

TO: James L. App, City Manager

FROM: Meg Williamson, Assistant to the City Manager

SUBJECT: Union/46 Specific Plan Park Site Purchase

DATE: November 4, 2003

Needs: For the City Council to consider authorizing the City Manager to execute a Purchase Agreement to acquire a 7-acre Park Site located in the Montebello housing tract project.

Facts:

1. The Union/46 Specific Plan, adopted in 1989, established the requirement that a combined School and Park site be set aside within the northern portion of the plan area for purchase by the City and School District.
2. The School site was designated as 10-acres in size. If the School bought and developed their site, the City Park was designated at 7-acres. If the School did not develop, then the Park size was to increase to 10-acres.
3. The Specific Plan established a fee for Park acquisition and development (above and beyond city-wide standard map and building permit fees).
4. In 2000, the City Council approved Frank Arciero's Tract 2369 (Montebello) with the condition he offer the sale of the Park Site to the City in conjunction with recordation of Phase 3. There was a similar condition for the 10-acre school site, but the School negotiated an Option Agreement that gives them until October 2005 to execute the purchase.
5. Submittal of Phase 3 for recordation is expected in November, 2003.
6. With mutual consent of the landowner, the City has obtained an appraisal of the seven (7) and three (3) acre increments for the park site.
7. The appraised purchase price of the seven (7) acre park site is \$1,100,000. The optionable three (3) acre remainder of the park site is \$500,000.
8. Because it is unknown whether the School will exercise their option to purchase their ten (10) acre site, the City only has the ability to move forward with the purchase of seven (7) acres at this time. The remaining three (3) acres will be optioned by the City for future purchase if the School does not acquire, at the current appraised price of \$500,000.
9. A combination of Union/46 Specific Plan park acquisition fees, the City's Park and Open Space Acquisition fees, and credit for Park fees to be paid for Phase 3 can be utilized for this purchase.
10. The City Council has established parameters for the fundamental purchase agreement terms and conditions in closed session.

11. The City attorney has drafted a Purchase Agreement in accordance with the direction previously received by City Council in closed session (attached).
12. The seller's agents/representatives have indicated their approval of the general form and content of this draft Purchase Agreement (attached).
13. City Manager execution authority is requested as it will expedite the purchase agreement before Phase 3 records.

ANALYSIS &

CONCLUSION: The City is "obligated" to negotiate the purchase of a minimum of 7-acres. If the School does not exercise their purchase option in 2005, the City is obligated to purchase an additional 3-acres (total of 10 acres).

Time is of the essence in executing this Purchase Agreement. The developer/property owner is moving closer to recordation of Phase 3 and indicates a desire to finalize the terms of the Purchase Agreement by November 4, 2003.

Delegation of authority to the City Manager to execute the Purchase Agreement, within established Council guidelines, will provide the greatest degree of opportunity to successfully execute the park purchase.

POLICY

REFERENCE: General Plan; Union/46 Specific Plan; Tract 2369 conditions of approval.

FISCAL

IMPACT: \$1,100,000 to \$1,600,000 potential impact from a combination of Union/46 Specific Plan and Park Development Fees (currently available and as may be collected in the future).

- OPTIONS:**
- a. Adopt Resolution No. 03-XX authorizing the City Manager to execute a Purchase Agreement for 7-acres for a Park site within the Union/46 Specific Plan Area and to enter into an Option Agreement for an additional 3-acres for an expanded Park site in the event the School District does not acquire the adjacent 10-acre site for a School.
 - b. Amend, modify or reject above option.

Attachments:

1. Letter from Applicant's Engineer confirming approval of agreement format
2. Resolution authorizing City Manager to enter into Purchase Agreement
3. Purchase Agreement and its Exhibits

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT
FOR A 7-ACRE PARK SITE WITHIN THE UNION/46 SPECIFIC PLAN AREA, AND
TO OPTION THE PURCHASE OF AN ADDITIONAL 3-ACRES IF THE SCHOOL DISTRICT
DOES NOT ACQUIRE AN ADJACENT SCHOOL SITE

WHEREAS, the Union/46 Specific Plan, adopted in 1989, established the requirement that a combined School and Park site be set aside within the northern portion of the plan area for purchase by the City and School District; and

WHEREAS, the School site was designated as 10-acres in size and if the School bought and developed their site, the City Park was designated at 7-acre, but if the School did not develop, then the Park size was to increase to 10-acres; and

WHEREAS, the Specific Plan established a fee for Park acquisition and development (above and beyond city-wide standard map and building permit fees); and

WHEREAS, in 2000, the City Council approved Frank Arciero's Tract 2369 (Montebello) with the condition he offer the sale of the Park Site to the City in conjunction with recordation of Phase 3; and

WHEREAS, the School District based on a Tract 2369 condition of approval has an Option Agreement with the landowner for the 10-acre school site that gives them until October 2005 to execute the purchase; and

WHEREAS, the submittal of Phase 3 of Tract 2369 for recordation is expected in November 2003; and

WHEREAS, with mutual consent of the landowner, the City has obtained an appraisal of the seven (7) and three (3) acre increments for the park site; and

WHEREAS, the appraised purchase price of the seven (7) acre park site is \$1,100,000 and the optionable three (3) acre remainder of the park site is \$500,000; and

WHEREAS, it is unknown whether the School will exercise their option to purchase their ten (10) acre site, and the City only has the ability to move forward with the purchase of seven (7) acres at this time; and

WHEREAS, the remaining three (3) acres can be optioned by the City for future purchase, if the School does not acquire, at the current appraised price of \$500,000; and

WHEREAS, a combination of Union/46 Specific Plan park acquisition fees, the City's Park and Open Space Acquisition fees, and credit for Park fees to be paid for Phase 3, can be utilized for this purchase; and

WHEREAS, the City Council has established parameters for the fundamental purchase agreement terms and conditions in closed session; and

WHEREAS, the City attorney has drafted a Purchase Agreement in accordance with the direction previously received by City Council in closed session; and

WHEREAS, the seller's agents/representatives have indicated their approval of the general form and content of the draft Purchase Agreement; and

WHEREAS, City Manager execution authority is requested as it will expedite the purchase agreement before Phase 3 records.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of El Paso de Robles that the City Manager shall execute a Purchase Agreement with Mr. Frank Arciero for acquisition of a 7-acre Park Site within the Montebello residential subdivision.

