

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS
(11.38 Net Acre Property commonly known as Veteran's Park)

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement"), dated for reference purposes only as of _____, 2019, is by and between the City of Pomona, a California Municipal Corporation ("Seller"), and Seventh Street Development, Inc., a California corporation ("Purchaser"). Seller and Purchaser are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Seller is the fee owner of approximately 13.95 acres (approximately 11.38 net acres) of real property comprised of APN 8707-019-903, 906 & 909 in the City of Pomona commonly known as Veteran's Park (the "Site") plus certain vehicular easement rights over the adjacent parcel identified as APN 8707-019-018 & 019 and 8707-019-902 (the "Easement"). The Site and Easement including improvements located thereon, along with all of the following, are collectively referred to as the "Property": all rights, privileges, easements and appurtenances to the Property, if any, including, without limitation, all of Seller's right, title and interest, if any, in and to all minerals, oil, gas and other hydrocarbon substances, development rights and water stock relating thereto, all strips and gores; and all of Seller's right, title and interest in and to any easements and other appurtenances used or connected with the beneficial use or enjoyment of the Property. A legal definition of the Property is contained in **Exhibit A** attached hereto and incorporated herein.

B. To provide for the future development of the Property, Seller and Purchaser entered into that certain Exclusive Negotiating Agreement on or about September 26, 2018, which expiration term was extended to September 21, 2019 by the parties by a letter agreement dated March 12, 2019 (the "ENA"), pursuant to which the Parties agreed to negotiate this Agreement to provide for Purchaser's purchase of the Property and development of the Property with up to four light industrial/manufacturing buildings with ancillary offices totaling approximately 210,000 square feet, as further described in **Exhibit B** and depicted in the Conceptual Property Plan in **Exhibit B-1** attached hereto and incorporated herein, as such proposed development may be modified by the Parties in writing ("Project").

C. Seller desires to sell, and Purchaser desires to purchase the Property, all in accordance with the terms set forth below.

TERMS & CONDITIONS

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, Seller and Purchaser agree as follows:

1. **Sale.** On the terms contained herein and subject to the conditions of this Agreement, Purchaser hereby agrees to purchase from Seller, and Seller agrees to sell to Purchaser the Property, on the Closing Date (defined in Section 11). The Parties agree that once this Agreement is fully executed, it shall supersede the ENA and the ENA will terminate.

2. **Opening of Escrow.** Within three (3) Business Days of execution of this Agreement, the parties shall open an escrow ("Escrow") with Escrow Holder by causing an executed copy of this Agreement to be deposited with Janette DeLap, Escrow Officer, Fidelity National Title Company, 3237 Guasti Road, Ste 105, Ontario, CA 91761 Telephone: (909)569-0225, Email: Janette.DeLap@fnf.com ("Escrow Holder"). Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder and accepted by Escrow Holder as evidenced by Escrow Holder's execution of this Agreement ("Opening of Escrow").

3. **Purchase Price.** The purchase price for the Property ("Purchase Price") shall be the amount of Eleven Million Six Hundred Fifty Thousand and 00/100 Dollars (\$11,650,000.00). At Seller's sole option, Seller may require Purchaser to provide an appraisal to confirm the Purchase Price reflects at least fair market value. If an appraisal to confirm this price is desired by Seller, Seller shall provide Purchaser written notice within thirty (30) days of the full execution of this Agreement (the "Appraisal Notice"). Seller and Purchaser shall then select a mutually acceptable licensed real estate appraiser to confirm the above price as fair market value within thirty (30) days of the Appraisal Notice. Purchaser's Deposit shall be used to pay for the appraisal. If the above price is determined by the appraiser to be less than fair market value (defined as the value a third party would pay on the open market for such parcel in an arm's length transaction), the Purchase Price shall be adjusted upwards to appraiser's estimate of fair market value; provided however that no adjustment shall be made to reduce the Purchase Price downwards based on the appraisal. Purchaser shall have the option of accepting such revised Purchase Price within seven (7) days of written notice of the price adjustment from Seller (the "Price Adjustment Notice"). If Purchaser does not provide a written response to Seller accepting the price adjustment within seven (7) days of receiving the Price Adjustment Notice from Seller, this Agreement shall automatically terminate without further liability by any party except as expressly provided therein. If the Agreement is terminated, Purchaser shall be refunded its Deposit less the cost of the appraisal. If the Agreement is not terminated, Seller and Purchaser agree the Purchase Price (as may be adjusted in accordance with this Section) to be the fair market value of the Property and Purchaser shall pay Seller the Purchase Price as follows:

3.1 **Deposit.** Upon receipt by Purchaser of a signed copy of this Agreement from Seller, and acceptance of the terms and execution of this Agreement by Purchaser, Purchaser shall, within five (5) Business Days thereafter, deposit the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "Initial Deposit") with the Escrow Holder. On the date that is the expiration date of the Contingency Period (defined in Section 8 below), Purchaser shall deposit an additional Two Hundred Thousand and 00/100 Dollars (\$200,000.00) into the Escrow (the "Additional Deposit"). The Initial Deposit and the Additional Deposit (collectively, the "Deposit") shall be held in Escrow for the benefit of the parties and applied against the Purchase Price at Closing (defined in Section 11) or refunded or forfeited in accordance with the terms of this Agreement.

The Deposit shall be held by Escrow Holder in an interest-bearing account and such interest, when received by Seller, shall become part of the Deposit. If Purchaser provides written notice of termination of this Agreement to Escrow Holder prior to the end of the Contingency Period, then the Deposit less the cost of appraisal (if one was prepared pursuant to Section 3) and any Purchaser-approved City Environmental Assessment and CEQA costs shall

be refunded to Purchaser; provided however that in no event shall such refund exceed the amount of the Deposit. In the event Purchaser expressly waives contingencies in writing and elects to continue and does not terminate this Agreement on or prior to the expiration of the Contingency Period, the Deposit shall become immediately non-refundable and held in Escrow, except in the event of a Seller default, a failure of a condition precedent in favor of Purchaser (including specifically receipt of Approvals by Purchaser consistent with the timeframes in the Schedule of Performance per Section 8.3 but excluding contingency items required to be approved during the Contingency Period), or as otherwise specifically set forth in this Agreement, but in all events the Deposit shall be applicable to the Purchase Price and to any Purchaser-approved City Environmental Assessment and CEQA costs including without limitation traffic studies. In the event of a Seller default, a failure of a condition precedent in favor of Purchaser (including specifically timely receipt of Approvals by Purchaser consistent with the timeframes in the Schedule of Performance per Section 8.3 but excluding contingency items required to be approved during the Contingency Period), then the Deposit less the cost of appraisal (if one was prepared pursuant to Section 3) and any Purchaser-approved City Environmental Assessment and CEQA costs shall be refunded to Purchaser. If the purchase and sale of the Property is not consummated because of a default under this Agreement on the part of Purchaser after the expiration of the Contingency Period, the Escrow Holder shall disburse the Deposit to Seller as liquidated damages pursuant to Section 10.1 below.

