# City of Carpinteria
# City Council Special Meeting Agenda
# Monday, June 17, 2013
**Council Chamber, 5775 Carpinteria Avenue**

**5:00 p.m. Closed Session - 5:30 p.m. Regular Session**

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**ESTIMATED TIME:**

5:00 p.m. **CALL TO ORDER**

**ROLL CALL**

**CLOSED SESSION**

a. Conference with Real Property Negotiator(s) – Government Code Section 54956.8

Property: Assessor's Parcel No. 001-170-010. Property located at 5669 Carpinteria Avenue; and Assessor's Parcel No. 001-170-013. Property located at 5885 Carpinteria Avenue.

Negotiating Party: County of Santa Barbara.

Agency Negotiators: Matt Roberts, Parks and Recreation Director; Dave Durflinger, City Manager; Peter Brown, City Attorney; and Dylan Johnson, Deputy City Attorney.

Under Negotiation: price and/or terms of purchase agreement.

b. Conference with Real Property Negotiator(s) – Government Code Section 54956.8

Property: Assessor's Parcel No. 004-105-015. Property located on Linden at the railroad.

Negotiating Party/Property Owner: Southern Pacific Railroad Corporation

Agency Negotiators: Matt Roberts, Parks and Recreation Director; Jackie Campbell, Community Development Director; John Thornberry, Administrative Services Director; and Beth Collins-Burgard and Dylan Johnson, Deputy City Attorneys.

Under Negotiation: price and/or terms of purchase agreement.

5:01 p.m. **PUBLIC COMMENT ON CLOSED SESSION MATTER**

**TEMPORARY ADJOURNMENT TO CLOSED SESSION**

5:30 p.m **CALL BACK TO ORDER**

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENT** - The Council will receive public comment concerning the matters that are the subject of the special meeting. Persons wishing to address the City Council should fill out a green Request to Speak form. The Mayor will call on you when you're your item is taken up.

***The City and the City Council are not responsible for the content of statements made during the public comment period, or the factual accuracy of any such statements.***

**The City Council will meet for the following purposes:**

5:31 p.m. 1. Consider Adoption of Resolution No. 5471, Appropriating up to a Combined Total of $800,000 from the Parkland Acquisition Fund, the Quimby Fund and the Park Open Space Fund, To Be Used to Fund the Purchase of a 1.44 Acre Portion of a Parcel of Vacant Land Designated by the Santa Barbara County Assessor as APN 004-105-015; and Authorize the Mayor to Execute the Purchase and Sale Agreement and Escrow Instructions Between Southern Pacific Rail Corporation and the City of Carpinteria.

Recommendation: (1) Adopt Resolution No. 5471, as read by title only, appropriating up to a combined total of $800,000 from the Parkland Acquisition Fund, the Quimby Fund and the Park Open Space Fund, to be used to purchase a 1.44 acre portion of the parcel of vacant land designated by the Santa Barbara County Assessor as APN 004-105-015; and (2) Authorize the Mayor to execute the Purchase and Sale Agreement and Escrow Instructions between Southern Pacific Rail Corporation and the City of Carpinteria.

Staff presenter: Mathew Roberts, Parks and Recreation Director

a. Staff Report
b. Public Comment
c. City Council Determination

5:51 p.m. 2. Approval of an Agreement to Purchase Tax Defaulted Property between the City and the Board of Supervisors of Santa Barbara County, and Initiation of Fundraising Efforts

Recommendation: (1) Approve the Agreement with the Board of Supervisors of Santa Barbara County to purchase certain tax defaulted property designated by the County Assessor as APNs 001-170-010 and 001-170-013, and authorize the Mayor to sign the Agreement on behalf of the City of Carpinteria. (2) Initiate fundraising efforts including the creation of an ad hoc City Council committee.

Staff presenter: Dave Durflinger, City Manager

a. Staff Report
b. Public Comment
c. City Council Determination

6:10 p.m. **ADJOURNMENT**

The next regular meeting to be held on **Monday, June 24, 2013**, at **5:30** P.M., in the Council Chamber, City Hall, 5775 Carpinteria Avenue, Carpinteria, California.

In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the City Clerk's Office at 684-5405, extension 403 or the California Relay Service at (866) 735-2929. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements for accessibility to this meeting.

This agenda was posted on Thursday, June 20, 2103, in the City Clerk's Office, on the City Hall Public Notices Board, and on the Internet.

Agenda Section: Other Business
Agenda Item # 1
Agenda Report # 13-61

# STAFF REPORT
# SPECIAL COUNCIL MEETING
# DATE: June 17, 2013

**ITEM FOR COUNCIL CONSIDERATION:**

1. Consider adoption of Resolution No. 5471, appropriating up to a combined total of $800,000 from the Parkland Acquisition Fund, the Quimby Fund and the Park Open Space Fund, to be used to fund the purchase of a 1.44 acre portion of a parcel of vacant land designated by the Santa Barbara County Assessor as APN 004-105-015.

2. Authorize the Mayor to execute the Purchase and Sale Agreement and Escrow Instructions between Southern Pacific Rail Corporation and the City of Carpinteria.

Report prepared by:
Matthew Roberts, Parks and Recreation Director — Signature

Reviewed by:
John Thornberry, Administrative Services Director — Signature

Dave Durflinger, City Manager — Signature

**STAFF RECOMMENDATION:**

**Action Item:** √

1. Adopt Resolution No. 5471, appropriating up to a combined total of $800,000 from the Parkland Acquisition Fund, the Quimby Fund and the Park Open Space Fund, to be used to purchase a 1.44 acre portion of the parcel of vacant land designated by the Santa Barbara County Assessor as APN 004-105-015.

2. Authorize the Mayor to execute the Purchase and Sale Agreement and Escrow Instructions between Southern Pacific Rail Corporation and the City of Carpinteria.

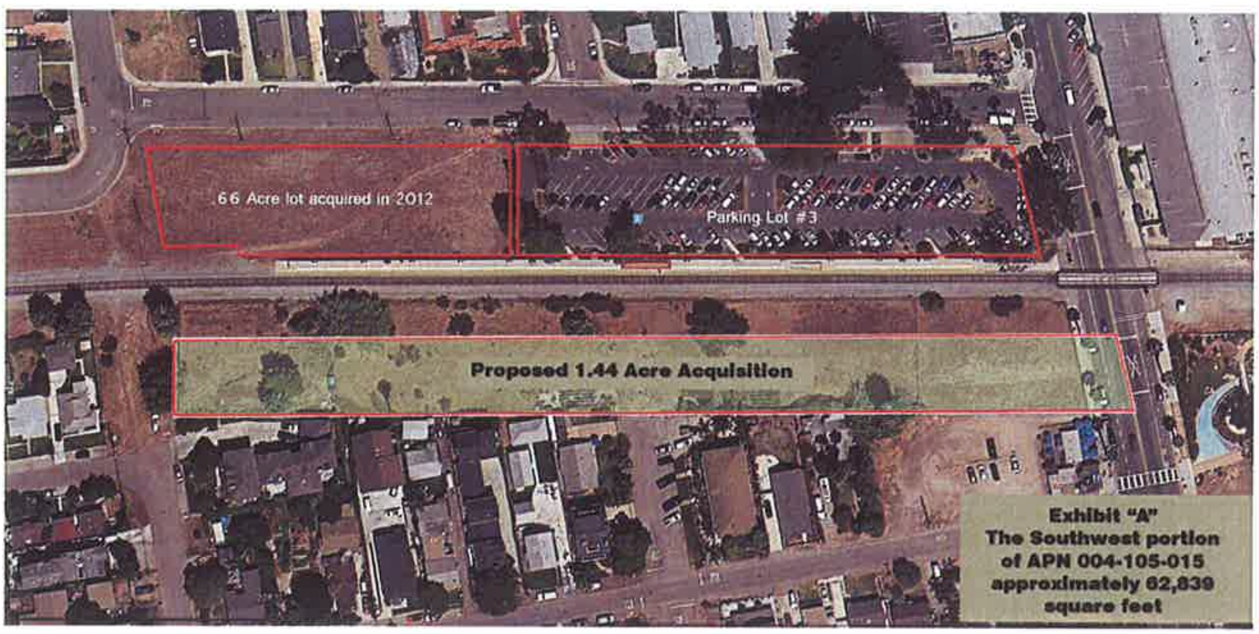
Sample Motion: I move to adopt Resolution No. 5471, as read by title only, and to authorize the Mayor to execute the Purchase and Sale Agreement and Escrow Instructions between Southern Pacific Rail Corporation and the City of Carpinteria as presented.

## I. BACKGROUND:

The City Council has previously authorized City Staff to negotiate with Union Pacific Corporation on price and terms to acquire a parcel of land to be used for recreation and/or open space purposes. Union Pacific Railroad is the sole owner of Southern Pacific Railroad. The parcel of land is described as a 1.44 acre portion of APN 004-105-015, located south of the railroad between Holly Avenue and Linden Avenue (the "Property").

In 1989, the City purchased from Southern Pacific Railroad what is now known as Municipal Parking Lot No.3 that is directly north of the Property. The Property is currently unimproved and is directly across the railroad and south of a parcel the City purchased from Union Pacific Railroad in 2012. The Property is currently zoned Commercial Planned Development (CPD) and has a General Plan land use designation of Open Space/Recreation (OSR).

No improvement plan or management plan has been prepared for the proposed acquisition; however, the Property appears to be suitable for a variety of park, coastal access, trail, green space and recreational uses. The diagram overlaid on the aerial photo below illustrates the land previously acquired, along with the proposed acquisition.




After negotiations with Union Pacific Railroad, the following terms have been included in the proposed Purchase and Sale Agreement.

- Purchase Price per square foot ...... $12.25
- Calculated Purchase price.............. $766,457.82[1]
- Feasibility Review Period............... 165 days

[1] The Purchase and Sale Agreement defines the purchase price as the net square footage of the parcel times $12.27. The net square footage is calculated by calculating the gross square footage of the parcel and then deducting the square footage of the Linden Avenue easement on the property.

- City takes liability for environmental contamination if discovered after escrow closes.
- City may not use property for uses not allowed for in the City's Open Space /Rec zoning.
- City may not use property for residential purposes.
- City accepts railroad nuisance conditions.
- UP retains mineral rights.
- City must install fence on acquired property along railroad where no fence is currently in place.

During the Feasibility Review Period the City will have the right to enter the Property and perform evaluations to see if the proposed acquisition is suitable for public acquisition.

The City has already conducted some suitability analysis that includes reviewing a report in the form of a letter prepared by a geo-environmental firm.[2] The report evaluates the known historical use of the Property including the remediation of an underground fuel storage tank that was supervised by the Santa Barbara County Environmental Health Department. The analytical report concludes that the site was cleaned to a standard that is unlikely to require any further environmental cleanup action. No further environmental contamination analysis is being proposed by Staff at this time.

The City has also performed some parcel boundary analysis using the services of a licensed civil surveyor. This analysis shows that there appears to be several adjoining properties that may have constructed improvements that encroach upon portions of the Property. The extent of these encroachments is relatively minor.

The Property is also encumbered by an existing lease that Union Pacific Railroad representatives generally describe as a beautification lease. The summary description provided to City Staff reveals that the arrangement allows the lessee to have limited use of the Property in return for maintaining the Property and paying a nominal lease fee. Union Pacific Railroad will provide a copy of this agreement to the City once the City enters into the Purchase and Sale Agreement. An analysis of the terms of this lease would be performed during the Feasibility Review Period to determine if there are any concerns.

The City will need to process a lot split application in order to legally create a new lot. This action is likely exempt from CEQA as the project does not include any development and the land acquisition is being pursued by the City in order to increase its inventory of park land and public open space.

[2] Review of Previous Environmental Site Assessment, Remediation and Regulatory Closure. Former Orchard Services Property, 399 Linden Avenue, (Portion of APN 004-105-015) , Carpinteria, California March 22, 2013. Prepared by Campbell Geo, Inc.

## II. POLICY:

The Carpinteria Planning Commission conducted a public hearing on May 6, 2013 and found that the City's proposed acquisition of the Property is consistent with the City's General Plan.

The City's General Plan and Local Coastal Plan policy OSC-14 directs the City to pursue the provision of adequate parks and open space for all community members.

**Policy OSC-14a** requires improved public access to coastal recreational areas.

**Policies OSC-14d and 14e** encourage recreational opportunities along coastal areas, including the beach.

**Policies OSC-15a, 15b and 15c** encourage the development of trail facilities throughout the City, as well as the enhancement of existing trails.

**Implementation policies 52** through **65** provide for the development of new recreational facilities, parks and trails throughout the City, and identify funding sources for these facilities.

## III. FINANCIAL CONSIDERATIONS:

The project total estimate for acquisition was calculated several years ago and was thought to be about $800,000.00.