BE IT FURTHER RESOLVED, by the City Council of the City of El Paso de Robles that the City Manager shall execute an Option to Purchase an additional 3-acres for the Park Site, that shall be triggered in the event the School District does not acquire their adjacent 10-acre site.

BE IT FURTHER RESOLVED, by the City Council of the City of El Paso de Robles that the City Manager is authorized to execute the Purchase Agreement and Option in substantial accordance with the "Purchase Agreement" and its Exhibits as shown in attached Exhibit A.

PASSED AND ADOPTED by the City of El Paso de Robles this 4th day of November 2003 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

EXHIBIT MAP

PARK SITE

A

7.0 AC
(304,920 S.F.)

SCHOOL SITE

B

3.0 AC
(130,680 S.F.)

SCHOOL SITE

C

7.0 AC
(304,871 S.F.)

128

127

126

125

124

123

122

121

120

60'

KLECK

ROAD

MONTEBELLO OAKS ROAD



EXHIBIT D

FORM OF FEE CREDIT NOTE

\$200,508

_____, 2003
Paso Robles, California

1. Promise to Pay. For value received, THE CITY OF PASO ROBLES, a municipal corporation (the "City"), with an address of 1000 Spring Street, Paso Robles, California hereby promises to pay FALLINGSTAR HOMES, INC., a _____ corporation, ("Fallingstar"), at P.O. Box 2040, Paso Robles, CA, the principal sum of Two Hundred Thousand, Five Hundred and Eight Dollars (\$200,508) ("the Principal"). No interest shall accrue under this Note except as provided under Section 6 below. This Note is made pursuant to the terms and conditions contained herein and those contained in the Agreement of Purchase and Sale (the "Agreement") entered into between City and Fallingstar, dated _____ which provides for Fallingstar to convey certain real property (the "Property") to City. Pursuant to the Agreement, City made a cash payment toward the purchase price and this Note evidences the remaining balance of the purchase price pursuant to the Agreement.

2. Repayment; Development Fee Credits. Repayment shall be made by City in the form of credits to Fallingstar for Union/46 Specific Plan Park Acquisition and Development Fees and City Park Development Fees due during Phase III of the Montebello Project (the "Project"). For each single family residence, Fallingstar shall receive a Credit from City, and the Principal amount of this Note shall be reduced accordingly, as follows: (i) \$ 702 of credit for Union/46 Specific Plan Park Acquisition and Development Fees and (ii) \$2,532 of credit for City Park Development Fees for each Certificate of Occupancy in Phase III of the Project obtained by Fallingstar. Therefore, the Principal shall be reduced by \$3,234 for each Certificate of Occupancy obtained by Fallingstar for the 62 single-family units developed during Phase III of the Project; provided the total amount of Credits provided hereunder shall not exceed the Principal, or the then outstanding amount of the Principal, as applicable. A Table of Fee Credits Applied to Principal is attached as Exhibit A, attached hereto.

3. Maturity Date. This Note shall mature at the earlier of (i) the completion of Phase III of the Project such that Fallingstar is entitled to be issued 62 Certificates of Occupancy or (ii) December 1, 2006 ("the Maturity Date"). Any outstanding Principal remaining unpaid at the time of the Maturity Date shall be repaid in a cash payment to Fallingstar by City within 60 days of the Maturity Date. Upon such payment, Fallingstar shall be required to pay the full amount of the Union//46 Specific Plan Park Acquisition and Development Fees for any remaining single family residences in Phase III.

4. Nonnegotiability; Transfer. This is a nonnegotiable Note. This Note is not transferable by the City. Any unauthorized assignment or transfer shall be considered

void and of no force and effect. Fallingstar may negotiate transfer or assumption of this Note only with the express prior written consent of City in its sole and absolute discretion.

5. Prepayment. The City has the right to prepay, at any time and from time to time, all or any portion of the Principal without any premium or penalty. Prepayment will reduce the credit received by Fallingstar under Section 2 by an equivalent amount.

6. Default. The whole sum of unpaid principal shall, at the option of Fallingstar, become immediately due and payable if City defaults in the payment of any installment of principal when due, or if the City defaults in the performance of any of the duties and obligations of the City under the Agreement. If in the event of a default the City fails to pay the whole sum of unpaid principal within 30 days after written demand by Fallingstar, then any outstanding amounts due under this Note shall thereafter bear interest at the rate equal to two percent (2%) above the prime interest rate as may be established from time to time by Bank of America NT & SA. Interest shall accrue commencing on the 31st day after such written demand from Fallingstar and shall continue to accrue until all amounts due under this Note are paid in full. The City agrees to pay the following costs, expenses and attorneys' fees paid or incurred by Fallingstar or adjudged by a Court: (1) reasonable costs of collection, costs and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, or of any covenant of this Note, whether or not suit is filed; and (2) costs of suit and such sum as the Court may adjudge as attorneys' fees in any action to enforce payment of this Note or any part of it; and (3) costs of suit and such sum as the Court may adjudge as attorneys' fees in any other litigation or controversy connected with this Note, including, but not limited to, actions for declaratory relief that Fallingstar is required to prosecute or defend and actions for relief based on rescission, or actions to cancel this Note that Fallingstar is required to defend. City further agrees to pay immediately upon demand all costs and expenses of Fallingstar including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder Fallingstar finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against City, any guarantor or any other party liable therefor or to the protection of its rights under this Note or the Agreement, or (iii) if City seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

7. Miscellaneous.

This Note shall be governed by and be construed in accordance with the laws of the State of California.

Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested, to the address stated in Section 6.01 of the Agreement, or at such other address as either party may designate by written notice.

If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

8. List of Exhibits.

A. Table of Fee Credits Applied to Principal

_____, 2003

THE CITY OF PASO ROBLES,
a municipal corporation

By: _____

Name: _____

Its: _____

“The City”

EXHIBIT A

TABLE OF FEE CREDITS APPLIED TO PRINCIPAL Phase III of the Montebello Project, Tract 2369

Number of Certificates of Occupancy Issued	Date Issued	Total Fee Credit (# of Certificates of Occupancy x \$3,234)	Outstanding Principal Balance
			\$200,508

EXHIBIT C

FORM OF CONTINGENT OPTION AGREEMENT

THIS CONTINGENT OPTION AGREEMENT ("Option Agreement") is made as of this ____ day of _____, 2003, by and between the CITY OF PASO ROBLES, a municipal corporation, (the "City"), and FALLINGSTAR HOMES, INC., a _____ corporation ("Fallingstar") who agree as follows:

RECITALS

A. Fallingstar is the fee owner of certain real property situated in the City of Paso Robles, San Luis Obispo County, California commonly known as Tract 2369 or the Montebello Project (the "Project"), particularly described in Exhibit A attached hereto.

