

**AGREEMENT FOR PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

**SELLER: THE CITY OF POMONA AND
THE POMONA HOUSING AUTHORITY**

BUYER: WATT COMMUNITIES LLC

DATED: [INSERT DATE]

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AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS

This AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is made as of _____, 2018, by and between the CITY OF POMONA, a California charter city ("**City**"), THE POMONA HOUSING AUTHORITY, a local housing authority-created and existing pursuant to California law ("**Authority**," and jointly with City as "**Seller**"), and WATT COMMUNITIES LLC, a California limited liability company ("**Buyer**"). Seller and Buyer are at times herein referred to individually as a "**Party**," and jointly as the "**Parties**."

RECITALS

1. The properties commonly known as 150 East Center Street (APN's 8336-026-900 through 903) and a lot, generally described as a 16,584 square foot parcel (APN 8336-021-901) located in Pomona, California, legally described on **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto (jointly the "**Property**") are owned by the Authority and City, respectively.
2. Buyer is interested in acquiring the Property and thereafter combining the Property with adjacent properties located at 192 East Center Street and 353 Gibbs Street, Pomona, California (APNs 8336-026-900 through 903 and 8336-021-901, respectively) (hereinafter jointly referred to as the "Adjacent Properties") for the purpose of constructing a residential development.
3. Buyer entered into a purchase and sale agreement with the City of Pomona Successor Agency, dated April 26, 2018, for the acquisition of the Adjacent Properties, and escrow on said purchase transaction is open, and a condition of closing is that Buyer acquire the Property as described in this Agreement.
4. Based on the foregoing, Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, on all the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the Parties hereto agree as follows:

1. PURCHASE AND SALE.

Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and conditions hereinafter set forth in this Agreement.

2. PURCHASE PRICE.

The total purchase price ("**Purchase Price**") for the Property shall be \$950,000, payable by Buyer to Seller as follows:

(a) The cash sum of Ten Thousand Dollars (\$10,000.00) shall be deposited in Escrow within ten (10) days of the opening thereof, to be held in an interest-bearing passbook account at a lending institution which is FDIC insured, with interest accruing to the credit of Buyer ("**Buyer Deposit**"). The deposit shall be credited toward the Purchase Price at Close of Escrow.

(b) The balance of the Purchase Price shall be deposited in Escrow by Buyer prior to Close of Escrow for delivery to Seller upon Close of Escrow.

(c) The Purchase Price shall be reduced by the costs incurred by the Buyer to hire a relocation consultant and the amount of relocation benefits paid.

3. CONDITION OF TITLE TO PROPERTY.

3.1 TITLE TRANSFER AT CLOSE OF ESCROW

Title to the Property shall be conveyed to Buyer upon the Close of Escrow.

3.2 TITLE EXCEPTIONS

Title to the Property shall be conveyed to Buyer by Grant Deed in the form attached hereto as **Exhibit "C"**, free and clear of all liens except for:

(a) Liens securing real property taxes and assessments (which constitute liens not yet due and payable);

(b) Such other exceptions and reservations shown on a Preliminary Title Report ("**Preliminary Report**") issued by Chicago Title ("**Title Company**") which are approved by Buyer. (All exceptions to title permitted pursuant to this Paragraph 3.2(b) are referred to in this Agreement as "**Permitted Exceptions**").

3.3 REVIEW OF TITLE

(a) Seller agrees to furnish Buyer with a copy of the Preliminary Report, together with a copy of all recorded exceptions to title, within five (5) days of the Opening of Escrow. Seller shall provide Buyer a property survey if Seller has previously performed or had performed a property survey, and the survey is still in the possession of Seller.

(b) Buyer shall have twenty-five (25) days after receipt of the later of 1) the Preliminary Report, 2) copies of all recorded exceptions to title, or 3) an ALTA survey for the Property, which shall be procured by Buyer at its expense, within which to notify Seller in writing of Buyer's disapproval, in its sole and absolute discretion, of any exceptions set forth in the Preliminary Report.

(c) In the event of Buyer's disapproval of the Preliminary Report, Seller, at its sole election (to be exercised by written notice to Buyer within five (5) days after receipt of Buyer's said notice of disapproval), shall have thirty (30) days after Buyer's said disapproval within which to remove or otherwise remedy the disapproved exceptions.

(d) If Seller cannot eliminate or otherwise remedy the disapproved exceptions within said twenty (20) day time period, then Seller shall provide Buyer with written notice of the same, and Buyer shall have ten (10) days after receipt of Seller's notice to elect to waive its prior objections to such matters or to terminate this Agreement. If Buyer does not timely provide Seller with written notice of its election to waive its prior objections, then this Agreement shall thereupon terminate and all sums and documents deposited in Escrow shall be returned to the parties who respectively deposited the same, and Buyer and Seller shall each pay one-half (1/2) of the Escrow costs.

3.4 TITLE INSURANCE

Title to the Property shall be evidenced by a standard American Land Title Association policy of title insurance with liability in the amount of the Purchase Price showing title to the Property vested in (or as designated by) Buyer subject only to the Permitted Exceptions. If the Buyer desires to obtain an extended coverage American Land Title Association policy, Buyer shall bear all costs of the policy and any required survey, in excess of the cost of the standard American Land Title Association policy. Seller shall select Title Company at Seller's discretion prior to opening of escrow and Buyer shall have the option to accept or reject Title Company within five (5) business days prior to opening of escrow.