The anticipated acquisition cost summary is presented below.

| Name | Description | Amount |
|---|---|---|
| Acquisition | Negotiated Cash Price | $766,457.82 |
| Lot Survey | Estimate | $3,000 |
| Fence Installation | Estimate | $22,500.00 |
| Escrow fees | Estimate | $2,000 |
| Contingency | Estimate | $6,000 |

Estimated amount required by City to complete the acquisition project: $800,000.00

Source of Funds and Amounts: The City collects Development Impact Fees that may be used for park and open space acquisition. The accounts are designated The Parkland Acquisition Fund, The Open Space Fund and the Quimby Fund. The table below shows each fund's current balance, the proposed appropriation and the remaining balance should the project be completed. These accounts are replenished throughout the year through contributions from various sources of revenue related to the funds such as development impact fees.

| Name | Current Fund Balance | Proposed Appropriation | Remaining Fund Balance |
|---|---|---|---|
| Parkland Acquisition | $382,841.00 | $380,000.00 | $2,841.00 |
| Open Space Acquisition | $63,379.00 | $63,000.00 | $379.00 |
| Quimby Fund | $358,054.00 | $357,000.00 | $1,054.00 |
| Total | $804,274.00 | $800,000.00 | $4,274.00 |

No General Fund monies are required to complete the recommended action.

The City's park and recreation system has immense economic value. Nationwide, it has been clearly demonstrated that parks contribute to a city's revenues through the enhancement of property values and tourism. Less measurable but still important economic benefits from parks and recreational uses include air pollution reduction, improved water quality, environmental, public health and safety, aesthetic, community identity and socialization benefits.

## IV. LEGAL ISSUES:

The City Attorney has reviewed and consulted with City Staff on the Purchase and sale Agreement.

## V. ALTERNATIVE:

The City Council could decline to purchase the property or direct staff to continue negotiating with Union Pacific Railroad over the terms of the Purchase and Sale Agreement.

## VI. ATTACHMENTS:

A. Resolution No. 5471
B. Purchase and Sale Agreement and Escrow Instructions

# Attachment A

# RESOLUTION NO. 5471

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA AUTHORIZING THE PURCHASE AND SALE AGREEMENT WITH SOUTHERN PACIFIC RAILROAD AND APPROPRIATING $380,000 FROM THE CITY'S PARK ACQUISITION FUND, $63,000 FROM THE OPEN SPACE ACQUISITION FUND, AND $357,000 FROM THE QUIMBY FUND TO BE USED FOR ACQUISITION OF 62,839 SQUARE FEET OF REAL PROPERTY GENERALLY DESCRIBED AS THE SOUTH WESTERN PORTION OF APN 004-105-015 IN THE CITY OF CARPINTERIA, SANTA BARBARA COUNTY, CALIFORNIA.

**WHEREAS**, The City of Carpinteria has determined that the acquisition of approximately 1.44 acres of the southwest portion of a parcel of land described as Assessor's Parcel Number 004-105-015 and graphically depicted in the attached Exhibit 1, is a desirable acquisition for uses consistent with the Open Space/Recreation designation of the City of Carpinteria's General Plan/Local Coastal Land Use Plan; and

**WHEREAS**, The City of Carpinteria collects development impact fees from new development in order to purchase parkland and open space so that the City can continue to adequately serve its population with adequate parks and open space; and

**WHEREAS**, the City has collected adequate funds to pay for the proposed expenditure.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARPINTERIA AS FOLLOWS,**

**SECTION 1.**
The above recitals are true and correct and are incorporated herein as set forth in full.

**SECTION 2.**
The City Council approves the Purchase and Sale Agreement and authorizes the appropriation of $380,000 from the City's Park Acquisition Fund, $63,000.00 from the Open Space Acquisition Fund, and $357,000 from the Quimby Fund to be used for the acquisition of approximately 1.44 acres of real property generally described as the southwest portion of APN 004-105-015 in the City of Carpinteria, Santa Barbara County, California, and more particularly described and depicted in attached Exhibit 1 incorporated herein by this reference.

PASSED, APPROVED AND ADOPTED this 17th day of June 2013, by the following called vote:

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

__________________________

Mayor, City of Carpinteria

Attest:

__________________________

City Clerk, City of Carpinteria

I hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 17th day of June 2013.

__________________________

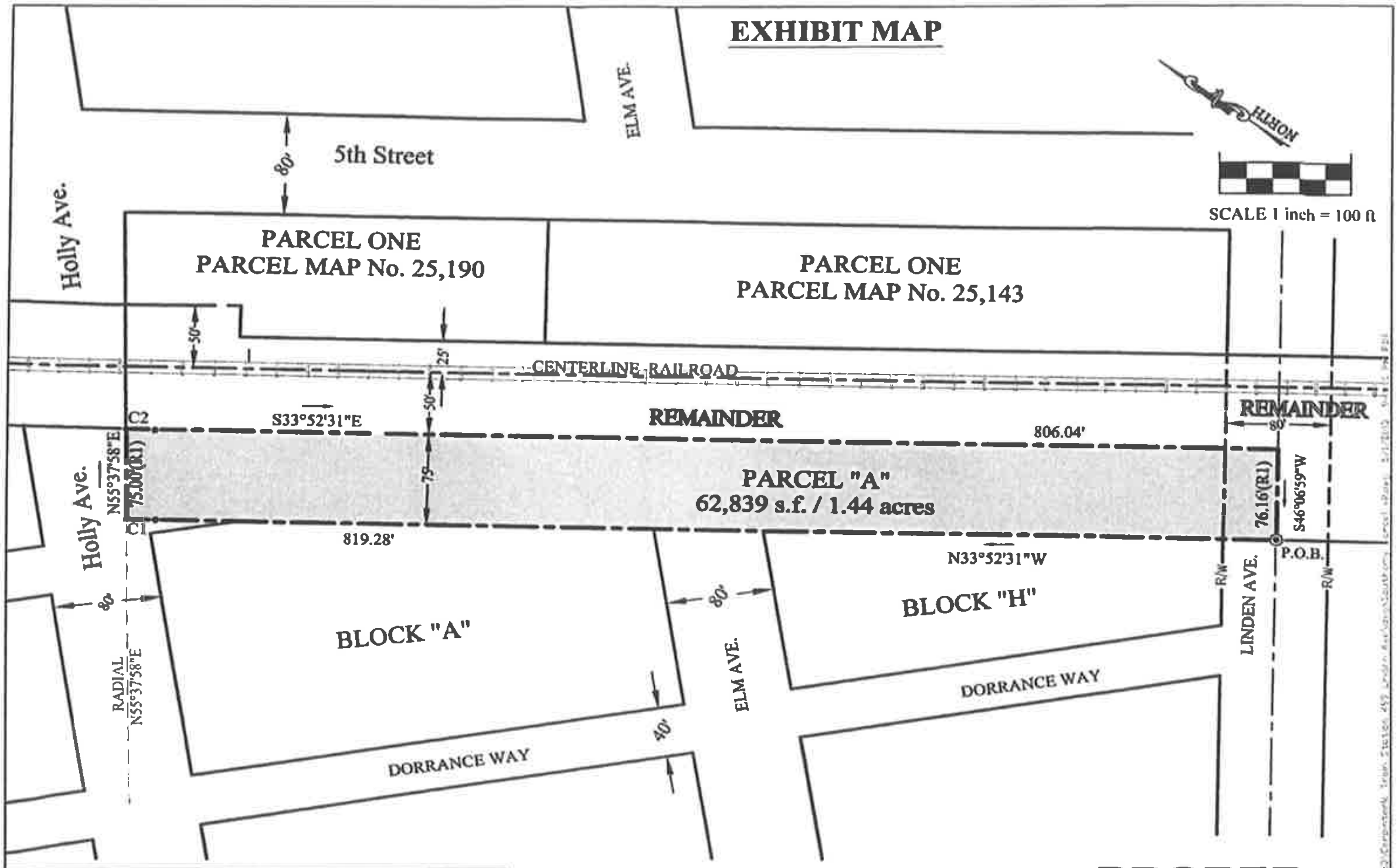
City Clerk

Approved as to form:

__________________________

City Attorney

EXHIBIT 1 Resolution No. 5471




CURVE TABLE

| CURVE | LENGTH | RADIUS | DELTA ANG. |
|---|---|---|---|
| C1 | 23.58 | 2740.02 | 1°29'31" |
| C2 | 24.23 | 2815.02 | 1°29'31" |

LEGEND
P.O.B. POINT OF BEGINNING
R/W RIGHT OF WAY
R1 PARCEL MAP No. 25,190 Bk.63, Pgs. 93 & 94

PROBER
Land Surveying
5290 Overpass Rd., Ste. 121, SB, CA 93111
Office 805 964-1096 Fax 964-2415 plssb@cox.net
www.ProberLandSurveying.com

Attachment B

**PURCHASE AND SALE AGREEMENT**
**AND ESCROW INSTRUCTIONS**

**Between**

**SOUTHERN PACIFIC RAIL CORPORATION,**
**a Utah corporation**

**SELLER**

**And**

**CITY OF CARPINTERIA,**
**a California municipal corporation**

**BUYER**

**DATED: __________________, 2013**

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Chicago Title Company ("Escrow Holder")
1225 Coast Village Road, Suite E
Santa Barbara, California 93108
Attention: Anna Ortiz Wines
Telephone: (805) 565-6900
Facsimile: (805) 565-6905
E-Mail: WinesA@ctt.com

Escrow No. ____________

Date of Opening of
Escrow: ____________

# PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (the "Agreement") is made as of ______________, 2013 ("Execution Date"), by and between **SOUTHERN PACIFIC RAIL CORPORATION**, a Utah corporation ("Seller"), and **CITY OF CARPINTERIA**, a California municipal corporation, incorporated as a political subdivision of the State of California ("Buyer").

## ARTICLE 1
## PROPERTY

1.1 The Property; Reservations. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the real property in Carpinteria, Santa Barbara County, California, shown on the print attached as **Exhibit A** (the "Property"), subject to the terms and conditions of this Agreement, any and all applicable federal, state and local laws, orders, rules, regulations, any and all outstanding rights of record or open and obvious on the ground, and all matters in the form of Grant Deed attached as **Exhibit B** (the "Deed"), including, without limitation, the following reservations:

(a) EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limitation, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Seller, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property or to interfere with the use of the Property by Buyer, its successors or assigns.

(b) FURTHER EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, forever, exclusive PERPETUAL EASEMENTS ten feet (10') in width measured from the centerline of the Fiber Optic Improvements (as defined below), in, on, over, under and across the Property ("Fiber Optics Easement Property"), in which areas Seller (and its easement holders, lessees, sublessees, licensees, successors or assigns) shall have the right to own, construct, reconstruct, maintain, operate, use and/or remove existing and/or future communication systems, lines and facilities of every kind and nature, including, but not limited to, all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment (the "Fiber Optics Improvements"). Seller does further reserve unto itself, its successors and assigns, a limited right-of-way and right of access to the Fiber Optics Easement Property over and across the Property, for the purposes of the use, enjoyment, maintenance, operation and access to the Fiber Optics Easement Property. All Fiber Optics Improvements presently existing on or hereafter constructed on the Fiber Optics Easement Property shall remain the personal property of Seller (or the grantee under any applicable agreement). Seller shall be entitled to all revenues derived from all current and future agreements to which Seller is a party affecting the Fiber Optics Easement Property. No permanent building, structure or fence and no material or obstruction of any kind or character shall be stored or maintained on the Fiber Optics Easement Property which would obstruct or interfere with the use and enjoyment of rights herein reserved without the prior written consent of the grantee under the applicable agreement. *[This reservation will be deleted from the Deed if the survey to be obtained by Buyer pursuant to Section 5.2 discloses that the Fiber Optic Improvements are not located on the Property or within five feet (5') of the boundary line of the Property.]*

## ARTICLE 2
## PURCHASE PRICE

2.1 Purchase Price The purchase price ("Purchase Price") for the Property is SEVEN HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED FIFTY-SEVEN AND 82/100TH DOLLARS ($766,457.82), calculated on the basis of Twelve and 27/100th Dollars ($12.27) per net square foot, and subject to upward or downward adjustment on such basis in the event the survey to be secured by Buyer pursuant to Section 5.2 shall disclose that the total net square footage of the Property is less than or greater than 62,466 gross square feet. For purposes of this Agreement, the phrase "net square foot" means the gross square footage of the Property less only the square footage of any portion of the Property located within the existing public street right-of-way of Linden Avenue.

2.2 Payment of Purchase Price. At least one (1) business day prior to the Closing Date (as defined in Section 8.2.1), Buyer shall deliver to Escrow Holder a sum equal to the Purchase Price, together with Buyer's share of prorations and costs of Escrow as provided in Sections 8.6 through 8.8. Buyer shall pay such sum by cashier's or certified check drawn upon a California financial institution, or by cash deposit or a wire transfer of U.S. funds for immediate credit.