Purchaser has deposited Ten Thousand and 00/100 Dollars (\$10,000.00) (the "ENA Deposit") with Seller under the ENA to cover the actual reasonable documented out-of-pocket third party legal and other expenses to negotiate and prepare this Agreement. Seller shall provide an accounting (including invoices) for any such documented out-of-pocket costs and refund to Buyer any unused portion of the ENA Deposit and any interest accrued thereon within forty-five (45) days of the execution of this Agreement.

3.2 Cash at Closing. On or before 1:00 pm on the Business Day preceding the Closing Date, Purchaser shall deposit with the Escrow Holder, in cash, by certified check or by wire transfer of immediately available funds the balance of the Purchase Price less the Deposit plus or minus closing pro-rations, adjustments, and costs related to the Closing and less any Purchaser-approved City Environmental Assessment and CEQA costs, including without limitation any traffic or other required studies paid by Seller. The Purchase Price shall be disbursed to Seller by the Escrow Holder upon confirmation of the recordation of the Deed (as defined in Section 4.1.1) in the Official Records of Los Angeles County.

4. Closing Deliveries to Escrow Holder.

4.1 By Seller. Seller hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder not later than 1:00 pm one or before the Business Day preceding the Closing Date the following instruments and documents, the delivery of each of which shall be a condition precedent to the Closing for the benefit of Purchaser.

4.1.1 Deed. An executed grant deed in the form attached hereto as **Exhibit C ("Deed")**.

4.1.2 Non-Foreign Certification. Seller shall deliver to Escrow Holder a certification duly executed by Seller under penalty of perjury in the form of, and upon the terms set forth in, the Transferor's Certification of Non-Foreign Status ("FIRPTA Certificate"), setting forth Seller's address and federal tax identification number and certifying that Seller is a "United States Person" and that Seller is not a "foreign person" in accordance with and/or for the purpose of the provisions of Sections 7701 and 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder and Section 583 of the California Revenue & Tax Code ("Cal-FIRPTA").

4.1.3 Closing Statement. An executed settlement statement reflecting the pro-rations and adjustments required under Section 9.

4.1.4 Closing Documents. Any additional tax forms, recordation forms, 1099s or other documents as may be reasonably required by the Escrow Holder or the Title Company to consummate the transaction contemplated by this Agreement.

4.1.5 Cash – Pro-rations. The amount, if any, required of Seller under Section 9.

4.2 By Purchaser. Purchaser hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder on or prior to 1:00 pm on the Business Day preceding the Closing Date the following instruments and documents, the delivery of each of which shall be a condition precedent to the Closing for the benefit of Seller.

4.2.1 Purchase Price. Purchaser shall deliver to Escrow Holder the Purchase Price in accordance with Section 3.

4.2.2 Preliminary Change of Ownership Statement. Purchaser shall deliver to Escrow Holder a Preliminary Change of Ownership Statement completed in the manner required in Los Angeles County.

4.3 Additional Closing Items. Each party shall also execute and deliver to the Escrow Holder such documents, certificates and instruments as may customarily be required in transactions of this type. The items required to be submitted to the Escrow Holder pursuant to this Section and Sections 4.1 and 4.2 above are referred to herein collectively as the "Closing Items."

5. **Title.**

(a) As evidence of title, within five (5) days of the Opening of Escrow, or as soon thereafter as is reasonably practical, Seller shall deliver to Purchaser a commitment for an owner's policy of title insurance with standard exceptions ("Title Insurance Commitment") issued by Fidelity National Title (Steven Gomez, 4210 Riverwalk Parkway Suite 100, Riverside, CA 92505, 951-710-5941) ("Title Company"), in the amount of the Purchase Price (or such amount as required by Purchaser), dated later than the Opening of Escrow, and guaranteeing the title in the condition required for performance of this Agreement, together with copies of all documents shown in the

commitment as affecting title ("Title Documents") and a scaled and dimensioned plot showing the location of any easements on the Property. At Closing, Seller shall pay the premium for a CLTA standard coverage owner's policy.

(b) The Purchaser shall have thirty (30) days from Seller's delivery of the Title Insurance Commitment and Title Documents to inspect the state of the title and matters affecting title, and to object in writing to the matters shown thereby, including matters of survey ("Title Objections"). Failure to object in writing within the above period shall constitute a waiver of the Purchaser's objections to title. If Purchaser objects in writing to any matter disclosed by the Title Insurance Commitment or Title Documents, then Seller shall have ten (10) Business Days from the date it is notified in writing of the particular defects claimed, to elect, in its reasonable discretion, either: (1) to remedy the title defects that are the subject of the Purchaser's objection, or (2) not remedy the title defects that are the subject of the Purchaser's objection, at Seller's option. Seller's election shall be communicated in writing to Purchaser. If Seller elects not to remedy such title defect, then Purchaser shall have five (5) Business Days following receipt of Seller's notification under the preceding sentence to elect to either (x) waive its title objection and accept title subject to the alleged title defect, or (y) terminate this Agreement and receive a refund of the Deposit.

(c) Seller shall cure any title objection that may be cured by the payment of a sum certain (such as existing mortgages, land contracts and other liens) by paying or depositing that sum at Closing.

(d) Notwithstanding the foregoing, Purchaser hereby objects to all liens evidencing monetary encumbrances (other than liens for non-delinquent general real property taxes to be paid by Purchaser under this Agreement) and Seller agrees to cause all such liens to be eliminated at Seller's sole cost (including all prepayment penalties and charges) prior to the Closing Date. At the Closing, Seller will provide the Title Company with a commercially reasonable owner's affidavit, which will include a representation by the Seller (if accurate as of the Closing) that will allow the Title Company to issue an endorsement to Purchaser's title policy against potential mechanic's and materialmen's liens; provided, however that if such representation is not accurate, Seller will work with the Title Company to provide alternative assurances or indemnities to allow the Title Company to issue to Purchaser such lien endorsement at the Closing.