4. CONDITION OF PROPERTY AND CONTINGENCIES.

4.1 CONDITION OF PROPERTY

(a) Except as provided in this Agreement, the Property shall be conveyed and delivered to Buyer in an "as-is" physical condition. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT, EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 4.3, 6.1 OR OTHERWISE IN THIS AGREEMENT, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION:

(1) The quality, nature, adequacy and physical condition and aspects of the Property, including, but not limited to, sewage, and utility systems, the square footage within the Property.

(2) The quality, nature, adequacy, and physical condition of soils, geology and any groundwater.

(3) The existence, quality, nature, adequacy and physical condition of utilities serving the Property.

(4) The development potential of the Property, and the Property's use, habitability, merchantability, or fitness, or the suitability, value or adequacy of the Property for any particular purpose.

(5) The zoning or other legal status of the Property or any other public or private restrictions on use of the Property.

(6) The compliance of the Property with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental, entity or of any other person or entity (including, without limitation, the Americans with Disabilities Act).

(7) The presence of hazardous materials on, under or about the Property or the adjoining or neighboring property.

(8) The quality of any labor and materials used in any Improvements.

(9) The economics of the operation of the Property.

(b) Seller is not in any way responsible for any demolition or physical site clearance of said Property. Buyer is solely responsible for the relocation of utilities and easements as necessary on any parcel within the Property.

4.2 BUYER AND SELLER CONTINGENCIES

4.2.1 Buyer's obligation to consummate the transactions contemplated in this Agreement shall be expressly subject to and contingent upon Buyer's written approval or written waiver of due diligence inquiries and investigations of the Property as Buyer deems appropriate in Buyer's sole and absolute discretion. Such investigations and inquiries include, without limitation, the physical condition of the Property, the condition of the soils and the geologic, engineering and environmental conditions of the Property and any and all other factors which Buyer deems relevant to its purchase or development of the Property. The period of time within which Buyer must review and approve or disapprove of Buyer's investigations of the condition and feasibility of the Property (the "Contingency Period") shall commence on the Opening of Escrow (as hereinafter defined) and end at 5:00 p.m. Pacific time on the date thirty (30) days following Opening of Escrow. In the event that Buyer approves or waives all of Buyer's due diligence investigations concerning the Property, Buyer shall give written notice of approval (the "Approval Notice") to Escrow Holder and Seller which shall be delivered on or before the end of the Contingency Period. Buyer's failure to notify Seller of Buyer's approval or waiver of any of the Contingencies by delivering the Approval Notice within the applicable time period shall constitute Buyer's disapproval thereof. If Buyer does not deliver the Approval Notice within the required time, this Agreement shall terminate, and the parties shall thereafter have no further rights, duties or obligations under this Agreement except to the extent expressly provided otherwise, and Buyer shall have no interest in or to the Property.

4.3 CONDITIONS PRECEDENT.

The following "Conditions Precedent" shall be satisfied and true as of the Close of Escrow.

4.3.1 Buyer is currently in Escrow for the Adjacent Properties. Prior to or contemporaneously with the Close of Escrow for the Property as described in this Agreement, escrow for Buyer's purchase of the Adjacent Properties shall also close, and the Close of Escrow for the Property under this Agreement shall be contingent on satisfaction of the conditions to close

escrow for Buyer's purchase of the Adjacent Properties. If the transaction related to the Adjacent Properties fail to close for any reason other than a default by Buyer thereunder, then, at Buyer's election, this Agreement may be terminated by Buyer's written notice to Seller and Buyer's Deposit shall be returned by Escrow Holder to Buyer.

4.3.2 Buyer shall process and receive approval of Project Entitlements pursuant to Section 37 of the Purchase and Sale Agreement for the Adjacent Properties dated April 26, 2018, between the City of Pomona Successor Agency and Watt Communities LLC. "Project Entitlements" shall mean the approval by the City or any other applicable governmental entities of a tentative subdivision map for the Adjacent Properties permitting residential development on the Adjacent Property with a number of units satisfactory to Buyer in buyer's discretion, together with the approval of any CEQA-related documents required by the City as a condition to approval of the tentative map, including, if required by the City, an environmental impact report for Buyer's proposed development and construction of a residential project on the Adjacent Property together with those other discretionary zoning or entitlement approvals (including, without limitation, a zone change and general plan amendment) as are necessary for the entitlement of the Adjacent Properties for residential development. Nothing herein is intended or shall be interpreted as requiring the City to approve the tentative map or any other discretionary zoning or entitlement approval for Buyer's proposed residential development, but rather such shall be in the City's discretion after completion of any requisite CEQA process. Buyer shall not take any action which will be binding on the Adjacent Properties prior to the close of escrow without obtaining the Seller's approval, which approval will not be unreasonably withheld or delayed. Prior to submitting any entitlement application in connection with the Adjacent Properties, Buyer shall provide a copy to Seller for Seller's review. If seller disapproves any aspect of such proposed submittal, Seller shall give Buyer written notice stating with specific detail the nature of Seller's objection and Buyer shall modify the proposed submittal to accommodate Seller's comments.

