

# **PURCHASE AND SALE AGREEMENT**

by and between the

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE  
CITY OF RIALTO**

a California public agency

and

**NEWMARK MERRILL COMPANIES, INC.**

a California corporation

regarding the

**1432 S. Riverside Avenue, Rialto, CA**

Dated: \_\_\_\_\_, 2021

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## **LIST OF EXHIBITS**

**PURCHASE AND SALE AGREEMENT**  
**1432 S. Riverside Avenue, Rialto, CA**

This PURCHASE AND SALE AGREEMENT (“**Agreement**”) dated as of this \_\_\_\_ day of \_\_\_\_\_, 2021, is entered into by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF RIALTO, a California public agency (“**Agency**”), and NEWMARK MERRILL COMPANIES, INC., a California corporation (“**Developer**”).

**R E C I T A L S**

The following Recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 0 of this Agreement:

A. Agency owns the real property located at 1432 South Riverside Avenue, Rialto, California, consisting of approximately 15.09 acres located west of Riverside Avenue and north of Valley Boulevard (all or portions of APNs 0132-101-07, 08, 15, 16; 0132-111-03; 0132-161-13; and 0132-202-06) (Property), as depicted in Exhibit A and more particularly described in Exhibit B attached hereto and incorporated herein (“**Property**”). The Agency desires to sell to Developer, and Developer desires to purchase the Property on the terms set forth in this Agreement. The Property will be divided for conveyance purposes into one or more parcels containing approximately 11 acres (“**Phase 1 Parcels**”) and one or more parcels containing approximately 3.92 acres (“**Phase 2 Parcel**”).

B. The Property was formerly owned by the Rialto Redevelopment Agency. Following dissolution of all redevelopment agencies by the State of California on February 1, 2012, the Successor Agency to the Rialto Redevelopment Agency prepared, and the Successor Agency’s Oversight Board and the State Department of Finance approved, a Long Range Property Management Plan governing disposition of the former Rialto Redevelopment Agency’s real property assets, including the Property. The Long Range Property Management Plan had permitted conveyance of the Property to the City. To further the economic development goals established by the Long Range Property Management Plan, the City has requested that the Agency enter into a purchase and sale contract with Developer for the Property.

C. The Property is comprised of seven parcels of land. As set forth herein, the parties will seek a lot line adjustment that will result in a different configuration of those seven parcels as compared to their configuration on the Effective Date. The Fire Station Parcel, as fully described in Document Number [REDACTED] recorded with the San Bernardino County recorder is not part of this transaction.

D. The City and Developer previously entered into that certain Exclusive Right to Negotiate Agreement dated June 27, 2017, as amended (“**Original ENA**”) and are currently also parties to the also named Exclusive Right to Negotiate Agreement dated December 8, 2020 as

amended by that certain First Amended and Restated Exclusive Negotiating Agreement dated October 12, 2021 with an effective date of December 8, 2020 (“ENA”).

E. As contemplated by the ENA, Agency and Developer now desire to enter into this Agreement to provide for disposition of the Property to Developer. With the execution of this Agreement by both parties, upon the Effective Date, Developer will have an equitable interest in the Property for purposes of entering into the contemplated development agreement pursuant to the Development Agreement Law.

F. Agency and Developer have reached mutual agreement and desire to voluntarily enter into this Agreement to transfer the Property subject to the conditions and requirements set forth herein.

NOW, THEREFORE, Agency and Developer hereby agree as follows:

### **AGREEMENT**

#### **1. DEFINITIONS; REPRESENTATIONS AND WARRANTIES; TRANSFERS AND CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL.**

##### **1.1 Definitions.**

“**Additional Deposit**” is defined in Section 2.3.3.

“**Affiliate of Developer**” means an entity or person that is Controlling, Controlled by, or under common Control with Developer.

“**Agency**” means Successor Agency to the Redevelopment Agency of the City of Rialto, a California public agency.

“**Agency Conditions Precedent**” is defined in Section 2.5.

“**Agency Manager**” shall mean the City Manager of the City, or his or her designee.

“**Agency Parties**” is defined in Section 2.12.

“**Agency’s Cure Notice Period**” is defined in Section 2.4.24.

“**Agency’s Title Notice**” is defined in Section 2.4.24.

“**Agreement**” means this Purchase and Sale Agreement between Agency and Developer.

“**Applicable Laws**” means all applicable federal, state, County, and City laws, statutes, ordinances, governmental rules, regulations, orders, permits, licenses, approvals and authorizations applicable to the condition, ownership, operation, development, use or occupancy of the Property, as may be amended from time to time, including, without limitation, requirements of any board or fire insurance underwriters or other similar bodies, Environmental Laws, federal and state labor laws, and federal and state disability laws, including the Americans

with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*).

**“As-Is Condition”** is defined in Section 2.12.

**“CEQA”** means the California Environmental Quality Act set forth in Public Resources Code Section 21000 *et seq.* and CEQA Guidelines (Tit. 14 CCR § 15000 *et seq.*).

**“City”** means the City of Rialto, a California municipal corporation.

**“City Council”** means the City Council of the City of Rialto, acting as the Successor Agency of the City of Rialto.

**“Claims”** means liabilities, obligations, orders, claims, damages, governmental fines or penalties, and expenses of defense with respect thereto, including reasonable attorneys’ fees and costs.

**“Closing”** is defined in Section 2.8.

**“Closing Date”** shall mean the date upon which the Closing occurs with respect to the Property, or if the Closing occurs in phases, shall mean for the Phase 1 Parcels, the date upon which the Closing for the Phase 1 Parcels occurs and for the Phase 2 Parcel, the date upon which the Closing for the Phase 2 Parcel occurs.

**“Closing Default”** is defined in Section 10.3.2.

**“Closing Failure”** is defined in Section 10.3.1.

**“Confidential Information”** is defined in Section 11.20.1.

**“Contingency Date”** is defined in Section 2.4.5

**“Control”, “Controlled” or “Controlling”**, used with respect to Developer or any entity or person, shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of such entity or person.

**“Cross Access Easement”** is defined in Section 2.6.13.

**“Default”** means the failure of a party to perform any material action or covenant required by this Agreement within the time period(s) provided herein following Notice and opportunity to cure.

**“Deposit”** is defined in Section 2.3.3.

**“Deposit Return Event”** shall mean the occurrence of any one of the following:  
(a) issuance by Developer of a Developer’s Disapproval Notice pursuant to Section 2.4.5; (b) a failure to close Escrow on or before the Outside Closing Date as a result of the failure of the Agency Conditions Precedent set forth in this Agreement that is not a Default by the Agency;

(c) termination of the Agreement based on Developer's decision not to defend a Legal Challenge in accordance with Section 6.3, or (d) a failure to close Escrow on or before the Outside Closing Date as a result of a failure of any one of the Developer Conditions Precedent set forth in Sections 2.6.4, 2.6.5, 2.6.6, 2.6.8, 2.6.9, 2.6.10, 2.6.12, 2.6.13, 2.6.14, 2.6.15 or 2.6.16.

**"Developer"** means Newmark Merrill Companies, Inc., a California corporation, and its permitted assignee(s) and successor(s)-in-interest.

**"Developer Conditions Precedent"** is defined in Section 2.6.

**"Developer Party"** and **"Developer Parties"** is defined in Section 2.4.1.

**"Developer's Approval Notice"** is defined in Section 2.4.5.

**"Developer's Disapproval Notice"** is defined in Section 2.4.5.

**"Developer's Inspections"** is defined in Section 2.4.1

**"Due Diligence Period"** is defined in Section 2.4.5.

**"Effective Date"** is defined in Section 1.2.

**"ENA"** is defined in Recital F above.

**"End User"** shall mean any person or entity operating or intending to operate a business in any building on the Property.

**"Environmental Laws"** means, collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.*, (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 *et seq.*, (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.*, (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, (v) the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*, (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 *et seq.*, (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251 *et seq.*, (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701 *et seq.*, (ix) California Health & Safety Code § 25100 *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300 *et seq.*, (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404 *et seq.*, (xii) Health & Safety Code § 25531 *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5 *et seq.*, (xiv) Health & Safety Code § 25280 *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1 *et seq.*, (xvi) Health & Safety Code § 25501 *et seq.*, (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901 *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000 *et seq.*, (xix) California Fish and Game Code §§ 5650-5656 and (xx) any other federal, state or local laws, ordinances, rules, regulations, court orders or

common law related in any way to the protection of the environment, health or safety.

**“Escrow”** is defined in Section 2.7.

**“Escrow Agent”** means Commerce Escrow Company, 1055 Wilshire Boulevard, Suite 1000, Los Angeles, CA 90017, Attn: Robert T. Minsky, SVP, Sr. Escrow Officer.

**“Finally Approved”** means that all periods to challenge, review or appeal of this Agreement, the Development Agreement or any City issued entitlements (including by litigation or referendum) shall have expired without any challenge, review or appeal, or if there is a challenge, review or appeal, a final non-appealable resolution of the challenge or appeal shall have been issued upholding the approval of the Development Agreement and City issued entitlements without any material changes to the original conditions of such approval.

**“Force Majeure Delay”** is defined in Section 11.2.

**“Gateway Center”** means that certain shopping center to the south of the Property.

**“Gateway Access Easement”** is defined in Section 2.6.14.

**“GDP”** is defined in Section 11.2.

**“Grant Deed”** means the grant deed for the conveyance of the Property from Agency to Developer to be executed and recorded at Closing substantially in the form attached hereto as Exhibit C and incorporated herein by this reference.

**“Hazardous Materials”** means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as a “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste” or “hazardous substance” under any Environmental Laws.

**“Independent Consideration”** is defined in Section 2.3.2.

**“Initial Deposit”** is defined in Section 2.3.1.

**“Litigation Challenge”** is defined in Section 6.3.

**“Lot Line Adjustment”** is defined in Section 2.16.

**“Mortgage”** means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of Developer’s rights under this Agreement.

**“Mortgagee”** means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

**“Municipal Code”** means the Rialto Municipal Code, as it may be amended from time to



time.