(e) Notwithstanding anything to the contrary contained in this Agreement, if, at any time prior to the Closing Date, any updates to the Title Insurance Commitment are received by Purchaser, Purchaser shall have ten (10) Business Days (regardless of the date) following Purchaser's receipt of such update and legible copies of all underlying documents referenced therein (that were not referenced in the Title Documents previously provided to Purchaser) to notify Seller in writing of objections to items on any such updates ("Title Updates"), and if there are such objections the parties shall proceed in accordance with Section 5(b) above. Purchaser, at its cost, has the right to procure an ALTA Survey and ALTA title policy for the Property. If desired by Purchaser, Purchaser shall procure the ALTA policy at least fifteen (15) Business Days prior to the expiration of the Contingency Period. Purchaser shall have ten (10) Business Days after receipt of

the Survey to object to any matters of survey in writing to Seller, in which event the procedure set forth in Section 5(b) above shall apply to such Survey objections.

6. **Possession.** Unless this Agreement is earlier terminated pursuant to the terms thereof, Seller shall deliver and Purchaser shall accept possession of the Property on the Closing Date, without any rights of tenants or any other party in possession.

7. **Conditions to Closing.** Seller's obligation to sell and Purchaser's obligation to purchase the Property shall be subject to and expressly conditioned upon satisfaction (or written waiver) of the following conditions precedent to the Closing set forth in Sections 7.1 through 7.5 below, which shall be exclusively for the benefit of Seller and Purchaser.

7.1 Approvals. On the later to occur of the expiration date of the Contingency Period or consistent with the Schedule of Performance (defined in Section 7.4 below), Purchaser shall have obtained any and all discretionary land use and other entitlements required for the Project, including without limitation (but only as applicable), parcel map approval, site plan and design review, environmental assessment, and CEQA approval and identification of associated mitigation measures for the Project (collectively, the "Approvals") from the City of Pomona and all other governmental authorities with jurisdiction over the Property (collectively the "Governmental Authorities"), sufficient to allow Purchaser to develop the Project after the Closing. Purchaser may obtain ministerial permits, including without limitation (but only as applicable), demolition and building permits, in accordance with the Schedule of Performance. Purchaser shall bear the expense of obtaining any such Approvals. Purchaser shall complete construction of the Project within thirty (30) months of issuance of building permits.

7.2 Site Plan and Architectural Renderings. The Approvals shall require Purchaser to provide a site plan and basic architectural renderings of the Project. The site plan and basic architectural renderings shall include a well-defined architectural concept for the Project showing vehicular circulation and access points, amounts and location of parking, location and size of all buildings (including height and perimeter dimensions) pedestrian circulation, landscaping and architectural character of the Project. Notwithstanding the foregoing, no Approvals shall be deemed final until approved by the City. Seller, in its capacity as owner of the Property, agrees to promptly cooperate with Purchaser, at no additional third-party cost to Seller, in all reasonable respects in obtaining the Approvals, provided that in no event shall the Approvals bind the Property or the Seller prior to the Closing Date. Seller's cooperation shall include without limitation, executing and joining in any applications or submissions made by Purchaser which require the consent or joinder of the record owner of the Property. Additionally, Seller hereby grants to Purchaser the right to negotiate directly with any Governmental Authorities having jurisdiction over the Property and/or the development thereof, provided that the outcome of any such negotiations shall not bind Seller or the Property prior to the Closing Date.

7.3 CEQA. The development of the Project shall be subject to, and processed in accordance with the California Environmental Quality Act, at California Public Resources Code Section 21000 *et seq.* and regulations promulgated pursuant thereto ("CEQA"), in accordance with California law. Close of Escrow is explicitly conditioned upon compliance with CEQA.

7.3.1 **No Commitment to Development.** The Parties agree that nothing in this Agreement is intended to commit the Buyer to completing a particular project or to commit the City to granting any Approval. The City's approval of this Agreement does not constitute approval by the City of any development of the Property or of other activity on the Property that would have a direct or reasonably foreseeable indirect environmental impact pursuant to CEQA. (See 14 C.C.R. §§ 15060(c); 15378(b).) Moreover, Buyer's future use or development of the Property is expressly conditioned on CEQA compliance. City shall conduct environmental review in accordance with CEQA prior to taking any discretionary action with regard to any proposed development of the Property. Nothing in this Agreement shall be construed to limit the City's discretion to consider and adopt any mitigation measure or project alternative, including the alternative of rejecting any proposed development of the Property, as provided in Public Resources Code section 21002. Following completion of the City's environmental review of any proposed development of the Property, the City shall file a notice of such approval as provided in Public Resources Code section 21152.

7.3.2 **Future Proposals Subject to Review.** Buyer and the City shall work together to conduct environmental review in accordance with CEQA before City takes action on any plan or entitlement or before the Parties Close of Escrow under this Agreement. The Parties agree and acknowledge that any proposed development of the Property might change as a result of various environmental factors. On or before the Close of Escrow, the scope and location of proposed development and the design of the anticipated improvements might well change to account for needs of Buyer, including changes required by the CEQA process.

7.4 **Schedule of Performance.** It is the intention of Seller and Purchaser that the development of the Project and the Property be completed in a timely and an expeditious manner. Accordingly, the Parties agree to develop the Project in accordance with the times set forth in the Schedule of Performance attached hereto as **Exhibit "D."** The City Manager of Seller shall have the authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days

8. **Purchaser's Contingencies, Contingency Period, Survey and Development Approvals.** Commencing on the Opening of Escrow and continuing until Seventy-five (75) days after the later of: a) receipt of the Materials (as defined below) from Seller, b) approval of the transfer of the Property to Purchaser by the US Secretary of the Department of the Interior (the "Contingency Period"), Purchaser shall have the right to perform and to seek any and all necessary or proper investigations, inspections and approvals necessary to develop and operate the Project at the Property, as described in Sections 8.1, 8.2 and 8.3, below:

8.1 **Approval by the Department of Interior.** The transfer of the Site is subject to approval by the US Secretary of the Department of the Interior. The City agrees to work expeditiously and in good faith to take any reasonable action(s) to apply for and obtain such approval; provided that Developer recognizes and agrees that the City, by entering into this Agreement, cannot and does not guarantee such approval. The Developer shall work cooperatively and in good faith with the City in efforts to accomplish the purposes of this paragraph, including the provision of information about the Project and/or the Developer to the Department upon request.