2.3 Waiver of Right to Record Lis Pendens. AS A MATERIAL CONSIDERATION FOR SELLER ENTERING INTO THIS AGREEMENT, BUYER EXPRESSLY WAIVES (A) ANY RIGHT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE, PART II, TITLE 4.5 (SECTION 405 – 405.61) OR AT COMMON LAW OR OTHERWISE TO RECORD OR FILE A LIS PENDENS OR A NOTICE OF PENDENCY OF ACTION OR SIMILAR NOTICE AGAINST ALL OR ANY PORTION OF THE PROPERTY, (B) ITS RIGHT TO SPECIFIC

PERFORMANCE IN CONNECTION WITH ANY ALLEGED DEFAULT BY SELLER HEREUNDER AND (C) ITS RIGHT TO BRING ANY ACTION THAT WOULD IN ANY WAY AFFECT TITLE TO OR THE RIGHT OF POSSESSION OF ALL OR ANY PORTION OF THE PROPERTY. BUYER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. BUYER ACKNOWLEDGES AND AGREES THAT PRIOR TO THE ACTUAL CLOSE OF ESCROW, BUYER DOES NOT AND WILL NOT HAVE ANY RIGHT, TITLE AND/OR INTEREST IN THE PROPERTY OR ANY PORTION THEREOF. BUYER AND SELLER HEREBY EVIDENCE THEIR SPECIFIC AGREEMENT TO THE TERMS OF THIS WAIVER BY PLACING THEIR SIGNATURES OR INITIALS IN THE PLACE PROVIDED BELOW.

**SELLER:** TK **BUYER:** ______________

## ARTICLE 3
## AS IS SALE; RELEASE AND INDEMNITY; INSPECTION

3.1 As Is Sale; Release and Indemnity

3.1.1 "As Is" Sale. Buyer and its representatives, prior to the Closing Date, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire, including, without limitation, governmental laws and regulations to which the Property is subject. Buyer shall accept the Property upon the basis of its review and determination of the applicability and effect of such laws and regulations. Buyer acknowledges and agrees that the Property is to be sold and conveyed to and accepted by Buyer in an "as is" condition with all faults, and that the Property has been used for railroad and industrial purposes. Buyer further acknowledges that prior to the expiration of the Feasibility Review Period (as defined in Section 5.3), Seller shall provide and Buyer will have received, reviewed and will be knowledgeable of the matters contained in the reports and other documents listed on **Exhibit C** attached hereto and made a part hereof, including, without limitation, the Natural Hazard Area Report (collectively, the "Property Materials"). Seller makes no representation or warranty as to the accuracy or completeness of the Property Materials. Except as set forth in Section 9.1, Seller does not make any representations or warranties of any kind whatsoever, either express of implied, with respect to the Property or any of such related matters; in particular, but without limitation, except as set forth in Section 9.1, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

3.1.2 Release. BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, SELLER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON ACTING ON BEHALF OF SELLER, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY , INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. WITH RESPECT TO THE FOREGOING RELEASE, BUYER EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:

> **1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

BUYER HEREBY EVIDENCES ITS SPECIFIC AGREEMENT TO THE TERMS OF THIS RELEASE BY PLACING ITS SIGNATURE OR INITIALS BELOW.

____________________

**Buyer's Initials**

3.1.3 General Allocation of Environmental Responsibility. With respect to any existing or future environmental contamination of the Property, from and after Closing, Buyer, at no cost to Seller, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or otherwise necessary to make the Property suitable for Buyer's use of the Property; provided, however, nothing in this Section 3.1.3 shall prevent or prohibit Buyer from causing or attempting to require a third party, other than Seller or Seller's affiliates, to conduct any such investigation, monitoring, remediation, removal, response or other action, or from recovering or seeking to recover from any third party Buyer's costs incurred in having conducted such investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation.

3.1.4 Survival. The provisions of this Section 3.1 will survive the Closing and the delivery of the Deed.

3.1.5 Additional and Independent Consideration. The release and general allocation of environmental responsibility by Buyer under this Section 3.1 are additional and independent consideration to Seller for the sale and purchase of the Property, without which Seller would not sell the Property for the Purchase Price.

3.2 Inspection

3.2.1 During the term of the Feasibility Review Period (as defined in Section 5.3), Buyer and its representatives (including architects and engineers) have the right to enter upon and inspect the Property and conduct such boundary and topographic surveys, soil and engineering tests and environmental assessments with engineers or consultants licensed in the State of California as Buyer may reasonably require. Such inspections and tests must not materially damage the Property in any respect, and must be conducted in accordance with standards customarily employed in the industry and in compliance with all governmental laws, rules and regulations. Buyer shall notify Seller in writing at least forty-eight (48) hours prior to the date that each and every of such testing or inspections that involve material damage to the Property are to be conducted on the Property, and provide evidence, satisfactory to Seller, of the availability of adequate public liability and other insurance, which insurance must name Seller as an additional insured. If Buyer wishes to perform any environmental sampling, then Buyer shall (a) before conducting any sampling, provide Seller with Buyer's work plan for sampling and shall modify the work plan as reasonably requested by Seller, (b) give Seller reasonable advance notice of the dates when sampling will be conducted so that Seller and/or its consultants have the opportunity to be present, (c) conduct any sampling in accordance with the work plan referred to under (a) above and with generally accepted environmental engineering standards, and (d) provide Seller with the draft report on such sampling for Seller's review and comments prior to the report being placed in final form, and give reasonable consideration to such comments. **Buyer and its agents and contractors will maintain in confidence all information, reports, and evaluations generated in connection with any environmental assessments and will not make disclosure without the prior written consent of Seller unless required by law or court order.**

3.2.2 Following each entry by Buyer on the Property, Buyer shall promptly restore the Property to its original condition as existed prior to any such inspections and/or tests. If Buyer, its agents, representatives or employees undertake any boring or other disturbance of the soil, the soil so disturbed must be compacted to the original condition of the Property and Buyer shall obtain at its own expense a certificate from a soils engineer that certifies that such soil so disturbed has been compacted to the original condition of the Property.

3.2.3 Buyer shall indemnify, hold harmless and defend (with counsel acceptable to Seller) Seller and Seller's affiliates ("Seller's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), its and their officers, agents servants and employees against and from any and all liability, loss, cost, damage or expense (including, without limitation, attorneys' fees) attributable to Buyer's investigations of the Property during the Feasibility Review Period.

3.2.4 If Buyer discovers any hydrocarbon substances or any other hazardous or toxic substances, asbestos or asbestos-bearing materials, waste or materials subject to legal requirements or corrective action, Buyer shall immediately notify Seller of the same. As a material consideration for Seller entering into this Agreement, Buyer shall promptly deliver to Seller, without charge therefor, the results and copies of any and all environmental assessments made by or for Buyer with respect to the Property.

3.2.5 Buyer shall pay in full for all materials joined or affixed to the Property and for all persons who perform labor upon the Property, and must not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Buyer. Buyer shall indemnify, hold harmless and defend (with counsel acceptable to Seller) Seller and Seller's affiliates, its and their officers, agents, servants and employees against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished before Closing.

3.2.6 The indemnity obligations of Buyer under this Section will survive any termination of this Agreement or the delivery of the Deed and the transfer of title.

## ARTICLE 4
## TITLE TO PROPERTY

4.1 Title. At the Closing (as defined in Section 8.2.1), Seller shall execute and deliver to Buyer the Deed to the Property in the form of **Exhibit B** attached hereto. Title will be evidenced by the issuance by Chicago Title Company ("Title Company") of a CLTA Standard Coverage Owner's Policy of Title Insurance in the full amount of the Purchase Price (the "Title Policy"), insuring fee simple title to the Property in Buyer, subject only to:

4.1.1 A lien to secure payment of real property taxes and assessments, not delinquent;

4.1.2 Matters affecting the condition of title created or permitted to be created by or with the written consent of Buyer;

4.1.3 Standard exceptions in the Title Policy, and exceptions that are disclosed by the Title Report described in Section 5.1 or any supplementary report and that are approved or deemed approved by Buyer in accordance with Section 5.1;

4.1.4 Any other exceptions or reservations set forth in the Deed; and

4.1.5 That certain Lease of Property dated March 1, 2004 between Seller and UPPO's Garden, LLC, identified in the records of Seller as Audit No. 232075 (the "Lease"). At Closing, the Lease will be assigned by Seller to and assumed by Buyer to the extent the Lease affects the Property, by duly executed Assignment and Assumption Agreement (the "Assignment") in the form attached as **Exhibit D**. Rental and other payments, if any, under the Lease shall be prorated between Seller and Buyer as of the date of Closing.

4.2 Unidentified Licenses. Buyer acknowledges that the Property may be subject to licenses and other third party rights ("Unidentified Licenses") that have not been identified by Seller to Buyer from Seller's review of its records. It is the responsibility of Buyer to determine if any of these Unidentified Licenses exist. If any Unidentified License that affects the Property is identified after the Execution Date, Seller's rights (including, without limitation, any income) and obligations under such Unidentified License will be assigned to and assumed by Buyer at or after Closing to the extent such Unidentified License affects the Property by duly executed Assignment in the form of **Exhibit D**.

4.3 Extended Coverage. Buyer, at its option and at its sole cost and expense, may obtain ALTA extended coverage and/or an ALTA survey, provided, however, that the failure to obtain such extended coverage will not be a condition to nor delay the Close of Escrow beyond the Closing Date, and that Seller will not be required to assume any obligations or liabilities in addition to Seller's obligations and liabilities under this Agreement.

## ARTICLE 5
## BUYER'S CONDITIONS TO CLOSING

The following are conditions precedent to Buyer's obligation to purchase the Property:

5.1 Approval of Title.

(a) Within fifteen (15) days after the Opening of Escrow, Buyer, at its sole cost and expense, shall obtain a preliminary title report on the Property ("Title Report") together with all copies of the documents referred to in the Title Report that are provided by the Title Company with the Title Report, and furnish a copy of same to Seller. Within the earlier to occur of (i) ten (10) days after receipt by Buyer of the Title Report and the survey referred to in subparagraph (b) below, or (ii) forty (40) days after Opening of Escrow ("Title Contingency Date"), Buyer shall deliver written notice to Seller ("Buyer's Title Notice") of all matters of title to the Property disapproved by Buyer ("Disapproved Items"). Buyer's failure to deliver Buyer's Title Notice by the Title Contingency Date will be deemed to be Buyer's approval of the survey and all existing title matters. If Buyer timely notifies Seller of Disapproved Items and all or some of the Disapproved Items (except for those Disapproved Items, if any, which will be removed upon the Close of Escrow in accordance with the terms of this Agreement) are not cured or deleted as exceptions to title within fifteen (15) days after Seller's receipt of Buyer's Title Notice ("Seller's Cure Period"), Buyer will have the option of either waiving its disapproval of such Disapproved Items and proceeding to the Close of Escrow or terminating this Agreement, in which event the provisions of Section 5.1(b) will govern. The procurement by Seller of a commitment for the issuance of the Title Policy, or an endorsement thereto, insuring Buyer against any Disapproved Item set forth in Buyer's Title Notice, will be deemed a cure by Seller of such Disapproved Item. In the event Buyer elects to terminate this Agreement pursuant to this Section 5.1, Buyer shall notify Seller of its election by written notice at least ten (10) days before the Closing Date. Buyer's failure to timely deliver written notice to Seller of its election will be deemed to be Buyer's election to proceed to the Close of Escrow and to waive its disapproval of such Disapproved Items. In no event will Seller's failure to cure or delete as exceptions to the Title Policy any Disapproved Items be deemed to be a breach of this Agreement by Seller or entitle Buyer to any offset against the Purchase Price.

(b) If this Agreement is terminated pursuant to this Section 5.1., neither party will have any further rights or obligations under this Agreement (other than the Surviving Obligations).

5.2 Survey. Within thirty (30) days after the Opening of Escrow, Buyer, at its sole cost and expense, shall obtain and furnish to Seller and Title Company a copy of a survey of the Property, prepared and certified to both Seller and Buyer by a public surveyor registered in the State of California. The survey, as approved by Buyer as set forth in Section 5.1 above and as approved by Seller, will be used by Seller as the basis for preparation of the description of the Property and the Fiber Optics Easement Property, if applicable.

5.3 Feasibility Review. Buyer will have approved, within one hundred sixty-five (165) days after the Opening of Escrow ("Feasibility Review Period"), the condition of the Property and the feasibility of the Buyer's development plan therefor. Buyer's feasibility review pertains to Buyer's review of and satisfaction with the following:

(i) The availability of approvals by all governmental bodies having jurisdiction over the Property for Buyer's development of the Property; and

(ii) Buyer's engineering studies, soils investigations, environmental assessments, surveys and physical inspection of the Property.

Buyer may elect, at any time prior to the expiration of the Feasibility Review Period, to terminate this Agreement as a result of Buyer's disapproval of any of the foregoing matters; provided however, that if Buyer fails to notify Seller and Escrow Holder of Buyer's disapproval of the feasibility of Buyer's proposed development of the Property by written notice delivered to Seller no later than the date of expiration of the Feasibility Review Period, Buyer will be deemed to have approved the feasibility and this condition will be deemed satisfied. If this Agreement is terminated pursuant to the foregoing provisions of this Section 5.3, neither party will have any further rights or obligations under this Agreement (except for the Surviving Obligations).

5.4 City Council Approval. The terms and conditions of this Agreement are subject to discretionary approval by the City Council of the City of Carpinteria ("City Council Approval"). Notice of approval or disapproval shall be given by Buyer to Seller before the end of the Feasibility Review Period. If the terms of this Agreement are not approved by the City Council of the City of Carpinteria before the end of the Feasibility Review Period, then this Agreement shall be deemed terminated forthwith. If this Agreement is terminated pursuant to the foregoing provisions of this Section 5.4, neither party will have any further rights or obligations under this Agreement (except for the Surviving Obligations).

