

**PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS**

**by and between**

**THE CITY COUNCIL OF THE CITY OF POMONA, ACTING IN ITS CAPACITY AS  
THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF  
THE CITY OF POMONA**

**AND**

**JOHN PENA IRREVOCABLE FAMILY LIVING TRUST 82-6632724**

**for**

**MISSION PROMENADE**

**101 W. Mission Boulevard**

Date: \_\_\_\_\_, 2018

## TABLE OF CONTENTS

1.	RECITALS:.....	4
2.	PURCHASE AND SALE. ....	5
3.	PURCHASE PRICE AND DEPOSITS.....	6
4.	CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS. ....	6
5.	SERVICE CONTRACTS.....	8
6.	PREPAID RENT AND DEPOSITS .....	9
7.	CONDITIONS TO CLOSING.....	9
8.	OPENING OF ESCROW.....	9
9.	CLOSING DATE. ....	9
10.	SELLER'S DELIVERIES TO ESCROW. ....	10
11.	BUYER'S DELIVERIES TO ESCROW.....	10
12.	CLOSING. ....	10
13.	CLOSING COSTS.....	11
14.	PRORATIONS.....	11
15.	COVENANTS REGARDING CONTINUED OPERATION.....	12
16.	CONDEMNATION OR DESTRUCTION OF PROPERTY. ....	12
17.	SELLER'S WARRANTIES.....	12
18.	AS IS SALE. ....	14
19.	SELLER'S DEFAULT .....	15
20.	BROKERS FEES AND DISCLOSURES. ....	15
21.	NOTICES.....	15
22.	GENERAL PROVISIONS.....	16

## LIST OF EXHIBITS

EXHIBIT "A"	LEGAL DESCRIPTION.....	20
EXHIBIT "B"	DESCRIPTION OF PROPERTY .....	21
EXHIBIT "C"	DUE DILIGENCE DOCUMENTS .....	22
EXHIBIT "D"	GRANT DEED.....	24

<b>EXHIBIT "E"</b>	<b>RENT ROLL.....</b>	<b>27</b>
<b>EXHIBIT "F"</b>	<b>TENANT ESTOPPEL/CERTIFICATE .....</b>	<b>29</b>
<b>EXHIBIT "G"</b>	<b>SELLER'S ESTOPPEL CERTIFICATE .....</b>	<b>30</b>
<b>EXHIBIT "H"</b>	<b>ASSIGNMENT AND ASSUMPTION OF LEASES.....</b>	<b>31</b>
<b>EXHIBIT "I"</b>	<b>BILL OF SALE .....</b>	<b>34</b>
<b>EXHIBIT "J"</b>	<b>ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS ....</b>	<b>35</b>
<b>EXHIBIT "K"</b>	<b>NOTICE TO TENANTS .....</b>	<b>38</b>

DRAFT

## PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This Purchase and Sale Agreement and Escrow Instructions ("**Agreement**") is dated \_\_\_\_\_ for reference purposes only and is made and entered into by and between THE CITY COUNCIL OF THE CITY OF POMONA ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF POMONA, a public entity ("**Seller**" or "**Successor Agency**"), and JOHN PENA IRREVOCABLE FAMILY LIVING TRUST 82-6632724 ("**Buyer**" or "**Buyers**"), with reference to the following:

### 1. RECITALS:

A. The property commonly known as 101 West Mission Boulevard, Pomona, California and legally described on **Exhibit "A"** attached hereto and depicted on **Exhibit "B"** attached hereto ("**Property**") was formerly owned by the Redevelopment Agency of the City of Pomona ("**Agency**").

B. As part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed AB X1 26 ("**AB 26**") requiring that each redevelopment agency be dissolved. On June 27, 2012 the State Legislature adopted Assembly Bill 1484 ("**AB 1484**") amending the provisions of AB 26.

C. In accordance with the requirements of AB 26 and AB 1484, the City Council of the City of Pomona ("**City**") on January 9, 2012, adopted City Council Resolution No. 2012-8 electing to become the Successor Agency ("**Successor Agency**") to the former Redevelopment Agency of the City of Pomona pursuant to California Health and Safety Code Sections 34171(j) and 34173.

D. Pursuant to California Health and Safety Code Sections 34173 and 34175(b) and City Council Resolution No. 2012-8 all of the assets and properties of the former Redevelopment Agency of the City of Pomona were transferred to the Successor Agency by operation of law.

E. The Successor Agency is the current legal owner of the Property as the successor in interest to the former Redevelopment Agency of the City of Pomona.

F. This disposition of the Property is made by the Successor Agency and approved by Resolution of the Pomona Oversight Board ("**Oversight Board**") after notice of a public meeting in accordance with California Health and Safety Code Section 34181(f).

G. The Property is conveyed by Successor Agency in accordance with the Long Range Property Management Plan (Site No. 7) approved on July 10, 2014 by the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Pomona pursuant to Resolution No. OB-2014-4, and subsequently approved by the California Department of Finance ("**DOF**") as evidenced by that certain letter dated October 7, 2014 ("**DOF Approval**").

H. Seller desires to sell, transfer and convey the Property to Buyer, and Buyer desires to purchase and accept the same from Seller on the other terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties hereby agree as follows:

## 2. PURCHASE AND SALE.

Buyer agrees to purchase and Seller agrees to sell, subject to and upon the terms and conditions hereinafter set forth, the Property as described below (collectively, the "Property"):

(a) All that certain real property commonly known as 101 West Mission Ave., Pomona, California, as more particularly described in Exhibit "B" and legally described in Exhibit "A" hereto (collectively, the "**Land**"), together with all tenements, hereditaments, easements, rights-of-way, appurtenances, oil, gas, water or mineral rights, development rights and air rights appertaining to the Land or to the Improvements and owned by Seller;

(b) That leased multi-tenant building (the "**Building**") situated on the Land, together with all other improvements located on the Land or appurtenant thereto, including two residential units identified as Assessor's Parcel Number 8341-008-916 and 8341-008-917, but excluding any and all other residential condominium units, residential airspace and all rights with such residential units, and all rights held by the homeowners association, as more particularly described in the condominium plan, CCR's and bylaws associated with the Property (collectively, "**Improvements**"; the Land and the Improvements are hereinafter collectively called the "**Real Property**");

(c) All furniture, furnishings, machinery, equipment and fixtures owned by Seller attached to the Improvements and located at and used in connection with the ownership, operation and maintenance of the Real Property as of the Effective Date, including, without limitation, heating, lighting, air conditioning, ventilating, plumbing, electrical or other mechanical equipment (collectively, the "**Fixtures**");

(d) All written leases, tenancies and rental or occupancy agreements granting possessory rights in, on or covering the Real Property in effect as of the Effective Date, together with all written modifications, extensions, amendments and guarantees thereof, together with such other written leases of the Improvements as may be made prior to the Close of Escrow in accordance with the terms of this Agreement (collectively, the "**Leases**"), and all security deposits, letters of credit or guaranties currently, actually held by Seller in connection with the Leases, if any;

(e) All written contracts, agreements, guarantees, warranties and indemnities, if any, affecting the ownership, operation, development, management and maintenance of the Land, Improvements, Personal Property and Leases (collectively, the "**Contracts**");

(f) Rights in all plans, maps, plats, permits, models, drawings, specifications, blueprints, surveys, engineering reports, environmental reports, owner's association documents, and other technical descriptions or materials relating in any way to the Land, Improvements, Personal Property, Leases or Contracts (collectively, the "**Intangibles**"); and

(g) To the extent assignable, all certificates, occupancy and use certificates, permits, authorizations, consents, variances, waivers, approvals and the like from any governmental or quasi-governmental entity or instrumentality affecting the ownership, development, operation or

maintenance of the Real Property (collectively, the “**Licenses**”).