8.2 Review and Approval of Documents and Materials. Within ten (10) days of the Opening of Escrow, Seller shall deliver to Purchaser any and all documents; reports; surveys; environmental assessments; engineering reports; site, infrastructure or building plans and blueprints for the Property in Seller's possession or under its control; all contracts and other materials in Seller's possession or under its control or that of its agents, respecting the Property, including any Hazardous Substance Conditions Report concerning the Property, any Natural Hazard Zone Disclosure Report, and all lease agreements relating to any tenant or occupant then occupying the Property (collectively, "Materials"). During the Contingency Period, Purchaser may review and evaluate the Materials to determine whether the Property is appropriate for Purchaser's proposed use, in its sole discretion.

8.3 Purchaser's Due Diligence & Survey. During the Contingency Period, Purchaser and its agents may upon advance written notice to Seller as provided herein, at Purchaser's sole expense, enter upon the Property for the limited purpose of conducting tests and physical inspections of the property, including building inspections, geotechnical investigations, and environmental site assessments desired by the Purchaser. Purchaser shall also conduct such investigations with regard to zoning, building codes, and availability of permits and approvals for its intended construction and use of the Property, as it deems prudent in its sole discretion. Purchaser shall restore the Property to the condition that it was in prior to those tests and inspections and shall indemnify, defend and hold Seller and Seller's officers, agents and employees harmless from all damages, costs, loss, expense (including attorneys' fees) and liability resulting from or in any way related to Purchaser's or Purchaser's agents' entry upon the Property and/or activities, acts and omissions on the Property. Notwithstanding anything to the contrary contained in this Agreement, (i) the defense, indemnity and hold harmless provision contained in this Section shall not apply to the extent such liabilities arise in connection with the gross negligence or are caused by the willful misconduct of Seller, its officers, employees, agents, contractors, licensees or invitees during the Contingency Period and (ii) provided further that Purchaser shall have no liability to Seller or to its officers, employees, agents or contractors by reason of, nor shall Purchaser have any duty to indemnify, defend or hold any person or entity harmless from or against, any liabilities, including, without limitation, any claim for diminution in value of the Property or for environmental remediation or clean-up costs, resulting directly from Purchaser having merely discovered and/or reported (to the extent required by applicable law) any adverse physical condition, title condition, environmental condition or other defect with respect to the Property. The foregoing provisions shall survive the Closing or any termination of this Agreement. Purchaser shall notify Seller in writing at least 48 hours in advance of its desire to enter upon the Property and conduct or cause to be conducted any inspections or investigations at the Property so as to give Seller adequate opportunity to make reasonable arrangements with the tenant in possession (if any). During the Contingency Period, Purchaser shall have the right, but not the obligation, to cause a Survey of the Property at its own expense. The Survey report shall also: (1) be certified to Purchaser and (2) be prepared and sealed by a registered California Property Surveyor. If the Closing does not occur due to a default by Purchaser, copies of any final non-privileged, non-attorney-client work product reports and/or surveys prepared pursuant to this Agreement shall be delivered to Seller without representation or warranty. Purchaser shall not be liable for the content of any reports/Survey and said reports/Survey are provided to Seller for reference purposes only.

8.4 Approvals. On the later to occur of the expiration of the Contingency Period or consistent with the Schedule of Performance, Purchaser shall obtain all necessary Approvals, all at Purchaser's expense. The parties acknowledge that, notwithstanding any other provision of this Agreement, Purchaser's obligation to proceed to Closing is strictly conditioned upon Purchaser's receipt of the Approvals.

8.4.1 No Commitment to Development. The Parties agree that nothing in this Agreement is intended to commit the Buyer to completing a particular project or to commit the City to granting any Approval. The City's approval of this Agreement does not constitute approval by the City of any development of the Property or of other activity on the Property that would have a direct or reasonably foreseeable indirect environmental impact pursuant to CEQA. (See 14 C.C.R. §§ 15060(c); 15378(b).) City shall retain its sole and unfettered discretion as to the consideration of any and all decisions.

8.5 Purchaser's Objections. Purchaser shall have the right at any time on or before the expiration of the Contingency Period to terminate this Agreement if, during the course of Purchaser's due diligence investigations of the Property and in connection with its obtaining of the Approvals, Purchaser determines in its sole and absolute discretion that the Property is not acceptable to Purchaser. Without limiting the generality of the foregoing, and notwithstanding the expiration of the Contingency Period, if Purchaser is unable to procure the Approvals in the timeframes set forth in the Schedule of Performance due to events outside the control of Purchaser, Purchaser shall have the right to terminate this Agreement.

8.6 Termination Notice. Purchaser may exercise Purchaser's termination rights pursuant to Section 8.4 by delivering written notice of termination to Seller and Escrow Agent (a "Termination Notice") on or before the expiration of the Contingency Period. Upon the timely delivery of such Termination Notice: (i) Escrow Agent shall immediately return the Deposit, less the cost of appraisal (if one was prepared pursuant to Section 3) and any Purchaser-approved City Environmental Assessment and CEQA costs including without limitation a traffic study paid by Seller, to Purchaser without the need for further instruction or approval of the parties, and (ii) this Agreement shall automatically terminate and be of no further force or effect and neither party shall have any further rights or obligations hereunder except for those rights and obligations expressly intended to survive a termination of this Agreement. Notwithstanding anything contained herein to the contrary, if Purchaser fails to provide a Termination Notice or written objections to contingencies on or prior to the expiration of the Contingency Period in accordance with the provisions of this Section 8, then Purchaser shall be deemed to have elected to terminate this Agreement and the Deposit, less the cost of appraisal (if one was prepared pursuant to Section 3) and any Purchaser-approved City Environmental Assessment and CEQA costs including without limitation a traffic study paid by Seller, shall be promptly returned to Purchaser without need for further instruction or approval of the Parties.