B. The City desires to acquire the contingent right (the "Option") to acquire fee simple title to the real property located in the City of Paso Robles, State of California, consisting of three (3)-acres of real property, located in the Montebello Project, more particularly described and shown in Exhibit B, attached hereto and incorporated herein (the "Property").

C. The Paso Robles School District (the "School District") has an existing Option to Purchase the Property the earlier of (a) October 3, 2005, or (b) three (3) years from the date of recordation of the final map of the subdivision of Phase III of the Project (the "School District Option"). Fallingstar desires to extend to City a contingent option to purchase the Property in the event the School District does not, for any reason, exercise its option and acquire the Property.

D. This Option Agreement is being executed concurrently with an Agreement of Purchase and Sale between the City and Fallingstar for the purchase of a seven (7)-acre parcel of real property located within said Project adjacent to the Property.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, Fallingstar and the City agree as follows:

ARTICLE 1. THE OPTION

1.01. Incorporation of Recitals.

The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Option Agreement as if set forth herein in full.

1.02. Grant of Option.

Fallingstar hereby grants the City, for the term, and upon the terms and conditions of this Option Agreement, the contingent right (the "Option") to acquire fee simple title to the real property located in the City of Paso Robles, State of California, consisting of three (3)-acres of real property, located in the Montebello Project, more particularly described and shown in Exhibit A and B, both of which are attached hereto and incorporated herein (the "Property"). This Option may only be exercised in the event that the School District does not exercise the School District Option.

1.03. Term.

The term of the Option (the "Option Term") shall commence on the date of this Option Agreement's execution by both parties and shall terminate upon the earlier to occur of (i) conveyance of the Property to School District pursuant to the School District Option or (ii) at 5:00 p.m. (Pacific Standard Time) sixty (60) days after the earlier of a) the School District giving notice of its intention not to exercise the School District Option or b) October 3, 2005.

1.04. Exercise.

The City shall exercise the Option, if at all, by delivering to Fallingstar a written notice that City intends to exercise its Option within the Option Term set forth in Section 1.03. Upon receipt of such notice by Fallingstar, Fallingstar shall be obligated to sell the Property to the City and the City shall be obligated to purchase the Property from Fallingstar in accordance with this Option Agreement.

1.05. Option Consideration.

The consideration for this Option is the sum of ONE DOLLAR (\$1), which shall be paid by the City to Fallingstar concurrently with the execution of this Option Agreement by the City and Fallingstar.

ARTICLE 2. PURCHASE PRICE

2.01. Purchase Price.

The total purchase price (the "Purchase Price") for the Property shall be FIVE HUNDRED THOUSAND DOLLARS (\$500,000) to be paid in the form of cash, certified check, wire transfer or other immediately available funds at the option of City.

ARTICLE 3. ESCROW

If City exercises its Option in accordance with Section 1.04 above, Fallingstar shall sell the Property to City and City shall purchase the Property from Fallingstar on the terms and conditions set forth in this Option Agreement.

3.01. Opening.

The purchase and sale of the Property shall be consummated by means of an escrow which is to be opened at _____, Paso Robles California ("Escrow Holder"), or other escrow company agreed to by the parties, within two (2) days following exercise by City of its Option pursuant to Section 1.04.

3.02. Instructions.

The escrow instructions given to Escrow Holder shall be consistent with the terms of this Option Agreement and, as between the Parties, the terms of this Option Agreement shall prevail if there is any inconsistency, unless the typewritten rather than printed portion of the instructions specifically provide to the contrary.

3.03. Close of Escrow.

Escrow shall close on or before the date specified by City in writing, which date shall be not less than thirty (30) days nor more than ninety (90) days following exercise by City of its Option pursuant to Section 1.04 (the "Close of Escrow").

3.04. Costs and Prorations.

A. City shall bear one-half (1/2) of the escrow fees and recording costs. City shall also bear the cost of any special endorsements and the incremental increases in cost for any ALTA survey and ALTA extended policy of title insurance requested by City, all with respect to the Property.

B. Fallingstar shall bear the cost of transfer taxes, the ALTA standard owner's title insurance premiums and one-half (1/2) of the escrow fees and recording costs.

C. All real estate taxes, assessments, and personal property taxes due and owing as of the Close of Escrow, and all penalties and interest thereon, shall be paid by Fallingstar. City shall be responsible for all real estate taxes and assessments and personal property taxes on and after the Close of Escrow. Real estate taxes, assessments and personal property taxes shall be prorated based upon the most recent tax bill, so that the portion of taxes and assessments allocable to the period from the beginning of such tax year through the Close of Escrow shall be charged to and paid by Fallingstar, and the portion of the taxes and assessments allocable to the portion of such tax year from the Close of Escrow to the end of such tax year shall be charged to and paid by City. Proration of taxes and assessments shall be final as of the Close of Escrow, regardless of the amount of taxes or assessments that actually are, or subsequently become, due.

D. All other fees and miscellaneous costs shall be borne or prorated by the Parties according to the custom in San Luis Obispo County, as determined by Escrow Holder.

3.05. Deposits Into Escrow.

3.05.1. At least one business day prior to the Close of Escrow, Fallingstar shall deposit into Escrow:

(a) A fully executed and acknowledged grant deed conveying the Property to City (the "Deed") on the Title Company's standard form and Fallingstar's share of the costs to close escrow;

(b) An affidavit of qualifying statement which satisfied the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Non-Foreign Affidavit");

(c) A "Withholding Exemption Certificate, Form 590," pursuant to Revenue and Taxation Code Sections 18662 and 18668, stating either the amount of withholding required from Fallingstar's proceeds or that Fallingstar is exempt from such withholding requirement ("the Certificate");

(d) To the extent Fallingstar is an entity, certified copies of Fallingstar's organizational documents and/or other entity resolutions or other authorizing documents authorizing the execution and delivery of this Agreement and all other documents and agreements contemplated herein, the consummation of all transactions contemplated hereby, and authorizing those persons signing on behalf of Fallingstar to bind Fallingstar; and

(e) Such other agreements or documents reasonably necessary from Fallingstar to close escrow as provided herein.