(h) The Real Property, Personal Property, Leases, Contracts, Intangibles and Licenses are referred to herein collectively as the “**Purchased Property**.”

### **3. PURCHASE PRICE AND DEPOSITS.**

The purchase price (the “**Purchase Price**”), for the Purchased Property shall be the sum of Five Million Seven Hundred Fifty Thousand and No/100 Dollars (\$5,750,000), which shall be paid to Seller by Buyer as follows:

(a) Within three (3) business days from the approval of this Agreement by the Oversight Board, Seller shall deposit Fifty Thousand Dollars (\$50,000) as its Earnest Money Deposit with Escrow Agent (“**Earnest Money Deposit**”).

(b) Upon the expiration of the Due Diligence Period the Total Earnest Money Deposit shall become nonrefundable but applicable to the Purchase Price and retained by Escrow Holder until Closing, except upon the default of Buyer, the provisions of paragraph 3(e) of this Agreement shall apply and the Earnest Money Deposit shall be transferred to Seller as liquidated damages.

(c) On or before the date that is three (3) business days prior to the Close of Escrow, Buyer shall deposit the remainder of the Purchase Price into Escrow.

(d) The Parties agree that upon the Close of Escrow, the Earnest Money Deposit, together with any interest earned thereon while in Escrow, shall be applicable to the Purchase Price and shall be credited toward the Purchase Price at the Close of Escrow.

(e) **If Buyer refuses to complete the transfer of title to the Site, to which Seller is prepared to deliver insurable title in accordance with the terms and conditions of this Agreement, this Agreement may be terminated at the option of Seller, and the parties agree that the Total Earnest Money Deposit and any interest earned thereon, shall be forfeited by Buyer and paid to or retained by the Seller as liquidated damages which sum the Parties agree is a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the range of harm to Seller that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the place provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party was represented by counsel who explained the consequences of this liquidated damages provision at the time this Agreement was made.**

Buyer initial here: \_\_\_\_\_

Seller initial here: \_\_\_\_\_

### **4. CONDITIONS PRECEDENT TO BUYER’S OBLIGATIONS.**

The following are conditions precedent to Buyer’s obligation to purchase the Purchased Property that shall be satisfied or waived in Buyer's sole and absolute discretion within thirty (30) days of Opening of Escrow (“**Due Diligence Period**”):

(a) *Title Contingency.* Not later than one (1) Business Day after the Opening of

Escrow, Seller shall order a preliminary title report (the “**Title Report**”) regarding the Purchased Property issued by \_\_\_\_\_), (the “**Title Company**”), together with copies of all documents referred to as exceptions therein in as legible a form as possible (collectively, the “**Title Documents**”), copies of which shall be delivered to Buyer not later than five (5) days after the Opening of Escrow. Buyer's written approval of the exceptions to title shown in the Title Report (the “**Permitted Exceptions**”) shall be a condition precedent to Buyer's obligation to purchase the Purchased Property. Within the Due Diligence Period Buyer shall approve or disapprove in writing the Title Documents, including all exceptions thereto; provided however, that Buyer's failure to approve or disapprove the Title Report and Title Documents shall constitute Buyer's disapproval thereof. Upon Buyer's disapproval, the Seller shall have five (5) days to agree to cure at Closing any exceptions disapproved in writing by Buyer. If the Seller elects not to cure any exceptions disapproved by Buyer, and Buyer elects not to waive its disapproval and to accept such disapproved exception as Permitted Exceptions, then the Agreement shall terminate, the Escrow shall be deemed cancelled, Buyer's Earnest Money Deposit shall be returned to Buyer, each Party shall pay ½ of the escrow fees, and neither party shall have any further duty or obligation to the other.

(b) *Due Diligence Review.* No later than five (5) calendar day after the Opening of Escrow, Seller shall deliver to Buyer the due diligence documents described on **Exhibit “C”** (“**Due Diligence Documents**”). Not later than the end of the Due Diligence Period, Buyer shall deliver to Seller and Escrow Holder written notice of Buyer's approval or disapproval of its due diligence review of the Due Diligence Documents, the Purchased Property and feasibility of this transaction (the “**Due Diligence Examination**”). Buyer shall be deemed to have disapproved its Due Diligence Examination and not to have removed all of its contingencies to Closing unless Buyer shall provide written notice of its approval of same to Seller and Escrow Holder prior to the expiration of the Due Diligence Period. During the Due Diligence Period, and thereafter until Close of Escrow, Buyer may perform due diligence examinations, reviews and inspections of all matters pertaining to the Purchased Property, including, the feasibility of the Purchased Property for Buyer's intended purposes, survey and title matters, environmental and governmental compliance matters, matters pertaining to the tenants and Leases, and investigations concerning the physical and financial condition of the Purchased Property and local market conditions. All due diligence examinations, reviews and inspections conducted by Buyer shall be at Buyer's sole cost and expense. Seller shall provide Buyer with reasonable access to the Purchased Property, the tenants and to Seller's agents and employees involved in the management of the Purchased Property upon reasonable notice. Buyer shall, at all times, conduct its due diligence review, inspections and examinations in a manner so as to not cause damage to the Purchased Property and so as to not unreasonably interfere with, disturb or otherwise violate the rights of any tenant of the Purchased Property. Buyer agrees to indemnify, defend and hold Seller and the Purchased Property harmless from and against any and all claims, loss, cost, damage, liability or expense arising from the performance by Buyer, its employees, its contractors, subcontractors, brokers, agents and representatives of its due diligence reviews, inspections and examinations hereunder (the foregoing obligations surviving any termination of this Agreement). In no event shall Buyer make any intrusive physical testing (environmental, structural or otherwise) at the Purchased Property (such as soil borings or the like) without Seller's prior written consent (which Seller may grant or withhold in its sole and absolute discretion), and Buyer shall in all events promptly return the Purchased Property to its prior condition and repair thereafter. Prior to entry upon the

Purchased Property Buyer shall obtain insurance covering Buyer's indemnity, hold harmless, and defense obligations to Seller pursuant to this paragraph. Prior to entry upon the Purchased Property for such Investigations Buyer shall furnish to Seller duplicates of appropriate certificates of commercial general liability insurance in the amount of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage and Two Million Dollars (\$2,000,000) general aggregate limit, naming Seller as an additional insured, insuring Buyer's obligations and responsibilities under this paragraph (b). Buyer shall maintain each such policy in effect until the Close of Escrow.

(c) In the event Buyer should not complete the purchase of the Purchased Property, Buyer shall return all Due Diligence Documents in its possession to Seller.

(d) Buyer shall have the right to make additional requests for due diligence items as Buyer reasonably deems appropriate. The Seller shall reasonably cooperate with the Buyer in providing those additional items that are requested, although Buyer's sole remedy in the event the Seller does not provide items requested by the Buyer is to terminate the Escrow.

(e) Any additional third party reports, including updating existing reports, shall be at the Buyer's sole cost and expense.

