

AGREEMENT OF PURCHASE AND SALE  
AND JOINT ESCROW INSTRUCTIONS

SELLER: THE CITY OF POMONA SUCCESSOR AGENCY

BUYER: EXPRESSIONS ENTERTAINMENT, LLC

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## AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS

This AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is made as of \_\_\_\_\_, by and between the CITY OF POMONA ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF POMONA, a public body ("**Successor Agency**" or "**Seller**"), pursuant to California Health and Safety Code Sections 34173 and 34175 and EXPRESSIONS ENTERTAINMENT, LLC, a California limited liability company ("**Buyer**").

### RECITALS

1. The property commonly known as 1320 Jacqueline Drive, Pomona, California (APN 8359-039-903), legally described on **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto ("**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 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 Property as the successor in interest to the former Redevelopment Agency of the City of Pomona.
6. 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). On \_\_\_\_\_, 2018, the Pomona Oversight Board ("**Oversight Board**") adopted its Resolution No. \_\_\_\_\_ approving this Agreement (the "**Oversight Board Approval**").
7. The Property is conveyed by Seller in accordance with the Long Range Property Management Plan (Site No. \_\_\_\_\_) 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**").

8. Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, all on the terms and conditions of this Agreement.

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

**1. PURCHASE AND SALE.**

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

**2. PURCHASE PRICE.**

The total purchase price ("**Purchase Price**") for the Property shall be One Hundred Thirty Thousand and No/100 Dollars (\$130,000), payable by Buyer to Seller as follows:

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

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

**3. CONDITION OF TITLE TO PROPERTY.**

**3.1 TITLE TRANSFER AT CLOSE OF ESCROW**

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

**3.2 TITLE EXCEPTIONS**

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

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

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

**3.3 REVIEW OF TITLE**

(a) Seller agrees to furnish Buyer with a copy of the Preliminary Report, together with a copy of all recorded exceptions to title, within five (5) days of the Opening of

Escrow. Seller shall provide Buyer a property survey if Seller has previously performed or had performed a property survey, and the survey is still in the possession of Seller.

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

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

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

### **3.4 TITLE INSURANCE**

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

## **4. CONDITION OF PROPERTY AND CONTINGENCIES.**

### **4.1 CONDITION OF PROPERTY**

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

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

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

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

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

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

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

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

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

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

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

## 4.2 BUYERS CONTINGENCIES

4.2.1 Buyer's obligation to purchase the Property is subject to the following contingencies described in subparagraphs (a) through (c) below in this Paragraph 4.2.1 ("**Contingencies**"). Each and all of the following Contingencies are for the sole benefit of Buyer and may be waived or deemed satisfied by Buyer for any or no reason in Buyer's sole and absolute discretion by written notice to Escrow on or before the date that is thirty (30) days from the Opening of Escrow *and* receipt by Buyer of all documents, leases, contracts and records affecting the Property that are in Seller's possession or control, the ("**Contingency Removal Date**" or "**Contingency Period**"). Seller shall, within ten (10) days of Opening of Escrow as defined in Paragraph 11.1, provide to Buyer all documents, leases, contracts, surveys and records that are in Sellers possession or control including, without limitation, those records referenced in Paragraphs 6.1(e) and 6.1(g).

(a) Buyer's review and approval of the Preliminary Report and all recorded exceptions to title in accordance with Paragraph 3.3 of this Agreement. Upon the Close of Escrow, the Title Company shall be irrevocably committed to issue the Title Policy insuring fee title to the Property as being vested in Buyer subject to only the Permitted Exceptions and otherwise in a condition approved by Buyer.

(b) During the Contingency Period Buyer is invited, urged, and cautioned to conduct, at Buyer's expense, such investigations, inspections, surveys, plans, and tests of the