3.05.2. At least one business day prior to the Close of Escrow, City shall deposit into Escrow:

(a) Payment of the Purchase Price as provided in Section 2.01;

(b) A fully executed and acknowledged acceptance of the grant deed;

(c) City's share of closing costs, in the form of wire transfer or other immediately available funds;

(d) Such other agreements, documents or funds reasonably necessary from City to close escrow as provided for herein;

(e) Certified copies of City's resolutions or other authorizing documents authorizing the execution and delivery of this Option Agreement and all other documents and agreement contemplated herein, the consummation of all transactions contemplated hereby, and authorizing those persons signing on behalf of City to bind City; and

(f) Instructions to Escrow Holder to record Grant Deed of the Property subject to this Option Agreement.

ARTICLE 4. CONDITIONS TO CLOSE OF ESCROW

If City exercises its Option in accordance with Section 1.04 above, Fallingstar shall sell the Property to City and City shall purchase the Property from Fallingstar on the terms and conditions set forth in this Option Agreement.

4.01. General.

The provisions of this Article are conditions precedent to the Close of Escrow described in Article 3 and, unless otherwise provided expressly or by context, are covenants.

4.02. Title.

Fallingstar shall convey to City fee simple title to the Property by grant deed, free of any liens or encumbrances except those exceptions approved by City pursuant to Section 4.03. below or which are otherwise approved by City in writing (the "Permitted Exceptions"). At closing, Fallingstar shall cause Escrow Holder to cause its underwriter to issue its policy of title insurance including any special endorsements requested by City, insuring title to the Property in City with liability in the amount of the Purchase Price. The policy shall list only the current taxes and Permitted Exceptions plus the printed exceptions common to such policies.

4.03. Approval of Encumbrances.

Fallingstar shall, upon City's exercise of its Option pursuant to Section 1.04 order from Escrow Holder and, within five (5) days thereafter, cause to be delivered to City a preliminary title report and legible copies of all documents referred to therein covering or relating to the Property. City shall have five business (5) days following receipt of such report and documents

within which to disapprove any additional exceptions listed therein by forwarding to Fallingstar written notice thereof in accordance with Section 6.01. Failure to give written notice of disapproval to Fallingstar of some or all of the exceptions shall be deemed to be approval of all exceptions, except for monetary liens other than current real property taxes and assessments not yet due and payable. If City disapproves any exceptions, Fallingstar shall have ten (10) days within which to agree to remove the exception. Notice shall be given as provided in Section 6.01. Failure to give written notice of such agreement to City shall be deemed to be refusal, except that Fallingstar shall automatically be deemed to agree to remove monetary liens other than current real property taxes and assessments not yet due and payable. If Fallingstar does not agree to remove any other exceptions properly and timely disapproved by City, City may elect: (a) to terminate this Option Agreement; or (b) to waive City's objection and close escrow. If Fallingstar shall agree to remove any exception objected to by City, Fallingstar shall then have until the date for close of escrow within which to remove such exception. If Fallingstar is unable to remove any exception objected to by City by the date for close of escrow, City may elect: (a) to terminate this Option Agreement; or (b) to waive City's objection and close escrow.

4.04. City's Conditions Precedent.

4.04.1 City's obligation to purchase the Property is subject to the satisfaction of the conditions set forth in this Section 4.04, which are for City's benefit only.

4.04.2 This Option Agreement is contingent on City's review and approval of the physical condition of the Property and all other matters that City may elect to investigate concerning any aspect of the Property or this Agreement on or before 5:00 p.m. on the 60th day following exercise by City of its Option pursuant to Section 1.04 hereof (the "Feasibility Expiration Date"). City shall have the right, at its sole cost and expense, to conduct any and all feasibility studies and investigative due diligence with respect to the Property which City in its sole discretion deems advisable, including without limitation the suitability of the Property for City's intended use; all soil conditions on the Property, including any asbestos or hazardous materials and environmental matters including the presence of endangered species or archeological resources; the requirements of all governmental agencies; all environmental reports; and any and all other matters directly or indirectly affecting the Property. City shall be responsible for performing all due diligence contemplated herein, and City shall bear any and all costs and expenses related thereto. City shall rely on its own

investigation and due diligence to evaluate whether the Property meets its standards; provided, however, City's investigation shall not in any way preclude City from relying on the express representations and warranties made by Fallingstar in this Option Agreement. City shall give Fallingstar reasonable notice of such tests and inspections which shall be scheduled so as to not unreasonably interfere with Fallingstar's use of the Property. City shall keep the Property free from liens resulting from any activity permitted by this Section and shall repair any damages done to the Property as a result of such activity, and shall hold Fallingstar harmless from and against any liability resulting from any such activities.

4.04.2(a) Any time prior to the Feasibility Expiration Date, City may, in its sole and absolute judgment and discretion, and for any reason or no reason, elect either of the following:

(1) To proceed with the purchase of the Property under the terms of this Option Agreement by delivering written notice to Fallingstar prior to 5:00 p.m. on the Feasibility Expiration Date of its approval of the feasibility condition referenced in this Section 4.04.2, in which case the feasibility contingency of this Section 4.04.2 shall be deemed approved by City.

(2) To terminate this Option Agreement by delivering to Fallingstar prior to 5:00 p.m. on the Feasibility Expiration Date written notice of City's election not to proceed, in which case (A) this Option Agreement shall terminate immediately, and (B) each party shall bear its own costs to date and neither party shall have any further obligation or liability hereunder except for the matters expressly provided herein as surviving such termination.

4.04.2(b) Should City fail, prior to 5:00 p.m. on the Feasibility Expiration Date, to give either notice referenced in clauses (1) or (2) immediately preceding as provided therein, City shall be deemed to have **disapproved** the feasibility condition of this Section 4.04.2 and elected to terminate this Agreement pursuant to the provisions of clause (2) immediately preceding.

4.04.2(c) Once City approves the inspection of Property as provided herein, Fallingstar covenants that it shall take no action,

which would result in a change in the condition or status of the Property from that approved by City hereunder until the Property has been transferred to City.

4.04.3 This Option Agreement is contingent on City not objecting to the condition of title, or Fallingstar agreeing to remove any exceptions to title objected to by City in accordance with Section 4.03.