(f) *Taxes, Assessments, Liens, Other Encumbrances.* At Closing, subject to the parties' proration obligations, Seller shall pay and remove all delinquent taxes, assessments, liens, Mechanics' Liens, Judgments and other encumbrances (collectively, "**Liens**") from title to the Purchased Property, other than the Permitted Exceptions. Taxes and ongoing assessments shall be prorated as of the Close of Escrow. Prior to Closing, Seller shall deliver to Escrow releases, satisfactions, withdrawals, dismissals with prejudice, releases of mechanics' liens and any other documents in recordable form ("**Releases**") sufficient to remove all Liens other than Permitted Exceptions, from title. At the Closing Escrow Holder shall pay all Liens, except Permitted Exceptions, from Seller's proceeds of sale and shall record all Releases necessary to remove all Liens, other than Permitted Exceptions, from title, and obtain the issuance of owner's title insurance as provided in paragraph 11 of this Agreement.

(g) If Buyer disapproves any due diligence item in (a) through (f) of this subsection after the expiration of the Due Diligence Period, and Buyer refuses to close Escrow, then Buyer's Total Earnest Money Deposit shall be transferred to Seller as liquidated damage in accordance with Section 3(e) of this Agreement.

## **5. SERVICE CONTRACTS.**

On or prior to the expiration of the Due Diligence Period, Buyer shall notify Seller if there are any service contracts, management contracts or other operating agreements currently affecting the Purchased Property which Buyer wishes to assume upon the Closing (those which Buyer elects to assume are hereinafter referred to as the "**Service Contracts**"). Any failure by Buyer to give such notice shall be deemed to constitute Buyer's election to not assume any service contracts, management contracts or other operating agreements, other than the Leases, from Seller upon the Closing, and Seller shall cancel all such contracts and agreements upon the Closing. Notwithstanding the foregoing, Buyer shall assume all Service Contracts which by their terms are not cancelable prior to the Closing Date.

## 6. PREPAID RENT AND DEPOSITS

Seller shall provide Buyer with a list of all rents and deposits owed by each individual tenant and any reserves held by Seller for the Homeowners Association or the Property being purchase by Buyer. Buyer shall sign a written assumption agreement agreeing to hold the prepaid rent and deposits in accordance with the applicable leases or rental agreements and deliver the assumption agreement into Escrow for delivery to Seller.

## 7. CONDITIONS TO CLOSING.

(a) *Buyer's Conditions of Closing.* Buyer's obligation to close this transaction shall be conditioned upon the following: (i) Seller shall have fully performed and complied with its material obligations, covenants and agreements under this Agreement; and (ii) there shall have been no material adverse changes in the physical or financial condition of the Purchased Property from and after the date hereof (for purposes hereof, the term "material" meaning having a financial impact of not less than Fifty Thousand Dollars (\$50,000); and (iv) all contingencies shall be satisfied or waived by Buyer.

(b) *Seller's Conditions of Closing.* Seller's obligation to close this transaction shall be conditioned upon the following: (i) Buyer shall have fully performed and complied with its obligations, covenants and agreements under this Agreement and (ii) Buyer shall have deposited the Purchase Price into Escrow.

## 8. OPENING OF ESCROW.

Within three (3) days of the execution of this Agreement by Buyer and Seller, and the approval of this Agreement by the Oversight Board, the parties shall deposit a fully executed copy of this Agreement, or fully executed counterparts thereof, with \_\_\_\_\_ ("Escrow Holder"). Escrow Holder shall promptly execute the Acknowledgement at the end of this Agreement. Escrow is deemed to be opened on the date of deposit of the Agreement with Escrow (the foregoing being herein called the "**Opening of Escrow**"). This Agreement shall serve as the instructions to the Escrow Holder to consummate the purchase and sale transaction contemplated hereunder. Seller and Buyer agree to execute such additional and supplementary escrow instructions as may be reasonably required to enable Escrow Holder to comply with the terms of this Agreement. In the event there is a conflict between this Agreement and the additional escrow instructions, the terms and conditions outlined in this Agreement will prevail unless the additional escrow instruction expresses an intent to modify this Agreement.

## 9. CLOSING DATE.

The closing (the "**Closing**") shall mean the recordation in the Office of the County Recorder of Los Angeles County of a Grant Deed in the form attached hereto as **Exhibit "D"** (the "**Grant Deed**") transferring the Purchased Property from Seller to Buyer, free and clear of all liens and encumbrances, other than the Permitted Exceptions. The Closing shall occur on or before thirty (30) days after all of Seller's and Buyer's contingencies have been satisfied or waived (the "**Closing Date**") but in no event later than December 31, 2017. The Closing Date may be extended by mutual written consent of Buyer and Seller delivered to Escrow. If the escrow is not in a condition to be closed on the Closing Date, or any extended Closing Date, then a party to this Agreement who is not in default may notify the other Party, and the Escrow

Holder, in writing that unless the Closing occurs within 5 business days following the notice that the Escrow shall terminated.

#### **10. SELLER'S DELIVERIES TO ESCROW.**

On or prior to the Closing Date, Seller shall deliver or cause to be delivered to Escrow Holder, duly executed, and where appropriate acknowledged, originals of the following documents with respect to the Purchased Property:

- (a) The Deed;
- (b) A duly executed counterpart of an assignment and assumption of leases, in form attached as **Exhibit "H"** or such other form which is reasonably acceptable to the Seller and Buyer, pursuant to which the Seller shall assign all of its interest in and to the tenant leases to Buyer (the **"Assignment of Leases"**);
- (c) A duly executed bill of sale, in form attached as **Exhibit "I"** or such other form which is reasonably acceptable to the Seller and Buyer, pursuant to which the Seller shall transfer all of its interest in the personal property, if any, to the Buyer (the **"Bill of Sale"**).
- (d) A duly executed counterpart of an assignment and assumption agreement, in form attached as **Exhibit "J"** or such other form which is reasonably acceptable to the Seller and Buyer, pursuant to which the Seller shall assign all of its interest in and to the Service Contracts to Buyer;
- (e) A certificate (the **"Certificate"**) confirming that Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code;
- (f) A completed California FTB Form 597;
- (g) Notices to all tenants of the Purchased Property (**"Notices to Tenants"**), in a form attached as **Exhibit "K"** or such other form which is reasonably acceptable to Seller and Buyer;
- (h) The originals of the Leases, if and to the extent in Seller's possession; and
- (i) Such additional documents and instruments as may be reasonably required by Buyer and Escrow Holder in order to consummate the transaction.
- (j) To the extent available, the Estoppel Certificates, in the form attached as **Exhibit "F"** or such other form which is reasonably acceptable to the Seller and Buyer, as more fully set forth below

#### **11. BUYER'S DELIVERIES TO ESCROW.**

On or before the Closing Date, Buyer shall deliver or cause to be delivered to Escrow Holder, duly executed, and where appropriate acknowledged, originals of the documents shown below:

- (a) The balance of the Purchase Price;
- (b) A duly executed counterpart of the Assignment of Leases;
- (c) A duly executed counterpart of the Assignment of Contracts, if applicable;
- (d) A duly executed assignment and assumption of prepaid rentals and deposits; and
- (e) Such additional documents and instruments as may be reasonably required by Seller and Escrow Holder in order to consummate the transaction.