**“NMTC”** means New Market Tax Credits as such term is used in Internal Revenue Code Section 45(D).

**“Notice”** means a written notice in the form prescribed by Section 11.1.

**“Organizational Documents”** means the Certificate of Formation and organization chart of Developer, as the same may be amended from time to time.

**“Original ENA”** is defined in Recital F above.

**“Outside Closing Date”** is defined in Section 2.8.

**“Permitted Exceptions”** is defined in Section 2.4.23.

**“Permitted Transfer”** is defined in Section 1.5.2.

**“Phase 1 Parcels”** is defined in Recital A.

**“Phase 2 Parcel”** is defined in Recital A.

**“Property”** is defined in Recital A.

**“Property Claims”** is defined in Section 2.14.

**“Public Disclosure Laws”** is defined in Section 11.20.1.

**“Purchase Price”** is defined in Section 2.2.

**“Seller Property Reports”** is defined in Section 2.4.2.

**“Severe Economic Recession”** is defined in Section 11.2.

**“Storm Drain Easement”** is defined in Section 2.6.15.

**“Term”** is defined in Section 1.3.

**“Title Company”** means Stewart Title Guaranty Company, 525 N. Brand Blvd, 2nd Floor, Glendale, California 91203. Attn: Linda Standaart, Vice President, National Commercial Services.

**“Title Report”** is defined in Section 2.4.23.

**“Title Objections”** is defined in Section 2.4.23.

**“Title Review Period”** is defined in Section 2.4.23.

**“Transfer”** means the conveyance, sale or transfer by Developer of its interest in this

Agreement or the Property.

“**Title Policy**” is defined in Section 2.10.

1.2 Effective Date. The effective date of this Agreement shall be the date this Agreement is fully executed by the Parties (“**Effective Date**”). The Effective Date shall be inserted above, where indicated.

1.3 Term. The “**Term**” of this Agreement shall commence on the Effective Date, and shall expire upon Close of Escrow for the Phase 2 Parcel, unless earlier terminated (pursuant to the terms of this Agreement), following the expiration of the Term or the earlier termination in accordance herewith, this Agreement shall be deemed terminated and of no further force and effect, except for the provisions of this Agreement that expressly survive termination.

1.4 Representations and Warranties.

1.4.1 Agency Representations. As of the Effective Date, Agency represents and warrants to Developer as follows:

(a) Authority. Agency is a California public agency with full right, power and lawful authority to perform its obligations hereunder, and the execution, delivery, and performance of this Agreement and all instruments referenced in this Agreement by Agency has been fully authorized by all requisite actions on the part of the City Council, acting in its capacity as Agency. Whenever a reference is made herein to an action or approval to be undertaken by the Agency or the City, the Agency Manager or his or her designee is authorized to act on behalf of the Agency, unless specifically provided otherwise or the context requires otherwise. The Agency Manager or his or her designee is further authorized to execute and deliver, on behalf of the Agency, any notice, consent, certification or other similar document, necessary or desirable to consummate the transactions contemplated by this Agreement.

(b) Consents. The Agency has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any instrument referenced in this Agreement) all required consents in connection with entering into this Agreement and the instruments and documents referenced in this Agreement to which the Agency is or shall be a party and the consummation of the transactions contemplated hereby, and the conveyance of the Property described in this Agreement by the Agency is (or shall be prior to the Close of Escrow) authorized by State law, including without limitation, the consent of the San Bernardino County Oversight Board and the Department of Finance. Failure of the Oversight Board for San Bernardino County and/or the California Department of Finance to provide consent to the conveyance of the property to Developer shall not be considered a default of the Agency or a breach of this Agreement by the Agency. In the event the Close of Escrow does not occur before the Outside Close Date (as the same may be extended as set forth in Section 2.8) because the Agency, having submitted its notice of exemption, is required by court order or by order of an administrative agency with jurisdiction over the Agency to comply with the real property disposal requirements of Government Code Section 54222 concerning notice and negotiation, the Agency shall not be considered to be in default or in breach of this Agreement.

(c) Valid Agency Obligation. This Agreement is a valid obligation of Agency and is enforceable in accordance with its terms.

(d) No Conflict. To Agency's current actual knowledge, Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which Agency is bound.

(e) No Litigation or Other Proceeding. To Agency's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Agency to perform its obligations under this Agreement.

(f) No Agency Bankruptcy. Agency is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Agency's assets has been made.

(g) Right to Possession. No person or entity other than Agency has the right to use, occupy, or possess the Property or any portion thereof. Agency shall not enter into any lease or other agreement respecting the use, occupancy, or possession of the Property or any portion thereof without the prior written consent of Developer.

(h) Condition of Property. Agency has no notice of any pending or threatened action or proceeding arising out of the condition of the Property or any alleged violation of any Environmental Laws. Except as otherwise disclosed by Agency, to Agency's actual current knowledge, the Property is in compliance with all Environmental Laws.

(i) Litigation. There is no litigation either pending or threatened, to which the Agency is or may be made a party, or to which the Property is or may become subject which would reasonably be expected to prevent or materially impair the ability of the Agency to carry out its obligations under this Agreement and upon each Close of Escrow, the instruments then in effect, or to affect the Property conveyed at such Close of Escrow.

As used in this Section 1.4.1, "current, actual knowledge" means the current actual knowledge of Marcus Fuller, Agency Manager. Until such time as the Closing occurs, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.4.1 not to be true, promptly give written Notice of such fact or condition to Developer. The foregoing representations and warranties shall survive each Close of Escrow and continue in effect for a period of twelve months thereafter.

1.4.2                      Developer's Representations. As of the Effective Date, Developer represents and warrants to Agency as follows:

(a)     Authority. Developer is duly organized within the State of California and in good standing under the laws of the State of California. The Organizational Documents provided by Developer to Agency are true and complete copies of the originals, as may be amended from time to time. Developer has full right, power and lawful authority to undertake all of its obligations hereunder and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite corporate actions on the part of Developer.

(b)     No Conflict. To Developer's current actual knowledge, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which Developer is bound.

(c)     Valid Developer Obligation. Subject to the effect of bankruptcy laws, if any, this Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

(d)     No Litigation or Other Proceeding. To Developer's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened, in writing, which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(e)     No Developer Bankruptcy. Developer is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made.

For purposes of this Section 1.4.2, "current, actual knowledge" means the current actual knowledge of Sanford D. Sigal and Brad Pearl, without any obligation for investigation or inquiry. Until the Close of Escrow or earlier termination of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.4.2 not to be true, promptly give written Notice of such fact or condition to Agency. The foregoing representations and warranties shall survive each Close of Escrow and continue in effect for a period of twelve months thereafter.

## 1.5                      Transfers and Change in Ownership.

1.5.1                      Process for Review of Proposed Transfer. The process set forth in this subsection 1.5.1 shall apply to any proposed Transfer that is not a Permitted Transfer. Developer shall notify Agency of any proposed Transfer at least thirty (30) days prior to completing any Transfer. Prior to consideration by the Agency of any proposed Transfer, Developer shall deliver to City the form of a proposed written Assignment and Assumption Agreement approved by the Agency in its reasonable discretion in which the transferee expressly agrees to assume the rights and obligations of

Developer under this Agreement with respect to those portion(s) of the Property that are being transferred that arise after the effective date of the Transfer, and in which the transferee agrees to assume or the transferor remains responsible for performance of all obligations of Developer that arose prior to the effective date of the Transfer with respect to the rights and obligations being transferred. No later than ten (10) business days after the date said Transfer becomes effective, Developer shall deliver to Agency a fully executed original of the Assignment and Assumption Agreement. Upon the effective date of said Transfer, Developer shall be released from all obligations expressly assumed by the transferee under the executed Assignment and Assumption Agreement.

1.5.2 Notwithstanding any other provision of this Agreement to the contrary, each of following Transfers are permitted and shall not require consent of the Agency under this Section 1.5 (each, a “**Permitted Transfer**”):

- (a) Any Transfer for financing purposes to secure the funds necessary for construction and/or permanent financing of the Project;
- (b) A Transfer of Developer’s interest in all or a portion of the Project or in this Agreement to an Affiliate of Developer;
- (c) A Transfer of Control of Developer to an Affiliate of Developer;
- (d) Transfers of common area to a property owners association;
- (e) Dedications and grants of easements and rights of way required in accordance with the Entitlements or this Agreement and including, without limitation, to any public or quasi-public entity or to any utility, as necessary or desirable for development of the Project;
- (f) Lease(s) of any individual tenant space(s) within the Project), including without limitation, outdoor areas leased to End Users.
- (g) Sale of any individual parcel within the Project to any End User(s)..
- (h) Grant of temporary license or access rights in the Property as necessary or desirable for development of the Property/
- (i) Any Transfer of the Phase 2 Parcel to an unaffiliated third-party person or entity or to a joint venture of Developer and any such other person or entity.

Developer shall give at least ten (10) business days’ prior written Notice to City of a Permitted Transfer, except that no such Notice shall be required for any Permitted Transfer under subsections (c) through (h). In addition, Agency shall be entitled to review such documentation as may be reasonably required by Agency to confirm the proposed Transfer is a Permitted Transfer. Upon the effective date of said Transfer, Developer shall be released from all obligations expressly assumed by the Transferee under the executed assignment and assumption agreement.

## 2. PURCHASE AND SALE.

2.1 Purchase and Sale. Subject to the terms, covenants and conditions of this Agreement, Developer shall purchase from Agency and Agency shall sell to Developer the Property. Developer shall have the right, at its election, to cause the Close of Escrow with respect to the entirety of the Property to take place at one time or to defer the acquisition of the Phase 2 Parcel and to cause the Close of Escrow for the Phase 1 Parcels to occur prior to the Close of Escrow for the Phase 2 Parcel by provision of written notice to Agency prior to the Close of Escrow for the Phase 1 Parcels; provided that nothing in this Agreement shall require that the Developer close Escrow on the Phase 2 Parcel prior to the Phase 1 Parcels.