4.05. Delivery of Documents.

Within five (5) days after the Effective Date, Fallingstar shall deliver to City, for City's approval, the following:

A. Copies of all existing environmental assessments and site characterization reports which Fallingstar has in its possession.

B. Copies of all existing soils reports, geological reports, well reports, surveys and any other reports, documents or related information pertaining to the Property which Fallingstar has in its possession.

4.06. Deed and Cash Payment.

City shall cause Escrow Holder to be ready, willing and able to deliver to Fallingstar the payment of the Purchase Price required from City as provided in Section 2.01. Fallingstar shall cause Escrow Holder to be ready, willing and able to record and deliver to City the grant deed required from Fallingstar, duly executed by Fallingstar and notarized and to issue the title policy.

4.07. Assessments.

Fallingstar shall indemnify and hold harmless City of and from any assessments or assessment liens encumbering the Property, other than those specifically excepted in this Agreement, by reason of any work or improvement completed or installed at or before the Close of Escrow.

ARTICLE 5. FALLINGSTAR'S REPRESENTATIONS AND WARRANTIES

5.01. Representations and Warranties in General.

Fallingstar acknowledges that the execution of this Option Agreement by City is made in material reliance by City on the Fallingstar's representations and warranties made in this Article 5.

5.02. No Pending Governmental Action.

Fallingstar warrants that (i) to the best of its knowledge, as of the close of escrow there will not be any violation of any law, ordinance, rule or administrative or judicial order affecting the Property that would (a) interfere with the Close of Escrow or, (b) have a material adverse effect upon the value or use of the Property; and (ii) Fallingstar has not received notice of any condemnation or other proceeding or action that is pending in which Fallingstar is a party and, to the best of Fallingstar's knowledge, there is no such proceeding or action threatened or contemplated by any governmental body, authority or agency that will affect in any way the size of, use of, improvements on, construction on or access to the Property, other than zoning and other land use controls of the City of Paso Robles, County of San Luis Obispo or other applicable governmental agencies.

5.03. Environmental Compliance.

Fallingstar represents and warrants that, to the best of Fallingstar's knowledge, as of the Close of Escrow, the Property will not violate any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions.

ARTICLE 6. MISCELLANEOUS

6.01. Notices.

Any notices, requests, demands or other communications required or permitted to be given under this Option Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if served personally on the party to whom notice is to be given, or on the second day after

mailing, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, and properly addressed as follows:

Fallingstar: Fallingstar Homes, Inc.
P.O. Box 2040
Paso Robles, CA 93447

Attention: _____

Facsimile: (805) 237-8432

City: City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446

Attention: _____

Facsimile: (805) 237-4032

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

6.02. Brokers.

Each of the parties hereto represents that it has dealt with no broker or finder in connection with this exchange and, insofar as they know, no broker or other person is entitled to any commission or finder's fee in connection with this transaction. City and Fallingstar each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

6.03. Interpretation.

The paragraph headings throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

6.04. Time of Essence.

Time is of the essence of this Agreement and of the escrow provided for herein.

6.05. Attorneys' Fees.

In the event either Fallingstar or City shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the prevailing party shall be entitled to reasonable attorneys' fees which shall consist of the fees for services rendered by counsel, the fees for services of experts, and all other expenses incurred in connection with the action, including those expenses recoverable as allowable costs of suit under the applicable state or federal statute, and those attorneys' fees and costs incurred executing upon or appealing any judgment, as well as all other expenses incurred during the course of the action.

6.06. Integration.

This Option Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, relating to the subject matter which are not fully expressed herein.

6.07. Additional Documents.

From time to time prior to and after the close of escrow, each party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested by the other party to carry out the purpose and intent of this Agreement.

6.08. Dependency and Survival of Provisions.

The respective warranties, representations, covenants, agreements, obligations and undertakings of each party hereunder shall be construed as dependent upon and given in consideration of those of the other party, and shall survive the close of escrow and delivery of the deed.

6.09. California Law.

This Agreement shall be governed by the laws of the State of California.

6.10. Reporting to Internal Revenue Service.

The escrow instructions for this transaction shall obligate Escrow Holder to report this transaction to the Internal Revenue Service pursuant to Section 6045 of the Internal Revenue Code of 1986, as amended.

6.11. Counterparts.

This Option Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one (1) document.

6.12. Calculation of Time Periods.

If any date for performance under this Option Agreement falls on a Saturday, Sunday or bank holiday, then the date of performance shall be the next day which is not a Saturday, Sunday or bank holiday, and the next time period shall be calculated from and after the date of such actual performance.

6.13. Exhibits.

All exhibits to which reference is made in this Option Agreement are incorporated in this Option Agreement by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the parties. Reference to "this Option Agreement" includes matters incorporated by reference.

6.15. List of Exhibits.

- A. Description of Property
- B. Map of Property
- C. Memorandum of Contingent Option Agreement

IN WITNESS WHEREOF, Fallingstar and the City have executed this Option Agreement as of the date first set forth above.

APPROVED AS TO FORM

By: _____
City Attorney

CITY OF PASO ROBLES

By: _____
City Manager

By: _____
Secretary

"CITY"

FALLINGSTAR HOMES, INC.

By: _____

Title: _____

"FALLINGSTAR"

EXHIBIT A

DESCRIPTION OF PROPERTY

[To Be Inserted.]

EXHIBIT B

MAP OF PROPERTY

[To Be Inserted.]

EXHIBIT C

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446
Attention: City Manager

MEMORANDUM OF CONTINGENT OPTION AGREEMENT

This Memorandum of Contingent Option Agreement is made and entered into this _____ day of _____, 2003, by and between the CITY OF PASO ROBLES, a municipal corporation ("The City") and FALLINSTAR HOMES, INC., a _____ corporation ("Fallingstar").

1. City and Fallingstar executed that certain Contingent Option Agreement (the "Option Agreement") dated _____, 2003, with respect to certain real property owned by Fallingstar and situated in Tract 2369 also commonly known as the Montebello Project (the "Project") in Paso Robles, California and as more particularly described in Attachment A attached hereto ("the Property").

2. The Paso Robles School District (the "School District") has an Option to Purchase the Property the earlier of (a) October 3, 2005 or (b) three (3) years from the date of recordation of the final map of the subdivision of Phase III of the Project (the "School District Option"). Fallingstar gave City the option to purchase the Property if School District chooses not to exercise its option.