#### **12. CLOSING.**

Escrow Holder shall close the Escrow when Escrow Holder holds all documents, funds and instruments required under this Agreement to be deposited into Escrow, all of the Seller's and Buyer's contingencies have been satisfied or waived and the Title Company is prepared to issue the Buyer a CLTA owner's policy of title insurance, evidencing Buyer's ownership in the

Purchased Property subject only to (i) the Permitted Exceptions, (ii) those liens and encumbrances contemplated hereunder; and (iii) the preprinted terms, conditions and reservations contained in the owner's policy. Upon Closing, Escrow Holder shall: (1) record the Deed in the Office of the County Recorder of Los Angeles County; (2) deliver to Seller the Purchase Price as adjusted for prorations and adjustments under this Agreement, and less deductions for Seller's share of closing costs payable by Seller on account of this transaction, by wire or in such other manner as the Seller shall specify; (3) deliver an original of the Assignment of Leases and Assignment of Contracts (if applicable) to each of Buyer and Seller; (4) deliver the assignment and assumption agreement for rents and deposits to Seller with a copy to Buyer; (5) deliver the original of the Bill of Sale to Buyer; (6) deliver the originals of the Leases to Buyer (and copies, to the extent that the Seller does not have originals; and (7) deliver the originals of the Notices to Tenants to Buyer.

### **13. CLOSING COSTS.**

Seller shall pay that portion of the premium payable for the Owner's Policy which would be payable for a standard CLTA owner's policy of title insurance in the face amount of the Purchase Price, any documentary transfer tax due upon recordation of the Deed, and one-half (1/2) of the fees for the Escrow. Buyer shall pay the balance of the title insurance premium payable for any additional title insurance requested by Buyer as well as any costs for endorsements requested by Buyer, all recording charges for the Deed and one-half (1/2) of the fees for the Escrow, and all costs associated with any financing that the Buyer shall secure in connection with this transaction, including recording fees of any deed of trust. Seller and Buyer shall each be responsible for their respective attorneys' fees. Any other closing costs shall be shared in the manner that is customary in the county in which the Purchased Property is located.

### **14. PRORATIONS.**

(a) *Taxes and Rentals.* At Closing, Escrow Holder shall prorate real estate taxes and assessments, for the current tax year. Real estate taxes and assessments shall be prorated based upon the latest available tax information. All Rentals and other income from the property actually collected by Seller shall be prorated by Escrow Holder as of 11:59 p.m. on the day preceding the Closing Date. All accrued and unpaid rentals at the time of Closing shall not be prorated and shall become the property of Buyer without any obligation to Seller for accounting or reimbursement. Buyer shall be credited (as a credit to Buyer on its closing statement, but not as a credit to the Purchase Price) at Closing by Escrow Holder with the amount of all prepaid rent, security and other deposits currently, actually held or collected on behalf of tenants under the Leases, if any, the amount of which credit shall be provided to Escrow Holder by Buyer and Seller, and any reserves held by Seller for the Homeowners Association or the Property being purchase by Buyer. To the extent that any taxes and assessments are not fully prorated on the date of the Closing, then the parties shall, as soon as reasonably possible thereafter, prorate or adjust such amounts between themselves outside of Escrow.

(b) *Service Contracts.* Any expenses or charges payable under any Service Contracts which Buyer elects to assume under this Agreement shall be prorated by Escrow Holder in accordance with a schedule thereof to be provided to Escrow Holder by Seller and Buyer. To the extent that any such charges are not prorated as of the date of the Closing, or require adjustment after the Closing based upon bills subsequently received, the parties shall adjust the same between themselves as soon as reasonably possible after the Closing outside of Escrow.

## **15. COVENANTS REGARDING CONTINUED OPERATION.**

(a) From and after the date of this Agreement, Seller agrees to operate the Purchased Property in its normal course of business. Seller agrees to repair and maintain or cause to be repaired and maintained the Purchased Property, Improvements and the Fixtures in its condition as of the date of execution of this Agreement, reasonable wear and tear excepted.

(b) From and after the date of this Agreement, Seller shall not, without Buyer's prior written consent thereto (which consent shall not be unreasonably withheld :

(1) extend, renew, modify or replace any of the Service Contracts, Management contracts, or other operating agreements which will result in such extension, renewal, modification or replacement being effective more than thirty (30) days after the Closing Date;

(2) make any alterations to the Purchased Property, except in the ordinary course of business, as required by any lease agreements or as required by law.

(3) extend, renew, or modify any existing Lease agreements, except as required by the lease agreement.

(4) voluntarily subject the Purchased Property to any additional liens, encumbrances, easements, rights of way or similar matters which will remain effective after the Closing Date unless reasonably acceptable title insurance coverage, whether by endorsement or otherwise, is available to insure around any such item or the lien or encumbrance will be removed at Closing.

(5) enter into any new Lease agreements for the Purchased Property or any portion of the Purchased Property.

## **16. CONDEMNATION OR DESTRUCTION OF PROPERTY.**

In the event that, after the date hereof but prior to the Closing, either (a) any portion of the Purchased Property is taken pursuant to or in lieu of and under threat of eminent domain proceedings, or (b) any of the Improvements are materially damaged or destroyed by any casualty, then, within ten (10) days after Buyer's receipt of notice from Seller of the occurrence, cost and applicable insurance coverage of the same, Buyer shall elect whether to proceed with the transactions contemplated by this Agreement or to terminate this Agreement. If Buyer elects to terminate this Agreement, then the Escrow shall be deemed cancelled and neither party shall have any further rights or obligations under this Agreement except as to those provisions of this Agreement which expressly provide that they shall survive the termination hereof. In the event that Buyer elects to complete the transaction, Seller shall have no obligation to repair or replace any damage or destruction, and Seller shall, at the Closing, assign to Buyer all claims of Seller respecting any condemnation or casualty insurance coverage, as applicable, and all condemnation proceeds or proceeds from any such casualty insurance, received by Seller prior to the Closing (other than casualty insurance proceeds applicable to damage which shall have been repaired by Seller prior to the Closing, and loss of rents coverage for such period), and the transaction shall otherwise close on the same terms and conditions.. For purposes of this Section 15, material damage or destruction shall mean any damage or destruction where the estimated cost of repair of the same is in excess of One Hundred Thousand Dollars (\$100,000).

## **17. SELLER'S WARRANTIES.**

Seller makes the representations and warranties in this Paragraph 17, each and all of which shall survive the Close of Escrow for a period of one year.

a. Seller is a California Successor Agency duly formed and existing In accordance with the requirements of AB 26 and AB 1484. The City Council of the City of Pomona on January 9, 2012, adopted City Council Resolution No. 2012-8 electing to become the Successor Agency to the former Redevelopment Agency of the City of Pomona pursuant to California Health and Safety Code Sections 34171(j) and 34173. Pursuant to California Health and Safety Code Sections 34173 and 34175(b) and City Council Resolution No. 2012-8 all of the assets and properties of the former Redevelopment Agency of the City of Pomona were transferred to the Successor Agency by operation of law. The Successor Agency is the current legal owner of the Purchased Property as the successor in interest to the former Redevelopment Agency of the City of Pomona. Seller has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby subject to the approval of the Oversight Board and the DOF. The person signing this Agreement on behalf of Seller has the authority and authorization by Seller to enter into this Agreement and to sell the Purchased Property on behalf of Seller.

b. Neither the entering into this Agreement nor the performance of any of Seller's obligations under this Agreement will violate the terms of any contract, agreement or instrument to which Seller is a party.

c. To Seller's actual knowledge, Seller has not actually received any formal written notice that any of the easements, covenants, conditions, restrictions or agreements to which the Purchased Property is subject interferes with or is breached by the use or operation of the Purchased Property as presently used and operated.

d. To Seller's actual knowledge, Seller has not been served (by means of formal, legal service of process as required by law) with any litigation, and no arbitration proceedings have been commenced, which do or will materially affect any aspect of the Purchased Property or Seller's ability to perform its obligations under this Agreement, except as shown on the Title Report.