5.5 Compliance by Seller. Seller will have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Seller.

## ARTICLE 6
## SELLER'S CONDITIONS TO CLOSING

The following are conditions precedent to Seller's obligation to sell the Property.

6.1 Seller's Management Approval. The terms and conditions of this transaction are subject to approval in accordance with Seller's Management Policy Statement. Seller shall give Buyer notice of approval or disapproval within ten (10) days after receiving any environmental reports on the Property prepared on behalf of Buyer, and failure to give such notice within said time period will be deemed notice of disapproval. If, within such 10-day time period the terms of this Agreement are not approved for any reason in accordance with Seller's Management Policy Statement, then this Agreement will be deemed terminated forthwith. If this Agreement is terminated pursuant to the foregoing provisions of this Section 6.1, neither party will have any further rights or obligations under this Agreement (except for the Surviving Obligations).

6.2 Compliance by Buyer. Buyer will have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Buyer.

## ARTICLE 7
## EXEMPTION FROM SUBDIVISION MAP ACT

7.1 Subdivision Compliance. This Agreement is expressly conditioned upon compliance with the California Subdivision Map Act ("Subdivision Compliance"). If the Property is not already in compliance, Buyer shall undertake and use commercially reasonable efforts to pursue, at its sole cost and expense, such action as may be necessary to effect Subdivision Compliance. In the event that Buyer has not effected such Subdivision Compliance on or before the end of Feasibility Review Period this Agreement shall automatically terminate, Buyer shall bear all escrow cancellation and similar fees, and neither party will have any further rights or obligations (except for the Surviving Obligations).

7.2 Seller's Cooperation. In connection with Buyer pursuing Subdivision Compliance, Seller shall cooperate in good faith by executing necessary documents, provided, however, that Seller shall not be required to incur any cost or expense in connection therewith and that any action Buyer desires Seller to take shall be reasonably acceptable to Seller as to substance and legal form. In no event shall Buyer take any action (nor shall Seller be required to take any action) in connection with such Subdivision Compliance which would (a) affect in any manner whatsoever Seller's adjacent property, (b) encumber the Property prior to Closing of Escrow, (c) obligate Seller as owner of the Property or otherwise to pay money, construct improvements or dedicate any interest in real property, or (d) detrimentally affect the value, use or development of the Property or Seller's adjacent property.

7.3 Termination If the City of Carpinteria or other governmental entity having jurisdiction attaches conditions to Subdivision Compliance which are unacceptable to Seller, Seller may terminate this Agreement. In the event of such termination, the parties shall share equally all escrow cancellation and similar fees, and neither party will have any further rights or obligations (except for the Surviving Obligations).

## ARTICLE 8
## OPENING AND CLOSING OF ESCROW

8.1 Opening of Escrow and Escrow Instructions. Upon execution of this Agreement, the parties shall deposit three (3) executed counterparts of this Agreement with Escrow Holder and this instrument will serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby, including Escrow Holder's general provisions which are contained in **Exhibit E** attached hereto to the extent said general provisions do not conflict with the provisions contained in these Escrow Instructions. Escrow Holder shall insert the date of the Opening of Escrow on the upper right hand corner of the first page of this Agreement on each of the three counterparts. The Opening of Escrow is the date upon which Escrow Holder has received executed counterparts of this Agreement from both Buyer and Seller. Escrow Holder shall deliver to both Buyer and Seller a set of counterparts of the Agreement executed by Buyer, Seller and Escrow Holder and shall retain a set in Escrow. Escrow Holder is responsible only for undertaking such matters in conjunction with the Closing as are specifically provided for in this Agreement or in any additional or supplementary escrow instructions delivered by the parties. If the Opening of Escrow has not occurred by March 29, 2013, this Agreement will be null and void and of no further force and effect.

8.2 Closing.

8.2.1 Closing Date. The consummation of the transaction contemplated by this Agreement and recording of the Deed (the "Closing" or "Close of Escrow") will occur and delivery of all items to be made at the Closing under the terms of this Agreement will be made within thirty (30) days after the end of the Feasibility Review Period (the "Closing Date").

8.2.2 Preclosing Conditions. Provided that Escrow Holder can comply with these instructions, that Escrow Holder has received the deliveries described in Sections 8.3 and 8.4 below, that Escrow Holder has not received prior written notice from a party that any condition to such party's obligations has not been fulfilled, or that Buyer has elected to terminate its rights and obligations under this Agreement pursuant to Article 5 or Seller has elected to terminate its rights and obligations under this Agreement pursuant to Article 6 and the Title Company has issued or is unconditionally prepared to issue to Buyer, as of the Closing Date, the Title Policy, then Escrow Holder is authorized and instructed to (a) record the Deed, (b) deliver the Purchase Price to Seller, less prorations and costs of Escrow in accordance with Section 8.6, (c) deliver a conformed copy of the recorded Deed to Buyer and Seller, and (d) deliver the closing statements to Buyer and Seller in accordance with Section 8.2.4. Escrow Holder is instructed to request that the amount of the documentary transfer tax due be shown on a separate paper and affixed to the Deed by the County Recorder after the permanent record is made, which request must be in the form of **Exhibit F**.

8.2.3 Failure to Close. If the Closing does not occur on or before the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party and to Escrow Holder. In the event of such termination and cancellation, neither party will have any further obligations hereunder (other than the Surviving Obligations) and all documents and other instruments must be returned to the party depositing the same into Escrow. If neither party is in default, then Buyer and Seller will share equally the cost of cancellation of Escrow. If only one of the parties hereto is in default or if this Agreement expressly so provides, then such defaulting party shall pay for the entire cost of cancellation of Escrow. The termination of this Agreement and cancellation of Escrow will be without prejudice to whatever legal rights, as such rights may be limited by the terms of this Agreement, that Buyer or Seller may have against each other arising out of this Agreement and the Escrow. If neither party so elects to terminate this Agreement and cancel Escrow, Escrow Holder shall close the Escrow as soon as possible.

8.2.4 Notification; Closing Statements. If Escrow Holder cannot comply with the instructions in this Agreement and to be provided, Escrow Holder is not authorized to cause the recording of the Deed or close this Escrow. If Escrow Holder is unable to cause the recording of the Deed, Escrow Holder shall notify Dave Durflinger at (805) 684-5405 x400 and Garry Malmberg at (402) 544-8586, without delay. If Escrow Holder is able to comply with the instructions herein and to be provided, at the Closing Escrow Holder shall deliver to Seller at the addresses provided in Section 12.9 a true, correct and complete copy of the Seller's closing statement, in the form customarily prepared by Escrow Holder and shall deliver to Buyer at the address provided in Section 12.9 a true, correct and complete copy of Buyer's closing statement, in the form customarily prepared by Escrow Holder.

8.3 Deliveries by Seller. Not later than one business day prior to the Closing Date, Seller shall deposit with Escrow Holder the following items:

8.3.1 Deed. The Deed in the form of **Exhibit B** duly executed and acknowledged by Seller.

8.3.2 Assignment. The Assignment in the form of **Exhibit C** duly executed by Seller.

8.3.3 Transfer Tax Letter. The Transfer Tax Letter duly executed by Seller in the form of **Exhibit F**.

8.3.4 Non-Foreign Status Certificate. A Non-Foreign Status Certificate pursuant to Internal Revenue Code Section 1445 duly executed by Seller.

8.3.5 California Form 593-C. California Form 593-C (Real Estate Withholding Certificate) duly executed by Seller.

8.3.6 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for under this Agreement that have not previously been delivered.

8.4 Deliveries by Buyer. Not later than one (1) business day prior to the Closing Date (or such other time specified below), Buyer shall deposit with Escrow Holder the following items:

8.4.1 Purchase Price. An amount equal to the Purchase Price, plus Buyer's share of the prorations and costs of Escrow that are required pursuant to this Article 8 to close Escrow.

8.4.2 Assignment. The Assignment in the form of **Exhibit C** duly executed by Buyer.

8.4.3 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for under this Agreement that have not been previously delivered.

8.5 Other Instruments. Seller and Buyer shall each deposit such other instruments and take such other actions as are reasonably required by Escrow Holder or otherwise required to close the Escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

8.6 Prorations. All revenues and expenses of the Property, including, without limitation, assessments and utility fees and/or deposits, will be prorated and apportioned between Buyer and Seller as of 12:01 a.m. on the Closing Date, so that Seller bears all expenses with respect to the Property and has the benefit of all income with respect to the Property through and including the date immediately preceding the Closing Date.

8.7 Special Taxes, Bonds or Assessments. If, at the time of Closing, any portion of the Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment will be prorated as of midnight at the end of the day preceding the Close of Escrow. All installments not then yet due whether or not the same have been prepaid will not be prorated and Buyer shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date will be credited to Seller. In addition, Buyer shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Property for liabilities now or hereafter imposed by any governmental authority (collectively referred to as "Governmental Requirements") including, without limitation, any such Governmental Requirements imposed by the City of Carpinteria, and those for (a) common area improvements, whether or not specifically set forth in this Agreement, (b) local assessment or improvement districts, (c) any special tax assessments, (d) traffic mitigation improvements, (e) park and recreation fees, and/or (f) any other public facility infrastructure or traffic mitigation required or imposed by the City of Carpinteria. Buyer shall assume all such bonds or future assessments without offset or adjustment.

8.8 Costs and Expenses. The costs and expenses of Escrow upon Close of Escrow will be allocated as follows: Buyer and Seller shall each pay one-half (1/2) of the recording fees. Buyer shall pay the premium for the Owner's Policy of Title Insurance, the cost of any documentary or other transfer taxes applicable to the sale, and all other standard costs and charges of the Escrow. All other fees and costs pertaining to the transaction shall be allocated between the parties and prorated as is customary in Santa Barbara County.

8.9 Disbursement of Funds. On the Close of Escrow, Escrow Holder shall disburse the Purchase Price less (a) Seller's share of prorations as determined pursuant to Section 8.6; and (b) Seller's share of costs of Escrow pursuant to Section 8.8, in immediately available funds, and, unless otherwise instructed by Seller, Escrow Holder shall cause such funds to be sent by wire transfer as follows:

US Bank
Omaha, Nebraska 68102
ABA Routing #104000029
For Credit SOUTHERN PACIFIC RAIL CORPORATION
Account No. 148744571164

Escrow Holder shall wire such funds to Seller as of 11:00 a.m. on such date in order that such funds may be received by Seller on the Close of Escrow; provided, however, that if such funds cannot be wired to Seller on the Close of Escrow, Escrow Holder shall, unless otherwise directed in writing by Seller, invest the funds overnight in an interest-bearing account.

8.10 Delivery of Documents. Upon the Close of Escrow, Escrow Holder shall promptly deliver all instruments and documents to such party's attorney specified in Section 12.9, and if no attorney is specified, then to such party directly. Escrow Holder shall promptly deliver to the party entitled thereto the recorded originals of such instruments or documents upon Escrow Holder's receipt of the same.

8.11 Supplemental Taxes. Seller and Buyer acknowledge that the Property may be subject to supplemental taxes due as a result of change of ownership taking place through this Escrow. Any necessary adjustment due either party on receipt of a supplemental tax bill will be made by the parties outside of this Escrow and Escrow Holder is released of any liability in connection with same.

## ARTICLE 9
## REPRESENTATIONS, WARRANTIES AND COVENANTS; POST-SALE CONDITIONS

9.1 Representations, Warranties and Covenants of Seller. Seller hereby represents, warrants and covenants to Buyer as of the date of this Agreement, as follows:

9.1.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Utah and qualified to do business in California.

9.1.2 Enforceability. This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are intended, provided Buyer has duly executed those documents requiring Buyer's signature, to be legal, valid, and binding obligations of Seller, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

9.2 Representations, Warranties and Covenants of Buyer. Buyer hereby represents, warrants and covenants to Seller as of the date of this Agreement, as follows:

9.2.1 Organization. Buyer is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of California and qualified to do business in California, with full power and authority to enter into and comply with the terms of this Agreement.

9.2.2 Enforceability. This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are intended, provided Seller has duly executed those documents requiring Seller's signature, to be legal, valid, and binding obligations of Buyer, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.

9.2.3 Bankruptcy. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or contemplated by Buyer.

9.3 Mutual Representations and Covenants, Brokers and Finders. No broker's fee, finder's fee, commission or similar compensation will be paid to principals of Buyer or Seller in connection with this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, agrees to indemnify and hold Seller harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim; and Seller, if such claim is based upon any agreement alleged to have been made by Seller, agrees to indemnify and hold Buyer harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. The provisions of this Section will survive the Close of Escrow or termination of this Agreement.

9.4 Post-Sale Conditions. The Property shall be conveyed by Seller to Buyer subject to the following covenants, conditions and restrictions which Buyer by the acceptance of the Deed shall covenant for itself, its successors and assigns, faithfully to keep, observe and perform:

9.4.1 Restriction on Use. Buyer, its successors and assigns, may use the Property only for activities allowed under the Open Space/Recreation ("OSR") designation of the City of Carpinteria's General Plan/Local Costal Land Use Plan & Environmental Impact Report, State Clearinghouse No. 1997121111, dated April 2003, or subsequent law, which is intended to provide recreational areas (passive or active), including City parks, beaches, golf courses and related uses, as well as open space areas. Notwithstanding the foregoing OSR designation, the Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers).