3. The term of the Option Agreement commences on the date of the Option Agreement's execution, _____, 2003, and terminates upon (i) exercise by School District of the School District Option or (ii) at 5:00 p.m. (Pacific Standard Time) sixty (60) days after the earlier of a) the School District giving notice of its intention not to exercise the School District Option or b) October 3, 2005.

Exhibit C to
Option Agreement

4. This Memorandum of Contingent Option Agreement is made upon all the terms and conditions in the Option Agreement and relating to the Property and all said terms and conditions incorporated by reference herein.

IN WITNESS WHEREOF, the respective parties hereto have executed this Memorandum.

FALLINGSTAR

Title_____

CITY OF PASO ROBLES

By_____

Attest:_____

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT OF PURCHASE AND SALE (the "Agreement") is entered into this ____ day of _____, 2003 (the "Effective Date"), by FALLINGSTAR HOMES, INC., a _____ corporation ("Seller"), and the CITY OF PASO ROBLES, a municipal corporation, ("Buyer;" collectively, Seller and Buyer are referred to as the "Parties").

RECITALS

A. Seller is the current owner of certain real property situated in the City of Paso Robles, San Luis Obispo County, California, commonly known as Tract 2369 or the Montebello Project (the "Project"), and more particularly described in Exhibit A.

B. Within said Project, there is a seven (7)-acre parcel ("the Property") designated for future park purposes, more particularly described in Exhibit B.

C. The purpose of this Agreement is to provide for the purchase and sale of the Property from Seller to Buyer.

D. This Agreement is being executed concurrently with a Contingent Option Agreement (the "Option Agreement") between Buyer and Seller for a three (3)-acre parcel of real property located in said Project and adjacent to the Property as referenced in Section 2.05. The Option Agreement is attached as Exhibit C.

AGREEMENT

In consideration of the above Recitals and the agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE 1. GENERAL

1.01. Recitals.

The Recitals set forth above, and the definitions they contain, are hereby incorporated as a part of this Agreement.

1.02. Effective Date.

The effective date of this Agreement ("Effective Date") shall be the date when both parties have signed and initialed this Agreement.

ARTICLE 2. PURCHASE AND SALE; CONTINGENT OPTION

2.01. Purchase and Sale.

Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller on the terms and conditions specified in this Agreement.

2.02. Purchase Price.

The purchase price for the Property shall be ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000) (the "Purchase Price") to be paid as follows: (i) Eight Hundred and Ninety-Nine Thousand Four Hundred and Ninety-Two dollars (\$899,492) to be paid in cash at close of escrow (the "Cash Payment") and (ii) a total of Two Hundred Thousand Five Hundred and Eight dollars (\$200,508) of fee credits to be evidenced by a Fee Credit Note to be executed by Buyer in substantially the form attached hereto as Exhibit D and incorporated herein by reference. The Fee Credit Note shall be repaid as set forth in Section 2.04 below.

2.03. Payment of Purchase Price.

Buyer shall deposit the Cash Payment in escrow with the Escrow Holder in cash or by cashier's check or form of wire transfer or other immediately available funds together with the fully executed Fee Credit Note, during business hours at least one (1) business day before close of escrow.

2.04. Repayment of Fee Credit Note.

The Fee Credit Note shall be repaid by Buyer in the form of credits to Buyer for City Park Development Fees and Union/46 Specific Plan Park Acquisition and Development Fees for the 62 single-family homes to be developed in Phase III of the Project (the "Fees Credit"). The terms and conditions for such repayment are more fully set forth in the Fee Credit Note (Exhibit D).

2.05 Contingent Option Agreement

As a condition to Close of Escrow the Parties will enter into a Contingent Option Agreement providing for the contingent option to Buyer to purchase certain real property from Seller (the "Option Property") in substantially the form attached in Exhibit C.

ARTICLE 3. ESCROW

3.01. Opening.

The purchase and sale of the Property shall be consummated by means of an escrow which is to be opened at _____, in Paso Robles California ("Escrow Holder"), within two (2) days following the Effective Date.

3.02. Instructions.

The escrow instructions given to Escrow Holder shall be consistent with the terms of this Agreement and, as between the Parties, the terms of this Agreement shall prevail if there is any inconsistency, unless the typewritten rather than printed portion of the instructions specifically provide to the contrary.

3.03. Close of Escrow.

Escrow shall close on a date specified by Buyer in writing, which date shall be no earlier than _____ nor later than ninety (90) days after the Effective Date of this Agreement on a date specified by Buyer in writing (the "Close of Escrow").

3.04. Costs and Prorations.

A. Buyer shall bear one-half (1/2) of the escrow fees and recording costs. Buyer shall also bear the cost of any special endorsements and

the incremental increase in cost for any ALTA survey and ALTA extended policy of title insurance requested by Buyer, all with respect to the Property.

B. Seller shall bear the cost of transfer taxes, the ALTA standard owner's title insurance premiums and one-half (1/2) of the escrow fees and recording costs.

C. All real estate taxes, assessments, and personal property taxes due and owing as of the Close of Escrow, and all penalties and interest thereon, shall be paid by Seller. Buyer shall be responsible for all real estate taxes and assessments and personal property taxes on and after the Close of Escrow. Real estate taxes, assessments and personal property taxes shall be prorated based upon the most recent tax bill, so that the portion of taxes and assessments allocable to the period from the beginning of such tax year through the Close of Escrow shall be charged to and paid by Seller, and the portion of the taxes and assessments allocable to the portion of such tax year from the Close of Escrow 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 Close of Escrow, regardless of the amount of taxes or assessments that actually are, or subsequently become, due.

D. All other fees and miscellaneous costs shall be borne or prorated by the Parties according to the custom in San Luis Obispo County, as determined by Escrow Holder.

3.05. Deposits Into Escrow.

At least one business day prior to the Close of Escrow, Seller shall deposit into Escrow:

(a) A fully executed and acknowledged grant deed conveying the Property to Buyer (the "Deed") on the Title Company's standard form and Seller's share of the escrow costs;

(b) An affidavit of qualifying statement which satisfied the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Non-Foreign Affidavit");

(c) A "Withholding Exemption Certificate, Form 590," pursuant to Revenue and Taxation Code Sections 18662 and 18668, stating either the amount of withholding required from Seller's proceeds or that Seller is exempt from such withholding requirement ("the Certificate");

(d) To the extent Seller is an entity, certified copies of Seller's organizational documents and/or other entity resolutions or other authorizing documents authorizing the execution and delivery of this Agreement and all other documents and agreements contemplated herein, the consummation of all transactions contemplated hereby, and authorizing those persons signing on behalf of Seller to bind Seller;

(e) The fully executed Option Agreement (Exhibit C) and the fully executed Memorandum of Option Agreement (Exhibit C to Option Agreement) duly executed by Seller; and

(f) Such other agreements or documents reasonably necessary from Seller to close escrow as provided herein.