e. To Seller's actual knowledge, Seller has not actually received any formal written notice of any presently uncured violation of any law, ordinance, rule or regulation (including, but not limited to, those relating to zoning, building, fire, health and safety) of any governmental, quasi-governmental authority bearing on the construction, operation, ownership or use of the Purchased Property.

f. To Seller's actual knowledge there are not any written commitments to, or written agreements with, any governmental or quasi-governmental authority or agency materially affecting the Purchased Property which have not been heretofore disclosed by Seller to Buyer in writing.

g. *Leases*

i. The term "**Leases**" means all written agreements between Seller and all parties having rights to occupy or possess the Purchased Property.

ii. Within three (3) day of the Opening of Escrow, Seller shall deliver to Buyer true and complete copies of all the Leases and a schedule of all Leases as of the date of delivery listing all Leases, the duration of each, the then current rental payable under each, rental deposits and security deposits currently, actually held by Seller, and certain other information respecting each such Lease ("**Rent**

**Roll**)). The Rent Roll shall be in the form of **Exhibit "E"** attached hereto and incorporated herein by reference. Except as set forth in the Rent Roll, To Seller's actual knowledge, the Leases and Rent Roll are true, correct and complete.

iii. Estoppel Certificates.

(a) Seller shall use commercially reasonable efforts to seek estoppel certificates from Starbucks, US Bank, The UPS Store, Flame Broiler, and Think Insurance (such Tenants are collectively, the "**Major Tenants**"). In addition to estoppels from each of the Major Tenants, Seller shall use commercially reasonable efforts to seek estoppel certificates from at least ninety percent (90%) of the remaining tenants. The estoppel certificates shall be on either (i) the form required by each such Tenant Lease; (ii) with respect to a Major Tenant the form of the estoppel certificate may be the standard form generally used by such Tenant; or (iii) on the form or substantially the form of **Exhibit "F"** attached hereto.

(b) Seller shall have no liability to Buyer for failure to provide any Estoppel Certificates, so long as Seller uses commercially reasonable efforts to seek to obtain the Estoppel Certificates. If Seller has not provided Buyer with signed copies of estoppel certificates from each Major Tenant and 90% of the remaining tenants prior to waiver of the Due Diligence Contingency, then Buyer shall have the right to terminate this Agreement by delivering written notice thereof to Seller

(c) If any Tenant of the Purchased Property (other than a Major Tenant) does not provide an Estoppel Certificate, then Seller shall execute the form of Estoppel Certificate attached hereto as **Exhibit "G"**. Such Seller estoppel certificates shall not apply to the 90% requirement of Estoppel Certificates.

(d) Seller shall use commercially reasonable efforts to seek an estoppel certificate from the Homeowner's Association representing that Seller is not in default to the Homeowner's Association and is not indebted to the Homeowner's Association.

h. Seller has no knowledge of any contemplated, intended or pending condemnation or similar proceeding affecting the Purchased Property, and to Seller's actual knowledge no condemnation proceedings affecting the Purchased Property have been contemplated or intended, or are contemplated or intended, by the City of Pomona.

i.

All representations and warranties of Seller are made to the actual knowledge of Seller, without having performed any investigations, inspections, document reviews, or due diligence, other than Seller shall require that its 3<sup>rd</sup> party property manager for the Purchased Property read and approve these representations and warranties.

## 18. AS IS SALE.

Except as provided in Paragraph 17 of this Agreement, Seller expressly disclaims and Buyer acknowledges and accepts that Seller has disclaimed making any representations, warranties, promises, covenants, agreements, assurances or guarantees of any kind with respect to the Purchased Property. The Buyer expressly acknowledges and agrees that Seller is selling,

and the Buyer is purchasing, the Purchased Property in its "as is" condition, with all faults, including but not limited to, both latent and patent defects, whether or not Seller is aware or has knowledge of any such defects, and with absolutely no warranties, express or implied from the Seller, including but not limited to, warranties of merchantability or fitness for a particular purpose, including without limitation, those going to the physical, financial and/or legal condition of the Purchased Property, among other things. Buyer acknowledges that any building or room dimensions, or total acreage or building square footage figures, provided to Buyer by Seller or its agents may be approximate, or may have been calculated, and may only be accurate, based on a particular formula which incorporates specific assumptions, and therefore, and should not be relied on as accurate, unless confirmed by survey or other means. Buyer acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Purchased Property, by Seller, any agent of Seller or any third party. The terms and conditions of this Section shall expressly survive the Closing Date, shall not merge with the provisions of any closing documents and shall be incorporated into the Deed. Seller is not liable or bound in any manner by any oral or written statements, representation, or information pertaining to the Purchased Property furnished by any real estate broker, agent, employee, servant, contractor or other person. Buyer acknowledges that the price and terms of this transaction reflect the AS IS nature of this sale and any faults, liabilities, defects or other adverse matter that may be associated with the Purchased Property.

#### **19. SELLER'S DEFAULT**

If the transaction herein provided shall not close by reason of Seller's default, then Buyer may, as its sole remedy, require any deposit placed with Escrow Holder by Buyer be returned to Buyer.

Buyer initial here: \_\_\_\_\_ Seller initial here: \_\_\_\_\_

#### **20. BROKERS FEES AND DISCLOSURES.**

Seller and Buyer hereby represent and warrant to each other that there are no real estate brokers/agents involved in the purchase and sale of the Purchased Property. Buyer shall pay, and shall hold Seller harmless from and against, any commission or finder's fee payable to any party who represents or claims to represent Buyer. Seller shall pay, and shall hold Buyer harmless from and against, any commission or finder's fee payable to any party who represents or claims to represent Seller

#### **21. NOTICES.**

Any notice which a party is required or may desire to give the other under this Agreement shall be in writing and shall be sent by personal delivery, by U.S. mail, by Federal Express or similar generally recognized overnight courier regularly providing proof of delivery, by email with confirmation or by facsimile, if given from a facsimile machine which mechanically generates confirmation of delivery and where such notice is concurrently given by another method permitted under this Agreement as a follow up notice, and all such notices shall be addressed as follows:

To Seller:

Executive Director  
City of Pomona Successor Agency

505 South Garey Avenue  
Pomona, California 91766  
Attn: Kirk Pelser  
Phone: (909) 620-2410  
Fax: (909) 720-3703

To Buyer:

JOHN PENA IRREVOCABLE FAMILY LIVING TRUST 82-6632724

With a copy to:

Any notice so given shall be deemed to have been duly given, if by mail, three (3) days after deposit of the same in the U.S. mail, if by Federal Express or similar generally recognized overnight courier upon delivery or refusal of delivery thereof, if by personal delivery, upon delivery or refusal of delivery thereof, and if by facsimile upon confirmation of receipt thereof. Any party shall have the right to change the address for notice set forth in this section by notice given to the other party in accordance with the provisions of this section.

## **22. GENERAL PROVISIONS.**

(a) Entire Agreement.

This Agreement contains the entire agreement between the parties regarding the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters. This Agreement may not be modified or amended except by written agreement signed by both parties.

(b) Time of the Essence.

Time is of the essence as to this Agreement and each and every obligation hereunder.

(c) Interpretation.

Section headings shall not be used in construing this Agreement. Each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits hereto or thereto.

(d) Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

(e) Successors and Assigns.

This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties.

(f) Legal Costs.