4.3.3 The City Council shall hold a public hearing and approve by resolution disposal of 150 East Center Street (APN's 8336-026-900 through 903) located in Pomona, California, legally described on **Exhibit "A"** and depicted on **Exhibit "B"**. Notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community at least once per week for at least two successive weeks, as specified in Section 6066 of the Government Code, prior to the hearing.

4.3.4 The City Council shall hold a public hearing and approve by resolution disposal of the lot, generally described as a 16,584 square foot parcel (APN 8336-021-901) located in Pomona, California, legally described on **Exhibit "A"** and depicted on **Exhibit "B"**. Notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community at least once per week for at least two successive weeks, as specified in Section 6066 of the Government Code, prior to the hearing.

4.3.5 Buyer shall perform California Environmental Quality Act ("CEQA") analysis and obtain City approval of CEQA-related documents required by the City.

4.3.6 The reporting requirements imposed by California Health and Safety Code Section 33433 shall be prepared, approved, and made available for public inspection.

5. EXCHANGE.

5.1 Buyer and Seller acknowledge that Buyer shall have the right to cause this Agreement to be modified so that Buyer may have the transaction qualify as an exchange under the Internal Revenue Code of 1954, and the California Revenue and Taxation Code. Buyer shall exercise its right to modify this Agreement by giving Seller written notice at least sixty (60) days prior to Close of Escrow, setting forth in such notice all of the conditions relating to such exchange. Seller agrees to fully cooperate with Buyer to modify this Agreement as is necessary. Seller shall bear no additional cost, expense or liability (whether actual or contingent) as a result of the exchange transaction.

6. REPRESENTATIONS AND WARRANTIES

6.1 SELLER'S WARRANTIES

Seller makes the representations and warranties in this Paragraph 6, each and all of which shall survive any and all inquiries and investigations made by Buyer and shall survive the Close of Escrow and recordation of the Grant Deed.

- (a) The City is a California charter city and municipal corporation.
- (b) The Pomona Housing Authority is a local housing authority-created and existing pursuant to California law.
- (c) Neither the entering into this Agreement nor the performance of any of Seller's obligations under this Agreement will violate the terms of any contract, agreement or instrument to which Seller is a party.
- (d) Seller has not actually received any formal written notice that any of the easements, covenants, conditions, restrictions or agreements to which the Property is subject interferes with or is breached by the use or operation of the Property as presently used and operated as a vacant parcel.
- (e) Seller has not been served (by means of formal, legal service of process as required by law) (and has no knowledge of) with any litigation, and no arbitration proceedings have been commenced, which do or will affect any aspect of the Property or Seller's ability to perform its obligations under this Agreement.
- (f) Seller hereby agrees, through and including the Close of Escrow and at the Seller's sole cost and expense, to operate the Property in the same manner as Seller has been operating the Property in the past.

6.1.1 No Alterations

Seller will not intentionally alter the physical condition of the Property from and after the date of this Agreement, reasonable wear and tear excepted. If, through no fault of Seller, the physical condition of the Property is different on the date scheduled for the Close of Escrow

than as of the date of this Agreement, then, except as provided in Section 13 of this Agreement, in such event Buyer may terminate this Agreement. If Buyer elects to terminate this Agreement by written notice to Seller and Escrow Holder given within ten (10) days of discovery of the altered condition, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement and all sums and documents deposited in Escrow shall be immediately returned without further instruction to the parties who deposited the same and Seller and Buyer shall each pay one-half (1/2) of Escrow costs. If Buyer fails to notify Seller and Escrow Holder of its election to terminate this Agreement within said ten (10) day time period provided above, Buyer shall be deemed to have accepted the modified condition of the Property and elected to purchase the Property.

6.1.2 Changed Conditions

If, prior to the Close of Escrow, new events have occurred which were beyond the control of Seller and which render any previously true representation or warranty untrue, Seller shall, within five (5) business days thereafter, disclose those matters by written notice to Buyer. Buyer shall have ten (10) days after the earlier of (i) such disclosure; or (ii) Buyer's independent discovery that such representation or warranty has become untrue, to elect, in its sole and absolute discretion, and as its sole remedy, by written notice to Seller within said ten (10) day period, whether (i) to purchase the Property or (ii) terminate this Agreement by written notice to Seller and Escrow and Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement and all sums and documents deposited in Escrow shall be immediately returned to the parties who deposited the same without further instruction and Seller and Buyer shall each pay one-half (1/2) of Escrow costs. If Buyer fails to notify Seller and Escrow Holder of its election to terminate this Agreement within said ten (10) day time period provided above, Buyer shall be deemed to have accepted the modified representations and warranties and elected to purchase the Property.

6.1.3 Other than those express representations and warranties contained in this Agreement, Seller makes no warranty or representation, express or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose.

6.1.4 Except to the extent Seller has made a specific representation and warranty with respect thereto, no document or information provided by Seller to Buyer shall constitute a representation as to the completeness or accuracy of such documents or information.

6.2. REPRESENTATIONS AND WARRANTIES BY BUYER.

Buyer makes the following representations and warranties in this Paragraph 6.2, each and all of which shall survive any and all inquiries and investigations made by Seller and shall survive the Close of Escrow and recordation of the Grant Deed.