Property, including, without implied limitation, soils, groundwater, wells, percolation, geology, environmental, drainage, engineering and utilities investigations, inspections, surveys, plans, and tests (collectively, “**Investigations**”), as Buyer determines, in Buyer’s sole discretion, are required to determine the suitability of the Property for Buyer’s intended use and development. Such Investigations shall be conducted at the sole cost and expense of Buyer. In the event that Buyer exercises this right of entry, Buyer shall comply with all applicable laws and obtain all permits which may be required with respect to its investigations and testing. Buyer further agrees to indemnify, defend, and hold harmless Successor Agency and the Property from and against any and all claims, damages, liabilities, and losses arising from such activities of Buyer or its employees or agents, and from and against all mechanics’, materialmen’s’, and other liens resulting from any such conduct. Buyer shall restore the Property as nearly as possible to its condition existing immediately prior to any such entry by or on behalf of Buyer. Prior to entry upon the Site Buyer shall obtain insurance covering Buyer’s indemnity, hold harmless, and defense obligations to Successor Agency pursuant to this paragraph. Prior to entry upon the Property for such Investigations Buyer shall furnish to Successor Agency 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 Successor Agency as an additional insured, insuring Buyer’s obligations and responsibilities under this paragraph (4). Buyer shall maintain each such policy in effect until the Close of Escrow. If Buyer elects to terminate this Agreement by reason of failure of the Contingency set forth in this subparagraph (b), Buyer shall promptly upon such election deliver to Seller all written reports, studies and information prepared by third parties for Buyer which pertain to the physical condition of the Property, provided that Buyer has the legal right, power and authority to provide such third party reports, studies and information to Seller.

If Buyer discovers any pre-existing Hazardous Materials on the Property prior to the Contingency Removal Date (that Buyer did not place or release), then Seller shall have the option, but not the obligation, at Seller’s sole and absolute discretion, to remediate such Hazardous Materials. If Seller declines to so remediate, then Buyer shall have the option to terminate this Agreement and receive its Deposit. As used herein, the term “Hazardous Material(s)” includes, without limitation, any hazardous or toxic material, substance, irritant, chemical or waste, which is (A) defined, classified, designated, listed or otherwise considered under any Environmental Law as a “hazardous waste,” “hazardous substance,” “hazardous material,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “biohazardous material,” “pollutant,” “toxic pollutant,” “contaminant,” “restricted hazardous waste,” “infectious waste,” “toxic substance,” or any other terms or expression intended to define, list, regulate or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment, (B) toxic, ignitable, corrosive, reactive, explosive, flammable, infectious, radioactive, carcinogenic or mutagenic, and which is or becomes regulated by an local, state or federal governmental authority, (C) asbestos, (D) an oil, petroleum, petroleum based product or petroleum additive, derived substance or breakdown product, (E) urea formaldehyde foam insulation, (F) polychlorinated biphenyls (PCBs), (G) Freon and other chlorofluorocarbons, (H) any drilling fluids, produced waters and other wastes associated with exploration, development or production of crude oil, natural gas or geothermal resources, and (I) lead-based paint.



(c) Buyer's review and approval of all leases, service contracts and other documents affecting the Property, if any.

4.2.2 Prior to the Close of Escrow, Buyer shall have secured all governmental approvals, licenses, entitlements and permits, conditional use permits, site plan approvals, subdivision maps, storm water drainage permits and utility connections, using commercially reasonable efforts, which Buyer determines are necessary for Buyer's proposed development and use of the Property (collectively, "Entitlements"), including without limitation, environmental approvals (including, without limitation, compliance with CEQA including certification of an environmental analysis and report; conditional use permits; and design development approval. Buyer shall be deemed to have secured an Entitlement only when (i) it has obtained certification (e.g., an ordinance approving an Entitlement or other similar confirmation), and (ii) it is deemed to be "Final" in accordance with the following terms. The date that all of the Entitlements are deemed to be Final is referred to herein as the "Entitlement Date". An Entitlement shall be deemed "Final" only when it does not contain any term, condition, restriction, impact fees or monetary exaction which is unacceptable to Buyer in Buyer's sole and absolute discretion, and Entitlements shall not be deemed Final unless such Entitlements are fully vested rights benefitting Buyer and all governmental and quasi-governmental authorities having jurisdiction over any aspect of the matter, have unconditionally and finally approved the same, and the time period within which any party may appeal or otherwise contest each such approval by administrative or judicial proceeding, referendum, petition for rehearing or otherwise has expired without objection, appeal or contest, or if an appeal or contest has been filed or pursued, such appeal or contest has been fully and favorably resolved, as determined in Buyer's sole and absolute discretion, and the time period for any further appeal or contest to such resolution by any party has expired.

4.2.3. If Buyer disapproves any Contingency within the applicable time period provided above, Buyer's sole remedy shall be to terminate this Agreement and Seller shall have no obligation to remedy any Contingency which Buyer disapproves. If this Agreement terminates as a result of the failure of the satisfaction of any of the Contingencies, all sums and documents deposited in Escrow shall be immediately returned to the parties who respectively deposited the same without further instruction, and Buyer and Seller shall each pay one-half (1/2) of the Escrow costs.