2.2 Purchase Price. The purchase price for the Property shall be Three Million Five Hundred Eight Thousand Seven Hundred Fifty Eight Dollars (\$3,508,758), based on the fair market value determination (and the related assumptions described therein) set forth in that certain *Appraisal Report* by Curtis-Rosenthal, Inc. (date of value, June 27, 2021). The Purchase Price shall be payable in full at Closing in cash by wire transfer from Escrow Agent of immediately available funds received from Developer to a bank account to be designated by Agency in writing to Developer prior to the Closing. If the Closing for the Phase 1 Parcels occurs prior to the Closing for the Phase 2 Parcel, the Purchase Price due and payable for the Phase 1 Parcels shall be One Million Four Hundred Fifty-Nine Thousand Six Hundred Ninety-Five Dollars (\$1,459,695) and the Purchase Price due and payable for the Phase 2 Parcels shall be Two Million Forty-Nine Thousand Sixty Two Dollars (\$2,049,062).

### 2.3 Deposits.

2.3.1 Initial Deposit. Within five (5) business days after the Effective Date, Developer and Agency shall open an Escrow with Escrow Agent for the conveyance of the Property to Developer as further described in Section 2.7 and Developer shall deposit in Escrow an earnest money deposit of Fifty Thousand Dollars (\$50,000) (“**Initial Deposit**”). Except as set forth in Section 2.3.4, the Initial Deposit shall become non-refundable and be considered fully earned by Agency upon Developer’s Approval Notice at the expiration of the Due Diligence Period described in Section 2.4.5 below.

2.3.2 Independent Consideration. A portion of the amount deposited by Developer pursuant to Section 2.3.1, in the amount of One Hundred Dollars (\$100) (the “**Independent Consideration**”) shall be earned by Agency upon execution and delivery of this Agreement by Agency and Developer. Agency and Developer hereby mutually acknowledge and agree that the Independent Consideration represents adequate bargained for consideration for Agency’s execution and delivery of this Agreement and Developer’s right to have inspected the Property pursuant to the terms of this Agreement. The Independent Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement and is nonrefundable in all events. Upon the Closing or earlier termination of this Agreement, the Independent Consideration shall be paid to Agency.

2.3.3 Additional Deposit. Upon delivery of Developer's Approval Notice at the expiration of the Due Diligence Period described in Section 2.4.5 below, Developer shall deliver to Escrow an additional deposit in the amount of Fifty Thousand Dollars (\$50,000) ("**Additional Deposit**"). The Initial Deposit, and upon payment thereof, the Additional Deposit, are referred to herein as the "**Deposit**". At the Closing, the Deposit shall be applied to the Purchase Price.

2.3.4 Failure to Close. If Escrow does not close:

(a) for any of the reasons specified in Section 10.3.1 (failure to Close other than as a result of Default by Agency, Default by Developer or a Deposit Return Event) or 10.3.2 (failure to close due to Developer Default), then this Agreement shall terminate and the provisions of the applicable Section shall govern;

(b) as a result of a matter that is a Deposit Return Event, then this Agreement shall terminate, and Escrow shall return the Deposit to Developer less the Independent Contract Consideration, which shall be paid to Agency and Agency and Developer shall each pay one-half (1/2) of Escrow Holder's normal cancellation charges; or

(c) as a result of a Default by Agency, then Developer shall have all remedies available at law and at equity with respect to the Default by the Agency, including without limitation, the right to specific performance, to sue for damages and/or to terminate this Agreement and, at the election of Developer, Escrow shall return the Deposit to Developer less the Independent Contract Consideration, which shall be paid to Agency, and Agency shall be responsible to pay for all escrow and title cancellation fees of Escrow Agent.

If Developer elects to cause the Close of Escrow for the Phase 1 Parcels to proceed in advance of the Close of Escrow for the Phase 2 Parcel, then the provisions of this Section shall apply to the failure to close with respect to the Phase 1 Parcels only.

2.3.5 Effect of Termination. Except as specifically set forth in this Section 2.3 and Section 10.3, the termination of this Agreement prior to Close of Escrow shall constitute a waiver of any rights or claims either party may have against the other or against the Property, or any portion thereof, but shall not terminate or release any liability or obligations of either party to comply with any obligations under this Agreement which are expressly stated to survive a termination of this Agreement prior to the Close of Escrow.

2.4 Developer's Due Diligence. Developer shall review and approve or disapprove in its sole and absolute discretion, as hereafter provided, all of the following matters.

2.4.1 Physical and Governmental Inspections. Developer and Developer's representatives, agents, contractors, subcontractors, consultants, employees and designees (each a "**Developer Party**" and, collectively, the "**Developer Parties**") shall have the right to enter upon the Property from time to time with twenty-four (24) hours' advance telephonic or email notice to Agency, at Developer's sole cost, to conduct such inspections, investigations and non-invasive tests as Developer may elect to make or

obtain, including, without limitation, an ALTA survey and environmental studies (collectively, “**Developer's Inspections**”). Any subsurface environmental investigation of the Property must first be approved by Agency, which approval shall not be unreasonably withheld, conditioned, or delayed. Developer shall promptly repair any physical damage to the Property caused by Developer’s Inspections and restore the Property to its condition prior to Developer's Inspections and shall protect, defend, indemnify and hold Agency harmless from any Claims arising from or related to any damage to property (real or personal) or injury to or death of any person to the extent caused by the acts, omissions, negligence or willful misconduct of Developer or Developer Parties in connection with Developer’s Inspections; provided, however, that the foregoing indemnity, defense and hold harmless obligations do not apply to (a) any Claims to the extent arising from the negligent acts or omissions or willful misconduct of Agency, (b) any diminution in value in the Property arising from or relating to matters discovered by Developer at, under or emanating from the Property during its investigation of the Property, and (c) any Hazardous Materials that are discovered (but not deposited or exacerbated by Developer) at, under or emanating from the Property during Developer’s investigation of the Property. Such obligation to protect, defend, indemnify and hold Agency harmless shall survive the Closing or any termination of this Agreement with respect to any Claim arising with respect to activities of Developer during the period in which this access right is in effect.

2.4.2                    Property Reports. Developer has obtained from the City certain Property condition reports, analyses, surveys, results of Property investigations, studies, easements, notices from any governmental authority about the presence of any Hazardous Materials, and other documents including without limitation the following documentation: (i) Phase I and Phase II environmental studies; (ii) ALTA and Topo Survey; (iii) title report; and (iv) Biological Resources Study (including the fly study), and (vi) survey documents required for the Lot Line Adjustment (“**Seller Property Reports**”).

2.4.3                    Title Inspection. Developer shall exercise its diligent and good faith efforts to cause the Title Company to issue and deliver to Agency and Developer a Preliminary Title Report (“**Title Report**”) within ten (10) business days following the Effective Date and Developer shall have twenty (20) days following receipt thereof, but in all events not later than the date that is five (5) business days prior to the Contingency Date (the “**Title Review Period**”), within which to notify Agency of any exceptions to title as shown in the Title Report which Developer disapproves; provided, however, Developer hereby approves the following exceptions: (a) the lien of any non-delinquent property taxes and assessments (which, if any exist, shall be prorated by the Title Company at Closing); (b) this Agreement, and (c) the covenants, conditions and restrictions set forth in the Grant Deed, (collectively, the “**Permitted Exceptions**”). Any exceptions, other than the Permitted Exceptions, which are timely disapproved by Developer in writing pursuant to this Section 2.4.3 shall be referred to collectively as the “**Title Objections**”. If Developer fails to notify Agency of its disapproval of any matters shown in the Title Report within the Title Review Period, Developer shall conclusively be deemed to have approved such matters. Any such matter not disapproved in writing by Developer within the Title Review Period shall also constitute a Permitted Exception hereunder.



2.4.4 Agency Action. If Developer notifies Agency of any Title Objections within the Title Review Period then, at Agency's sole discretion, Agency may elect (but shall not be obligated) to remove or cause to be removed any of the Title Objections at Agency's expense, which removal shall be subject to Developer's reasonable approval. Agency may notify Developer in writing ("**Agency's Title Notice**") within three (3) business days after receipt of Developer's notice of Title Objections ("**Agency's Cure Notice Period**") whether Agency elects to remove the same, and, by the Closing, Agency shall remove those Title Objections elected to be removed by Agency in Agency's Title Notice. Agency's failure to deliver Agency's Title Notice to Developer shall constitute Agency's election not to cure such Title Objections. Notwithstanding the foregoing, Agency agrees to remove as exceptions to title to the Property the following prior to the Closing Date (i) all delinquent taxes and assessments and interest and penalties thereon affecting the Property, if any, (ii) all Mortgages and deeds of trust created by, under or through Agency, if any, (iii) all mechanic's liens, if any, not created by Developer or resulting from Developer's Inspections, and (iv) any exceptions or encumbrances to title which are created by Agency after the Effective Date without the written consent of Developer. If Agency elects or is deemed to have elected not to cause any Title Objections to be removed prior to the Closing, Developer may elect, by Notice to Agency on or before the Contingency Date, to terminate this Agreement, in which event each party shall promptly execute and deliver to Escrow Agent such documents as Escrow Agent may reasonably require to evidence such termination and the respective obligations of Developer and Agency under this Agreement shall terminate, except as to matters which expressly survive termination, and Escrow shall promptly return the Additional Deposit to Developer. Developer's failure to give such Notice of termination on or before such date shall constitute Developer's waiver of any Title Objections which Agency is unwilling to cure, in which event such Title Objections shall be deemed to be Permitted Exceptions and the Closing(s) shall occur as herein provided.