8.7 AS-IS Purchase and Disclaimer of Warranties. Purchaser shall acquire the Property on an "AS IS, WHERE-IS" basis and shall be responsible for any and all physical defects in the Property, whether patent or latent, including, without limitation, the physical, environmental, and geotechnical condition of the Property, and the existence of any contamination, hazardous materials, vaults, debris, pipelines, wells, or other structures located

on, under or about the Property. Except as expressly set forth in this Agreement, Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property. Purchaser acknowledges that, from or after the Closing Date, any liability of the Seller for the environmental condition of the Property shall be extinguished, and that Seller shall have no liability for remediating any environmental condition of the Property. Purchaser shall indemnify and defend Seller against any claim or liability relating to the environmental condition of the Property; provided, however, that Seller shall remain liable for, and Seller shall indemnify and defend Purchaser against any claim or liability relating to (1) any hazardous materials released into the Property during Seller's ownership of the Property, (2) any third party claim that arose during Seller's ownership of the Property; (3) Seller's fraud or willful misconduct in connection with this Agreement; and (4) breach of Seller's Representation and Warranties. The foregoing indemnity obligation shall survive the Closing.

9. **Prorated and Adjusted Items.** The following items shall be prorated and/or adjusted as follows:

9.1 Taxes. Escrow is not to be concerned with proration of Seller's taxes for the current fiscal year. Seller is a public agency and therefore exempt from the payment of property taxes. Purchaser shall be responsible for all real property taxes accruing from or after the Closing Date.

9.2 Other Costs. Seller shall pay all water, sewer, telephone, and all other utility charges incurred on or before the Closing Date with respect to the Property. After the Closing Date, Purchaser shall pay all such charges. Seller shall pay the applicable transfer taxes, the cost applicable to Seller of recording any curative instruments and the cost of a CLTA standard coverage owner's title policy. Purchaser shall pay the cost of recording the Deed conveying title to the Property, the costs associated with Purchaser's financing, the cost of any extended coverage or ALTA owner's title policy and the cost of any title endorsements. Escrow fees shall be shared equally by the parties. Each party shall pay its own legal fees.

10. **Default.**

10.1 PURCHASER'S DEFAULT. IF PURCHASER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT BY REASON OF ANY UNCURED MATERIAL DEFAULT OF PURCHASER (AND NOT DUE TO A FAILURE OF A CONDITION PRECEDENT), SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO PURCHASER. PURCHASER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY PURCHASER AND AGREE THAT THE DEPOSIT (INCLUDING ALL INTEREST ACCRUED THEREON) IS A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT PURCHASER BREACHES THIS AGREEMENT BY DEFAULTING IN THE COMPLETION OF THE PURCHASE, THE DEPOSIT (INCLUDING ALL INTEREST ACCRUED THEREON) SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE PAID BY PURCHASER TO SELLER AS SELLER'S SOLE AND EXCLUSIVE

REMEDY. EXCEPT FOR ATTORNEYS' AND OTHER FEES RECOVERABLE PURSUANT TO SECTION 23 BELOW AND ITS RIGHTS TO BE INDEMNIFIED AS PROVIDED IN THIS AGREEMENT, SELLER AGREES TO AND DOES HEREBY WAIVE ALL OTHER REMEDIES AGAINST PURCHASER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY PURCHASER. THE PAYMENT OF THE DEPOSIT (INCLUDING ALL INTEREST ACCRUED THEREON) AS LIQUIDATED DAMAGES IS NOT INTENDED TO BE A FORFEITURE OR PENALTY BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

SELLER'S INITIALS: _____ PURCHASER'S INITIALS: CSF

10.2 SELLER'S DEFAULT. IF SELLER FAILS TO COMPLETE THE SALE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT BY REASON OF ANY MATERIAL DEFAULT OF SELLER (AND NOT DUE TO A FAILURE OF A CONDITION PRECEDENT), PURCHASER MAY EITHER (I) PROCEED AGAINST SELLER BY BRINGING AN ACTION FOR SPECIFIC PERFORMANCE UNDER THIS AGREEMENT WITHOUT ANY RIGHT TO SEEK DAMAGES OF ANY KIND OR NATURE, OR (II) TERMINATE THIS AGREEMENT IN WHICH EVENT THE DEPOSIT (INCLUDING ALL INTEREST ACCRUED THEREON) SHALL BE RETURNED TO PURCHASER. PURCHASER AND SELLER HEREBY ACKNOWLEDGES AND AGREES THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY PURCHASER AS A RESULT OF SUCH MATERIAL DEFAULT BY SELLER AND AGREE THAT THE REMEDY SET FORTH IN CLAUSE (II) ABOVE IS A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT SELLER BREACHES THIS AGREEMENT BY MATERIALLY DEFAULTING IN THE COMPLETION OF THE SALE, AND PURCHASER ELECTS NOT TO EXERCISE THE REMEDY SET FORTH IN CLAUSE (I) ABOVE BUT INSTEAD ELECTS THE REMEDY SET FORTH IN CLAUSE (II) ABOVE, SUCH SUMS SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF PURCHASER WHICH IS NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO PURCHASER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. EXCEPT FOR ATTORNEYS' AND OTHER FEES RECOVERABLE PURSUANT TO SECTION 23 BELOW AND ITS RIGHTS TO BE INDEMNIFIED AS PROVIDED IN THIS AGREEMENT, PURCHASER AGREES TO AND DOES HEREBY WAIVE ALL OTHER REMEDIES AGAINST SELLER WHICH PURCHASER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY SELLER.

SELLER'S INITIALS: _____ PURCHASER'S INITIALS: CSF

11. **Time and Place of Closing.** Consummation of this sale and purchase ("Closing") shall take place within thirty (30) days following the later of: (i) the expiration of the Contingency Period, or (ii) the date Purchaser obtains the Approvals (which, per Section 8.3 must be on the later to occur of the expiration of the Contingency Period or consistent with the Schedule of Performance). At the Closing, Purchaser shall provide a written waiver to Seller ("Purchaser's Closing Notice") of all conditions to Purchaser's obligation to proceed to Closing,

unless this Agreement has been duly and timely terminated pursuant to the provisions of this Agreement. Closing shall take place at the offices of the Escrow Holder and coordinated through their affiliate offices. As used herein, "Closing Date" means the date and time on which the Deed is recorded in the Official Records of the County.

11.1 Outside Closing Date. In no event shall the Closing occur later than one hundred eighty (180) days following the approval of the transfer of the Property by the US Secretary of the Department of the Interior (the "Outside Closing Date"), subject to extensions per Section 29.7.

12. **Pre-Closing Covenants.** Seller shall between the date hereof and the Closing Date, at Seller's sole cost and expense, unless otherwise consented to in writing by Purchaser:

12.1 Maintain the Property in compliance with all applicable laws and in its present condition, reasonable wear and use excepted.

12.2 Not suffer or permit any new easements, encumbrances, liens or security interests to attach to the Property, or transfer or convey the Property or any portion or portions of the Property.