9.4.2 Fence Covenant. Buyer, at its sole cost and expense, shall install, within ninety (90) days after the date of delivery of the Deed, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Seller adjacent to the northeasterly boundary of the Property. Any fencing or barrier must be of a design and type satisfactory to Seller, and in compliance with applicable building codes. Buyer shall submit the plans for any new fencing or barrier construction to:

Union Pacific Railroad Company
Assistant Vice President-Real Estate (Folder 2639-29)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Seller shall complete such review and make appropriate response to Buyer within twenty (20) days after receipt of such plans by Seller. Seller shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

9.4.3 Railroad Proximity Covenant.

(a) Buyer acknowledges that the property abutting the northeasterly boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the "Permitted Effects"). Buyer accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Buyer agrees that, at Buyer's sole cost and expense, as part of the development of the Property, Buyer shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted Effects.

(b) Buyer shall not and hereby waives all rights to institute legal proceedings against Seller to reduce or lessen the Permitted Effects.

(c) If Buyer sells or leases all or any portion of the Property, Buyer shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Seller, to comply with the above covenants.

9.4.4 Covenants To Run With Land. The foregoing covenants, conditions and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Buyer, and the benefits of which will inure to the successors and assigns of Seller. A breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

## ARTICLE 10
## ACQUISITION UNDER THREAT OF CONDEMNATION

The parties acknowledge that Buyer has the power of eminent domain. Buyer represents that it will institute eminent domain proceedings in the event that Seller does not sell the Property pursuant to this Agreement. The parties further acknowledge that Seller intends to treat any gain or loss realized from the sale of the Property as sold under imminent threat of condemnation pursuant to Section 1033 of the federal Internal Revenue Code of 1986.

## ARTICLE 11
## POSSESSION

Possession of the Property will be delivered to Buyer on the Close of Escrow, subject to the Lease and any Unidentified Licenses.

## ARTICLE 12
## MISCELLANEOUS

12.1 Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in Closing and carrying out the transactions contemplated by this Agreement.

12.2 Satisfaction or Waiver of Contingencies. The consummation of the Closing will be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

12.3 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns, except that Buyer's interest under this Agreement may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise. Any assignment, encumbrance or other transfer in violation of the foregoing will be void and Buyer will be deemed in default hereunder.

12.4 Parties in Interest. Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor will any provision give any third persons any right to subrogation or action over against any party to this Agreement.

12.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

12.6 Amendment. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by the party to be bound.

12.7 Waiver. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

12.8 Timeliness. Seller and Buyer acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision of this Agreement and that failure to timely perform any of the material terms, conditions, obligations or provisions of this Agreement by either party is a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

12.9 Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") must be in writing and must be (a) personally delivered; (b) delivered by a reputable overnight courier; or (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices are valid only to the extent they are (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices will be deemed received at the earlier of (a) actual receipt or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices must be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

| | |
|---|---|
| If to Seller: | SOUTHERN PACIFIC RAIL CORPORATION<br>c/o Union Pacific Railroad Company<br>ATTN: Garry Malmberg, Senior Manager-Real Estate<br>1400 Douglas Street, Mail Stop 1690<br>Omaha, Nebraska 68179<br>Telephone: (402) 544-8586<br>Facsimile: (402) 501-0340 |
| With copy to: | SOUTHERN PACIFIC RAIL CORPORATION<br>ATTN: Madeline Roebke, Assistant General Attorney<br>1400 Douglas Street, Mail Stop 1580<br>Omaha, Nebraska 68179 |

Telephone: (402) 544-1121
Facsimile: (402) 501-0132

If to Buyer: CITY OF CARPINTERIA
ATTN: Dave Durflinger, City Manager
5775 Carpinteria Avenue
Carpinteria, California 93013
Telephone: (805) 684-5405 x400
Facsimile: (805) 684-5304

With copy to: Mr. Peter Brown
City Attorney
21 E. Carrillo Street
Santa Barbara, California ______
Telephone: (805) 963-7000
Facsimile: (805) 965-4333

12.10 Governing Law and Venue. This Agreement is to be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, will be brought in the county in which the Property is located.

12.11 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and will not affect the construction or interpretation of any of its provisions.

12.12 Invalidity. Any provision of this Agreement which is invalid, void, or illegal, will not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement will remain in full force and effect.

12.13 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

12.14 Number and Gender. When required by the context of this Agreement, each number (singular and plural) will include all numbers, and each gender will include all genders.

12.15 Joint and Several Liability. In the event either party hereto now or hereafter consists of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations will be jointly and severally liable as parties under this Agreement.

12.16 Recording. Neither party may record this Agreement or any memorandum thereof.

12.17 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action bears all costs and expenses related thereto.

12.18 Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.

12.19 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement will not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

12.20 Recitals and Exhibits. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

12.21 Professional Fees and Costs. If any legal or equitable action, arbitration, bankruptcy, reorganization, or other proceeding, whether on the merits, application, or motion, are brought or undertaken, or an attorney retained, to enforce this Agreement or any closing document, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement or any closing document, then the successful or prevailing party or parties in such undertaking (or the party that would prevail if an action were brought) will be entitled to recover reasonable attorney's and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding, or discussions, in addition to any other relief to which such party may be entitled. The parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such party reasonably incurs expenses. The provisions of this Section will survive the Close of Escrow or the termination of this Agreement.

12.22 Confidentiality. All information, studies and reports relating to the Property obtained by Buyer, either by the observations and examinations of its agents and representatives or as disclosed to it by Seller, must remain confidential and Buyer shall not disclose any such matters to any person or governmental agency except as unconditionally required by law. If the transaction contemplated herein fails to close for any reason, Buyer shall deliver and return to Seller, at no cost to Seller, all such information, reports and studies, and Buyer shall make no further distributions or disclosures of any such information, reports and studies. Buyer agrees that, except for its lender, accountants, attorneys or a permitted assignee of Buyer, Buyer shall keep the contents of this Agreement confidential and that no publicity or press release to the general public with respect to this transaction shall be made by Buyer without the prior written consent of Seller. The provisions of this Section will survive the termination of this Agreement.

12.23 Not an Offer. The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell the Property to Buyer or the granting of an option or other rights with respect to the Property to Buyer. No agreement with respect to the purchase and sale of the Property will exist, and this writing will have no binding force or effect, until executed and delivered by both Seller and Buyer.

12.24 Back-Up Offers. Until the Close of Escrow, Seller will have the right to continue to present the Property for sale and accept "back-up" offers contingent on Buyer's failure to perform under the terms of this Agreement.

12.25 Severability. Any provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable will be invalid or unenforceable only to the extent of such determination, which will not invalidate or otherwise render ineffective any other provision of this Agreement.

12.26 Merger. Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of Buyer and Seller in this Agreement will merge into the Deed to be delivered by Seller to Buyer at Closing and will not survive the Closing of Escrow.

**SELLER:**

**SOUTHERN PACIFIC RAIL CORPORATION,**
**a Utah corporation**

By: Tony K. Love

Name: TONY K. LOVE

Title: Assistant Vice President – Real Estate

**BUYER:**

**CITY OF CARPINTERIA,**
**a California municipal corporation**

By:____________________

Name:____________________

Title:____________________

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT OF THREE (3) EXECUTED COPIES OF THIS AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

**ESCROW HOLDER:**

**CHICAGO TITLE COMPANY**

By:____________________
Anna Ortiz Wines, Escrow Officer


Blk 47
Blk 39
Blk 46
AVE
AVE
HOLLY
SOLD TO CITY
Signal Tool Ho
No 2
No 1
4 BW
4 BW
381
3682+08±
3680+20±
(Orig) 3680+40± CC 2°00'L±
(Orig) 3679+50±
3678+15 73 F C
3678+15 01 POT
3681+00(Sc)
3680+20(Sc)
3676+48(Sc)
3681+75 72
75'
50'
50
FIBER OPTIC CABLE
CALL BEFORE YOU DIG
1-800-336-9193

**EXHIBIT A**

**EXHIBIT B**

**RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:**

City of Carpinteria
Attn: City Manager
5775 Carpinteria Avenue
Carpinteria, California 93013

**MAIL TAX STATEMENTS TO:**

City of Carpinteria
Attn: City Manager
5775 Carpinteria Avenue
Carpinteria, California 93013

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*(Space above line for Recorder's use only)*

APN ______________ 2639-29

# GRANT DEED

FOR VALUE RECEIVED, **SOUTHERN PACIFIC RAIL CORPORATION,** a Utah corporation ("Grantor"), grants to **CITY OF CARPINTERIA**, a California municipal corporation, incorporated as a political subdivision of the State of California ("Grantee"), all of its right, title, and interest in and to that certain real property (the "Property") situated in the City of Carpinteria, County of Santa Barbara, State of California, described in **Exhibit A** attached hereto and incorporated by reference.

EXCEPTING from this grant and RESERVING unto Grantor, its successors and assigns, forever, the following:

(a) All minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limitation, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property or to interfere with the use of the Property by Grantee, its successors or assigns; and

(b) Exclusive PERPETUAL EASEMENTS ten feet (10') in width measured from the centerline of the Fiber Optic Improvements (as defined below), in, on, over, under and across the Property ("Fiber Optics Easement Property"), in which areas Grantor (and its easement holders, lessees, sublessees, licensees, successors or assigns) shall have the right to own, construct, reconstruct, maintain, operate, use and/or remove existing and/or future communication systems, lines and facilities of every kind and nature, including, but not limited to, all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment (the "Fiber Optics Improvements"). Grantor does further reserve unto itself, its successors and assigns, a limited right-of-way and right of access to the Fiber Optics Easement Property over and across the Property, for the purposes of the use, enjoyment, maintenance, operation and access to the Fiber Optics Easement Property. All Fiber Optics Improvements presently existing on or hereafter constructed on the Fiber Optics Easement Property shall remain the personal property of Grantor (or the grantee under any applicable agreement). Grantor shall be entitled to all revenues derived from all current and future agreements to which Grantor is a party affecting the Fiber Optics Easement Property. No permanent building, structure or fence and no material or obstruction of any kind or character shall be stored or maintained on the Fiber Optics Easement Property which would obstruct or interfere with the use and enjoyment of rights herein reserved without the prior written consent of the grantee under the applicable agreement. *[This reservation will be deleted from this Deed if the survey to be obtained by Grantee pursuant to Section 5.2 of the Purchase and Sale Agreement discloses that the Fiber Optic Improvements are not located on the Property or within five feet (5') of the boundary line of the Property.]*

THE PROPERTY IS CONVEYED TO GRANTEE SUBJECT TO:

A. All liens, encumbrances, easements, covenants, conditions and restrictions of record;

B. All matters which would be revealed or disclosed in an accurate survey of the Property;

C. All matters which would be revealed or disclosed by a physical inspection of the Property;

D. A lien not yet delinquent for taxes for real property and personal property, and any general or special assessments against the Property;

E. Zoning ordinances and regulations and any other notices, orders, laws, ordinances, and governmental regulations and restrictions regulating the use, occupancy or enjoyment of the Property, and amendments and additions thereto, now or hereafter in force or effect; and

F. Existing licenses and other existing rights to use the Property and renewals thereof, regardless of whether visible, open and obvious, recorded or unrecorded, or for public streets, rights of way or utilities.

Covenants.

The Property is conveyed by Grantor subject to the following covenants, conditions and restrictions which Grantee by the acceptance of this Deed covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

(a) Restriction on Use. Buyer, its successors and assigns, may use the Property only for activities allowed under the Open Space/Recreation ("OSR") designation of the City of Carpinteria's General Plan/Local Costal Land Use Plan & Environmental Impact Report, State Clearinghouse No. 1997121111, dated April 2003, which is intended to provide recreational areas (passive or active), including City parks, beaches, golf courses and related uses, as well as open space areas. Notwithstanding the foregoing OSR designation, the Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers).

(b) Fence Covenant. Grantee, at its sole cost and expense, shall install, within ninety (90) days after the date of delivery of the Deed, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Grantor adjacent to the northeasterly boundary of the Property. The existing (as of the date of delivery of the Deed) fencing along the northeasterly (track side) boundary of the Property is sufficient to meet this requirement. Any new fencing or barrier must be of a design and type satisfactory to Grantor, and in compliance with applicable building codes. Grantee shall submit the plans for any new fencing or barrier construction to:

Union Pacific Railroad Company
Assistant Vice President-Real Estate (Folder No. 2639-29)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Grantor shall complete such review and make appropriate response to Grantee within twenty (20) days after receipt of such plans by Grantor. Grantor shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

(c) Railroad Proximity Covenant.

(i) Grantee acknowledges that the property abutting the northeasterly boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the "Permitted Effects"). Grantee accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Grantee agrees that, at Grantee's sole cost and expense, as part of the development of the Property, Grantee shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted Effects.