The parties shall each pay any and all legal costs which they have incurred on their own behalf in the preparation of this Agreement, all instruments and other agreements pertaining to this transaction and that such legal costs shall not be part of the closing costs. If either Buyer or Seller brings suit or other proceeding with respect to the subject matter of this Agreement, the prevailing party (as determined by the court, arbitrator or other authority before which such suit or proceeding is commenced), in addition to such other relief as may be awarded, shall be entitled to recover its cost of suit, including reasonable attorney's fees, consultants and expert witness fees.

(g) Counterparts.

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

(h) Severability and Enforceability.

The provisions of this Agreement are severable, and if any one or more paragraphs, subparagraphs, clauses, or provisions of this Agreement are determined to be illegal, indefinite, invalid or otherwise unenforceable, in whole or in part, the remaining provisions of this Agreement shall continue in full force and effect and shall be binding and enforceable.

(i) Waiver.

The waiver by any party of a breach by the other party of, or default under, any provision of this Agreement shall not be deemed a waiver of (i) any other provision of this Agreement or (ii) any subsequent breach of, or default under, such provision or any other provision of this Agreement.

(j) Further Acts and Documents.

Each party hereto shall execute any and all further documents, instruments and other conveyances and agreements, and shall do all acts, which may be necessary or appropriate to fully implement the provisions of this Agreement.

(k) Facsimile Transmissions.

Documents transmitted by facsimile or other electronic means and showing the signature of a party shall be deemed to be binding upon such party in the same manner as if a manually signed copy of such document had been delivered, except that the documents to be recorded shall be manually executed and notarized.

(l) Business Days.

If, under the terms of this Agreement and the calculation of the time periods provided for herein, any date to be determined under this Agreement should fall on a day that is not a

Business Day, then such date shall be extended to fall on the next Business Day. As used in this Agreement, "Business Day" shall not include a Saturday, a Sunday, a legal holiday or other date on which courts or banks located in Los Angeles County, California are not open for business and shall not include Fridays on which the City is closed.

(m) Tax Deferred Exchange.

Seller and Buyer acknowledge that either Seller or Buyer may desire to structure the transaction evidenced hereby as part of an exchange of properties (i) of like-kind within the contemplation of Section 1031 of the Internal Revenue Code, or (ii) involving condemnation proceeds within the contemplation of Section 1033 of the Internal Revenue Code. Any such exchange of properties is referred to herein as an "Exchange". The parties agree to cooperate with each other in structuring such an Exchange provided that (a) such cooperation shall be without out-of-pocket cost or expense to the party not structuring such Exchange; (b) the party structuring such Exchange shall pay all of the other party's out-of-pocket cost or expense arising due to such Exchange; (c) the party structuring such Exchange shall give notice of the proposed structure of the Exchange at least two (2) business days prior to the Closing Date; (d) no such Exchange structure shall require the party that does not structure such Exchange to hold legal or equitable title to any property; and (e) no such Exchange or structuring in relation thereto shall delay or operate to postpone the Closing Date or any time periods set forth in this Agreement, nor shall the obligations of any of the parties hereto be modified, amended or assigned as a result of any such Exchange.

(Signature pages follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth next to their signatures. The "Effective Date" of this Agreement shall be the last date of signature.

"Seller" or "Successor Agency"

"Buyer"

THE CITY COUNCIL OF THE CITY OF POMONA ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF POMONA, pursuant to California Health and Safety Code Sections 34171(j) and 34173.

JOHN PENA IRREVOCABLE FAMILY LIVING TRUST 82-6632724

By: \_\_\_\_\_

Trustee

By: \_\_\_\_\_

Trustee

Date: \_\_\_\_\_

\_\_\_\_\_  
Linda C. Lowry, Executive Director

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Agency Secretary

Approved as to form:

\_\_\_\_\_  
Agency Counsel

#### ESCROW HOLDER'S ACKNOWLEDGEMENT

The undersigned hereby executes this Agreement to evidence its agreement to act as Escrow Holder in accordance with the terms of this Agreement.

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT “A”

LEGAL DESCRIPTION

*To be added*

8341-008-912  
8341-008-913  
8341-008-914  
8341-008-915  
8341-008-916  
8341-008-917

DRAFT

## EXHIBIT “B”

### DESCRIPTION OF PROPERTY

Property described as Lot 3 of Tract 53695 (APN 8341-008-912), consisting generally of the 1st floor of the retail and office space contained in Lot 3 of the project known as Mission Promenade 1 located at 101 West Mission Boulevard, Pomona, California (“Project”). Property described as Lot 3 of Tract 53695 (APN 8341-008-913) consisting generally of the 2<sup>nd</sup> floor of the retail and office space contained in Lot 3 of the Project. Property described as Lot 4 of Tract 53695 (APN 8341-008-914) consisting generally of the 1st floor of the retail and office space contained in Lot 4 of the Project. Lot 4 of Tract 53695 (APN 8341-008-915) consisting generally of the 2<sup>nd</sup> floor of the retail and office space contained in Lot 4 of the Project. comprising approximately 21,100 SF of 1st floor space and 24,600 SF of 2nd floor space, plus common areas that are exclusive to the retail and office space. Furthermore, the Property includes the surface parking lot containing approximately 120 parking spaces and ingress and egress on property described as Lots 1 and Lot 2 of Tract 53695 (APN 8341-008-910 and 8341-008-911, respectively). The property also includes an undivided interest the Commercial Common Area as defined in that Condominium Plan recorded December 5, 2003 as Document 03-3670027 of Records of Los Angeles County.

The Property also includes two 3<sup>rd</sup> floor residential units (APN’s 8341-008-916 and 8341-008-917

## EXHIBIT "C"

### DUE DILIGENCE DOCUMENTS

Each of the following if reasonably available to the Seller. Please note that it will be assumed that "seller's possession" will mean not only the City of Pomona, but also the City's 3rd party property manager, as it is possible that items requested are not in the City's possession, but only in the property manager's possession. :

- (a) All leases including addendums, assignments and amendments, tenant financial information (if in seller's files) and any correspondence with the tenants since January 1, 2016 (including any emails that contain information that would indicate any dissatisfaction with the tenants performance or tenants intent to maintain tenancy at the property);
- (b) The Service Contracts
- (c) Preliminary title report and all documents listed as Exceptions in the Title Report
- (d) Mission Promenade Owners Association articles of incorporation or other entitlement documents, by laws and any rules and regulations of the Association.
- (e) CC&R's for retail and office space.
- (f) CC&R's for Homeowners' Association.
- (g) Any environmental reports for the Purchased Property in Seller's possession.
- (h) Geotechnical investigation report, if available
- (i) Copy of building plans if available
- (j) 2016 Year End Property Management Reports and the monthly Property Management Reports from January 2016 to the presenting including providing each report on a monthly basis until such time as the sale is completed;
- (k) Common area reconciliations for 2015 & 2016;
- (l) Schedule of security deposits;
- (m) 2016 Operating budget;
- (n) Real estate property tax and personal (unsecured, if any) property tax bills for the past 2 tax years;
- (o) Insurance loss runs relating solely to the property for the past 3 years;
- (p) Most recent appraisal report