4.2.4. If Buyer fails to give written notice to Seller of its disapproval of any Contingency within the respective applicable time limit set forth above in Paragraph 4.1, it shall conclusively be deemed that Buyer has disapproved such Contingency.

4.2.5. If Buyer defaults under this Agreement and fails to close Escrow for the purchase of the property through no fault of Seller, then in addition to liquidated damages pursuant to Paragraph 9 Buyer shall pay all costs of escrow.

#### 4.3 CONDITIONS PRECEDENT.

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

4.3.1 Seller has represented to Buyer in writing that Seller has no knowledge of any Leases or Other Contracts affecting the Property other than those Seller shall have delivered to Buyer under Paragraph 4.2.1 of this Agreement.

4.3.2 Buyer's receipt, review and approval, in its reasonable discretion, of a tenant estoppel certificate (if applicable) affirming, among other things, that any lease agreement is in full force and effect, there are no defaults under such lease, and the amount of any security deposit currently on file with Seller. All such tenant estoppel certificates shall be provided by Seller to Buyer within twenty (20) days of Opening of Escrow as defined in Paragraph 11.

4.3.3 All representations and warranties of Seller in this Agreement shall be true on and as of the applicable Closing as though made at that time. All covenants of Seller with respect to the Site which are required to be performed prior to the Closing shall have been performed by such date.

4.3.4 The Oversight Board shall have approved this Agreement after notice of a public meeting in accordance with California Health and Safety Code Section 34181(f).

In the event any Condition Precedent shall not be satisfied and true as of the Close of Escrow, then in such event Buyer, in its sole and absolute discretion may 1) terminate this Agreement and all sums and documents deposited in Escrow shall be immediately returned to the parties who respectively deposited the same without further instruction, and Buyer and Seller shall each pay one-half (1/2) of the Escrow costs, 2) waive any Condition Precedent, except 4.3.4, at the sole and absolute discretion of the Buyer and close Escrow on or prior to the Close of Escrow, or 3) in the event Seller is unable to obtain the approvals required under Paragraphs 4.3.4, this Agreement shall automatically terminate with each party responsible for their own cost or expenses incurred pursuant to this Agreement, each party shall pay 1/2 of the Escrow fees and Successor Agency shall pay all title fees.

## **5. EXCHANGE.**

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

## **6. REPRESENTATIONS AND WARRANTIES**

### **6.1 SELLER'S WARRANTIES**

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

(a) The Successor Agency is a public entity duly formed and existing pursuant to California Health and Safety Code Sections 34173 and 34175.

(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) Seller has not actually received any formal written notice that any of the easements, covenants, conditions, restrictions or agreements to which the Property is subject interferes with or is breached by the use or operation of the Property as presently used and operated as a vacant parcel.

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

(e) Seller hereby agrees, through and including the Close of Escrow and at the Seller's sole cost and expense, to operate the Property in the same manner as Seller has been operating the Property in the past

#### 6.1.1 No Alterations

Seller will not intentionally alter the physical condition of the Property from and after the date of this Agreement, reasonable wear and tear excepted. If, through no fault of Seller, the physical condition of the Property is different on the date scheduled for the Close of Escrow than as of the date of this Agreement, then, except as provided in Section 13 of this Agreement, in such event Buyer may terminate this Agreement. If Buyer elects to terminate this Agreement by written notice to Seller and Escrow Holder given within ten (10) days of discovery of the altered condition, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement and all sums and documents deposited in Escrow shall be immediately returned without further instruction to the parties who deposited the same and Seller and Buyer shall each pay one-half (1/2) of Escrow costs. If Buyer fails to notify Seller and Escrow Holder of its election to terminate this Agreement within said ten (10) day time period provided above, Buyer shall be deemed to have accepted the modified condition of the Property and elected to purchase the Property.

#### 6.1.2 Changed Conditions

If, prior to the Close of Escrow, new events have occurred which were beyond the control of Seller and which render any previously true representation or warranty untrue, Seller shall, within five (5) business days thereafter, disclose those matters by written notice to Buyer. Buyer shall have ten (10) days after the earlier of (i) such disclosure; or (ii) Buyer's independent discovery that such representation or warranty has become untrue, to elect, in its sole and absolute discretion, and as its sole remedy, by written notice to Seller within said ten (10) day period, whether (i) to purchase the Property or (ii) terminate this Agreement by written notice to Seller and Escrow and Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement and all sums and documents deposited in Escrow

shall be immediately returned to the parties who deposited the same without further instruction and Seller and Buyer shall each pay one-half (1/2) of Escrow costs. If Buyer fails to notify Seller and Escrow Holder of its election to terminate this Agreement within said ten (10) day time period provided above, Buyer shall be deemed to have accepted the modified representations and warranties and elected to purchase the Property.