(ii) Grantee shall not and hereby waives all rights to institute legal proceedings against Grantor to reduce or lessen the Permitted Effects.

(iii) If Grantee sells or leases all or any portion of the Property, Grantee shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Grantor, to comply with the above covenants.

(d) Covenants To Run With Land. The foregoing covenants, conditions and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Grantee, and the benefits of which will inure to the successors and assigns of Grantor. A breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

IN WITNESS WHEREOF, the undersigned has executed this Deed as of ________________, 2013.

**SOUTHERN PACIFIC RAIL CORPORATION, a Utah corporation**

**Attest:**

____________________________
Assistant Secretary

(SEAL)

By:____________________________
Title:____________________________

Grantee hereby accepts this Deed and agrees for itself, its successors and assigns, to be bound by the covenants set forth herein.

Dated this _____ day of __________, 2013.

**CITY OF CARPINTERIA,**
**a California municipal corporation**

By:________________________________
Name:______________________________
Title:______________________________

**ATTEST:**

____________________________
City Clerk

**STATE OF NEBRASKA )**
**)**
**COUNTY OF DOUGLAS )**

On ____________, 2013, before me, a Notary Public in and for said County and State, personally appeared _________________________ and _________________________, _________________________ and Assistant Secretary, respectively, of SOUTHERN PACIFIC RAIL CORPORATION, a Utah corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

_________________________________
Notary Public

(Notary Seal)

**STATE OF CALIFORNIA )**
**)**
**COUNTY OF SANTA BARBARA )**

On ______________, 2013, before me, ______________________________, a Notary Public in and for said County and State, personally appeared ______________________ and ______________________________, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons 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.

______________________________
Notary Public

(Notary Seal)

## EXHIBIT A TO EXHIBIT B

## LEGAL DESCRIPTION OF PROPERTY
## TO BE ATTACHED

# EXHIBIT C

## PROPERTY MATERIALS

1. Groundwater Sampling, dated April 28, 1992

2. Report on Site Investigation
   Southern Pacific Transportation Company
   Carpinteria Sale Parcel, Carpinteria, California
   Prepared by: ERM West
   Walnut Creek, California
   Dated: November 1989

3. Additional Site Investigation & Remediation report
   Southern Pacific Transportation Company
   Orchard Services, 399 Linden Avenue, Carpinteria, California
   Prepared by: SP Environmental Systems, inc.
   Dated: July 15, 1991

4. Letter from County of Santa Barbara to SP Environmental Systems, Inc. dated March 29, 1991

5. Letter from SP Environmental Systems, Inc. to County dated October 29, 1991

6. Letter from IC Industrial Compliance to County dated January 8, 1992

7. Letter from IC Industrial compliance to County dated April 28, 1992

8. Preliminary Site Assessment
   Carpinteria, California
   Prepared by: Geomatrix Consultants
   Dated: July 1999
   Project No. 4221.20

9. Results of Limited Phase II Investigation
   Carpinteria, California
   Prepared by: Geomatrix Consultants
   Dated: September 1999
   Project No. 4221.20

# EXHIBIT D

## ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Assignor"), acting by and through its duly authorized officers, has ASSIGNED AND TRANSFERRED, and by these presents does ASSIGN AND TRANSFER unto **CITY OF CARPINTERIA**, a municipal corporation of the State of California ("Assignee"), all of Assignor's right, title and interest in and to the lease and license agreements (collectively, "Licenses") to the extent the Licenses affect the real property described in **Exhibit A** (the "Property"), which Licenses, and all amendments thereto, are described in **Exhibit B**, together with all security deposits and other deposits held by Assignor under the terms of said Licenses.

TO HAVE AND TO HOLD the Licenses unto Assignee, its successors and assigns. This Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to the Property accruing on and after the date hereof, and (b) indemnify and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Licenses as they relate to the Property on and after the date hereof, or (2) claims under the Licenses as they relate to the Property by the licensees named in the Licenses accruing on and after the date hereof.

All exhibits attached to this Agreement are incorporated herein for all purposes.

This Assignment and Assumption will inure to and be binding upon the parties, their successors and assigns.

*(Remainder of page intentionally left blank)*

Dated the _____ day of ________________, 2013.

**UNION PACIFIC RAILROAD COMPANY,**
**a Delaware corporation**

By:_________________________________

Name:_______________________________

Title:_______________________________

**CITY OF CARPINTERIA,**
**a California municipal corporation**

By:_________________________________

Name:_______________________________

Title:_______________________________

**ATTEST:**

___________________________
City Clerk

## EXHIBIT A TO EXHIBIT D

## LEGAL DESCRIPTION OF PROPERTY
## TO BE ATTACHED

## EXHIBIT B TO EXHIBIT D

## LIST OF LICENSES TO BE ASSIGNED

1. Lease of Property dated March 1, 2004 between Assignor and UPPO's Garden, LLC, identified in the records of Assignor as Audit No. 232075.

# EXHIBIT E

## GENERAL PROVISIONS

**1. DEPOSIT OF FUNDS**

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub escrow account prior to disbursement of any funds. Only cash or wire-transferred funds can be given immediate availability upon deposit. Cashier's checks, teller's checks and Certified checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all fundings should be wire transferred. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

Deposit of funds into general escrow trust account unless instructed otherwise. You may instruct Escrow Holder to deposit your funds into an interest bearing account by signing and returning the "Escrow Instructions - Interest Bearing Account", which has been provided to you. If you do not so instruct us, then all funds received in this escrow shall be deposited with other escrow funds in one or more general escrow trust accounts, which include both non-interest bearing demand accounts and other depository accounts of Escrow Holder, in any state or national bank or savings and loan association insured by the Federal Deposit Insurance Corporation (the "depository institutions") and may be transferred to any other such escrow trust accounts of Escrow Holder or one of its affiliates, either within or outside the State of California. A general escrow trust account is restricted and protected against claims by third parties and creditors of Escrow Holder and its affiliates.

Receipt of benefits by Escrow Holder and affiliates. The parties to this escrow acknowledge that the maintenance of such general escrow trust accounts with some depository institutions may result in Escrow Holder or its affiliates being provided with an array of bank services, accommodations or other benefits by the depository institution. Some or all of these benefits may be considered interest due you under California Insurance Code Section 12413.5. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations, and other benefits shall accrue to Escrow Holder or its affiliates and Escrow Holder shall have no obligation to account to the parties to this escrow for the value of such services, accommodations, interest or other benefits.

Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account. All disbursements shall be made by check of Chicago Title Company. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

**2. PRORATIONS AND ADJUSTMENTS**

Subject to the terms of the Purchase and Sale Agreement, All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. You are to use information contained on last available tax statement, rental statement as provided by the Seller, beneficiary's statement and fire insurance policy delivered into escrow for the prorations provided for herein.

**3. SUPPLEMENTAL TAXES**

The within described property may be subject to supplemental real property taxes due to the change of ownership taking place through this escrow. Any supplemental real property taxes arising as a result of the transfer of the property to Buyer shall be the sole responsibility of Buyer and any supplemental real property taxes arising prior to the closing date shall be the sole responsibility of the Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

**4. UTILITIES/POSSESSION**

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

**5. PREPARATION AND RECORDATION OF INSTRUMENTS**

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded, And funds disbursed.

**6. AUTHORIZATION TO FURNISH COPIES**

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Broker(s) and Lender(s) named in this escrow.

# GENERAL PROVISIONS
(continued)

**7. RIGHT OF CANCELLATION**

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver, one (1) copy of such notice to each of the other principals at the addresses stated in this escrow. UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED IN YOUR OFFICE BY A PRINCIPAL WITHIN TEN (10) DAYS AFTER DATE OF SUCH DELIVERY, YOU ARE AUTHORIZED TO COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF YOUR CANCELLATION CHARGES. If written objection is filed, you are authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the principals' mutual written instructions, or by final order of a court of competent jurisdiction.

**8. PERSONAL PROPERTY**

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Agent to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

**9. RIGHT OF RESIGNATION**

reasonable

Escrow Holder has the right to resign upon written notice delivered to the principals herein. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

**10. AUTHORIZATION TO EXECUTE ASSIGNMENT OF HAZARD INSURANCE POLICIES**

Either Buyer, Seller and/or Lender may hand you the insurance agent's name and insurance policy information, and you are to execute, on behalf of the principals hereto, form assignments of interest in any insurance policy (other than title insurance) called for in this escrow, forward assignment and policy to the insurance agent, requesting that the insurer consent to such transfer and/or attach a loss payable clause and/or such other endorsements as may be required, and forward such policy(s) to the principals entitled thereto. It is not your responsibility to verify the information handed you or the assignability of said insurance. Your sole duty is to forward said request to insurance agent at close of escrow.

Further, there shall be no responsibility upon the part of Escrow Holder to renew hazard insurance policy(s) upon expiration or otherwise keep it in force either during or subsequent to the close of escrow. Cancellation of any existing hazard insurance policies is to be handled directly by the principals, and outside of escrow.

**11. ACTION IN INTERPLEADER**

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefore to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise, provided such filing is meritorious

**12. TERMINATION OF AGENCY OBLIGATION**

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due Chicago Title Company, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

**13. CONFLICTING INSTRUCTIONS**

Upon receipt of any conflicting instructions, you are to take no action in connection with this escrow until non-conflicting instructions are received from all of the principals to this escrow (subject to sections 7, 9, 11 and 12 above).

**14. REIMBURSEMENT ATTORNEY FEES/ESCROW HOLDER**

In the event that a suit is brought by any party or parties to these escrow instructions to which the Escrow Holder is named as a party which results in a judgment in favor of the Escrow Holder and against a principal or principals herein, the principals or principals' agent agree to pay said Escrow Holder all costs, expenses and reasonable attorney's fees which it may expend or incur in said suit, the amount thereof to be fixed and judgment therefore to be rendered by the court in said suit.

**15. DELIVERY/RECEIPT**

Delivery to principals as used in these instructions unless otherwise stated herein is to be by hand in person to the principal, regular mail, email or fax to any of the contact information provided in these instructions. If delivered by regular mail receipt is determined to be 72 hours after such mailing. All documents, balances and statements due to the undersigned may be delivered to the contact information shown herein. All notices, change of instructions, communications and documents are to be delivered in writing to the office of Chicago Title Company as set forth herein.

# GENERAL PROVISIONS
(continued)

**16. STATE/FEDERAL CODE NOTIFICATIONS**

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Pursuant to State Law, prior to the close of escrow, Buyer will provide Escrow Holder with a Preliminary Change of Ownership Report. In the event said report is not handed to Escrow Holder for submission to the County in which subject property is located, upon recording of the Grant Deed, Buyers acknowledge that the applicable fee will be assessed by said County and Escrow Holder shall debit the account of Buyer for same at close of escrow.

**17. NON-RESIDENT ALIEN**

The Foreign Investment in Real Property Tax Act (FIRPTA), Title 26 U.S.C., Section 1445, and the regulations there under, provide in part, that a transferee (buyer) of a U.S. real property interest from a foreign person (non-resident alien) must withhold a tax equal to ten percent (10%) of the amount realized on the disposition, report the transaction and remit the withholding to the Internal Revenue Service within twenty (20) days after the transfer. Chicago Title Company has not and will not participate in any determination of whether the FIRPTA tax provisions are applicable to the subject transaction, nor act as a Qualified Substitute nor furnish tax advice to any party to the transaction. Chicago Title Company is not responsible for determining whether the transaction will qualify for an exception or an exemption and is not responsible for the filing of any tax forms with the Internal Revenue Service as they relate to FIRPTA. Chicago Title Companyis not the agent for the buyer for the purposes of receiving and analyzing any evidence or documentation that the Seller in the subject transaction is a U.S. citizen or resident alien. The buyer is advised they must independently make a determination of whether the contemplated transaction is taxable or non-taxable and the applicability of the withholding requirement to the subject transaction, and should seek the advice of their attorney or accountant. Chicago Title Company is not responsible for the payment of this tax and/or and penalty and/or interest incurred in connection therewith and such taxes are not a matter covered by the Owner's Policy of Title Insurance to be issued to the Buyer. The Buyer is advised they bear full responsibility for compliance with the tax withholding requirement if applicable and/or for payment of any tax, interest, penalties and/or other expenses that may be due on the subject transaction.

**18. ENCUMBRANCES**

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be correct shall be settled between the parties direct and outside of escrow.

You are authorized, ~~without the need for further approval,~~ to debit my account for any fees and charges that I have agreed to pay in connection with this escrow, and for any amounts that I am obligated to pay to the holder of any lien or encumbrance to establish the title as insured by the policy of title insurance called for in these instructions. If for any reason my account is not debited for such amounts at the time of closing, I agree to pay them immediately upon demand, or to reimburse any other person or entity who has paid them.

**19. ENVIRONMENTAL ISSUES**

Chicago Title Company has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow. Chicago Title Company is released of any responsibility and/or liability in connection therewith.

**20. USURY**

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

**21. DISCLOSURE**

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

**22. FACSIMILE/ELECTRONIC SIGNATURE**

Escrow Holder is hereby authorized and instructed that, in the event any party utilizes electronic or "facsimile" transmitted signed documents or instructions to Escrow Holder, you are to rely on the same for all escrow instruction purposes and the closing of escrow as if they bore original signatures. "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law.

