

PROJECT: Metrolink SCORE Simi Valley Double Track Project APN:

644-0-111-050 (portion)

Parcel ID: SV: TCE-001, SV: TCE-006, SV: TCE-007

### SETTLEMENT AGREEMENT

This Settlement Agreement, ("Agreement"), is made by and between the Ventura County Transportation Commission ("VCTC"), and BFS Group LLC f/k/a BMC West, LLC ("Builders FirstSource"). VCTC and Builders FirstSource may be individually referred to as "Party" and collectively referred to as "Parties".

### RECITALS

WHEREAS, Sharon Mullin, an individual, and Wave Services, Inc., a California nonprofit corporation, as co-trustees of the Terry and Sharon Mullin Flip Charitable Remainder Unitrust #7, dated January 5, 2010 ("Mullin Trust") owns the real property located at 2000 Tapo Street in the City of Simi Valley, County of Ventura, State of California ("Premises"), identified by Assessor's Parcel Number 644-0-111-050, as depicted on the Plat Map identified as "Attachment 1", attached hereto and incorporated herein by reference; and

WHEREAS, a portion of the Premises is shown on the image in "Attachment 2", attached hereto incorporated herein by reference; and

WHEREAS, Builders FirstSource or its predecessor-in-interest and Mullin Trust entered into a certain Agreement of Lease dated January 7, 2000, as amended by Amendment to Lease dated February 28, 2015 and Amendment to Lease dated August 28, 2019 (collectively, as amended, the "Lease") whereby Builders FirstSource leased the Premises from the Mullin Trust for, among other things, the purpose of selling and distributing lumber products; and

WHEREAS, VCTC, in partnership with the Southern California Regional Rail Authority d/b/a Metrolink ("SCRRA" or "Metrolink"), is currently undertaking the Simi Valley Double Track and Platform Project ("Project") to support the Southern California Optimized Rail Expansion (SCORE) program; and

WHEREAS, SCRRA's construction of the Project would impact certain portions of the Premises; and

WHEREAS, in coordination with this Agreement and in furtherance of the Project, VCTC is acquiring temporary construction easements from the Mullin Trust on certain portions of the Premises described in "Attachment 3" attached hereto and made a part hereof (the "Easement Area"), pursuant to that certain Temporary Construction Easement Deed made by Mullin Trust and that certain Right-of-Way Contract between Mullin Trust and VCTC, each executed on or about the date hereof (collectively, the "Mullin-VCTC Agreements"); and

WHEREAS, Builders FirstSource was operating their business on the Premises when the Notice of Decision to Appraise (NOD) was issued; and

WHEREAS, Builders FirstSource's business operations on the Premises would be impacted during

construction of the Project; and

WHEREAS, the Effective Date is the date on which this Agreement is approved and fully executed by VCTC and Builders FirstSource, as listed on the signature page of this Agreement; and

WHEREAS, except as set forth in this Agreement, Builders FirstSource agrees to accept VCTC payment as compensation for any and all of its losses arising from the use by VCTC of the Premises in connection with the three temporary construction easements described in the Mullin-VCTC Agreements and known as TCE-001, TCE-006, and TCE-007 (as defined below) and/or the construction of the Project in the manner proposed and in the time periods provided herein and in the Mullin-VCTC Agreements, including tangible and intangible losses, such as goodwill, as determined in the Preliminary Goodwill Loss Study prepared by Donna Desmond Associates, and dated December 8, 2023 (“Attachment 4”).

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, VCTC and Builders FirstSource mutually agree as follows:

#### **ARTICLE I. AGREEMENT**

1. Recitals. All the above recitals are true and correct and by this reference are incorporated herein.
2. Consideration.
  - A. VCTC shall pay to Builders FirstSource the total sum of Six Hundred Seventy-six Thousand Dollars (\$676,000.00) (the “Payment”) as the agreed total just compensation for any and all damages arising from the construction of the Project in the manner proposed and the use of the Easement area in the time periods provided herein and in the Mullin-VCTC Agreements, inclusive of interest, costs, and fees. The Payment is not intended to extend to unanticipated physical damage caused by VCTC’s usage of the Easement Area or the construction of the Project, including any damage caused by the gross negligence or willful misconduct of VCTC or its contractors, agents, representatives, and employees (for which VCTC shall be responsible).
  - B. Upon the Close of Escrow in accordance with the terms hereof, Builders FirstSource shall voluntarily and knowingly waive, release and discharge forever any and all rights, demands, liabilities, obligations, claims or causes of action in law or equity which Builders FirstSource had, now has or foreseeably may assert in the future based on VCTC’s use of the Premises and/or based on the construction of the Project in the manner proposed, whether now existing or hereinafter arising, against VCTC which arise from, or relate to VCTC’s acquisition of the Subject Property, and expenses incurred in connection therewith.
  - C. Builders FirstSource agrees and acknowledges that the statute which authorizes this payment also provides compensation for such loss that will not be duplicated in the compensation otherwise awarded to Mullin Trust. It is understood and agreed between the Parties hereto that the payment under Paragraph 2(A) above includes compensation for any and all moving of business or personal property as a result of

the Project's impact to Builders FirstSource.

- D. The Mullin-VCC Agreements contemplate three separate temporary construction easements, only one of which (TCE-007, as defined below) shall affect Builders FirstSource's use of the rail spur on the Premises. As further described in the Mullin-VCTC Agreements, the three temporary construction easements will not be used simultaneously. VCTC acknowledges that if the temporary construction easement with a triangular shape and a total area of  $\pm 2,445$  square feet known as SV: TCE-007 and described in Attachment 3 as Parcel 3 ("TCE-007") is still required 180 days after use of such easement commences, then, subject to approval from Mullin Trust and Builders FirstSource of such extension, VCTC shall pay an additional Five Thousand Three Hundred Forty-Six Dollars (\$5,346.00) for every additional day TCE-007 is used, representing the per diem amount of goodwill set forth in Attachment 4, until VCTC ceases to use TCE-007 and has restored it in accordance with the Mullin-VCTC Agreements.

3. VCTC Responsibilities.

- A. Upon the mutual execution of this Agreement, VCTC will open escrow ("Escrow") with Commonwealth Land Title Company or another national escrow or title company ("Escrow Holder") at its sole cost. Promptly on the Escrow Holder's request, VCTC shall execute such additional Escrow instructions as are reasonably required to consummate the transaction contemplated by this Agreement and are not inconsistent with this Agreement.
- B. The Escrow Holder will hold all funds deposited by VCTC in an escrow account ("Escrow Account") that is interest bearing and at a bank approved by VCTC with interest accruing for the benefit of VCTC. The Escrow Account shall remain open until all charges due and payable have been paid and settled, with any remaining funds refunded to the VCTC.
- C. Upon the opening of Escrow, the VCTC shall deposit the Payment into Escrow.
- D. On or before the date that Escrow is to close ("Close of Escrow") the VCTC will deposit all other such documents consistent with this Agreement as are reasonably required by Escrow Holder or otherwise to close Escrow.
- E. Upon Close of Escrow, VCTC shall authorize the Escrow Holder to close Escrow and distribute the Payment, in accordance with the provisions herein, to Builders FirstSource.
- F. Upon Close of Escrow, VCTC shall authorize Escrow Holder to deliver to Builders FirstSource any other documents (or copies thereof) deposited into Escrow by VCTC.
- G. In the event of any conflict between the terms of this Agreement and any additional

Escrow instructions, the terms of this Agreement shall control.

- H. VCTC shall comply with the Mullin-VCTC Agreements, including maintenance of the Easement Area during construction and the restoration of the Easement Area to the same or substantially similar condition as existed prior to VCTC's construction. Unless otherwise approved by Mullin Trust and Builders FirstSource, VCTC's construction and other activities on the Easement Area may not exceed 14 months for TCE-001, 180 days (6 months) for TCE-006, and 180 days (6 months) for TCE-007 from the date that each respective TCE commences, as further detailed in the Mullin-VCTC Agreements.

4. Builders FirstSource Responsibilities.

- A. Upon the mutual execution of this Agreement, and on or before the date that Escrow is to close ("Close of Escrow"), Builders FirstSource shall, promptly on the Escrow Holder's request, execute such additional Escrow instructions as are reasonably required to consummate the transaction contemplated by this Agreement and are not inconsistent with this Agreement.