At least one business day prior to the Close of Escrow, Buyer shall deposit into Escrow:

(a) The Cash Payment as provided in Section 2.03;

(b) The Fee Credit Note as provided in Section 2.03;

(c) Buyer's share of closing costs, in the form of wire transfer or other immediately available funds;

(d) A fully executed and acknowledged acceptance of the Grant Deed;

(e) The fully executed Option Agreement (Exhibit C) and the fully executed Memorandum of Option Agreement (Exhibit C to Option Agreement) duly executed by Buyer;

(f) Such other agreements, documents or funds reasonably necessary from Buyer to close escrow as provided for herein;

(g) Certified copies of Buyer's resolutions or other authorizing documents authorizing the execution and delivery of this Agreement and all other documents and agreements contemplated herein, the consummation of all transactions contemplated hereby, and authorizing those persons signing on behalf of Buyer to bind Buyer; and

(h) Instructions to Escrow Holder to record the Grant Deed for the Property and the Memorandum of Option Agreement on the Option Property (Exhibit C to Option Agreement).

ARTICLE 4. CONDITIONS TO CLOSE OF ESCROW

4.01. General.

The provisions of this Article are conditions precedent to the Close of the Escrow described in Article 3 and, unless otherwise provided expressly or by context, are covenants.

4.02. Title.

Seller shall convey to Buyer fee simple title to the Property by grant deed, free of any liens or encumbrances except those exceptions approved by Buyer pursuant to Section 4.03 below or which are otherwise approved by Buyer in writing (the "Permitted Exceptions"). At closing, Seller shall cause Escrow Holder to cause its underwriter to issue its policy of title insurance including any special endorsements requested by Buyer, insuring title to the Property in Buyer with liability in the amount of the Purchase Price. The policy shall list only the current taxes and Permitted Exceptions plus the printed exceptions common to such policies.

4.03. Approval of Encumbrances.

Seller shall, upon the signing of this Agreement, order from Escrow Holder and, within five (5) days of the Effective Date, cause to be delivered to Buyer a preliminary title report and legible copies of all documents referred to therein covering or relating to the Property. Buyer shall have five (5) business days following receipt of such report and documents within which to disapprove any additional exceptions listed therein by forwarding to Seller written notice in accordance with Section 6.01. Failure to give written notice of disapproval to Seller of some or all of the exceptions shall be deemed to be approval of all exceptions, except for monetary liens other than current real property taxes and assessments not yet due and payable. If Buyer disapproves any exceptions, Seller shall have ten (10) days within which to agree to remove the exception. Notice shall be given as provided in Section 6.01. Failure to give written notice of such agreement to Buyer shall be deemed to be refusal, except that Seller shall automatically be deemed to agree to remove monetary liens other than current real property taxes and assessments not yet due and payable. If Seller does not

agree to remove any other exceptions properly and timely disapproved by Buyer, Buyer may elect: (a) to terminate this Agreement; or (b) to waive Buyer's objection and close escrow. If Seller shall agree to remove any exception objected to by Buyer, Seller shall then have until the date for Close of Escrow within which to remove such exception. If Seller is unable to remove any exception objected to by Buyer by the date for close of escrow, Buyer may elect: (a) to terminate this Agreement; or (b) to waive Buyer's objection and close escrow.

4.04. Buyer's Conditions Precedent.

4.04.1. Buyer's obligation to purchase the Property is subject to the satisfaction of the conditions set forth in this Section 4.04, which are for Buyer's benefit only.

4.04.2. This Agreement is contingent on Buyer's review and approval of the physical condition of the Property and all other matters that Buyer may elect to investigate concerning any aspect of the Property or this Agreement on or before 5:00 p.m. on the 60th day following the Effective Date of this Agreement (the "Feasibility Expiration Date"). Buyer shall have the right, at its sole cost and expense, to conduct any and all feasibility studies and investigative due diligence with respect to the Property which Buyer in its sole discretion deems advisable, including without limitation, the suitability of the Property for Buyer's intended use; all soil conditions on the Property, including any asbestos or hazardous materials and environmental matters including the presence of endangered species and archeological resources; the requirements of all governmental agencies; all environmental reports; and any and all other matters directly or indirectly affecting the Property. Buyer shall be responsible for performing all due diligence contemplated herein, and Buyer shall bear any and all costs and expenses related thereto. Buyer shall rely on its own investigation and due diligence to evaluate whether the Property meets its standards; provided, however, Buyer's investigation shall not in any way preclude Buyer from relying on the express representations and warranties made by Seller in this Agreement. Buyer shall give Seller reasonable notice of such tests and inspections which shall be scheduled so as to not unreasonably interfere with Seller's use of the Property. Buyer shall keep the Property free from liens resulting from any activity permitted by this Section and shall repair any damages done to the Property as a result of such activity, and shall hold Seller harmless from and against any liability resulting from any such activities.

4.04.2(a). Any time prior to the Feasibility Expiration Date, Buyer may, in its sole and absolute judgment and discretion, and for any reason or no reason, elect either of the following:

(1). To proceed with the purchase of the Property under the terms of this Agreement by delivering written notice to Seller prior to 5:00 p.m. on the Feasibility Expiration Date of its approval of the feasibility condition referenced in this Section 4.04.2, in which case the feasibility contingency of this Section 4.04.2 shall be deemed approved by Buyer.

(2). To terminate this Agreement by delivering to Seller prior to 5:00 p.m. on the Feasibility Expiration Date written notice of Buyer's election not to proceed, in which case (A) this Agreement shall terminate immediately, and (B) each party shall bear its own costs to date and neither party shall have any further obligation or liability hereunder except for the matters expressly provided herein as surviving such termination.

4.04.2(b). Should Buyer fail, prior to 5:00 p.m. on the Feasibility Expiration Date, to give either notice referenced in clauses (1) or (2) immediately preceding as provided therein, Buyer shall be deemed to have **disapproved** the feasibility condition of this Section 4.04.2 and elected to terminate this Agreement pursuant to the provisions of clause (2) immediately preceding.