**23. CLARIFICATION OF DUTIES**

Chicago Title Company serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

## GENERAL PROVISIONS
(continued)

**24. FUNDS HELD IN ESCROW**

When the company has funds remaining in escrow over ninety (90) days after close of escrow or estimated close of escrow, the Company shall impose a monthly holding fee of Twenty-Five and No/100 Dollars ($25.00) that is to be charged against the funds held by the Company.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AS AMENDED AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS.

**Chicago Title Company conducts escrow business under a Certificate of Authority No. 350 issued by the California Department of Insurance.**

**END OF INSTRUCTIONS**

# EXHIBIT F

## SEPARATE STATEMENT OF DOCUMENTARY TRANSFER TAX

Clerk and Recorder
Santa Barbara County
Hall of Records
1100 Anacapa Street
Santa Barbara, CA 93101

____________, 2013

Ladies and Gentlemen:

In accordance with Revenue and Taxation Code section 11932, it is requested that this statement of documentary transfer tax not be recorded with the attached deed, but affixed to the deed after recordation and before return as directed on the deed.

The deed names **SOUTHERN PACIFIC RAIL CORPORATION**, a Utah corporation, as Grantor, and **CITY OF CARPINTERIA**, a California municipal corporation, as Grantee. The property being transferred is located in the City of Carpinteria, County of Santa Barbara, State of California.

The amount of documentary transfer tax due on the attached deed is ______________________________ Dollars ($___________), computed on the full value of the property (less the value of any liens and encumbrances remaining on the property at the time of sale).

Very truly yours,

**SOUTHERN PACIFIC RAIL CORPORATION,**
**a Utah corporation**

By:_________________________________
Title:_______________________________

AGENDA SECTION: OTHER BUSINESS
AGENDA ITEM #2
REPORT # 13-62

# *STAFF REPORT*
# SPECIAL COUNCIL MEETING DATE: June 17, 2013

**ITEM FOR COUNCIL CONSIDERATION:**

Approval of an Agreement to Purchase Tax Defaulted Property between the City and the Board of Supervisors of Santa Barbara County, and initiation of fundraising efforts.

Department: General Government

City Manager _______________
Signature

City Attorney Fidela Garcia for Peter Brown
Signature

**ACTION ITEM _X__; NON-ACTION ITEM __**

**STAFF RECOMMENDATION:**

1. Approve the Agreement with the Board of Supervisors of Santa Barbara County to purchase certain tax defaulted property designated by the County Assessor as APNs 001-170-010 and 001-170-013, and authorize the Mayor to sign the Agreement on behalf of the City of Carpinteria.
2. Initiate fundraising efforts including the creation of an ad hoc City Council committee.

**Sample Motion:** I move to:

1. Approve the Agreement to Purchase Tax Defaulted Property between the City and the Board of Supervisors of Santa Barbara County, and to authorize the Mayor, on behalf of the City, to sign the Agreement.
2. Create an ad hoc City Council committee to work with staff and community organizations to fundraise for the purchase of the subject property.

## I. BACKGROUND/DISCUSSION:

Property within the incorporated area of the City of Carpinteria (designated by the County Assessor as Assessor's Parcel Numbers 001-170-010 and 001-170-013), consisting of approximately 27.5 acres located between Carpinteria Avenue and the Pacific Ocean, adjacent to and east of Carpinteria City Hall, 5775 Carpinteria Avenue (see attached map) ("Property"), is tax defaulted and had been scheduled for tax sale at public auction earlier this month. The City Council of the City of Carpinteria determined that the Property is needed for public use. The City Council adopted Resolution No. 5466 on May 23, 2013, objecting to the tax sale at public auction and making an application to purchase the Property, pursuant to Revenue and Taxation Code Section 3695.4.

The City submitted the objection and application to the County Tax Collector on May 24, 2013, and the City received a letter confirming receipt and application completeness on June 3, 2013 (attached). The County removed the subject parcels from list of properties subject to tax sale at public auction.

Pursuant to direction from the City Council, staff has engaged in discussions with the County Tax Collector's office regarding the terms of the Agreement to Purchase Tax Defaulted Property. The Tax Collector's office provided the attached draft agreement for the Council's consideration. As presented, the Agreement establishes the price for the Property and provides that the Property will be used for open space/recreation, coastal resource preservation and public safety. Additional terms are included in the Agreement (see attachment A.)

If approved by both the City Council and the County Board of Supervisors, the Tax Collector's office will forward the Agreement to the State Controller for approval. Once the Agreement is approved by the Controller, the Tax Collector's office will undertake various required tasks such as notifying parties of interest and publishing notice of the Agreement. The Assessee has the opportunity to stop the sale and retain ownership by paying the delinquent taxes up until the agreement becomes effective. If this does not occur, it is estimated that the Agreement would become effective and the sale consummated in mid-September.

## II. FINANCIAL:

The cost to purchase the Property includes the taxes and penalties owed to the County Tax Collector plus some fees and charges. The total calculated price is expected to be just under $1.6 million. Payment is required no later than 60 days after the Agreement effective date, which means an expected payment date of mid-November. City funds available to support the purchase of the Property include various City reserves and dedicated funds such as Parkland Acquisition fees.

## III. ATTACHMENTS:

A. Agreement to Purchase Tax Defaulted Property
B. Letter from Treasurer-Tax Collector, Harry Hagen, dated May 31, 2013
C. City of Carpinteria Resolution No. 5466

ATTACHMENT A

Agreement from the County will be delivered late and will be made available as soon as possible.

ATTACHMENT B

**TREASURER-TAX COLLECTOR**

**HARRY E. HAGEN, CPA**
**Treasurer – Tax Collector**
**Public Administrator – Public Guardian**

**KIMBERLY TESORO, CPA**
Assistant Treasurer - Tax Collector
Public Administrator – Public Guardian

105 E. Anapamu Street, Room 109
Santa Barbara, CA 93101-2062
Administration: (805) 568-2490
Property Tax: (805) 568-2920
Fax: (805) 568-2488

511 E Lakeside Parkway, Santa Maria
Telephone: (805) 346-8330
Fax: (805) 346-8331

Mailing Address:
Post Office Box 579
Santa Barbara, CA 93102-0579

May 31, 2013

Dave Durflinger
City Manager
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013-2603

RECEIVED
JUN 03 2013
CITY OF CARPINTERIA

Mr. Dave Durflinger,

The County of Santa Barbara Tax Collector's Office received the City of Carpinteria's letter of objection and application to purchase tax-defaulted properties, parcel numbers 001-170-010 and 001-170-013, on May 24, 2013. The objection letter and application are complete. Pursuant to Revenue and Taxation Code 3695.4, both properties will be removed from the Chapter 7 Public Auction Tax Sale.

Revenue and Taxation Code 3695.4 allows a city to file with the Tax Collector a written objection to the sale of, along with an application to purchase in accordance with Chapter 8 (commencing with Section 3771), any property that is or may be needed for public use. The written objection shall specify the description of the property needed, whether the fee or an easement is required, and the public purpose to which the property is intended to be devoted.

We have started processing your application and expect to present the purchase proposal to the County Board of Supervisors in July 2013. The Chapter 8 Tax Sale has many State mandated tasks. We will work diligently and expeditiously to complete this process in a timely fashion.

Please contact me if you have any questions.

Respectfully,

Harry E. Hagen, CPA, CPFO, ACPFIM
Treasurer-Tax Collector-Public Administrator
County of Santa Barbara

ATTACHMENT C

## RESOLUTION NO. 5466

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA, CALIFORNIA, OBJECTING TO THE SALE OF TAX-DEFAULTED PROPERTY KNOWN AS ASSESSOR'S PARCEL NUMBERS 001-170-010 and 001-170-013, PURSUANT TO REVENUE & TAXATION CODE SECTION 3695.4.

**WHEREAS**, the City of Carpinteria has determined that it is not in the public interest for those properties designated by the County of Santa Barbara Assessor's Office as APNs 001-170-010 and 001-170-013, described more particularly in Exhibit 1 attached to this Resolution (the Property), to be sold at public auction due to failure to pay property taxes to the County of Santa Barbara; and

**WHEREAS**, the Property was a part of a larger site proposed for public acquisition and permanent preservation as open space by the City approximately 15 years ago but was left out of that acquisition due to the objection of the owners at that time; and

**WHEREAS**, no application for development of the Property has been submitted to the City in nearly 14 years; and

**WHEREAS**, the Property is located adjacent to the coastline, includes a coastal bluff, and is adjacent to a 53-acre permanently protected public open space and recreation area, and unique coastal resources; and

**WHEREAS**, the Property occupies a strategically important location with regard to the City's ability to implement a number of General Plan and Local Coastal Plan policies that call for the protection and restoration of environmentally sensitive habitat areas, improving public safety, public access to the coast, and public recreation opportunities in the coastal zone, and protecting important public viewsheds; and

**WHEREAS**, acquisition of the Property by the City would create unique opportunities to implement these policies and develop a variety of public improvements expanding opportunities for public access to the coastline, recreational opportunities in the coastal zone, and habitat restoration efforts.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARPINTERIA AS FOLLOWS:**

**SECTION 1:**
The above recitals are true and correct and are incorporated herein as though set forth in full.

**SECTION 2:**
The City Council of the City of Carpinteria, pursuant to Revenue and Taxation Code Section 3695.4, hereby objects to the default tax sale of the Property and finds that the Property is needed for public use. The City Council further finds that the City intends to devote the Property to the public purposes of improving public safety, improving public access to the coast, increasing recreational

opportunities, preserving open space and coastal resources, and that fee ownership of the Property is necessary to accomplish these purposes.

**SECTION 3:**
The City Council directs the City Manager to submit this Resolution, along with the required application to purchase the tax-defaulted Property in accordance with Chapter 8 of the Revenue and Taxation Code, to the County with the purpose of complying with procedures necessary to halt the default tax sale and initiate the proposal to the County to purchase the Property.

**PASSED, APPROVED AND ADOPTED** this 23rd day of May, 2013 by the following called vote:

AYES: COUNCILMEMBERS: CARTY, CLARK, NOMURA, SHAW, STEIN

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

Mayor, City of Carpinteria

ATTEST:

Adele Garcia
City Clerk, City of Carpinteria

I hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 23rd day of May, 2013.

Adele Garcia
City Clerk, City of Carpinteria

APPROVED AS TO FORM:

on behalf of Peter Brown
City Attorney, City of Carpinteria

# Exhibit 1

Subject parcels outlined in Red

# AGREEMENT TO PURCHASE TAX-DEFAULTED PROPERTY

This Agreement is made this _____________ day of ___________________, __________, by and between the County of Santa Barbara, a political subdivision of the State of California (“County”), and the City of Carpinteria ("PURCHASER"), pursuant to the Provisions of Division 1, Part 6, Chapter 8, of the Revenue and Taxation Code.

The real property situated within said county, hereinafter set forth and described in this Agreement, is tax-defaulted and is subject to the power of sale by the tax collector of said county for the nonpayment of taxes, pursuant to provisions of law.

In consideration of the mutual promises herein set forth, the parties mutually agree as follows:

1. That, as provided by Revenue and Taxation Code section 3800, the cost of giving notice of this Agreement shall be paid by the PURCHASER.

2. That the PURCHASER agrees to pay the sum of $ 1,528,490.24 for the real property described in Exhibit "A" within ninety (90) days after the date this Agreement becomes effective. Upon payment of said sum to the tax collector, the tax collector shall execute and deliver a deed conveying title to said property to PURCHASER.

3. That the property sold pursuant to this Agreement is offered and sold as is. The State, the County, and each employee of those entities acting in the employee’s official capacity in preparing, conducting, and selling property under this Agreement are not liable for any known or unknown conditions of the property, including, but not limited to, contaminated or damaged property, or errors in the Assessor’s, Tax Collector’s, or other County records. PURCHASER acknowledges that it is not relying upon any statements or representations of the County concerning the subject property.

4. That the County makes no representation concerning the condition of title to the subject property. County does not warrant title to the property or make any representations concerning the title. PURCHASER shall be responsible for any costs of guaranty of title, costs of proceedings to obtain a clear title to the property, and expenses incurred in the payment, compromise, or other method of removal of any liens or adverse claims against the property. County shall not be responsible for undertaking any such activities or paying any such costs.

5. That the parcels acquired pursuant to this Agreement may contain hazardous wastes, toxic substances, or other substances regulated by federal, state, and local agencies. County in no way assumes any responsibility, implied or otherwise, and makes no representations that the parcels are in compliance with federal, state, or local laws governing such substances. County in no way assumes any responsibility, implied or otherwise, for any costs or liability of any kind imposed upon or voluntarily assumed by PURCHASER or any other owner to remediate, clean up or otherwise bring into compliance according to federal, state, or local environmental laws any parcel purchased.

6. The PURCHASER shall indemnify County from and against any and all liability, loss, costs, damages, attorneys’ fees, and other expenses which County may sustain or incur by reason of a challenge to the validity of the tax-default sale of the property described in Exhibit “A”.