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

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

## 6.2. REPRESENTATIONS AND WARRANTIES BY BUYER.

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

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

(b) Expressions Entertainment, LLC is a California limited liability formed in the State of California, in good standing and authorized to conduct business in the State of California which has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The Buyer, and the specific, individual parties signing this Agreement on behalf of Buyer represent and warrant that the parties signing this Agreement on behalf of the Buyer have the full legal power, authority and right to execute and deliver this Agreement.

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

future use of the Property; (viii) the viability or financial condition of any tenant; and (ix) the actual or projected income or operation expenses of the Property.

#### 6.2.1 Brokers

The Seller and the Buyer each represent to the other party 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 acquisition of all or part of the Site, and agrees to hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations. Except as provided above, all real estate commissions, if any, will be paid by Buyer.

### 7. INDEMNIFICATION.

#### 7.1 GENERAL INDEMNIFICATION

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

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

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

7.1.2 If such claim for indemnification relates to a claim or demand presented in writing by a third party against Indemnitee, Indemnitor shall have the right to employ counsel reasonably acceptable to Indemnitee to defend any such claim or demand, and Indemnitee shall make available to Indemnitor, or its representatives, all records and other materials in its possession or under its control reasonably required by Indemnitor for its use in contesting such liability. If Indemnitor does not elect to defend any such claim or demand, Indemnitee may do so at its option, but shall not have any obligation to do so.

#### 7.2 ENVIRONMENTAL INDEMNITY

##### 7.2.1 Environmental Release

(1) Buyer, for itself and its successors and assigns, unconditionally releases Successor Agency from and against any and all liability to Buyer, both known and unknown,

present and future, for Environmental Damages to Buyer arising out of any violation of Environmental Requirements or the presence of Hazardous Material on, under or about the Property (the "Environmental Release"), except to the extent of a breach by Successor Agency of its representations and warranties set forth in Section 6.1 above.

(2) With respect to the Environmental Release, Buyer, after consultation with legal counsel and with full knowledge of the consequences of its actions, waives the provisions of 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT BY THE DEBTOR.

Buyer's Initials \_\_\_\_\_

#### 7.2.2 Environmental Indemnity

(1) Except for a breach of Successor Agency's representation or warranties under Section 6.1 above, Buyer shall indemnify, defend, and hold Successor Agency harmless from and against all Environmental Damages arising from the presence of any Hazardous Material at, in, on, or under the Property, or migrating off the Property (including groundwater), if such Hazardous Material was first introduced to the Property at any time, including without limitation:

(a) all claims, lawsuits, demands, obligations, investigations, damages, penalties, fines or actions by any federal, state, or local governmental agency (collectively, "Government Claims" ) based upon Buyer's or Successor Agency's failure to remediate the Property;

(b) all claims, lawsuits, demands, obligations, investigations, damages (including but not limited to diminution in value of property and related stigma damages, lost profits and consequential damages), penalties, fines or actions by owners and operators of adjacent and nearby properties or any other persons (collectively, "Third-Party Claims");

(c) all claims, lawsuits, demands, liabilities, damages, losses or judgments for personal injury or for injury to real or personal property;

(d) all claims, lawsuits, demands, obligations, investigations, damages, penalties, fines or actions by subsequent owners and operators of the Property or any lenders providing financing with respect to the Property arising from any underlying Government Claims under Section 10.3(a), Third-Party Claims under Section 10.3(b); and/or any other claims under Section 10.3(c); and

(2) Buyer's obligations under this Section 305.2 are collectively referred to in this Agreement as "Buyer's Indemnity Obligations".