5. Notices.

- A. Any notice either Party may or is required to give the other shall be in writing, and shall be given in writing (a) by personally delivery, (b) by overnight delivery service with proof of delivery, (c) by registered or certified mail, return receipt requested, or (d) by electronic mail (with a copy to follow by mail or personal delivery), in each of the foregoing cases to the intended addressee at the mailing or email address set forth below. Any notice so given shall be deemed to be given upon receipt of the same (or refusal to accept delivery), or with respect to email, upon delivery. Any party may designate a different address for itself by notice similarly given.

To VCTC:

Ventura County Transportation Commission  
751 E Daily Drive, Suite 420  
Camarillo, CA 93010  
Attn: Claire Grasty  
Director of Public Transit  
Email: [cgrasty@goventura.org](mailto:cgrasty@goventura.org)

To Builders FirstSource:

BFS Group LLC  
6031 Connection Drive, Suite 400  
Irving, TX 75039  
Attn: VP – Real Estate and Director of Real Estate

with a copy to:

Builders FirstSource, Inc.

6031 Connection Drive, Suite 400  
Irving, TX 75039  
Attn: Legal Department

And with a copy to: Corporate.RealEstate@bldr.com

## **Article II. MISCELLANEOUS**

1. This Agreement embodies all of the considerations agreed upon between VCTC and Builders FirstSource regarding the Premises. This Agreement was obtained without coercion, promises other than those provided herein, or threats of any kind whatsoever by or to either Party.
2. This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.
3. This Agreement is the result of negotiations between the Parties and is intended by the Parties to be a final expression of their understanding with respect to the matters herein contained. This Agreement supersedes any and all other prior agreements and understandings, oral or written, in connection therewith. No provision contained herein shall be construed against VCTC solely because it prepared this Agreement in its executed form.
4. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Ventura, State of California, and the Parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.
5. To the fullest extent permitted by law, VCTC and SCRRA shall indemnify, defend (with attorneys acceptable to Builders FirstSource), protect, and hold harmless Builders FirstSource, Mullin Trust, and each of their respective departments, trustees, officers, directors, officials, employees, agents, successors, assigns, and independent contractors from any claims, causes of action, liabilities, damages (including work related or other physical injuries, insufficient insurance coverage, and environmental damages), reasonable attorney's fees, and costs that directly or indirectly relate to or arise from acts or omissions of VCTC, SCRRA, or their respective agents, employees, contractors, subcontractors, sub-subcontractor, suppliers, or any person or entity for whose acts VCTC, SCRRA, or their contractors, subcontractors, sub-subcontractors, or suppliers is responsible. The foregoing indemnity shall survive the termination of this Agreement and/or the expiration or termination of the Mullin-VCTC Agreements. The indemnity set forth in this section shall not be limited by any insurance required to be obtained by VCTC under the Mullin-VCTC Agreements. Builders FirstSource agrees that VCTC and/or SCRRA shall not be liable to Builders FirstSource for actions of Builders FirstSource occurring on or from the use of the area within the Easement Area prior to VCTC's and/or SCRRA's actual use of such Easement Area.
6. Builders FirstSource shall indemnify, defend and hold harmless VCTC and SCRRA, and its departments, officers, directors, officials, employees, agents, successors, assigns, and

independent contractors from any claims, causes of action, liabilities, damages, reasonable attorney's fees, and costs that directly or indirectly relate to or arise from any material misrepresentation or breach of warranty or covenant by Builders FirstSource in this Agreement.

7. The Parties represent and warrant that each has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, to perform the obligations under and to consummate the transaction contemplated by this Agreement.
8. Builders FirstSource and its assigns and successors in interest shall be bound by all the terms and conditions contained in this Agreement, and the obligations imposed upon each shall be joint and several.
9. This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year last below written.

VENTURA COUNTY TRANSPORTATION  
COMMISSION (VCTC)

BFS GROUP LLC

By: \_\_\_\_\_  
Martin R. Erickson  
Executive Director

By: \_\_\_\_\_  
Paul W. Dunn  
Vice President – Real Estate

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attachment 1  
Assessor's Plat Map

[attached]



Attachment 2

Depiction of a Portion of the Premises

[attached]

Attachment 3

Temporary Construction Easement Areas

[attached]

Attachment 4  
Goodwill Loss Study

[attached]

5789513.1