7. That if any individual parcel listed in Exhibit “A” is withdrawn by the County or redeemed prior to the effective date of this Agreement, this Agreement shall be null and void as to that individual parcel. Notwithstanding the foregoing, the Agreement shall be binding and shall remain in full force and effect with respect to any remaining parcel(s).

8. Given that the effective date of the sale is estimated, any taxes owed for the 2013-14 fiscal year (“current year”) taxes and redemption penalties will be paid by the PURCHASER prior to receiving title to the parcel(s).

9. That the PURCHASER agrees to use the parcel(s) for public purpose under the following intent:
The City of Carpinteria intends to use the parcels for open space/recreation, coastal resource preservation, and public safety.

10. That, if said PURCHASER is a taxing agency as defined in Revenue and Taxation Code section 121 or any other agency that receives its revenue share under the provisions of Division 1, Part 8, Chapter 3 of the Revenue and

Taxation Code, it will not share in the distribution of the payment required by the Agreement as defined by section 3791 and section 3720 of the Revenue and Taxation Code.

11. That this Agreement may be executed in counterparts, each of which constitutes an original.

The undersigned hereby agree to the terms and conditions of this Agreement and are duly authorized to sign for said agencies.

PURCHASER
CITY OF CARPINTERIA

DATED: ____________________

__________________________________
Mayor

ATTEST:
CITY CLERK

By: ________________________
(seal)

APPROVED AS TO FORM:
CITY ATTORNEY

By:______________________________

COUNTY OF SANTA BARBARA

DATED: ____________________

__________________________________
Salud Carbajal, Chair
Board of Supervisors

ATTEST:
CLERK OF THE BOARD

By: ________________________
Deputy
(seal)

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By:_______________________________
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By:_____________________________

Pursuant to the provisions of section 3795 of the Revenue and Taxation Code, the Controller approves the foregoing agreement this _______ day of __________________, ______.

**JOHN CHIANG, CALIFORNIA STATE CONTROLLER**

**By ________________________________________**

# "EXHIBIT A"

## AGREEMENT TO PURCHASE TAX-DEFAULTED PROPERTY

| Item | APN<br>Last Assessee(s)<br>Price | Default Number<br>Year First Defaulted<br>Notice Recorded Number | Street Address<br>City |
|---|---|---|---|
| | | | |
| 1 | 001-170-010 (as more particularly described in attachment 1)<br>Capinteria Partners<br>Limited Partnership *<br>$ 24,278.21 | #00006<br>2005-2006<br>2011-0046545 | 5669 Carpinteria Ave<br>City of Carpinteria |
| | | | |
| 2 | 001-170-013 (as more particularly described in attachment 2)<br>Capinteria Partners<br>Limited Partnership *<br>$ 1,504,212.03 | #00007<br>2005-2006<br>2011-0046546 | 5885 Carpinteria Ave<br>City of Carpinteria |
| | | | |

*The recorded Trustee's Deed Upon Sale identifies "Capinteria Partners Limited Partnership" as opposed to "Carpinteria Partners Limited Partnership" as the foreclosing beneficiary who now holds title to this property. The word "Capinteria" may be a misspelling of "Carpinteria".

Attachment 1

A Tract of land in the City of Carpinteria, County of Santa Barbara, State of California, described as follows:

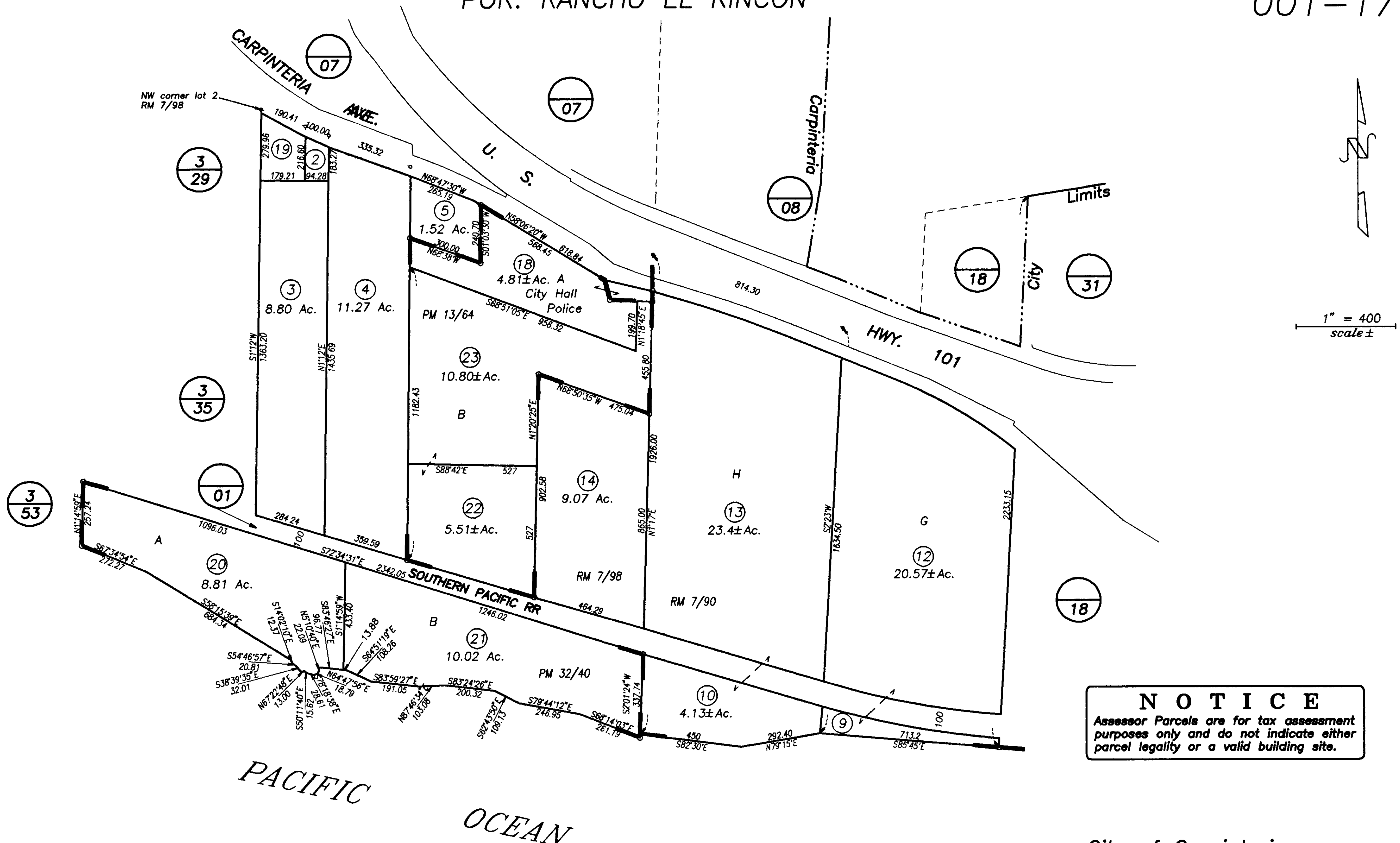
All of Tract "H" as shown on the map attached to the Commissioner's Report in the Matter of the Partition of the Estate of Martha C. Bailard, deceased, filed in Case No. 8145, in The Superior Court of Santa Barbara County, State of California, and a copy thereof filed in Book 7 at Page 90 of Maps and Surveys, in the Office of the County Recorder of said County.

Excepting therefrom those portions thereof lying Northerly of the Southerly line of that portion thereof described in the Deed to the Southern Pacific Branch Railway Company dated February 2, 1887, recorded March 29, 1887 in Book 12 at Page 543 of Deeds, in the Office of the County Recorder of said County.

Assessor's Parcel No. 001-170-010

# POR. RANCHO EL RINCON

001-17




**N O T I C E**
Assessor Parcels are for tax assessment purposes only and do not indicate either parcel legality or a valid building site.

City of Carpinteria
Assessor's Map Bk, 001 –Pg, 17
County of Santa Barbara, Calif.

10/13/ 1914 R.M. Bk. 7 , Pg. 98 , Tract P. C. Higgins Orchard Company
06/01/ 1914 R.M. Bk. 7 , Pg. 90 , Tract Estate of M. C. Bailard

07/97 take off SBE # on 22

Attachment 2

A Tract of land in the City of Carpinteria, County of Santa Barbara, State of California, described as follows:

All of Tract "H" as shown on the map attached to the Commissioner's Report in the Matter of the Partition of the Estate of Martha C. Bailard, deceased, filed in Case No. 8145, in The Superior Court of Santa Barbara County, State of California, and a copy thereof filed in Book 7 at Page 90 of Maps and Surveys in the Office of the County Recorder of said County.

Excepting therefrom those portions lying within the lines of the state highway as conveyed to the State of California by deed recorded May 20, 1953 as Instrument No. 8237 in Book 1153 at Page 185 of Official Records of said County.

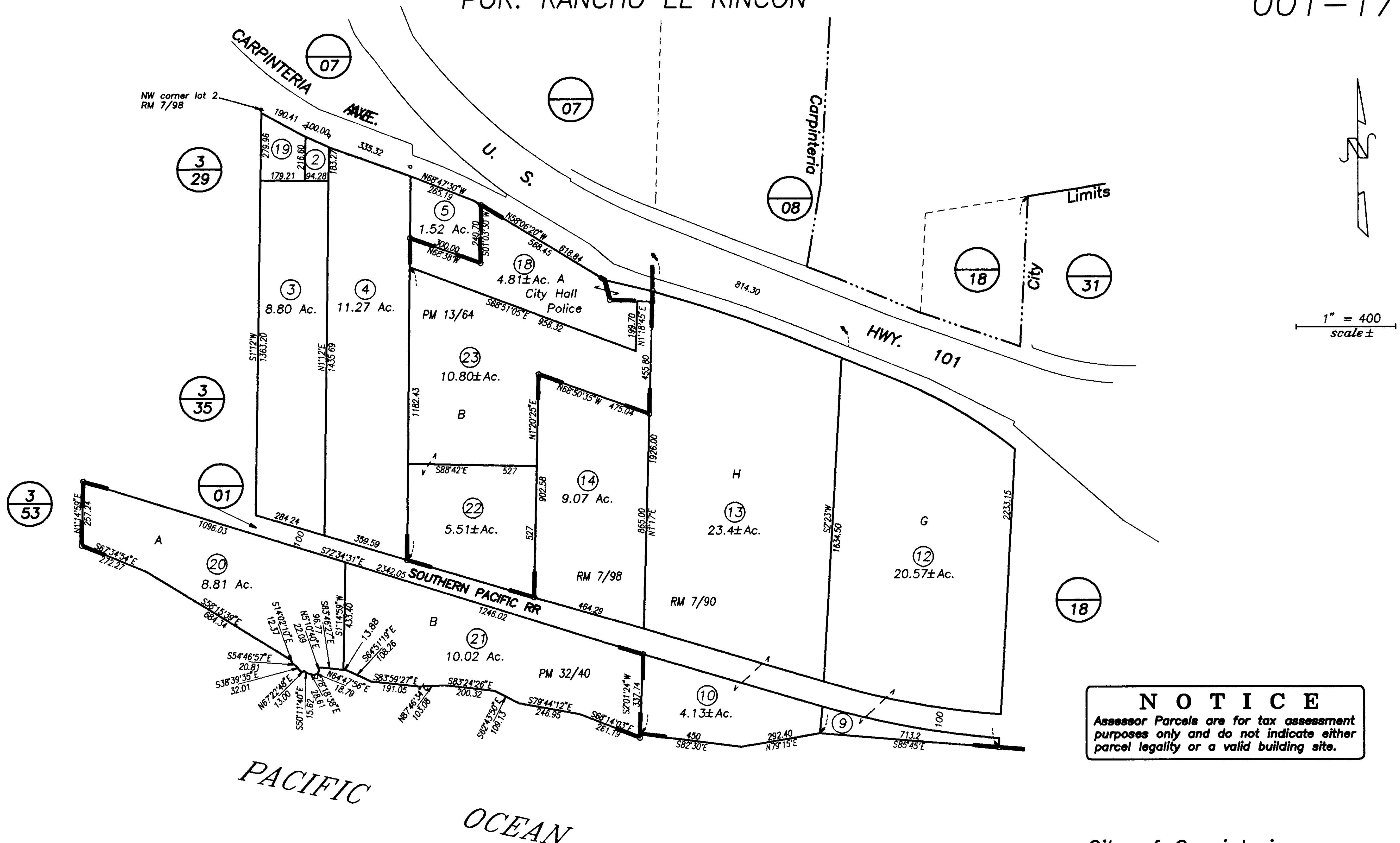
Also Excepting therefrom those portions thereof described in the deed to State of California recorded January 16, 1964 as Instrument No. 2425, in Book 2031 at Page 424 of Official Records.

Also Excepting therefrom those portions thereof lying Southerly of the Northerly line of that portion thereof described in the Deed to the Southern Pacific Branch Railway Company dated February 2, 1887, recorded March 29, 1887 in Book 12 at Page 543 of Deeds, in the Office of the County Recorder of said County.

Assessor's Parcel No. 001-170-013

POR. RANCHO EL RINCON

001-17




**NOTICE**

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07/97 take off SBE # on 22