#### 7.2.3 Defense of Claims

(1) Provided that Buyer accepts any tender of any reasonable expense or reasonable claim by Successor Agency without any reservation, Buyer shall have the right, in consultation with Successor Agency, to control on behalf of Successor Agency any and all

negotiations, settlement discussions, investigations, testing, defenses, trials, actions, proceedings, hearings, additional remediation obligations, and other resolutions with all Agencies and third parties arising out of, incidental to, or in connection with Buyer's performance of Buyer's Indemnity Obligations. If Buyer does not accept a tender of any reasonable expense or reasonable claim by Successor Agency without reservation, (except for a breach of Successor Agency's representation on warranties under Section 105.1 above), Successor Agency shall be entitled to engage in all such matters described in the preceding sentence on its own account, and shall be entitled to recover from Buyer the costs of engaging in such matters (including consultants' fees and reasonable attorneys' fees), provided Buyer's denial of liability is adjudicated to be in violation of the terms hereof. Without limiting Buyer's rights as described above, Buyer shall undertake reasonable consultation with Successor Agency with respect to matters materially involving the Property or Successor Agency.

#### 7.2.4 Definitions

(1) For purposes of Section 305 the following terms have the meanings indicated.

(a) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material, prior to the Closing, upon, about, beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property, regardless of whether the existence of such Hazardous Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property, and including without limitation:

1. Damages for personal injury, or injury to property or natural resources occurring upon or off the Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

2. Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local government agency or economic use of the Property or any other property in a manner consistent with its current use or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this agreement or collecting any sums due hereunder;

3. Liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced in subparagraph (ii) herein; and

4. Diminution in the value of the Property, and damages for the loss of business and restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the Property.

(b) “Environmental Requirements” means all applicable present and future statutes regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation:

1. All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes, whether solid, liquid, or gaseous in nature; and

2. All requirements pertaining to the protection of the health and safety of employees or the public.

(c) “Hazardous Material” means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

2. which is or becomes defined as a “hazardous waste,” “hazardous substances,” pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 *et seq.*); and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*); or

3. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or

4. the presence of which on the Property poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or

5. which contains petroleum, petroleum products or other hydrocarbon substances; or



6. which contains polychlorinated biphenyls (PCB's), asbestos, urea formaldehyde foam insulation or radon gas.

## **8. ASSUMPTION OF LIABILITIES.**

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

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

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

## **9. LIQUIDATED DAMAGES.**

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

BUYER: \_\_\_\_\_ SELLER: \_\_\_\_\_

## 10. SPECIAL CONDITIONS.

There are no special conditions.

## 11. ESCROW AND CLOSING.

### 11.1 OPENING OF ESCROW

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

### 11.2 CLOSE OF ESCROW

(a) Subject to the provisions of Paragraph 4.3, Escrow shall close, and the Grant Deed shall be recorded in the Office of the County Recorder of Los Angeles County, California ("**Close of Escrow**") not later than sixty (60) days after Opening of Escrow. The failure of any condition precedent or performance of due diligence by Buyer shall not extend the Close of Escrow. The Escrow may be extended by mutual written agreement signed by Buyer and Seller.

### 11.3 SELLER DELIVERIES TO ESCROW

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

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

(b) At least one (1) day prior to Close of Escrow, Seller shall deliver such certifications, declarations or other documents as may be required under Internal Revenue Code Sec. 1445 and California Revenue and Tax Code Sec. 18662, together with any and all other documents required by law pertaining to foreign or out-of-state sellers.

### 11.4 BUYER'S DELIVERIES TO ESCROW

Buyer shall deliver to Escrow Holder prior to the Close of Escrow the balance of the cash portion of the Purchase Price set forth in Paragraph 2, as adjusted pursuant to this Agreement,

together with an additional sum sufficient to cover Buyer's closing costs as set forth in Paragraph 11.6.2, below.

#### 11.5 COMPLETION OF ESCROW

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

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

(1) To Seller: the cash portion of the Purchase Price as set forth in Paragraph 2 as adjusted pursuant to this Agreement and reduced by the amount of Seller's closing costs as set forth in Paragraph 11.6.1, below.

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

#### 11.6 COSTS OF ESCROW

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

##### 11.6.1 Seller shall pay:

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

##### 11.6.2 Buyer shall pay:

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

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

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

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

## **12. PRORATIONS.**

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

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

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

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

## **13. DAMAGE OR DESTRUCTION PRIOR TO CLOSE OF ESCROW.**

If the Property, or any portion thereof, is damaged or destroyed prior to the Close of Escrow from any cause whatsoever, whether an insured risk or not, including but not limited to, fire, flood, accident or other casualty which, according to the Buyer's and Seller's best estimate, would cost more than Fifty Thousand Dollars (\$50,000) to repair, Buyer shall have the option, upon written notice to Seller, to either (i) terminate this Agreement, or (ii) purchase the Property. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder without further instruction. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees. If Buyer elects to purchase the Property, Buyer shall be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction and, in addition, Seller shall pay Buyer the amount of any deductible (which can be paid by Seller by means of a credit against the Purchase Price). In the event that Buyer's and Seller's best estimate of the cost of repair is Fifty Thousand Dollars (\$50,000) or less, Buyer shall purchase the Property and be entitled to, and Seller shall assign to Buyer, all