- (q) Any surveys (i.e. ALTA survey) in the seller's possession
- (r) Any agreements in existence between MP1 and MP2;
- (s) Any agreements relating to the use of MP2 for parking including any leases or other agreements between 3<sup>rd</sup> parties relating to the use of MP2 for parking;
- (t) All utility bills from January 1, 2016 to the present;
- (u) Minutes from the past 1 year of Owner Association meetings;
- (v) Any ADA surveys;
- (w) Notices of any pending or actual legal action involving the property for the past 3 years;
- (x) Fire inspection records indicating when the sprinkler system was last certified;
- (y) Any floor plans or other marketing materials utilized for the marketing of the property for lease;
- (z) Elevator inspection records;
- (aa) HVAC Maintenance contracts held by tenants
- (bb) Tenant insurance certificates held by Landlord
- (cc) Clean version of sign program from City

EXHIBIT "D"

GRANT DEED

WHEN RECORDED RETURN TO

MAIL TAX STATEMENTS TO:

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document exempt from fee pursuant to Section 27383 of the California Government Code

**GRANT DEED**

**RECITALS:**

1. The property commonly known as Mission Promenade, 101 West Mission Boulevard, Pomona, California and legally described on Exhibit "A" attached hereto ("Purchased Property") was formerly owned by the Redevelopment Agency of the City of Pomona ("Agency").
2. As part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed AB X1 26 ("AB 26") requiring that each redevelopment agency be dissolved. On June 27, 2012 the State Legislature adopted Assembly Bill 1484 ("AB 1484") amending the provisions of AB 26.
3. In accordance with the requirements of AB 26 and AB 1484, the City Council of the City of Pomona ("City") on January 9, 2012, adopted City Council Resolution No. 2012-8 electing to become the Successor Agency ("Successor Agency") to the former Redevelopment Agency of the City of Pomona pursuant to California Health and Safety Code Sections 34171(j) and 34173.
4. Pursuant to California Health and Safety Code Sections 34173 and 34175(b) and City Council Resolution No. 2012-8 all of the assets and properties of the former Redevelopment Agency of the City of Pomona were transferred to the Successor Agency by operation of law.
5. The Successor Agency is the current legal owner of the Purchased Property as the

successor in interest to the former Redevelopment Agency of the City of Pomona.

6. This disposition of the Purchased Property is made by the Successor Agency and approved by Resolution of the Pomona Oversight Board after notice of a public meeting in accordance with California Health and Safety Code Section 34181(f).

7. The Purchased Property is conveyed by Grantor in accordance with the Long Range Property Management Plan (Site No. 7) approved on July 10, 2014 by the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Pomona pursuant to Resolution No. OB-2014-4, and subsequently approved by the California Department of Finance as evidenced by that certain letter dated October 7, 2014 ("DOF Approval").

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

THE CITY OF POMONA acting in its capacity as the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF POMONA, a public body ("Successor Agency"), pursuant to California Health and Safety Code Sections 34173 and 34175 ("Grantor"), hereby grants to JOHN PENA IRREVOCABLE FAMILY LIVING TRUST 82-6632724 ("Grantee"), that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference

Executed on \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_, California.

ATTEST:

\_\_\_\_\_  
Secretary

THE CITY COUNCIL OF THE CITY OF POMONA, ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF POMONA

By: \_\_\_\_\_  
Linda C. Lowry, City Manager

APPROVED AS TO FORM:

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

**(ATTACH NOTARIES)**

**Exhibit “A” to  
Grant Deed**

**LEGAL DESCRIPTION**  
*To be added*



8341-008-912  
8341-008-913  
8341-008-914  
8341-008-915  
8341-008-916  
8341-008-917

DRAFT

EXHIBIT "E"

RENT ROLL

Complete and sign a separate sheet for each tenant, lessee or party with a possessory interest.

Unit Number:\_\_\_\_\_

Tenants' Name As Stated on the Lease

\_\_\_\_\_

Tenant's DBA, if any

\_\_\_\_\_

Tenant' Mailing Addresses:

\_\_\_\_\_

\_\_\_\_\_

Pomona, CA \_\_\_\_\_

Telephone\_\_\_\_\_ (Home)

Telephone\_\_\_\_\_ (Work)

Lease Type: triple net ☐ modified gross ☐ full service gross ☐

Rent Amount \$\_\_\_\_\_ per Month \_\_\_\_\_ Year \_\_\_\_\_ Other \_\_\_\_\_

Square footage occupied:\_\_\_\_\_

Monthly Rent per Square foot:\_\_\_\_\_

Amount of Triple Net/Additional Charges being paid by Tenant:\_\_\_\_\_

Next scheduled rent increase:\_\_\_\_\_

Method of Option increase, if any:\_\_\_\_\_

Lease Commencement Date \_\_\_\_\_ Lease Expiration Date \_\_\_\_\_

Term Monthly \_\_\_\_\_ Yearly \_\_\_\_\_ Other \_\_\_\_\_

Rent Amount in arrears, if any \$\_\_\_\_\_

Advance Rent Deposits \$\_\_\_\_\_

Security Deposits \$\_\_\_\_\_

We declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of our knowledge and belief as of \_\_\_\_\_, 20\_\_\_\_.

Landlord ("Seller")\_\_\_\_\_

Landlord ("Seller")\_\_\_\_\_

Tenant\_\_\_\_\_

Tenant\_\_\_\_\_

EXHIBIT "F"

TENANT ESTOPPEL/CERTIFICATE

Use AIR CRE "STANDARD ESTOPPEL CERTIFICATE – BY LESSEE,  
Form Number ESTLE-3.00, Revised 01-03-2017 (see next page for example)

DRAFT

EXHIBIT "G"

SELLER'S ESTOPPEL CERTIFICATE

Use AIR CRE "STANDARD ESTOPPEL CERTIFICATE – BY LESSOR,  
Form Number ESTLR-4.00, Revised 01-03-2017 (see next page for example)

DRAFT

## EXHIBIT "H"

### ASSIGNMENT AND ASSUMPTION OF LEASES

### ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASE ("Assignment") is made effective this \_\_\_ day of \_\_\_\_\_, 2017 by and between the City of Pomona Successor Agency ("Assignor"), and John Pena Irrevocable Family Living Trust 82-6632724 ("Assignee").

#### RECITALS

A. Assignor is the owner of certain real property located in the City of Pomona, County of Los Angeles, State of California, located at 101 West Mission Ave., Pomona, California, together with all buildings and other improvements thereon (the "Property");

B. Assignor, as owner of the Property, has an interest, as lessor/landlord, in those certain leases listed on Exhibit A hereto, as they may be and/or have been amended from time to time (each, a "Lease," and collectively, the "Leases"), with the lessees/tenants specified therein (each, a "Tenant", and collectively, the "Tenants").

C. The Assignor now wishes to assign the Leases to the Assignee and the Assignee now wishes to assume the Leases from Assignor, all on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the foregoing recitals which are incorporated herein, the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignor hereby assigns to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title and interest in and to each of the Leases, as of the date hereof. Assignee hereby assumes the Leases and agrees to perform all of the obligations of Assignor arising under the Leases on, from and after the date hereof.
2. Assignor hereby agrees to indemnify and hold harmless Assignee from and against any and all liability, claims, or causes of action existing in favor of or asserted by any Tenant under any of the Leases and arising out of or relating to Assignor's failure to perform any of the obligations under the said Lease, arising or accruing prior to the date of this Assignment, but not otherwise.
3. Assignee assumes all liability, obligations, and duties to perform all of the terms and conditions of each of the Leases on the part of the Assignor to be performed on and after the date of this Assignment, and Assignee covenants and agrees to discharge any and all obligations of Assignor under the Leases arising after the effective date of this Assignment. Assignee agrees to indemnify, defend and hold harmless Assignor from and against any and all liability, claims, or causes of action existing in favor of or asserted by any Tenant under any of the Leases and arising out of or relating to Assignee's failure to perform any of the obligations under the said Lease, arising on or after the date of this Assignment.
4. The foregoing rights to indemnification, as set forth in Paragraph 2 or 3, will not arise to the extent that (a) the party seeking indemnification actually receives insurance proceeds or other cash payments directly attributable to the liability in question (net of the cost of collection,

including reasonable attorneys' fees), or (b) the claim for indemnification arises out of the act or neglect of the party seeking indemnification. If and to the extent that the indemnified party has insurance coverage, or the right to make claim against any third party for any amount to be indemnified against as set forth above, the indemnified party will, upon full performance by the indemnifying party of its indemnification obligations, assign such rights to the indemnifying party or, if such rights are not assignable, the indemnified party will diligently pursue such rights by appropriate legal action or proceeding and assign the recovery and/or right of recovery to the indemnifying party, to the extent of the indemnification payment made by such party.