12.3 Not enter into or amend any contracts or agreements pertaining to the Property, which would survive the Closing and be binding upon Purchaser.

12.4 Maintain hazard and liability insurance with respect to the Property, in amounts determined to be appropriate by Seller, in Seller's reasonable discretion.

13. **Risk of Loss.**

13.1 Condemnation. If before the Closing Date any action or proceeding is commenced for the condemnation or exercise of the rights of eminent domain with respect to the Property or any portion of the Property, or if Seller is notified by the duly authorized officer of a duly empowered condemning authority of the intent to commence such action or proceeding ("Condemnation") and if such Condemnation would materially and adversely affect the use or operation of the Property, have the effect of decreasing the square footage of the buildable area at the Property, or reduce or eliminate access to the Property, then Purchaser may either (a) terminate this Agreement, or (b) proceed with the Closing without modifying the terms of this Agreement and without reducing the Purchase Price, on the condition that Seller must assign and turn over, and Purchaser will be entitled to keep, all awards for the Condemnation that accrue to Seller; provided, however, if any award is rendered specifically to compensate Seller for Seller's lost goodwill, such an award shall belong to Seller. Seller may not negotiate, resist, or stipulate to any Condemnation without Purchaser's written consent. Seller must notify Purchaser of any notice of Condemnation of all or any portion of the Property within five (5) days after the receipt of such notice, and Purchaser must exercise its option(s) as provided in this Section 13.1 within fifteen (15) days after receipt of such notice. If necessary, the Closing Date will be extended to give Purchaser the full 15-day period to make such election. Notwithstanding the foregoing, if any condemnation action is commenced prior to the Closing Date, Purchaser shall have the right to terminate this Agreement and to receive the return of the Deposit, as well as a sum equal to Purchaser's out-of-pocket costs incurred in connection with this transaction.

13.2 Damage and Destruction. If before the Closing Date any damage or destruction of the Property, or any portion of it, occurs, then within three (3) days after determination of the amount of the Insurance Proceeds (defined below) to be received with respect to such loss, Purchaser must elect, by written notice to Seller, either to: (a) terminate this Agreement (in which event the Deposit, and all accrued interest thereon, shall forthwith be returned to Purchaser and thereupon neither party shall have any further rights or obligations hereunder); or (b) receive an assignment of the Insurance Proceeds with respect to such loss and proceed to Closing without any reduction in the Purchase Price. If Purchaser shall fail to provide such written notice of election within ten (10) days after determination of the amount of the Insurance Proceeds to be received with respect to such loss, then Purchaser shall be deemed to have elected to terminate this Agreement. As used herein, "Insurance Proceeds" means the proceeds from any and all insurance maintained by Seller with respect to the Property and/or to such loss, including without limitation fire and casualty and liability insurance.

14. **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser that, to Seller's actual knowledge, except as set forth or otherwise disclosed in this Agreement, or in any exhibit to this Agreement, or in any schedule of exceptions attached to this Agreement:

14.1 This Agreement has been duly authorized and executed on behalf of Seller. As of the Opening of Escrow, this Agreement constitutes a valid and binding agreement, enforceable in accordance with its terms. As of the Opening of Escrow, Seller has obtained all consents, releases and permissions and has given all required notifications related to the transaction herein contemplated and required under any covenant, agreement, encumbrance, law or regulation to which Seller is a party or by which Seller is bound.

14.2 Seller is the fee simple owner of the Property. Seller is not a party to any contract, agreement or commitment to sell, convey, assign, transfer or otherwise dispose of any portion or portions of the Property.

14.3 Seller has not received notice of violation of any applicable law, ordinance, regulation, order or requirement relating to Seller's operation or use of the Property.

14.4 To Seller's actual knowledge: (i) neither the Property nor any part thereof is in breach of any environmental laws; (ii) no part of the Property has ever been used as a landfill, dump, toxic waste disposal site or storage area; (iii) there are no underground storage tanks at the Property, or, with respect to removed tanks, at the time of removal, any contaminated soil was removed; and (iv) the Property is free of any Hazardous Materials that would trigger response or remedial action under any environmental laws or any existing common law theory based on nuisance or strict liability. This warranty is limited to matters of which Seller has actual knowledge, and Purchaser acknowledges that Seller has not made any affirmative investigation as to environmental issues affecting the Property in connection with this Agreement. As used in this Agreement, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including

without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

14.5 There is no litigation pending or to the actual knowledge of Seller, threatened, against or by Seller or the Property which relates to, or if decided adversely, could have a material adverse effect upon, the Property (including condemnation or similar proceedings).

14.6 Except as disclosed in writing to Purchaser by Seller as part of the Materials, there are no leases, licenses or other occupancy or use agreements, written or oral, in effect in which Seller has granted any party rights to possession or use of the Property or any portion thereof, nor has Seller given any party an option or right of first refusal to purchase any portion of the Property.

14.7 The Property is not subject to any operating, maintenance or repair contract or other agreements ("Service Contracts") that will bind the Property or Purchaser after the Closing.

14.8 Except as disclosed in the Materials, Seller has no actual knowledge of any violations of health, environmental or other applicable law, ordinance, code, order or regulation in any respect with regard to the Property.

14.9 Seller is not aware of any inaccuracy or incompleteness of any of the documents, materials or reports contained in the Materials.

14.10 To Seller's actual knowledge and except for matters of record as of the date hereof, there are no bonds or assessments or charges for any public improvements or utilities made against the Property which remain unpaid (or which will remain unpaid by Seller as of the Closing Date).

14.11 No representation, statement or warranty by Seller contained in this Agreement or in any exhibit attached hereto contains or will contain any untrue statements or omits, or will omit, a material fact necessary to make the statement of fact therein recited not misleading. If, after Seller's execution hereof and prior to the Closing, any event occurs or condition exists of which Seller becomes aware which renders any of the representations contained herein untrue or misleading, Seller shall promptly notify Purchaser in writing.

All representations and warranties contained in this Agreement shall be deemed remade as of the Closing Date, except in the event of a change in circumstances not within the control of Seller affecting any representations or warranties set forth herein, in which case Seller shall provide written notice to Purchaser regarding such changed circumstances within a reasonable time following such change (not to exceed five (5) Business Days following the date the City's City Manager/Development Services Director obtains actual knowledge of the changed circumstance), and prior to the Closing and if Purchaser in its reasonable discretion determines that such changed circumstances are materially adverse to Purchaser, Purchaser may elect to terminate this Agreement and receive a refund of the Deposit. As used herein, "actual

knowledge” of Seller refers to the actual knowledge of Seller’s officers, employees and agents directly involved in the negotiation and/or drafting of this Agreement, those responsible for the acquisition or maintenance of the Property, the City Attorney and the City Clerk.