insurance proceeds covering such damage or destruction. In addition, the difference between the amount of insurance proceeds available and the cost of repair shall be deducted from the cash portion of the Purchase Price. Should any damage or destruction occur prior to the Close of Escrow, the date scheduled for the Close of Escrow shall be extended for a period of time not to exceed thirty (30) days, for the purpose of allowing Buyer and Seller sufficient time to estimate the cost of repair. If Buyer fails to notify Seller of its election under this Paragraph 13, Buyer shall be deemed to have elected to purchase the Property.

#### **14. EMINENT DOMAIN.**

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

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

#### **15. SURVIVAL OF CLOSE OF ESCROW.**

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

#### **16. INTENTIONALLY OMITTED**

#### **17. NOTICES.**

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

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

to Buyer:

to Seller:

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

With a copy to:

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

to Escrow Holder: \_\_\_\_\_

Telecopier No.: \_\_\_\_\_

#### **18. ENTIRE AGREEMENT.**

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

**19. BINDING EFFECT.**

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

**20. WAIVER.**

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

**21. CAPTIONS AND HEADINGS.**

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

**22. COUNTERPARTS.**

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

**23. GOVERNING LAW.**

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

**24. ATTORNEYS FEES.**

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

**25. TIME OF ESSENCE.**

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

**26. DATE OF AGREEMENT.**

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

**27. INVALIDITY OF ANY PROVISION.**

If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this

Agreement, the legality, validity, and enforceability of the remaining provisions (or the balance of such provision) shall not be affected thereby.

**28. NO RECORDATION.**

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

**29. DRAFTING OF AGREEMENT.**

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

**30. NO THIRD PARTY BENEFICIARY RIGHTS.**

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

**31. JOINT AND SEVERAL LIABILITY.**

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

**32. INCORPORATION OF EXHIBITS.**

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

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

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

**34. ASSIGNMENT**

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

**35. RESERVATION OF DISCRETION**

(1) The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City or Successor Agency's discretion concerning consideration of any submittal by the Buyer or any other party for development of the Property. Further, nothing in this Agreement in any respect does or shall be



construed to affect or prejudice the City or Successor Agency's discretion to consider, negotiate, approve or disapprove any development or any required approvals necessary by the laws, rules, and regulations governing the development of property.

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

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

### **36. NO BROKER REPRESENTATION**

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

36.

(SIGNATURES APPEAR ON NEXT PAGE)

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

"Seller"

THE CITY OF POMONA ACTING AS THE  
SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE CITY OF  
POMONA, a public body, pursuant to California  
Health and Safety Code Sections 34173 and 34175

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

APPROVED AS TO FORM:

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

"Buyer"

EXPRESSIONS ENTERTAINMENT, LLC, a  
California limited liability company

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

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

EXHIBIT "A"  
Legal Description of Property

APN: 8335-013-909

DRAFT

EXHIBIT "B"  
Depiction of Property

DRAFT

EXHIBIT "C"  
Grant Deed

WHEN RECORDED RETURN TO

MAIL TAX STATEMENTS TO:

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

**GRANT DEED**

**RECITALS:**

1. The properties commonly known as 1320 Jacqueline Drive, Pomona, California (APN 8359-039-903), legally described on **Exhibit "A"** ("**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 Property as the successor in interest to the former Redevelopment Agency of the City of Pomona.

6. This disposition of the 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 Property is conveyed by Grantor in accordance with the Long Range Property Management Plan (Site No. \_\_\_\_ ) 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**”).

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

THE CITY OF POMONA ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF POMONA, a public body pursuant to California Health and Safety Code Sections 34173 and 34175 ("Successor Agency" or "Grantor"), hereby grants to THALIA CORONA an individual ("Grantee"), that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property").

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

THE CITY OF POMONA ACTING AS THE  
SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE CITY OF  
POMONA, a public body, pursuant to California  
Health and Safety Code Sections 34171(j), 34173  
and 34175.

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Secretary

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

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

State of California )  
 )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit “A” to Grant Deed

**LEGAL DESCRIPTION OF PROPERTY**

APN: 8359-039-903

DRAFT