5. This Assignment may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and such counterparts together constitute one and the same instrument.
6. The prevailing party in any action arising out of or related to this Assignment shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. This Assignment shall be governed by the laws of the State of California.
7. This Assignment shall be binding upon Assignor and Assignee and inure to the benefit of Assignor and Assignee and their respective successors, transferees and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first hereinabove written.

"Assignor"

"Assignee"

THE CITY OF POMONA SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF POMONA, pursuant to California Health and Safety Code Sections 34171(j) and 34173.

JOHN PENA IRREVOCABLE FAMILY LIVING TRUST 82-6632724

By: \_\_\_\_\_  
Trustee

By: \_\_\_\_\_  
Trustee

\_\_\_\_\_  
Linda C. Lowry, City Manager

Attest:

\_\_\_\_\_  
Agency Secretary

Approved as to form:

\_\_\_\_\_  
Agency Counsel

EXHIBIT A TO ASSIGNMENT OF LEASES

LIST OF LEASES

DRAFT

EXHIBIT "I"

BILL OF SALE

**QUITCLAIM BILL OF SALE**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, The City of Pomona Successor Agency, a California public entity ("Seller") does, by these presents, quitclaim, sell, assign, transfer, set over, bargain, sale and deliver to John Pena Irrevocable Family Living Trust 82-6632724, without representation or warranty, all of the Seller's right, title and interest in and to all of the personal property owned by Seller and used in connection with the real property located at 101 W. Mission Avenue, Pomona, California, if any.

IN WITNESS WHEREOF, and intending to be bound hereby, the undersigned has executed this Bill of Sale this \_\_\_\_ day of \_\_\_\_\_, 2018.

"Seller"

THE CITY OF POMONA SUCCESSOR  
AGENCY TO THE FORMER  
REDEVELOPMENT AGENCY OF THE  
CITY OF POMONA, pursuant to California  
Health and Safety Code Sections 34171(j) and  
34173.

\_\_\_\_\_  
Linda C. Lowry, City Manager

Date; \_\_\_\_\_

Attest:

\_\_\_\_\_  
Agency Secretary

Approved as to form:

\_\_\_\_\_  
Agency Counsel

EXHIBIT "J"

ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS

**ASSIGNMENT AND ASSUMPTION OF CONTRACTS**

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS (this "Assignment") is made effective this \_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by and between the City of Pomona Successor Agency, a California public entity ("Assignor"), and John Pena Irrevocable Family Living Trust ("Assignee").

**WITNESSETH**

A. Assignor and Assignee entered into that certain Purchase and Sale Agreement and Escrow Instructions dated as of \_\_\_\_\_ (the "Agreement") with respect to the purchase and sale of that certain property located at 101 West Mission Ave., Pomona, California (the "Property").

B. In connection with the transaction, Assignor desires to assign to Assignee any and all of its right, title and interest in and to the contracts identified on Schedule I attached hereto and incorporated herein (collectively, the "Contracts").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee as of the Effective Date all of Assignor's right, title and interest in and to the Contracts.

1. Assignee hereby accepts such Assignment and agrees to be bound by all of the terms and provisions of the Contracts, and assumes any and all liabilities and agrees to perform, pay and discharge in full when due all of Assignor's liabilities and obligations associated with, or related to the performance by Assignor of any of the terms, covenants and conditions imposed upon Assignor under the Contracts, with respect to the period from and after the Effective Date.

2. Assignor hereby agrees to protect, hold harmless, indemnify, defend and release Assignee from and against any claims, expenses (including, without limitation, reasonable attorneys' fees and litigation costs), liabilities or obligations of Assignee which related to, arise or have arisen, under any of the Contracts with respect to the period prior to the Effective Date.

3. Assignee hereby agrees to protect, hold harmless, indemnify, defend and release Assignor from and against any claims, expenses (including, without limitation, reasonable attorneys' fees and litigation costs), liabilities or obligations of Assignor which relate to, arise or have arisen, under any of the Contracts with respect to the period from and after the Effective Date.

4. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions

on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

5. This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

6. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

7. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first hereinabove written.

“Assignor”

THE CITY OF POMONA SUCCESSOR  
AGENCY TO THE FORMER  
REDEVELOPMENT AGENCY OF THE  
CITY OF POMONA, pursuant to California  
Health and Safety Code Sections 34171(j) and  
34173.

\_\_\_\_\_  
Linda C. Lowry, City Manager

Attest:

\_\_\_\_\_  
Agency Secretary

Approved as to form:

\_\_\_\_\_  
Agency Counsel

“Assignee”

JOHN PENA IRREVOCABLE FAMILY  
LIVING TRUST 82-6632724

By: \_\_\_\_\_  
Trustee

By: \_\_\_\_\_  
Trustee

SCHEDULE I  
to  
Assignment and Assumption of Contracts

List of Contracts

DRAFT

EXHIBIT "K"

NOTICE TO TENANTS

NOTICE TO TENANTS

\_\_\_\_\_, 2018

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Sale of 101 West Mission Ave., Pomona, California (the "Property")

Date of Sale: \_\_\_\_\_, 2018

Your lease (the "Lease") for Unit No. \_\_\_\_\_

Ladies and Gentlemen:

You are hereby notified that as of the date of this Notice, (the "Transfer Date") the City of Pomona Successor Agency (the "Owner"), as owner of the Property and the current owner of the landlord's interest under your Lease, has sold the Property to Optima Irrevocable Trust I and Private Eq. Irrevocable Trust II (the "Purchaser"). As part of such sale, the Owner has assigned and transferred all of its interest in and to your Lease and any and all rents and other sums due thereunder to Purchaser, and Purchaser has assumed and agreed to perform all of the landlord's obligations under the Lease from and after the Transfer Date (including with respect to your security deposit).

Accordingly, (a) all of your obligations under the Lease from and after the Transfer Date (including your obligation to pay rent and other sums, and to fulfill your insurance requirements) shall be performable to and for the benefit of Purchaser, and (b) all of the obligations of the landlord under the Lease (including the obligation for any security deposits) from and after the Transfer Date shall be the binding obligation of Purchaser.

From this date forward, all rents and all other sums due under the Lease, shall be paid to [INSERT EXACT NAME OF PURCHASER]. The address of Purchaser for payment of rent and other sums due under the Lease, and for all other purposes (including correspondence, questions, the recoupment of security deposits and the giving of any notices provided for in the Lease) is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax No. \_\_\_\_\_

Very truly yours,  
City of Pomona Successor Agency,

By: \_\_\_\_\_  
Linda C. Lowry, City Manager

DRAFT