2.4.5 Contingency Date. Developer shall have until 5:00 p.m. (Pacific Time) on the day that is ninety (90) calendar days after the Effective Date (the "**Contingency Date**") in which to approve or disapprove, in Developer's sole and absolute discretion, any and all inspections, investigations, tests and studies set forth in this Section 2.4 by providing written notice to Agency ("**Developer's Approval Notice**"). In the event Developer determines the Property is not acceptable to Developer for any reason or no reason, Developer shall have the right to terminate this Agreement by delivering written Notice to Agency of its election to terminate pursuant to this Section 2.4.5 on or before the Contingency Date ("**Developer's Disapproval Notice**"). In the event Developer has not provided Agency, by the Contingency Date, with Developer's Approval Notice or Developer's Disapproval Notice, this Agreement shall automatically be deemed to have been terminated effective as of the Contingency Date, and thereafter neither party shall have any further rights or obligations hereunder except for those obligations which by their express terms survive the termination of this Agreement. If Developer timely provides Developer's Disapproval Notice or if this Agreement is deemed to have been terminated as provided above, upon such termination, Agency shall promptly return the Initial Deposit to Developer and each party shall promptly execute and deliver to Escrow Agent such documents as Escrow Agent may reasonably require to evidence such

termination. The 90-calendar day period within which Developer is to perform its due diligence investigation of the Property is referred to herein as the “**Due Diligence Period**”.

2.5 Agency Conditions Precedent. Agency’s obligation to proceed with the disposition of the Property to Developer pursuant to the terms of this Agreement is subject to the fulfillment or waiver by Agency of each and all of the conditions precedent described below (collectively, “**Agency Conditions Precedent**”). The Agency Conditions Precedent are solely for the benefit of Agency and shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the Outside Closing Date. To the extent that Developer exercises its right to cause the Close of Escrow for the Property to take place in two phases as set forth in Section 2.1, the Agency Closing Conditions shall be applicable separately to the Close of Escrow for the Phase 1 Parcels and the Close of Escrow for the Phase 2 Parcel.

2.5.1 No Default. Developer shall not be in Default under this Agreement.

2.5.2 Representations and Warranties. Developer shall have certified in writing as of the Closing that Developer’s representations and warranties in Section 1.4.2 continue to be true and correct in all material respects.

2.5.3 Approval of Condition of Property. Developer, on or before the Contingency Date, shall have given Developer’s Approval Notice as provided in Section 2.4.5.

2.5.4 Execution and Delivery of Documents. Developer shall have executed and acknowledged the Grant Deed, and Developer shall have executed (and, where appropriate, acknowledged), and delivered into Escrow all other documents that Developer is required to deliver into Escrow pursuant to Section 2.9.1 and, unless the requirement for Agency delivery of any of the following documents is waived by Developer, shall deliver the documents described in Sections 2.6.11, 2.6.12 and 2.6.13.

2.5.5 Delivery of Funds. Developer shall have delivered through Escrow the Purchase Price and such other funds, including Escrow costs, recording fees and other closing costs as are necessary to comply with Developer’s obligations under this Agreement.

2.5.6 Insurance. Developer shall have provided proof of insurance as required by Section 6.1 below.

2.5.7 Entitlements. Developer shall have applied for and the City shall have approved all entitlements determined by Developer to be required for its proposed development of the Property. The entitlements applied for by Developer for the Property may, but need not, include and are not limited to, a statutory development agreement in accordance with Section 65864 et. seq., conditional development permit, precise plan of design, lot line adjustment / lot merger, variance, etc.

2.5.8 Agency CEQA Approval. In accordance with Section 3, Agency shall have considered the CEQA document prepared by the lead agency and, acting as a responsible agency, shall have determined that all necessary approvals under CEQA for the development of the Property have been provided, or shall have undertaken such additional review as it determines, in its independent judgement to be required for approval of the sale of the Property pursuant to this Agreement and such determination shall be Finally Approved.

2.5.9 Approval of Transfer; Absence of Proceedings. The Oversight Board for San Bernardino County and the California Department of Finance shall have provided consent to the conveyance of the Property to Developer and there shall be an absence of any pending or threatened litigation, condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the Property which would materially and adversely affect Developer's intended uses of the Property or the value of the Property.

2.5.10 Organizational Documents. If the Agreement has been assigned to an Affiliate of Developer, Developer shall have submitted to Agency the Organizational Documents for Developer confirming that Developer's parent company, or its Affiliate has Control of Developer.

2.5.11 Absence of Proceedings. There shall be an absence of any condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the Property which would materially and adversely affect Developer's intended uses of the Property or the value of the Property.

2.5.12 Closing on or Before the Outside Closing Date. Escrow shall close on or before the Outside Closing Date, unless the Outside Closing Date is extended in accordance with Section 2.8 or 11.2.

2.6 Developer Conditions Precedent Developer's obligation to proceed with the acquisition of the Property from Agency pursuant to the terms of this Agreement is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below (collectively, "**Developer Conditions Precedent**"). The Developer's Conditions Precedent are solely for the benefit of Developer and shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the Outside Closing Date. To the extent that Developer exercises its right to cause the Close of Escrow for the Property to take place in two phases as set forth in Section 2.1, the Developer Closing Conditions shall be applicable separately to the Close of Escrow for the Phase 1 Parcels and the Close of Escrow for the Phase 2 Parcel.

2.6.1 No Default by Agency. Agency shall not be in Default under this Agreement.

2.6.2                   Representations and Warranties. Agency shall have certified in writing as of the Closing that Agency's representations and warranties in Section 1.4.1 continue to be true and correct in all material respects.

2.6.3                   Execution and Delivery of Documents by Agency. Agency shall have executed and acknowledged the Grant Deed, and Agency shall have executed (and, where appropriate, acknowledged) and delivered into Escrow all other documents that Agency is required to deliver into Escrow pursuant to Section 2.9.2 and, unless the requirement for Agency delivery of any of the following documents is waived by Developer, shall deliver the documents described in Sections 2.6.11, 2.6.12 and 2.6.13.

2.6.4                   Entitlements. Developer shall have applied for and the City shall have approved all entitlements determined by Developer to be required for its proposed development of the Property. The entitlements applied for by Developer for the Property may, but need not, include and are not limited to, a statutory development agreement in accordance with Section 65864 et. seq., conditional development permit, precise plan of design, lot line adjustment / lot merger, variance, etc.

2.6.5                   Agency CEQA Approval. In accordance with Section 3, Agency shall have considered the CEQA document prepared by the lead agency and, acting as a responsible agency, shall have determined that all necessary approvals under CEQA for the development of the Property have been provided, or shall have undertaken such additional review as it determines, in its independent judgement to be required for approval of the sale of the Property pursuant to this Agreement and such determination shall be Finally Approved.

2.6.6                   Other Agency Approvals. Agency shall have obtained all permits and approvals required by any other non-Agency governmental agencies with jurisdiction over the Property or the sale thereof. All such other agency approvals shall be valid (i.e., shall have not expired) as of the Closing Date.

2.6.7                   Title Policy. The Title Company shall, upon payment of Title Company's premium, be irrevocably committed to issue the Title Policy upon recordation of the Grant Deed, subject only to the Permitted Exceptions.

2.6.8                   Approval of Transfer; Absence of Proceedings. The Oversight Board for San Bernardino County and the California Department of Finance shall have provided consent to the conveyance of the Property to Developer and there shall be an absence of any pending or threatened litigation, condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the Property which would materially and adversely affect Developer's intended uses of the Property or the value of the Property.

2.6.9                   No Material Adverse Change. There shall not have occurred between the Effective Date and the Closing a material adverse change to the physical condition of the Property.

2.6.10                    Lot Line Adjustment. The Agency shall have processed a Lot Line Adjustment with the City which shall be complete in accordance with all City and State subdivision requirements.

2.6.11                    Title Condition. Agency shall have caused all debts and liability for labor, material and equipment incurred in connection with Agency's ownership, operation or improvement of the Property, which could result in a lien against all or any portion of the Property, to be promptly paid, and the Property shall be ready to be conveyed to Developer, subject only to the Permitted Exceptions approved by Developer during the Due Diligence Period.

2.6.12                    Cross Access Agreement. Agency shall have deposited with the Escrow Agent a fully executed and acknowledged Declaration and Grant of Cross Access Easements in a form reasonably acceptable to Developer running with the land for the benefit of the Property and the owners thereof and the Agency and the fire station property owned by the City adjacent thereto ("**Cross Access Agreement**") allowing for vehicular and pedestrian access between the Phase 2 Parcel, the Phase 1 Parcels and the property used for fire station purposes. The Cross Access Agreement shall be recorded with the County on or before the Closing Date for the Phase 2 Parcel prior to the recording of the Grant Deed conveying the Phase 2 Parcel to Developer.

2.6.13                    Gateway Center Access Agreement. Agency shall have deposited with the Escrow Agent a fully executed and acknowledged Access Easement, in a form acceptable to the Developer, running with the land for the benefit of the Property and the owners thereof and the Gateway Center and the owners thereof ("**Gateway Access Easement**") between City and the owner of the Gateway Center allowing for vehicular and pedestrian access between the Phase 1 Parcels, the Phase 2 Parcel and the Gateway Center which shall provide for rights of access across the main drives of each of the Property and Gateway Center by the owners of the Property and the owners of Gateway Center and their respective permittees.<sup>1</sup>

2.6.14                    Storm Drain Easement Agreement. Agency shall have deposited with the Escrow Agent a Storm Drain Easement in a form reasonably acceptable to Developer running with the land for the benefit of the Property and its owners ("**Storm Drain Easement**") fully executed and acknowledged by Agency and the owner of the Gateway Center and providing the owner of the Property with the right to access the existing storm drain on the Gateway Center property to connect to such storm drain, to provide flows and to maintain that connection.

2.6.15                    Construction Loan. Developer shall have obtained a construction loan in an amount sufficient to permit funding of the proposed project described in the approved CEQA document that shall be ready to close concurrently with or promptly following the Closing.

2.6.16                      New Market Tax Credits. Developer shall have secured an allocation of NMTC in an amount of not less than Five Million Dollars (\$5,000,000) that shall be ready to close concurrently with or promptly following the Close of Escrow.