(a) Each and all of the information and any financial statement delivered by Buyer to Seller are true and correct.

(b) Watt Communities, LLC is a California corporation, duly organized, validly existing and in good standing under the laws of the State of California, which has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

The Buyer, and the specific, individual parties signing this Agreement on behalf of Buyer represent and warrant that the parties signing this Agreement on behalf of the Buyer have the full legal power, authority and right to execute and deliver this Agreement.

(c) Buyer has or will make its own investigation concerning the physical condition of the Property, condition of title or any other matter pertaining to the Property, and, other than the specific representations and warranties made by Seller pursuant to this Agreement, Buyer is not relying on any representations, warranties or inducements of Seller with respect to the physical condition of the Property, condition of title to the Property, or any other matter pertaining to the Property. Accordingly, except for those specific representations and warranties of Seller set forth in this Agreement, Buyer is purchasing the Property and each and every aspect thereof in an "as-is" condition, and Seller makes no express or implied representation concerning (i) the status of title to the Property; (ii) any leases; (iii) the current or future real estate tax liability, assessment or valuation of the Property; (iv) the compliance of the Property in its current or future state with applicable laws or any violations thereof, including without limitation, those relating to access for the handicapped, environmental or zoning matters, or the ability to obtain a change in the zoning of the Property; (v) the nature and extent of any right-of-way, lease, lien, encumbrance, license or reservation; (vi) the availability of any financing for the purchase, alteration or operation of the Property from any source, including, without limitation, any governmental authority or lender; (vii) the current or future use of the Property; (viii) the viability or financial condition of any tenant; and (ix) the actual or projected income or operation expenses of the Property.

7. INDEMNIFICATION.

7.1 Subject to any other provisions of this Agreement to the contrary, each party agrees to indemnify ("Indemnitor") and hold the other party ("Indemnatee") harmless from and against any claim, loss, damage or expense, including any reasonable attorney's fees (including attorney's fees on appeal), asserted against or suffered by the Indemnatee resulting from:

- (a) Any breach by the Indemnitor of this Agreement;
- (b) The inaccuracy or breach of any of the representations, warranties or covenants made by the Indemnitor.

7.2 Indemnatee shall submit any claim for indemnification under this Agreement to the Indemnitor in writing within a reasonable time after Indemnatee determines that an event has occurred which has given rise to a right of indemnification under this Paragraph 7 and shall give Indemnitor a reasonable opportunity to investigate and cure any default of Indemnitor under this Agreement and eliminate or remove any claim by a third party. Notwithstanding the foregoing, if the nature of Indemnitor's default or the third party claim is such that it would be impractical or unreasonable to give Indemnitor an opportunity to investigate and cure such default and remove such claim, Indemnatee need not give Indemnitor such opportunity.

7.3 If such claim for indemnification relates to a claim or demand presented in writing by a third party against Indemnatee, Indemnitor shall have the right to employ counsel reasonably acceptable to Indemnatee to defend any such claim or demand, and Indemnatee shall make available to Indemnitor, or its representatives, all records and other materials in its possession or under its

control reasonably required by Indemnitor for its use in contesting such liability. If Indemnitor does not elect to defend any such claim or demand, Indemnatee may do so at its option, but shall not have any obligation to do so.

8. ASSUMPTION OF LIABILITIES.

8.1 Effective as of the Close of Escrow, Buyer shall be deemed to have assumed all obligations and liabilities of Seller that constitute covenants running with the land to the extent both pertaining to the Property, and first accruing after the Close of Escrow and expressly excluding all obligations and liabilities with respect thereto which arise prior to the Close of Escrow or which arise as a result of events which occur prior to the Close of Escrow.

8.2. Except for the foregoing assumption of obligations and liabilities by Buyer, Buyer does not assume and shall not be liable for any of the obligations or liabilities of Seller of any kind or nature affecting or otherwise relating to Seller, the Property, or otherwise.

8.3 Seller shall, prior to the Close of Escrow, timely perform and discharge all obligations and liabilities of every kind whatsoever to be discharged prior to the Close of Escrow and arising from or relating to (i) the Property, including, but not limited to, the use and ownership of the Property; and (ii) the operation of the Property.

9. LIQUIDATED DAMAGES.

IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF BUYER, IT IS AGREED THAT THE DEPOSIT ACTUALLY MADE PURSUANT TO PARAGRAPH 2(a) OF THIS AGREEMENT, FOR THE INITIAL ESCROW PERIOD OR THE EXTENDED ESCROW PERIOD AS APPLICABLE, AND SUBJECT TO THE PROVISIONS OF PARAGRAPH 11.2(f) OF THIS AGREEMENT, SHALL BE NON- REFUNDABLE AND SELLER SHALL BE ENTITLED TO SUCH DEPOSITS, WHICH AMOUNTS SHALL BE ACCEPTED BY SELLER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY. IT IS AGREED THAT SAID AMOUNT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR IMPOSSIBLE TO PRESENTLY PREDICT WHAT MONETARY DAMAGES SELLER WOULD SUFFER UPON BUYER'S FAILURE TO COMPLETE ITS PURCHASE OF THE PROPERTY. BUYER DESIRES TO LIMIT THE MONETARY DAMAGES FOR WHICH IT MIGHT BE LIABLE HEREUNDER AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS THEY WOULD INCUR IF A LAWSUIT WERE COMMENCED TO RECOVER DAMAGES OR OTHERWISE ENFORCE SELLER'S RIGHTS. IF FURTHER INSTRUCTIONS ARE REQUIRED BY ESCROW HOLDER TO EFFECTUATE THE TERMS OF THIS PARAGRAPH 9, BUYER AND SELLER AGREE TO EXECUTE THE SAME. THE PARTIES ACKNOWLEDGE THIS PROVISION BY PLACING THEIR INITIALS BELOW:

BUYER: _____ SELLER: _____

10. SPECIAL CONDITIONS.

There are no special conditions except as otherwise specified in this Agreement.