4.04.2(c). Once Buyer approves the inspection of Property as provided herein, Seller covenants that it shall take no action, which would result in a change in the condition or status of the Property from that approved by Buyer hereunder until the Property has been transferred to Buyer.

4.04.3. This Agreement is contingent on Buyer not objecting to the condition of title, or Seller agreeing to remove any exceptions to title objected to by Buyer in accordance with Section 4.03.

4.04.4. This Agreement is contingent on a fully executed Contingent Option Agreement, as attached herein as Exhibit C, deposited into Escrow.

4.05. Delivery of Documents.

Within five (5) days after the Effective Date, Seller shall deliver to Buyer, for Buyer's approval, the following:

A. Copies of all existing environmental assessments and site characterization reports which Seller has in its possession.

B. Copies of all existing soils reports, geological reports, well reports, surveys and any other reports, documents or related information pertaining to the Property which Seller has in its possession.

4.06. Deed and Cash Payment.

Buyer shall cause Escrow Holder to be ready, willing and able to deliver to Seller the Cash Payment and executed Fee Credit Note required from Buyer. Seller shall cause Escrow Holder to be ready, willing and able to record and deliver to Buyer: (i) the Option Agreement (Exhibit C) , duly executed by Seller, (ii) the Memorandum of Option Agreement (Exhibit C of Option Agreement) duly executed by Seller and (iii) the grant deed required from Seller, duly executed by Seller and notarized, and to issue the title policy.

4.07. Assessments.

Seller shall indemnify and hold harmless Buyer of and from any assessments or assessment liens encumbering the Property, other than those specifically excepted in this Agreement, by reason of any work or improvement completed or installed at or before the Close of Escrow.

ARTICLE 5. SELLER'S REPRESENTATIONS AND WARRANTIES

5.01. Representations and Warranties in General.

Seller acknowledges that the execution of this Agreement by Buyer is made in material reliance by Buyer on the Seller's representations and warranties made in this Article 5.

5.02. No Pending Governmental Action.

Seller warrants that (i) to the best of its knowledge, as of the close of escrow there will not be any violation of any law, ordinance, rule or

administrative or judicial order affecting the Property that would (a) interfere with the close of escrow or, (b) have a material adverse effect upon the value or use of the Property; and (ii) Seller has not received notice of any condemnation or other proceeding or action that is pending in which Seller is a party and, to the best of Seller's knowledge, there is no such proceeding or action threatened or contemplated by any governmental body, authority or agency that will affect in any way the size of, use of, improvements on, construction on or access to the Property, other than zoning and other land use controls of the City of Paso Robles, County of San Luis Obispo or other applicable governmental agencies.

5.03. Environmental Compliance.

Seller represents and warrants that, to the best of Seller's knowledge, as of the Close of Escrow, the Property will not violate any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions.

ARTICLE 6. MISCELLANEOUS

6.01. Notices.

Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if served personally on the party to whom notice is to be given, or on the second day after mailing, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, and properly addressed as follows:

Seller: Fallingstar Homes, Inc.
 P.O. Box 2040
 Paso Robles, CA 93447

Attention: _____

Facsimile: (805) 237-8432

Buyer: City of Paso Robles
 1000 Spring Street
 Paso Robles, CA 93446

Attention: _____

Facsimile: (805) 237-4032

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

6.02. Brokers.

Each of the parties hereto represents that it has dealt with no broker or finder in connection with this exchange and, insofar as they know, no broker or other person is entitled to any commission or finder's fee in connection with this transaction. Buyer and Seller each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

6.03. Assignment.

This Agreement shall bind and inure to the benefit of Seller's successors and assigns and Buyer's successors and assigns.

6.04. Interpretation.

The paragraph headings throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

6.05. Time of Essence.

Time is of the essence of this Agreement and of the escrow provided for herein.

6.06. Attorneys' Fees.

In the event either Seller or Buyer shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the prevailing party shall be entitled to reasonable attorneys' fees which shall consist of the fees for services rendered by counsel, the fees for services of experts, and all other expenses incurred in connection with the action, including those expenses

recoverable as allowable costs of suit under the applicable state or federal statute, and those attorneys' fees and costs incurred executing upon or appealing any judgment, as well as all other expenses incurred during the course of the action.

6.07. Integration.

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

6.08. Additional Documents.

From time to time prior to and after the close of escrow, each party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested by the other party to carry out the purpose and intent of this Agreement.

6.09. Dependency and Survival of Provisions.

The respective warranties, representations, covenants, agreements, obligations and undertakings of each party hereunder shall be construed as dependent upon and given in consideration of those of the other party, and shall survive the close of escrow and delivery of the deed.

6.10. California Law.

This Agreement shall be governed by the laws of the State of California.

6.11. Reporting to Internal Revenue Service.

The escrow instructions for this transaction shall obligate Escrow Holder to report this transaction to the Internal Revenue Service pursuant to Section 6045 of the Internal Revenue Code of 1986, as amended.

6.12. Counterparts.

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one (1) document.

6.13. Calculation of Time Periods.

If any date for performance under this Agreement falls on a Saturday, Sunday or bank holiday, then the date of performance shall be the next day which is not a Saturday, Sunday or bank holiday, and the next time period shall be calculated from and after the date of such actual performance.

6.14. Exhibits.

All exhibits to which reference is made in this Agreement are incorporated in this Agreement by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the parties. Reference to "this Agreement" includes matters incorporated by reference.

6.15. List of Exhibits.

- A - Map of Montebello Project
- B - Legal Description of the Property
- C- Form of Contingent Option Agreement
- D- Form of Fee Credit Note

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

FALLINGSTAR HOMES, INC.

By: _____

Title: _____

"SELLER"

CITY OF PASO ROBLES

By: _____

City Manager

By: _____

Secretary

"BUYER"

APPROVED AS TO FORM

By: _____

City Attorney

EXHIBIT A

MAP OF PROPERTY

[To Be Inserted.]

EXHIBIT B

DESCRIPTION OF PROPERTY

[To Be Inserted.]

EXHIBIT C

FORM OF CONTINGENT OPTION AGREEMENT

[To Be Inserted.]

EXHIBIT D

FORM OF FEE CREDIT NOTE

[To Be Inserted.]