2.7                      Escrow. Upon the written acceptance of the executed Agreement by Escrow Agent, this Agreement shall constitute the joint escrow instructions of Developer and Agency to Escrow Agent to open an escrow (“**Escrow**”) and Escrow Agent is thereafter delivered is hereby empowered to act in accordance with the terms of this Agreement. To the extent that Developer exercises its right to cause the Close of Escrow for the Property to take place in two phases as set forth in Section 2.1, the Escrow instructions contained in this Agreement or separately executed shall be applicable to each of the Close of Escrow for the Phase 1 Parcels and the Close of Escrow for the Phase 2 Parcel.

2.7.1                      Closing Costs. All fees, charges, and costs chargeable by Escrow Agent for the Escrow including recording fees, document fees, and title insurance premiums due with respect to the conveyance of the Property to Developer shall be paid by Developer. Agency shall pay all County transfer taxes. Agency transfer taxes, if any, shall be paid one half (1/2) by Agency and one half (1/2) by Developer. Any other closing costs and expenses not specifically allocated to one of the Parties hereunder shall be paid according to the custom for sales of vacant land in the County as determined by Escrow Agent and reflected on the settlement statement.

2.7.2                      Escrow Instructions. This Agreement constitutes the joint Escrow instructions of Developer and Agency with respect to the conveyance of the Property to Developer, and the Escrow Agent to whom these instructions are directed. The Parties shall use reasonable good faith efforts to close the Escrow for the conveyance of the Property in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and each party shall cancel its own policies, if any, as of the Closing. All funds received in the Escrow shall be deposited in interest-bearing accounts for the benefit of the depositing party in any state or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such accounts. If, in the opinion of either party, it is necessary or convenient in order to accomplish the Closing, such party may provide supplemental escrow instructions; provided that any supplemental Escrow instructions must be in writing and signed by Agency and Developer and accepted by the Escrow Agent to be effective and if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Closing shall take place as set forth in Section 2.8 below. Escrow Agent is instructed to release Agency’s and Developer’s Escrow closing statements to the respective Parties.

2.7.3                      Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a)                      Pay and charge Developer for the premium of the Title Policy, including any endorsements requested by Developer.

(b) Pay and charge Developer for Escrow fees, charges, and costs as provided in Section 2.7.1.

(c) Disburse the Purchase Price to Agency and record the Grant Deed when both the Developer Conditions Precedent and Agency Conditions Precedent have been fulfilled or waived in writing by Developer and Agency, as applicable. Immediately following recordation of the Grant Deed, Escrow Agent shall record all recordable documents delivered into Escrow for the Closing.

(d) Do such other actions as necessary, including obtaining and issuing the Title Policy, to fulfill its obligations under this Agreement.

(e) Direct Agency and Developer to execute and deliver any instrument, affidavit or statement, and to perform any act, which is reasonably necessary to comply with the provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated thereunder.

(f) Prepare and file with all appropriate governmental or taxing authorities uniform settlement statements, closing statements, tax withholding forms including IRS 1099-S forms, and be responsible for withholding taxes, if any such forms are provided for or required by law.

2.8 Closing. The Closing shall occur on or before the date that is thirty (30) days following the date on which all Developer Conditions Precedent and Agency Conditions Precedent have been satisfied or waived in writing but in all events by no later than the Outside Closing Date. The “**Outside Closing Date**” shall be December 31, 2022 provided that the Outside Closing Date shall be extended (a) to the date that is six (6) months following the final conclusion of such litigation if the Property, any proposed project or any City or other agency issued entitlement or Development Agreement is the subject of third party litigation, including, but not limited to, litigation challenging this Agreement, the disposition of the Property, any CEQA document or entitlement that is a condition precedent to Close of Escrow or the Agency’s right or ability to dispose of the Property or (b) for such additional period as may be requested by Developer, not to exceed six (6) months upon a court order or order of an administrative agency with jurisdiction over the Agency requiring Agency compliance with the real property disposal requirements of Government Code Section 54222 concerning notice and negotiation, as the same may be amended. For purposes of this Agreement, the “**Closing**” shall mean the time and day the Grant Deed (or in the case of phasing of Close of Escrow, the applicable Grant Deed) is recorded with the San Bernardino County recorder.

## 2.9 Delivery of Documents and Closing Funds.

2.9.1 At or before the Closing, Developer shall deposit into Escrow the following items with respect to the Property:

(a) Funds in an amount necessary to consummate the Closing, including the Purchase Price and Escrow costs set forth in Sections 2.2 and 2.7.1, respectively, less the amount of the Deposit;

(b) one (1) original executed and acknowledged Grant Deed;

(c) one (1) original executed Preliminary Change of Ownership Report for the Property; and

(d) one (1) original executed closing settlement statement.

2.9.2 At or before the Closing, Agency shall deposit into Escrow the following items with respect to the Property:

- (a) one (1) original executed and acknowledged Grant Deed;
- (b) one (1) original executed and acknowledged Cross Easement Agreement;
- (c) one (1) original executed and acknowledged Gateway Center Access Agreement;
- (d) one (1) original executed and acknowledged Storm Drain Easement Agreement;
- (e) one (1) duly executed non-foreign certification for the Property in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended;
- (f) one (1) duly executed California Form 593-W Certificate for the Property or comparable non-foreign person affidavit; and
- (g) one (1) original executed closing settlement statement.

2.9.3 At the Closing, Agency and Developer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the conveyance of the Property in accordance with the terms hereof, including, without limitation, an Owner's Title Insurance Affidavit in a form reasonably acceptable to Agency.

2.10 Title Insurance. Concurrently with recordation of the Grant Deed, the Title Company shall issue to Developer such policy of title insurance for the Property which at Developer's option may be an ALTA extended coverage owner's policy ("**Title Policy**") as may be required by Developer, and/or Developer's lenders or other institutions that may be providing financing, together with such endorsements as are reasonably requested by Developer and/or Developer's lenders or other institutions, insuring that Developer has a valid fee ownership interest in the Property, subject only to the Permitted Exceptions, and any other encumbrances expressly contemplated by this Agreement to be recorded at Closing. The Title Policy for the Property shall, at a minimum, be in the amount of the Purchase Price. The premium for the Title Policy, plus any additional costs, including the cost of surveys, and any endorsements requested by Developer shall be paid by the Agency.



2.11 Property Taxes and Assessments. Ad valorem taxes and assessments levied, assessed or imposed on the Property for any period prior to the Closing, if any, shall be paid by Agency. Ad valorem taxes and assessments levied, assessed or imposed on the Property for the period after the Closing shall be paid by Developer.

2.12 AS-IS CONVEYANCE. SUBJECT TO SATISFACTION OF THE DEVELOPER CONDITIONS PRECEDENT, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT AGENCY IS SELLING AND DEVELOPER IS PURCHASING THE PROPERTY ON AN “AS IS WITH ALL FAULTS” BASIS, CONDITION AND STATE OF REPAIR INCLUSIVE OF ANY AND ALL FAULTS AND DEFECTS, LEGAL, PHYSICAL, OR ECONOMIC, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE CLOSING (“**AS-IS CONDITION**”) AND THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES FROM AGENCY OR ANY OF AGENCY’S ELECTED OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES OR ATTORNEYS (EACH, A “**AGENCY PARTY**” AND COLLECTIVELY, “**AGENCY PARTIES**”) AS TO ANY MATTERS CONCERNING THE PROPERTY.

2.13 Independent Investigation. Developer acknowledges, agrees, represents, and warrants that, prior to Closing, Developer will have been given a full opportunity to obtain, review, inspect and investigate each and every aspect of the Property, either independently or through agents of the Developer’s choosing, including the following:

- (a) The size and dimensions of the Property.
- (b) The availability and adequacy of water, sewage, fire protection, and any other utilities serving the Property.
- (c) All matters relating to title including extent and conditions of title to the Property, taxes, assessments, and liens.
- (d) All legal and governmental laws, statutes, rules, regulations, ordinances, restrictions or requirements concerning the Property, including, without limitation, zoning, use permit requirements and building codes.
- (e) Natural hazards, including, without limitation, flood plain issues, currently or potentially concerning or affecting the Property.
- (f) Except as may be otherwise set forth in this Agreement, the physical, legal, economic and environmental condition and aspects of the Property, and all other matters concerning the conditions, use or sale of the Property, including, without limitation, any permits, licenses, agreements, liens, zoning reports, engineers’ reports and studies and similar information relating to the Property. Such examination of the condition of the Property has included examinations for the presence or absence of Hazardous Materials as Developer deemed necessary or desirable.

- (g) Any easements and/or access rights affecting the Property.
- (h) Any contracts and other documents or agreements affecting the Property.
- (i) All other matters of material significance affecting the Property.

2.14 Waivers and Releases. Effective as to each of the Phase 1 Parcels and the Phase 2 Parcel upon the Close of Escrow for such parcels, Developer shall waive and release Agency from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with: except as otherwise set forth in this Agreement, (i) all warranties of whatever type or kind with respect to the physical or environmental condition of the Property, whether express, implied or otherwise, including those of fitness for a particular purpose, tenantability, habitability or use; (ii) use, management, ownership or operation of the Property, whether before or after Closing; (iii) the physical, environmental or other condition of the Property; (iv) the application of, compliance with or failure to comply with any and all Applicable Laws with respect to the Property; (v) Hazardous Materials in, on, under or about the Property; and (vi) the As-Is Condition of the Property; the foregoing are collectively referred to as **“Property Claims”**. By releasing and forever discharging the Property Claims, Developer expressly waives any rights under California Civil Code Section 1542, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

INITIALS: DEVELOPER \_\_\_\_\_

Notwithstanding the foregoing, the release and waiver of Property Claims set forth in this Section 2.14 shall not apply to any Property Claims arising from breaches by Agency of this Agreement (including but not limited to, breaches of representations and warranties of Agency expressly set forth herein).