11. ESCROW AND CLOSING.

11.1 OPENING OF ESCROW

As soon as possible after the full execution of this Agreement, however not earlier than the selection of the Title Company as provided in Paragraph 3.4, Buyer and Seller shall open an escrow (the "**Opening of Escrow**") for the purpose of consummating the purchase and sale contemplated by this Agreement ("**Escrow**") by depositing an executed copy of this Agreement with First American Title Insurance Company, at 18500 Von Karman Avenue, Suite 600, Irvine, California ("**Escrow Holder**"). This Agreement shall constitute escrow instructions to Escrow Holder. Seller and Buyer shall, promptly upon request by Escrow Holder, execute such additional escrow instructions as may be reasonably required by Escrow Holder, including Escrow Holder's standard printed conditions and stipulations with respect to escrows concerning the purchase and sale of real property; provided, however, that if there is any conflict between the provisions of this Agreement and the provisions of any such additional instructions, the provisions of this Agreement shall prevail. Upon delivery to Escrow of a fully executed copy of this Agreement by both parties, and the selection of the Title Company as provided in Paragraph 3.4, Escrow shall be deemed opened on the terms and conditions set forth in this Agreement.

11.2 CLOSE OF ESCROW

(a) Subject to the provisions of Paragraph 4.3, Escrow shall close, and the Grant Deed shall be recorded in the Office of the County Recorder of Los Angeles County, California ("**Close of Escrow**") not later than December 31, 2019. The failure of any condition precedent or performance of due diligence by Buyer shall not extend the Close of Escrow; provided that the Escrow may be extended by mutual written agreement signed by Buyer and Seller.

(b) If Buyer requests an extension of Close of Escrow, Buyer agrees to maintain the Property free of weeds, trash and debris, and to keep the Property clear of trespassers or any other persons sleeping, camping or occupying the property during any such extended period, at the sole and absolute expense of Buyer. Prior to such extension period Buyer shall deposit with the Successor Agency the sum of \$5,000 to assure compliance with this subparagraph (b). If Buyer fails to comply with this subparagraph (b), the Successor Agency may undertake and perform the necessary work and actions and use the \$5,000 deposit of Buyer to pay the costs of such work and actions performed by the Successor Agency.

11.3 SELLER DELIVERIES TO ESCROW

Within the time set forth below, or if none is specified, prior to the Close of Escrow, Seller shall deliver to Escrow Holder, or if so indicated, to Buyer, the following documents and items:

(a) At least one (1) day prior to the Close of Escrow, the duly executed and acknowledged Grant Deed.

(b) At least one (1) day prior to Close of Escrow, Seller shall deliver such certifications, declarations or other documents as may be required under Internal Revenue Code

Sec. 1445 and California Revenue and Tax Code Sec. 18662, together with any and all other documents required by law pertaining to foreign or out-of-state sellers.

11.4 BUYER'S DELIVERIES TO ESCROW

Buyer shall deliver to Escrow Holder prior to the Close of Escrow the balance of the cash portion of the Purchase Price set forth in Paragraph 2, as adjusted pursuant to this Agreement, together with an additional sum sufficient to cover Buyer's closing costs as set forth in Paragraph 13.7.2, below.

11.5 COMPLETION OF ESCROW

(a) On the Close of Escrow, the Escrow Holder shall record the Grant Deed and shall deliver the monies and instruments to which each party is entitled pursuant to this Agreement, only when the Title Company is in a position to issue its ALTA policy of title insurance subject only (i) to the Permitted Exceptions; and (ii) Title Company's standard pre-printed exclusions, with liability in the amount of the purchase price, showing title to the Property vested in Buyer (or as designated by Buyer) ("**Title Policy**").

(b) Upon Close of Escrow, possession of the Property shall be delivered to Buyer subject to the Permitted Exceptions and all rights of tenants under the Leases, and the following items, documents and monies shall be delivered to the parties by Escrow Holder as set forth below:

(1) To Seller: the cash portion of the Purchase Price as set forth in Paragraph 2 as adjusted pursuant to this Agreement and reduced by the costs incurred by the Buyer to hire a relocation consultant and the amount of relocation benefits paid as set forth in Paragraph 2 (c) and the amount of Seller's closing costs as set forth in Paragraph 11.6.1, below.

(2) To Buyer: the Title Policy and Grant Deed after recordation.

11.6 COSTS OF ESCROW

Upon Close of Escrow, Escrow and title charges shall be paid in the manner provided below.

11.6.1 Seller shall pay:

- (a) The cost of the CLTA standard coverage portion of the Title Policy.
- (b) The cost of any and all documentary transfer tax or stamps or other sales tax and recording fees.
- (c) One-half (1/2) of the Escrow fees.