2.15 Covenants Regarding Operation and Maintenance Prior to Closing. From the Effective Date until the Closing or earlier termination of this Agreement, Agency shall operate and maintain the Property in a manner generally consistent with the manner in which Agency has operated and maintained the Property prior to the Effective Date. Notwithstanding the foregoing, from and after the Effective Date, Agency shall not: (a) cause nor voluntarily permit any new lien, encumbrance or any other matter to cause the condition of title to be changed, without Developer’s prior written consent; (b) enter into any agreements with any governmental agency, utility company or any person or entity regarding the Property, which would remain in

effect after the Closing, without obtaining Developer's prior written consent; or (c) amend any existing licenses, agreements or leases, or enter into any new licenses, agreements or leases, that would give any person or entity any right of possession to any portion of the Property, or which would remain in effect after the Closing. If Developer's consent is required by the terms of this Section 2.15, such consent shall not be unreasonably withheld, delayed, or conditioned; provided, however, in no event shall Developer be deemed to have acted unreasonably if the matter for which its consent is requested could, in Developer's reasonable discretion, have a material adverse impact on the Property or Developer's ability to construct a project thereon.

3. COMPLIANCE WITH CEQA

The Close of Escrow is contingent on CEQA approval by the City of Rialto as the lead agency and the Agency as a responsible agency. Development plans are being considered and completed. Since CEQA cannot be pursued until the development plan is in place, and financing (both private and public) cannot be pursued without a committed understanding of the pricing of the land, the Parties have entered into this Agreement is to enable Developer to make speculative investment in plans and to pursue investment approvals. Developer shall cooperate with the Agency and abide by the City's and Agency's environmental compliance procedures.

4. INTENTIONALLY OMITTED

5. INTENTIONALLY OMITTED.

6. INSURANCE AND INDEMNITY.

6.1 Insurance Requirements. On or before the Effective Date, Developer shall take out and maintain, a commercial general liability policy a minimum limit of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury and property damage, or such other higher policy limits as may be required by Developer's lenders or other institutions providing financing. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001). If commercial general liability insurance or other form with a general aggregate is used, the general aggregate limit shall be at least Four Million Dollars (\$4,000,000.00). Developer shall also take out and maintain or cause each of its contractors to take out and maintain a comprehensive automobile liability policy in an amount not less than One Million Dollars (\$1,000,000.00). If Developer desires to satisfy the foregoing insurance requirements through its general contractor, then Developer shall require in its construction contract with the general contractor that said general contractor comply with all of the requirements of this Section 6.1.

Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII or otherwise acceptable to Agency. The commercial general liability and comprehensive automobile policies hereunder shall name Agency Parties as an additional insured with respect to liability arising out of work or operations performed by or on behalf of Developer on or about the Property, including materials, parts or equipment furnished in connection with such work or operations.

Developer shall furnish Agency with a certificate of insurance evidencing the required insurance coverage and a standard additional insured endorsement. To the extent provided by the insurance carrier, the insurance policies shall be endorsed to notify Agency of any cancellation, termination or change that has a negative material effect on the coverage relative to the Property at least thirty (30) days in advance of the effective date of any such cancellation, termination or material change. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Agency, and the policy shall so provide. Any insurance, self-insurance or joint self-insurance maintained by Agency shall be in excess of and shall not contribute with the insurance required to be maintained by Developer. The insurance policies shall contain a waiver of subrogation for the benefit of Agency. The required certificate and endorsement shall be furnished by Developer to Agency prior to Developer being permitted access to the Property pursuant to Section 2.4.1.

Any deductibles or self-insured retentions in excess of two-hundred fifty thousand dollars (\$250,000) shall be disclosed to Agency. Any changes in deductibles and/or self-insured retention above the most recent disclosed amounts shall be disclosed to and reasonably approved by Agency, which may require Developer to provide proof of its ability to pay losses and costs of related investigation, claim administration, and defense expenses within the retention.

6.2 Developer's Indemnity. Developer shall indemnify, defend (with counsel reasonably acceptable to Agency), protect and hold Agency, harmless from any and all third party Claims, including Claims asserted by any tenants or other occupants of the Property with respect to the disposition of the Property, and any and all actions of the Developer and Agency Parties related to the disposition of the Property, including, but not limited to the Agency's approval of this Agreement and any subsequent instrument contemplated herein, or arising out of the actual or alleged presence or release of any Hazardous Materials on, about or from the Property following the Closing provided, however, that the foregoing indemnity, defense and hold harmless obligations do not apply to: (a) any portion of the Property prior to Developer's acquisition of such Property, (b) any Claims to the extent arising from the negligent acts or omissions or willful misconduct of Agency or the Agency Parties, (c) the mere discovery of existing conditions, contamination or Hazardous Materials at, on, under or emanating from the Property, the presence of which was caused by the Agency Parties. Insurance limits shall not operate to limit Developer's indemnity obligations under this Section 6.2. Notwithstanding anything to the contrary in this Section 6.2, any claims related to any third party Litigation Challenge, including Developer indemnity obligations, shall be controlled exclusively by Section 6.3.

6.3 Cooperation in the Event of Litigation Challenge. Agency and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other non-Agency governmental entity or official challenging the validity of any provision of this Agreement, the disposition of the Property, the Agency's right or ability to dispose of the Property, or any CEQA document(s) approved in connection therewith (each, a "**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

6.3.1 Meet and Confer. If a Litigation Challenge is filed, upon receipt of the petition, the Parties shall have twenty (20) days to meet and confer regarding the merits of such Litigation Challenge to determine whether they will jointly defend against the Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not adversely and materially impact any litigation deadlines. Agency and Developer shall mutually commit to meet all required litigation timelines and deadlines. If Agency and Developer agree jointly to defend the Litigation Challenge, they shall expeditiously enter a joint defense agreement, which shall include, among other things, provisions regarding the preservation of confidential communications. The Agency Manager is authorized to negotiate and enter such joint defense agreement in a form reasonably acceptable to the Agency Attorney and Developer's attorneys. Such joint defense agreement shall also provide that any proposed settlement of a Litigation Challenge shall be subject to Agency's and Developer's approval, each in its reasonable discretion. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by Developer, and by Agency in accordance with Applicable Laws, and Agency reserves its full legislative discretion with respect thereto.

6.3.2 Defense Election. If, after meeting and conferring, the Parties mutually agree (each in its sole discretion) to defend against the Litigation Challenge, then the following shall apply:

(a) For the purposes of cost-efficiency and coordination, the Parties shall first consider defending the Litigation Challenge with common counsel and under terms of a joint representation agreement mutually acceptable to Agency and Developer (each in its sole discretion), at Developer's sole cost and expense.

(b) If the Parties cannot reach timely and mutual agreement on a joint counsel, and Developer continues to elect (in its sole discretion) to defend against the Litigation Challenge, then:

(i) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice;

(ii) Agency may, in its sole discretion, elect to be separately represented by the Agency Attorney (and/or outside legal counsel of its choice) in any such action or proceeding with the reasonable costs of such representation to be paid by Developer;

(iii) Developer shall reimburse Agency, within twenty (20) business days following Agency's written demand therefor, which may be made from time to time during the course of such litigation, all necessary and reasonable costs incurred by Agency in connection with the Litigation Challenge, including Agency's administrative, outside legal fees and costs, and court costs.

The Parties intend that Agency's role under subsection (b)(ii)(2) shall be primarily oversight although Agency reserves its right to protect Agency's interests, and Agency shall

make good faith efforts to maximize coordination and minimize its Agency Attorney and any outside legal costs (for example, minimizing filing separate briefs, and duplication of effort to the extent feasible).

For any Litigation Challenge which Developer has elected to defend under this Section 6.3, Developer shall indemnify, and hold harmless Agency and Agency Parties from any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against Agency by way of judgment, settlement, or stipulation related to such Litigation Challenge.

6.3.3 Developer Election Not To Defend. If, after meeting and conferring, Developer elects, in its sole and absolute discretion, not to defend against the Litigation Challenge, it shall deliver written Notice to Agency regarding such decision. If Developer elects not to defend, Agency has the right, but not the obligation, in its sole discretion to (i) proceed to defend against the Litigation Challenge at its sole cost and expense and shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; and (ii) terminate this Agreement and, at Agency's option, consider the Developer's application for any related Agency Discretionary Entitlements or Agency Ministerial Permits withdrawn. In the alternative, if Developer and Agency both elect not to defend against the Litigation Challenge, Developer shall remain obligated to indemnify and hold Agency harmless from and against any damages, attorneys' fees or cost awards that are actually awarded. If, following receipt of Developer's Notice of election not to defend, Agency opts to take the lead role defending such Litigation Challenge and terminate this Agreement, then Agency shall be solely responsible for all damages, attorneys' fees or cost awards, if any, that are actually awarded from and after such time Agency has taken such lead role. Developer's obligations under this Section 6.3.3 shall survive the expiration or termination of this Agreement.

- 7. INTENTIONALLY OMITTED
- 8. INTENTIONALLY OMITTED
- 9. INTENTIONALLY OMITTED
- 10. DEFAULTS AND REMEDIES.

10.1 Default Remedies - General. Failure by either party to perform any action or covenant required by this Agreement within thirty (30) days following receipt of written Notice from the other party specifying the failure shall constitute a "**Default**" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such thirty (30) day period, a party shall be allowed additional time as is reasonably necessary to cure the failure so long as such party commences to cure the failure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion; however, such cure period shall not exceed sixty (60) days nor act to extend the Outside Closing Date. Upon occurrence of such Default and without any right to further notice or additional cure period, the non-defaulting party shall have all remedies available to it under this Agreement, including the right to terminate this

Agreement as set forth in Section 10.4 below. Neither party shall have the right to recover any punitive, consequential, or special damages.

10.2 Legal Actions. Upon the occurrence of a Default by Developer which is not related to a Closing Failure or a Closing Default as provided in Section 10.3 below, Agency shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy such Default, including the recovery of actual damages, subject to the limitations contained in Section 6.1 above; provided, however, that in no event shall Agency's pre-Closing remedies include specific performance of Developer's obligation to close Escrow on the Property. Developer's remedies in the event of a Default by Agency shall be limited to obtaining specific performance or injunctive relief, or terminating this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California, or in the Federal District Court for the Central District of the State of California.