11.6.2 Buyer shall pay:

- (a) One-half (1/2) of the Escrow fees.
- (b) The cost of the Title Policy in excess of standard CLTA coverage.

11.6.3 All other closing costs will be allocated between Buyer and Seller in a manner customary in the marketplace of the subject Property.

11.6.4 Escrow Holder is authorized and instructed to debit Seller and Buyer for closing costs as set forth in Paragraphs 11.6.1 and 11.6.2 above and as otherwise provided in this Agreement.

11.6.5 If Escrow fails to close as a result of the default of this Agreement by a party, the defaulting party shall pay all title and escrow charges; provided, however, that nothing in this Paragraph 11 shall be deemed to limit, and the provisions of this Paragraph 11 shall be in addition to, all other rights and remedies of the non-defaulting party.

12. PRORATIONS.

12.1 Prorations shall be made as of the Close of Escrow. All prorations shall be made on the basis of a thirty (30) day month and shall be paid in cash to Seller if it is entitled thereto, or shall be credited against the cash portion of the Purchase Price if Buyer is entitled thereto. Such prorations shall be made by Escrow Holder on the basis of a statement(s) approved by Buyer and Seller and deposited into the Escrow prior to the Close of Escrow. The date used for prorations is hereinafter referred to as the "**Proration Date.**"

(a) All real estate taxes, assessments and all personal property taxes due and owing as of the Proration Date, and all penalties and interest thereon, shall be paid by Seller. Current real estate taxes, special assessments and personal property taxes which are not yet due and owing shall be prorated based upon the most recent tax bill, so that the portion of current taxes allocable to the period from the beginning of such tax year through the Proration Date shall be charged to and paid by Seller and the portion of the current taxes allocable to the portion of such tax year from the Proration Date to the end of such tax year shall be charged to and paid by Buyer. Proration of taxes and assessments shall be final as of the Proration Date, regardless of the amount of taxes or assessments that actually are, or subsequently become, due.

(b) Expenses of operating the Property (other than insurance premiums, taxes and utility charges) which were prepaid by Seller for a period beyond the Proration Date shall be credited to Seller.

12.2 Buyer shall be responsible for obtaining and paying for utility services from and after Close of Escrow.

13. DAMAGE OR DESTRUCTION PRIOR TO CLOSE OF ESCROW.

If the Property, or any portion thereof, is damaged or destroyed prior to the Close of Escrow from any cause whatsoever, whether an insured risk or not, including but not limited to, fire, flood, accident or other casualty which, according to the Buyer's and Seller's best estimate, would cost more than Fifty Thousand Dollars (\$50,000) to repair, Buyer shall have the option, upon written notice to Seller, to either (i) terminate this Agreement, or (ii) purchase the Property. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's

notice of election to terminate and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder without further instruction. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees. If Buyer elects to purchase the Property, Buyer shall be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction and, in addition, Seller shall pay Buyer the amount of any deductible (which can be paid by Seller by means of a credit against the Purchase Price). In the event that Buyer's and Seller's best estimate of the cost of repair is Fifty Thousand Dollars (\$50,000) or less, Buyer shall purchase the Property and be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction. In addition, the difference between the amount of insurance proceeds available and the cost of repair shall be deducted from the cash portion of the Purchase Price. Should any damage or destruction occur prior to the Close of Escrow, the date scheduled for the Close of Escrow shall be extended for a period of time not to exceed thirty (30) days, for the purpose of allowing Buyer and Seller sufficient time to estimate the cost of repair. If Buyer fails to notify Seller of its election under this Paragraph 13, Buyer shall be deemed to have elected to purchase the Property.

14. EMINENT DOMAIN.

14.1 The words "condemnation" or "condemned" as used in this Paragraph 14 shall mean the exercise of, or intent to exercise, the power of eminent domain expressed in writing, as well as the filing of any action or proceeding for such purpose, by any person, entity, body, agency or authority having the right or power of eminent domain (the "condemning authority").

14.2 If Seller receives written notice from a condemning authority advising of a condemnation of all or any portion of the Property ("**Condemnation Notice**"), Seller shall immediately advise Buyer of same in writing and deliver therewith a copy of the Condemnation Notice. Within ten (10) days after Buyer's receipt of the Condemnation Notice, Buyer shall notify Seller of its election to either (i) terminate this Agreement and the Escrow or (ii) purchase the Property. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder without further instruction. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees. If Buyer elects to purchase the Property, Seller shall transfer to Buyer at the Close of Escrow all proceeds from condemnation or Seller's right to receive all such proceeds. If Buyer fails to notify Seller of its election under this Paragraph 14, Buyer shall be deemed to have elected to purchase the Property.

15. SURVIVAL OF CLOSE OF ESCROW.

All representations, warranties, covenants, conditions, agreements and obligations contained in or relating to this Agreement shall survive the Close of Escrow and the recordation of the Grant Deed and shall not merge therein unless specifically stated otherwise in this Agreement.

16. NON-DISCRIMINATION

Buyer agrees by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or

ethnic origin, age, family or marital status, handicap or disability in the sale, transfer, use, occupancy, tenure or enjoyment of the Property.