10.3 Liquidated Damages in the Event of Closing Failure or Closing Default.

10.3.1 Liquidated Damages in the Event of a Closing Failure. ,  
IF THE CLOSE OF ESCROW FOR THE PROPERTY (OR IF THE PROPERTY IS PROPOSED TO BE CONVEYED IN PHASES, THE PHASE 1 PARCELS) DOES NOT TAKE PLACE ON OR BEFORE 5:00 P.M., PACIFIC TIME, ON OR BEFORE THE OUTSIDE CLOSING DATE ESTABLISHED BY THIS AGREEMENT FOR SUCH CLOSE OF FOR ANY REASON OTHER THAN DEFAULT BY DEVELOPER, DEFAULT BY AGENCY OR OCCURRENCE OF A DEPOSIT RETURN EVENT (OCCURRENCE OF ALL OF THE ABOVE, A "**CLOSING FAILURE**"), THE PARTIES ACKNOWLEDGE AND AGREE THAT (A) AGENCY WILL SUFFER DAMAGES, INCLUDING COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER DEVELOPER FOR THE PROPERTY, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HERewith, (B) IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES AND (C) CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE, ESCROW SHALL PAY TO THE AGENCY THE INITIAL DEPOSIT AND SUCH AMOUNT SHALL SERVE AS LIQUIDATED DAMAGES TO THE AGENCY FOR THE CLOSING FAILURE. RETENTION OF THE INITIAL DEPOSIT SHALL BE THE AGENCY'S SOLE AND EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF A CLOSING FAILURE, AND THE AGENCY WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST DEVELOPER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE; PROVIDED, HOWEVER, ALL OF DEVELOPER'S OBLIGATIONS TO INDEMNIFY AGENCY AS PROVIDED HEREIN THAT, BY THEIR TERMS, EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT, SHALL BE SEPARATE, ADDITIONAL, AND INDEPENDENT OBLIGATIONS OF DEVELOPER SURVIVING THE TERMINATION OF THIS

AGREEMENT. IN THE EVENT OF A CLOSING FAILURE, ESCROW SHALL RETURN THE ADDITIONAL DEPOSIT TO DEVELOPER.

10.3.2                    Liquidated Damages in the Event of a Closing Default by DEVELOPER. IF THE CLOSE OF ESCROW FOR THE PROPERTY (OR IF THE PROPERTY IS PROPOSED TO BE CONVEYED IN PHASES, THE PHASE 1 PARCELS) DOES NOT TAKE PLACE ON OR BEFORE 5:00 P.M., PACIFIC TIME, ON OR BEFORE THE OUTSIDE CLOSING DATE ESTABLISHED BY THIS AGREEMENT FOR SUCH CLOSE OF ESCROW, SOLELY AS A RESULT OF A DEFAULT BY DEVELOPER (INCLUDING FAILURE TO DELIVER THE DELIVERABLES REQUIRED PURSUANT TO SECTION 2.5.4 OF THIS AGREEMENT), OR TO DELIVER SUFFICIENT FUNDS TO CAUSE THE CLOSING TO OCCUR IN A TIMELY MANNER SUBJECT TO NOTICE AND CURE RIGHTS SPECIFIED HEREIN), IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2 (“**CLOSING DEFAULT**”), THEN THE PARTIES ACKNOWLEDGE AND AGREE (A) THAT AGENCY WILL SUFFER DAMAGES, INCLUDING COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER DEVELOPER FOR THE PROPERTY, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HERewith, (B) THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES AND (C) CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE, IN THE EVENT OF A CLOSING DEFAULT, ESCROW SHALL PAY TO THE AGENCY THE DEPOSIT AND SUCH AMOUNT SHALL SERVE AS LIQUIDATED DAMAGES TO THE AGENCY FOR THE CLOSING DEFAULT. RETENTION OF THE DEPOSIT SHALL BE THE AGENCY’S SOLE AND EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF A CLOSING FAILURE, AND THE AGENCY WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST DEVELOPER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE; PROVIDED, HOWEVER, ALL OF DEVELOPER’S OBLIGATIONS TO INDEMNIFY AGENCY AS PROVIDED HEREIN THAT, BY THEIR TERMS, EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT, SHALL BE SEPARATE, ADDITIONAL, AND INDEPENDENT OBLIGATIONS OF DEVELOPER SURVIVING THE TERMINATION OF THIS AGREEMENT.

10.3.3                    Statutory Acknowledgments Regarding Liquidated Damages Remedies. THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION 10.3 ARE NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO AGENCY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. BY PLACING THEIR INITIALS BELOW, DEVELOPER AND AGENCY SPECIFICALLY CONFIRM THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED



DAMAGES AGREED UPON, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: \_\_\_\_\_

AGENCY

\_\_\_\_\_

DEVELOPER

10.3.4 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Agency Clerk of Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on Developer shall be made by personal service upon Developer's registered agent for service of process in California, at or in such other manner as may be provided by law.

10.4 Termination. In addition to the automatic termination provided for under Sections 1.3, 2.4.52.8 and 6.3 above, this Agreement may be terminated by the non-defaulting Party if there is an uncured Default, after Notice from the party not in default and expiration of all cure periods.

10.5 Rights and Remedies Are Cumulative. Except as specified otherwise in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party, except as otherwise expressly provided herein.

10.6 Inaction Not a Waiver of Default. Except as specified otherwise in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## 11. GENERAL PROVISIONS.

11.1 Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("**Notice**") which either party may desire or be required to give to the other party under this Agreement must be in writing and shall be given by certified mail, return receipt requested and postage prepaid, personal delivery, or reputable overnight courier (but not by facsimile or email), to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency: Successor Agency to the Redevelopment Agency of the City of  
Rialto  
Office of the City Manager  
150 S. Palm Avenue  
Rialto, California 92376  
Attention: Agency Manager

With a copy to: Successor Agency to the Redevelopment Agency of the City of  
Rialto  
Office of the City Attorney  
150 S. Palm Avenue  
Rialto, California 92376  
Attention: City Attorney

and: Burke, Williams & Sorensen LLP  
1770 Iowa Avenue, Suite 240  
Attention: Eric Vail, Esq.

To Developer : Sandy Sigal, Chief Executive Officer  
NewMark Merrill Companies, Inc.  
5850 Canoga Avenue, Suite 650  
Woodland Hills, CA 91367

With a copy to: Mr. Michael P. Wippler, Esq.  
Of Counsel  
Dykema  
333 South Grand Avenue  
Suite 2100  
Los Angeles, CA 90071

And a copy to Amy E. Freilich, Esq  
Hepner & Myers LLP  
1241 Johnson Avenue, Suite 360  
San Luis Obispo, CA 91361.

Any Notice shall be deemed received on the date of delivery if delivered by personal service, on the date of delivery or refused delivery as shown by the return receipt if sent by certified mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

11.2 Force Majeure; Extension of Times of Performance. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: epidemic, pandemic, health orders or other orders of the federal, state or any regional or

local government or agencies or instrumentalities thereof; war; insurrection; strikes and labor disputes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; or acts or failures to act of any public or governmental agency or entity (except that acts or failures to act of Agency shall not excuse performance by Agency); moratorium; or a Severe Economic Recession (each a “**Force Majeure Delay**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause; provided, however, in the case of Severe Economic Recession such time extension shall commence to run as of the start of the Severe Economic Recession. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer. Developer’s inability or failure to obtain financing or otherwise timely satisfy the Developer Conditions Precedent on or before the Outside Closing Date shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay unless such inability, failure or delay is the result of a Severe Economic Recession. “**Severe Economic Recession**” means a quarterly decline of more than three percent (3%) in the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of US Gross Domestic Product (“**GDP**”) published by the US Department of Commerce Bureau of Economic Analysis (and not BEA’s subsequent monthly revisions), lasting more than two (2) consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession. Delays associated with a third party Litigation Challenge shall not constitute a Force Majeure Delay but shall extend the Outside Closing Date as provided, and subject to the limitations, in Section 2.8. Under no circumstances shall a Force Majeure Delay result in an extension to the Outside Closing Date.

11.3 Successors and Assigns. Subject to the restrictions on Developer Transfers set forth in Section 1.5 above, all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and Agency and their respective successors and assigns. Whenever the term “Developer” is used in this Agreement, such term shall include any successors and assigns as herein provided.

11.4 Assignment by Agency. The Agency shall have the right, in its absolute and sole discretion, to assign this Agreement, in whole or in part, to the City.

11.5 Relationship Between Agency and Developer. It is hereby acknowledged that the relationship between Agency and Developer is not that of a partnership or joint venture and that Agency and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the exhibits hereto, Agency shall have no rights, powers, duties or obligations with respect to the entitlement or development of the Property. Developer shall indemnify, protect, hold harmless and defend Agency from any Claims made against Agency arising from a claimed relationship of partnership or joint venture between Agency and Developer with respect to the development, operation, maintenance or management of the Property.

11.6 Agency Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by Agency, the Agency Manager or his or her designee is authorized to act on behalf of Agency, unless specifically provided otherwise or the context requires otherwise.

11.7 Counterparts. This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

11.8 Integration. This Agreement, including the exhibits hereto, contains the entire understanding between the Parties relating to the transactions contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

11.9 Brokerage Commissions. Agency and Developer each represents to the other that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the conveyance of the Property as described in this Agreement, or the negotiation and execution of this Agreement. Each party shall indemnify, defend, protect and hold the other party harmless from any and all Claims based upon any assertion that such commissions or fees are allegedly due from the party making such representations.

11.10 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise. References to specific section numbers shall include all subsections which follow the referenced section.

11.11 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words "include" and "including" shall be construed as if followed by the words "without limitation" The inclusion of the words "without limitation" in certain locations in the Agreement but not in others shall not be interpreted to change the meaning or effect of the prior sentence The Parties acknowledge that each party and his, her or its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with this Agreement.

11.12 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

11.13 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision,

condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

11.14 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Time (PST) Zone time. Furthermore, unless otherwise specified, “day” shall mean a calendar day.

11.15 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

11.16 Time of Essence. Time is expressly made of the essence with respect to the performance by Agency and Developer of each and every obligation and condition of this Agreement.

11.17 Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

11.18 Conflicts of Interest. No City Council member, official or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

11.19 Time for Acceptance of Agreement by Agency. This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency on or before forty-five (45) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

11.20 Confidentiality.

11.20.1 General Provisions. Any financial information provided by Developer to Agency (whether in written, graphic, electronic or any other form) that is clearly marked as “CONFIDENTIAL / PROPRIETARY INFORMATION”

(collectively, “**Confidential Information**”) shall be subject to the provisions of this Section 11.20; provided, however, that if Developer inadvertently fails to so mark the information but subsequently notifies Agency of the information’s confidential nature, then thereafter Agency shall treat such information as Confidential Information for purposes of this Agreement. Subject to the terms of this Section 11.20, Agency shall use good faith and diligent efforts to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 et seq.) or other applicable local, state or federal disclosure laws (collectively, “**Public Disclosure Laws**”). Notwithstanding the preceding sentence, Agency may disclose Confidential Information to its officials, employees, agents, attorneys and advisors, but only if and to the extent necessary to carry out the purpose for which the Confidential Information was disclosed consistent with the rights and obligations provided for hereunder. Developer acknowledges that Agency has not made any representations or warranties that any Confidential Information Agency receives from Developer will be exempt from disclosure under any Public Disclosure Laws. In the event Agency’s legal counsel determines that the release of any Confidential Information is required by Public Disclosure Laws, or by order of a court of competent jurisdiction, Agency shall promptly notify Developer in writing of Agency’s intention to release the Confidential Information so that Developer has the opportunity to evaluate whether to object to said disclosure and/or to otherwise take whatever steps it deems necessary or desirable to prevent disclosure. If the Agency Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, Agency may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

11.20.2 Litigation Regarding Public Disclosure Requirements.

If any litigation is filed seeking to make public any Confidential Information, Agency and Developer shall cooperate in defending the litigation, and Developer shall pay Agency’s actual costs of defending such litigation and shall indemnify Agency against all costs and attorneys’ fees awarded to the plaintiff in any such litigation. Alternatively, Developer may elect to disclose the Confidential Information rather than defend the litigation. Developer’s indemnity obligations under this Section 11.20 shall survive the expiration or termination of this Agreement.

11.20.3 Carve Outs from Non-Disclosure Requirements.

The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (i) is now, or hereafter becomes, through no act or failure to act on the part of Agency, generally known or available; (ii) is known by Agency at the time of receiving such information as evidenced by Agency’s public records; (iii) is hereafter furnished to Agency by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by Agency without any breach of this Agreement and without any use of or access to Developer’s Confidential Information as evidenced by Agency’s records; (v) is not clearly marked “CONFIDENTIAL /PROPRIETARY INFORMATION” as provided above (except where Developer notifies Agency in writing, prior to any disclosure of the Confidential Information, that omission

of the “CONFIDENTIAL/PROPRIETARY INFORMATION” mark was inadvertent); or  
(vi) is the subject of a written permission to disclose provided by Developer to Agency.

11.21 Non-liability of Officials and Employees of Agency. No member, official or employee of Agency shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by Agency or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement. Developer hereby waives and releases any claim it may have against the members, officials or employees of Agency with respect to any Default or breach by Agency or for any amount which may become due to Developer or its successors under the terms of this Agreement.

11.22 Covenant of Good Faith and Fair Dealing. Each party, in its respective dealings with the other party under or in connection with this Agreement, shall act in good faith and with fair dealing.

11.23 Applicable Law; Venue. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Bernardino or the U.S. District Court, Central California District.

11.24 Survival. The Parties’ indemnification obligations under Sections 2.4.1, 3.7, 6.2, 6.3, 11.5, 11.9, and 11.20 shall survive termination of this Agreement solely with respect to Claims arising during the Term or during any lesser period in which such indemnity is intended to apply.

11.25 Proprietary and Governmental Roles; Actions by Parties. Except where clearly and expressly provided otherwise in this Agreement, the capacity of the Agency in this Agreement shall be as owner, lessor, assembler, redeveloper and/or seller of property only (“**Proprietary Capacity**”), and any obligations or restrictions imposed by this Agreement on the Agency, shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the exercise by the Agency of its governmental authority (“**Governmental Capacity**”) with respect to any matter related to this Agreement. Determinations of the Agency in its Proprietary Capacity shall be made by City in its reasonable discretion. In any instance in which a Party shall be requested to consent to or approve of any matter with respect to which such Party’s consent or approval is required by any of the provisions of this Agreement, such consent or approval shall be given in writing. In addition, whenever not expressly otherwise stated: (a) the Agency when acting in its Governmental Capacity shall be permitted to utilize its sole discretion with respect to matters requiring its approval except as otherwise specified in any applicable Governmental Requirements; (b) the Agency when acting in its Proprietary Capacity shall not unreasonably withhold, condition or delay its approvals with respect to matters requiring its approval under this Agreement; and (c) Developer shall not unreasonably withhold, delay or condition its consent with respect to matters requiring its approval under this Agreement.

11.26 Action Taken. Following its approval by the Agency, this Agreement shall be administered by any designee of the City Manager or the Agency Manager. Except where the

terms of this Agreement expressly require the approval of a matter or the taking of any action by the City Council, any matter to be approved by the Agency shall be deemed approved, and any action to be taken by the Agency shall be deemed taken, upon the written approval by the Agency Manager (or designee). The Agency Manager or designee shall have the authority to issue interpretations with respect to this Agreement and to determine whether any action requires the approval of the City Council. All major amendments or modifications of this Agreement shall require the approval of the City Council. All waivers and extensions of time for performance under this Agreement shall be approved by the Agency Manager (or designee) unless such action requires approval by the City Council under applicable law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.



**AGENCY:**

SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE CITY  
OF RIALTO, a California public agency

By: \_\_\_\_\_  
          Marcus Fuller, Agency Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
          Eric Vail, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
          Barbara McGee, City Clerk

**DEVELOPER:**

NEWMARK MERRILL COMPANIES, Inc., a  
California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**SITE MAP - PROPERTY**

EXHIBIT A

**EXHIBIT B**

**LEGAL DESCRIPTION – PROPERTY**

EXHIBIT C

## **EXHIBIT C**

### **RECORDING REQUESTED BY AND AFTER RECORDATION MAIL TO:**

Successor Agency to the Redevelopment  
Agency of the City of Rialto  
Office of the City Manager  
150 S. Palm Avenue  
Rialto, California 92376  
Attention: Agency Manager

*This document is exempt from the payment of a recording fee  
pursuant to Government Code §§ 6103, 27383*

*(Space Above This Line for Recorder's Use Only)*

## **GRANT DEED**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Successor Agency to the Redevelopment Agency of the City of Rialto, a California public agency ("**Grantor**"), hereby grants to Newmark Merrill Companies, Inc., a California corporation ("**Grantee**"), the real property (the "**Property**") located in the City of Rialto, County of San Bernardino, California, known as [REDACTED] and more particularly described in Attachment No. 1 attached hereto and incorporated in this grant deed ("**Grant Deed**") by reference.

1. Covenants. Grantee expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that Grantee and all such successors and assigns and all persons claiming under or through it, shall develop the Property subject to the Prohibition set forth in Section 2 of this Grant Deed.

2. Prohibition on Adult-Oriented Businesses. Adult use or business shall be specifically prohibited on the Property. As used in this Grant Deed, the term "adult use" or "adult business" shall have the meaning provided in Chapter 18.105.020 of the Rialto Municipal Code, as it may be amended, or its successor.

3. Effect, Duration and Enforcement of Covenants.

(a) It is intended and agreed that the covenants and agreements set forth in this Grant Deed shall be covenants running with the land and that they shall be, in any event and

EXHIBIT C

without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, (i) binding for the benefit and in favor of Grantor, as beneficiary; and (ii) binding against Grantee, its successors and assigns to or of the Property. The agreements and covenants herein shall be binding on Grantee itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Property.

(b) Grantor shall have the right, in the event of any and all of such covenants of which it is stated to be the beneficiary, to institute an action for injunction and/or specific enforcement to cure an alleged breach or violation of such covenants, subject to Section 4(c) below.

(c) Grantee shall be entitled to written notice from Grantor and shall have the right to cure any alleged breach or violation of all or any of the covenants set forth in this Grant Deed; provided that Grantee shall cure such breach or violation within thirty (30) days following the date of written notice from Grantor, or in the case of a breach or violation not reasonably susceptible of cure within thirty (30) days, Grantee shall commence to cure such breach or violation within such thirty (30) day period and thereafter diligently to prosecute such cure to completion within a reasonable time.

4. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument encumbering the Property; provided, however, that any successor of Grantee to the Property (other than the Grantor in the event Grantor re-acquires title to the Property) shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. Amendments. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property.

6. Grantee's Acknowledgment. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

7. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

#### EXHIBIT C

Successor Agency to the Redevelopment  
Agency of the City of Rialto, a California  
public agency

By: [form document – do not execute]  
\_\_\_\_\_, Agency Manager  
*[SIGNATURE MUST BE NOTARIZED]*

\_\_\_\_\_, City Attorney

\_\_\_\_\_, a

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 \_\_\_\_\_  
*[SIGNATURE MUST BE NOTARIZED]*  
 Title: \_\_\_\_\_

IRV #4815-1362-3037 v6

## ACKNOWLEDGMENTS

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 San Bernardino )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

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 San Bernardino )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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.

EXHIBIT C

Signature \_\_\_\_\_

EXHIBIT C



**ATTACHMENT NO. 1**

**LEGAL DESCRIPTION – PROPERTY**