Buyer, its successors and assigns, shall refrain from restricting the sale or transfer of the Property on the basis of race, color, religion, sex, disability, age, marital status, national origin or ancestry of any person. All such deeds or contracts shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:

In deeds: "The owner herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, disability, age, marital status, national origin or ancestry in the sale, transfer, use, occupancy or enjoyment of the land herein conveyed. The foregoing covenants shall run with the land."

In leases: (b) In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

In contracts: "There shall be no discrimination against or segregation or, any person or group of person on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the sale, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferor himself or herself of any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, subtenants, or vendees of the premises."

17. NOTICES.

All notices to be given pursuant to this Agreement shall be either (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) overnight courier (such as Federal Express, DHL, etc.); or (iv) by telecopy transmittal. If sent via certified or registered mail, receipt shall be deemed effective forty-eight (48) hours after being deposited in the United States mail. If sent via telecopy transmission, a confirming copy shall be sent to the sender, and receipt of the telecopy transmittal shall be deemed made twenty-four (24) hours after the sending thereof. If sent via overnight courier, receipt shall be deemed effective twenty-four (24) hours after the sending

thereof. All notices to be given pursuant to this Agreement shall be given to the parties at the following respective address.

to Buyer:

Watt Communities LLC
2716 Ocean Park Boulevard, Suite 2025
Santa Monica, CA 90405
Attn: Nam Joe
e-mail: njoe@wattcompanies.com

to Seller:

City Manager
City of Pomona
505 South Garey Avenue
Pomona, California 91766
Phone: (909) 620-2410
Fax: (909) 620-3703

With a copy to:

Alvarez-Glasman & Colvin
13181 Crossroads Parkway North
Suite 400, West Tower
Industry, CA 91746
Phone: (562) 699-5500
Fax: (562) 692-2244
Email: ccardinale@agclawfirm.com

to Escrow Holder:

First American Title Insurance Company
18500 Von Karman Ave. Suite 600
Irvine, CA 92612
Phone: 949-244-5668
Fax: 714-824-5946

18. ENTIRE AGREEMENT.

This Agreement, and the Exhibits attached hereto, represent the entire Agreement between the parties in connection with the transactions contemplated hereby and the subject matter hereof and this Agreement supersedes and replaces any and all prior and contemporaneous agreements, understandings and communications between the parties, whether oral or written, with regard to the subject matter hereof. There are no oral or written agreements, representations or inducements of any kind existing between the parties relating to this transaction which are not expressly set forth herein. This Agreement may not be modified except by a written agreement signed by both Buyer and Seller. Without limiting the foregoing, Buyer and Seller expressly acknowledge and

agree that they have not relied on any written or oral statements made by the other party's real estate broker in entering into this Agreement.

19. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, administrators, successors in interest and assigns.

20. WAIVER.

No waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

21. CAPTIONS AND HEADINGS.

The captions and paragraphs numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of this Agreement.

22. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

23. GOVERNING LAW.

This Agreement has been prepared, negotiated and executed in, and shall be construed in accordance with, the laws of the State of California. Any action or proceeding relating to or arising out of this Agreement shall be filed, if a State action, in the Superior Court of the State of California for the County of Los Angeles, or if a Federal action, in the United States District Court for the Central District of California.

24. ATTORNEYS FEES.

If either party named herein brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action (or proceeding), on trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the Court (or if applicable, the arbitrator).

25. TIME OF ESSENCE.

Time is of the essence with respect to all matters contained in this Agreement.

26. DATE OF AGREEMENT.

All references in this Agreement to "the date of this Agreement" or "the date hereof" shall be deemed to refer to the date set forth in the first paragraph of this Agreement.

27. INVALIDITY OF ANY PROVISION.

If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions (or the balance of such provision) shall not be affected thereby.

28. NO RECORDATION.

Buyer shall not record this Agreement, any memorandum of this Agreement, any assignment of this Agreement, or any other document which would cause a cloud on the title to the Property.

29. DRAFTING OF AGREEMENT.

Buyer and Seller acknowledge that this Agreement has been negotiated at arm's length, that each party has been represented by independent counsel and that this Agreement has been drafted by both parties and no one party shall be construed as the draftsman.

30. NO THIRD-PARTY BENEFICIARY RIGHTS.

This Agreement is entered into for the sole benefit of Buyer and Seller and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

31. JOINT AND SEVERAL LIABILITY.

If either the Buyer or the Seller (separately) is comprised of more than one party, each party constituting the Seller or Buyer, respectively, is jointly and severally liable for the performance of this Agreement.

32. INCORPORATION OF EXHIBITS.

Each and all of the exhibits attached to this Agreement are incorporated herein as if set forth in full in this Agreement.

33. NO JOINT VENTURE, PARTNERSHIP OR OTHER RELATIONSHIP CREATED.

The relationship between Buyer and Seller is that solely of a seller and buyer and no joint venture, partnership or other relationship is created or implied by this Agreement.

34. ASSIGNMENT

This Agreement may not be assigned by either party without the express written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer shall have the right to assign this Agreement or the Property, or any rights therein, to a limited liability company or any other entity which is controlled and owned by a majority interest by Buyer.

35. RESERVATION OF DISCRETION

(1) The Parties agree and acknowledge that nothing in this Agreement (including, without limitation, Section 37) in any respect does or shall be construed to affect or prejudice the exercise of the City or Agency's discretion concerning consideration of any submittal by the Buyer or any other party for entitlement or development of the Property. Further, nothing in this Agreement in any respect does or shall be construed to affect or prejudice the City or Authority's discretion to consider, negotiate, approve or disapprove any development or any required approvals necessary by the laws, rules, and regulations governing the development of property.

(2) By its execution of this Agreement, the City and/or Authority are not committing themselves to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by the Authority, the City or any Agency or department thereof. Except as specifically provided in this Agreement, the Authority and/or the City shall not be responsible for any costs or expenses incurred by the Buyer pursuant to this Agreement, nor shall the Agency be responsible for any potential lost profits of the Buyer.

(3) Buyer is aware, understands, and acknowledges that Authority and City are by law required to exercise their sole unfettered discretion in approving or denying any land use, development or building permit approvals required by the Buyer. Neither this Agreement nor any other agreement with Buyer obligates Authority or City to approve, disapprove or consider any development entitlements for any project in a particular manner

36. NO BROKER REPRESENTATION

Buyer and Seller acknowledge that a Broker has made no representations or warranties regarding the physical condition of the Property, or its suitability for Buyer's intended use, and that neither Party has made any representations or warranties to the other (except as expressly set for in this Agreement) and that Buyer and Seller are relying upon their own independent investigations in making this Agreement. No representations or recommendations are made by a Broker as to the legal sufficiency, legal effect, or tax consequences of this Agreement or the transaction to which it relates. The parties are urged to seek advice of counsel as to the legal and tax consequences of this transaction.

37. PROJECT ENTITLEMENTS

37.1 From and after the mutual execution of this Agreement, at all times that this Agreement remains in effect, Buyer shall have the right to process approval of the Project Entitlements for the Property. As used in this Agreement, the term "Project Entitlements" shall mean the approval by the City or any other applicable governmental entities of a tentative subdivision map (the "Tentative Map") for the Property permitting residential development on the Property with a number of units satisfactory to Buyer in Buyer's discretion, together with the approval of any CEQA-related documents required by the City as a condition to approval of the Tentative Map, including, if required by the City, an environmental impact report for Buyer's proposed development and construction of a residential project on the Property together with those other discretionary zoning or entitlement approvals (including, without limitation, a zone change and a general plan amendment) as are necessary for the entitlement of the Property for residential development. Nothing herein is intended or shall be interpreted as requiring the City to approve

the Tentative Map or any other discretionary zoning or entitlement approval for Buyer's proposed residential development, but rather such shall be in the City's discretion after completion of any requisite CEQA process.

37.2 Buyer shall not take any action which will be binding on the Property prior to Close of Escrow without obtaining Seller's approval, which approval will not be unreasonably withheld or delayed. Prior to submitting any entitlement application in connection with the Real Property, Buyer shall provide a copy to Seller for Seller's review. If Seller disapproves any aspect of such proposed submittal, Seller shall give Buyer written notice stating with specific detail the nature of Seller's objection and Buyer shall modify the proposed submittal to accommodate Seller's comments.

(SIGNATURES APPEAR ON NEXT PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

"Seller"

THE CITY OF POMONA, a California Charter
City

By: _____
Linda C. Lowry, City Manager

THE POMONA HOUSING AUTHORITY,
a California public housing authority

By: _____
Linda Lowry, Executive Director

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman
City Attorney/Authority Counsel

"Buyer"

WATT COMMUNITIES LLC, a California limited
liability company

By: _____
Manager

EXHIBIT "A"
Legal Description of Property

[INSERT LEGAL DESCRIPTION]

DRAFT

EXHIBIT "B"
Depiction of Property

[INSERT DEPICTION OF PROPERTY]

DRAFT

EXHIBIT "C"

Grant Deed

WHEN RECORDED RETURN TO

MAIL TAX STATEMENTS TO:

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE
This document exempt from recording fee pursuant to
Section 27383 of the California Government Code

GRANT DEED

RECITALS:

1. The properties commonly known as 150 East Center Street (APN's 8336-026-900 through 903) and a lot, generally described as a 16,584 square foot parcel (APN 8336-021-901) located in Pomona, California, legally described on **Exhibit "A" ("Property")**.
2. The Watt Communities LLC desires to construct a townhome development in the City of Pomona ("**Project**").
3. Completing said Project is contingent on transfer of said Property.
4. Based on the foregoing, the City of Pomona desires to transfer the Property to Watt Communities LLC on all the terms and conditions set forth in this Agreement.

For a valuable consideration, receipt of which is hereby acknowledged,

THE CITY OF POMONA, a California Charter City ("City" or "Grantor"), hereby grants to WATT COMMUNITIES LLC, a California limited liability company ("Grantee"), that certain Property described in Exhibit "A" attached hereto and incorporated herein by this reference.

Executed on _____, 20____, in _____, California.

THE CITY OF POMONA, a California Municipal Corporation

By: _____
Linda C. Lowry, City Manager

ATTEST:

APPROVED AS TO FORM:

Secretary

Agency Counsel

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit “A” to Grant Deed

[INSERT LEGAL DESCRIPTION AND DEPICTION OF PROPERTY]

DRAFT