15. **Assignment.** This Agreement shall not be assigned by any party hereto to any person or entity without the express written consent of Seller; provided, however, that Purchaser may assign the Agreement without Seller’s consent as follows: (a) to a California qualified business entity that is formed for the purpose of carrying out the Project and for which Purchaser is a member or the manager or affiliated with; or (b) for the sale or transfer of 50% or more of ownership or control interest between members of the same family; or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist of solely of members of the trustor’s family; or transfers to a corporation or partnership or other legal entity in which the members of the transferor’s family have a controlling majority interest of 51% or more; or (c) for the sale or transfer to an end user and/or to a tenant so long as Purchaser or its affiliate remains the developer of the Property. Any assignment does not release Purchaser from any of its obligations hereunder.

16. **Business Days.** As used herein, the term “Business Days” refers to Monday through Thursday, excluding holidays on which Seller is closed for business. Unless specified as Business Days, the term “days” shall mean calendar days.

17. **Binding Effect.** The covenants herein shall bind and inure to the benefit of the executors, administrators, successors and assigns of the respective parties.

18. **Brokers.** Seller and Purchaser acknowledge that no broker or finder was involved in this transaction and each party agrees to indemnify and hold harmless the other party from and against any claim that a commission or fee is due to any broker or finder who dealt with the party from whom indemnification is sought.

19. **Integration; Merger; Amendment; Survival of Representations.** Seller and Purchaser have not made any covenants, warranties or representations not set forth in this Agreement. This Agreement constitutes the entire Agreement between the parties. Except as otherwise provided herein, all representations, warranties and covenants set forth in this Agreement shall survive the Closing in accordance with Section 29.5. This instrument shall as to all prior drafts or forms exchanged between the parties or executed by the parties, be the sole effective instrument between them as to the provisions set forth in this Agreement. None of the terms and provisions hereof shall be altered or amended unless in writing and signed by the parties.

20. **Execution in Counterparts and by Fax/Email.** This document may be validly executed and delivered by facsimile, e-mail and/or portable document format (collectively, “Electronic Copy”). Any signer who executes this document and transmits this document by Electronic Copy intends that the Electronic Copy of their signature is to be deemed an original signature for all purposes. Any such Electronic Copy printout and any complete photocopy of such Electronic Copy printout is hereby deemed to be an original counterpart of this document. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. **Notices.** All notices shall be in writing and delivered personally, by overnight air courier service, by facsimile transmission or email, or by U.S. certified or registered mail, return receipt requested, postage prepaid, to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally, one (1) Business Day after depositing with an overnight air courier, or two (2) Business Days after depositing in the mail immediately, upon transmission (as confirmed by electronic confirmation of transmission generated by the sender's machine) for any notice given by facsimile or email:

If to Seller: City of Pomona
505 S Garey Avenue
Pomona, CA 91769
Attn: City Manager
Email: linda_lowry@ci.pomona.ca.us

with a copy to: Elizabeth Wagner Hull
Best Best & Krieger, LLP
18101 Von Karmen Ave, Suite 1000
Irvine, CA 92614
Email: Elizabeth.hull@bbklaw.com

If to Purchaser: Seventh Street Development, Inc.
3780 Kilroy Airport Way, Suite 520
Long Beach, CA 90806
Attn: Craig Furniss
Email: cfurniss@7thsd.com

with a copy to: Davis Wright Tremaine, LLP
1300 SW 5th Avenue, Suite 2400
Portland, OR 97201-5630
Attn: Stephen Ledoux, Esq.
Email: stephenledoux@dwt.com

22. **Governing Law.** This Agreement shall be construed according to the laws of the State of California.

23. **Attorney's Fees.** In the event any action or suit is brought by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorneys' fees, expert witness fees, accounting and engineering fees, and any other professional fees resulting therefrom.

24. **Expenses.** Seller and Purchaser shall pay their respective expenses and costs in connection with the preparation of this Agreement and other agreements and documents related to this Agreement and the transactions contemplated herein

25. **Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

26. **Construction.** The parties to this Agreement participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, then this Agreement will be construed as if drafted jointly by the parties to this Agreement, and no presumption or burden of proof will arise favoring or disfavoring any party to this Agreement by virtue of the authorship of any of the provisions of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates

27. **Qualification; Authority.** Each individual executing this Agreement on behalf of a party which is an entity, represents, warrants and covenants to the other party that (a) such person is duly authorized to execute and deliver this Agreement on behalf of such entity in accordance with authority granted under the organizational documents of such entity, and (b) such entity is bound under the terms of this Agreement.

28. **No Waiver.** The failure of either party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other, term, covenant, or condition of this Agreement at any later date or as a waiver of any term, covenant, or condition of this Agreement.

29. **Miscellaneous.**

29.1 Execution of Documents. The parties agree to execute such instructions to Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

29.2 Inducement. The making, execution and delivery of this Agreement by the parties hereto have been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

29.3 Incorporation of Exhibits. The exhibits attached hereto are incorporated herein by reference.

29.4 Relationship of Parties. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

29.5 Survival of Warranties. It is the express intention and agreement of the parties to this Agreement that all covenants, representations and warranties made by Seller in this

Agreement shall survive this Agreement, the recordation of the Deed and the Closing Date for a period of twelve (12) months.

29.6 **Limitation of Liability.** The parties agree that neither the holders of beneficial interests nor the trustees, officers, members, employees or agents of either party or any assignee or affiliate of either party shall be personally liable under the Agreement and all parties hereto shall look solely to the assets of the entity, for the payment of any claim or the performance of any obligation of either under this Agreement.

29.7 **Force Majeure.** If either Party is delayed or prevented from performing any act required in this Agreement by reason of any event beyond the reasonable control of either Party, including without limitation, by labor disputes, fire, unusual delay in deliveries, weather or acts of God, terrorism, delay in the issuance of permits or approvals, acts of governmental entities, unavoidable casualties or any other such causes beyond such Party's control, then the time herein fixed for completion of such obligation(s) shall be extended by the number of days that such Party has been delayed.

30. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

31. **1031 Exchange.** Both Seller and Purchaser agree to reasonably cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange.

32. **Representation by Counsel.** Each party hereto represents and agrees with each other that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party's respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

33. **Memorandum of Agreement.** The parties shall record a short form memorandum of this Agreement in the official records of Los Angeles County.

34. **Time is of the essence.** The parties agree that time is of the essence in the performance of all obligations under this Agreement.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

SELLER:

CITY OF POMONA,
a California municipal corporation

Linda Lowry, City Manager

ATTEST:


Name
City Clerk

APPROVED AS TO FORM:

Name
City Attorney

PURCHASER:

Seventh Street Development, Inc.,
a California corporation

By: 

Craig Furniss, President & Secretary

EXHIBIT A

DESCRIPTION OF PROPERTY

THE PROPERTY IS THAT CERTAIN REAL PROPERTY LOCATED IN THE CITY OF POMONA, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF LOT 2 OF [TRACT NO. 4581](#), IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 52, PAGES 2 AND 3 OF MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

ON THE NORTH BY THE NORTH LINE OF SAID LOT; ON THE EAST BY THE CENTER LINE OF ROAD VII-L.A. 77-B AS SAID CENTER LINE IS SHOWN ON COUNTY SURVEYOR'S MAP B-1268-1; ON THE SOUTH BY THE NORTH LINE OF THE 100 FOOT RIGHT OF WAY FOR BREA CANYON ROAD (NOW KNOWN AS MISSION BOULEVARD) AS DESCRIBED IN THE DEED RECORDED IN [BOOK 11545, PAGE 290 OF OFFICIAL RECORDS](#); AND BOUNDED ON THE WEST BY A LINE PARALLEL WITH THAT COURSE IN THE WESTERLY LINE OF SAID LOT 2 SHOWN ON SAID MAP HAVING A BEARING OF NORTH 14°15'30" WEST AND A LENGTH OF 957.02 FEET, WHICH LINE INTERSECTS THE NORTHERLY LINE OF SAID LOT 2, DISTANT EASTERLY THEREON 585.08 FEET FROM THE NORTHWEST CORNER OF SAID LOT.

EXCEPT THEREFROM THAT PORTION OF SAID LAND AS FURTHER DESCRIBED AS PARCEL 1A OF THE DEED TO STATE OF CALIFORNIA, STATE LANDS COMMISSION ACTING AS THE SCHOOL LAND BANK TRUSTEE, RECORDED NOVEMBER 12, 1997 AS [INSTRUMENT NO. 97-1793633 OF OFFICIAL RECORDS](#).

APN: 8707-019-903

PARCEL 2:

THE WESTERLY 50.00 FEET OF THAT PORTION OF LOT 2 OF [TRACT NO. 4581](#), IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 52, PAGES 2 AND 3 OF MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE NORTH 81°29'33" EAST 585.08 FEET, ALONG THE NORTH LINE OF SAID LOT 2; THENCE SOUTH 14°39'20" EAST, PARALLEL WITH THE EAST LINE OF LOT 3 IN SAID [TRACT NO. 4581](#), A DISTANCE OF 383.20 FEET, MORE OR LESS, TO A POINT THAT IS 381.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF SAID LOT 2, TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 14°39'20" EAST 868.18 FEET TO A POINT ON THE NORTH LINE OF MISSION BOULEVARD AS DESCRIBED BY DEED RECORDED SEPTEMBER 23, 1952 AS [INSTRUMENT NO. 3276, IN BOOK 39907, PAGE 305 OF OFFICIAL RECORDS](#), SAID NORTH LINE ALSO BEING 80 FEET NORTH, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF MISSION BOULEVARD; THENCE NORTH 81°27'15" EAST 275.00 FEET, ALONG THE NORTH LINE OF MISSION BOULEVARD, TO THE SOUTHWEST CORNER OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 12, 1997 AS [INSTRUMENT NO. 97-1793639 OF OFFICIAL RECORDS](#); THENCE ALONG THE WESTERLY LINE OF SAID LAST MENTIONED DEED, NORTH 11°01'03" WEST 129.16 FEET; THENCE NORTH 8°31'46" WEST 733.97 FEET TO THE INTERSECTION WITH THE LINE THAT IS SOUTHERLY 381.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF SAID LOT 2; THENCE ALONG SAID LINE, SOUTH 81°29'33" WEST 362.04 FEET, ALONG SAID LINE TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL DEPOSITS, INCLUDING BUT NOT LIMITED TO, OIL AND GAS, OTHER GASES, INCLUDING BUT NOT LIMITED TO NONHYDROCARBON AND GEOTHERMAL GASES, OIL SHADE, COAL, PHOSPHATE, ALUMINA, SILICA, FOSSILS OF ALL GEOLOGICAL AGES, SODIUM, GOLD, SILVER, METALS AND THEIR COMPOUNDS, ALKALI, ALKALI EARTH, SAND, CLAY, GRAVEL, SALTS AND MINERAL WATERS, URANIUM, TRONA, GEOTHERMAL RESOURCES, TOGETHER WITH THE RIGHT OF THE STATE OR PERSONS AUTHORIZED BY THE STATE TO PROSPECT FOR, DRILL FOR, EXTRACT, MINE AND REMOVE SUCH DEPOSITS OR RESOURCES AND TO OCCUPY AND USE SO MUCH OF THE SURFACE OF THE LANDS AS MAY BE NECESSARY THEREFOR, AS RESERVED BY THE STATE OF CALIFORNIA IN PATENT RECORDED NOVEMBER 12, 1997 AS [INSTRUMENT NO. 97-1793635](#), AND RE-RECORDED JULY 03, 2001 AS [INSTRUMENT NO. 01-1144689](#), BOTH OF OFFICIAL RECORDS.

APN: 8707-019-906

PARCEL 3:

THAT PORTION OF LOT 2 OF [TRACT NO. 4581](#), IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 52, PAGES 2 AND 3 OF MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF SAID LOT 2, BEING DISTANT THEREON NORTH 81°23'38" EAST 585.08 FEET FROM THE NORTHWESTERLY CORNER OF SAID LOT; THENCE PARALLEL WITH THE WESTERLY LINE OF SAID LOT 2, SOUTH 14°45'24" EAST 297.00 FEET; THENCE NORTH 68°36'23" WEST 54.51 FEET TO A LINE PARALLEL WITH THE WESTERLY LINE OF SAID LOT 2; THENCE ALONG SAID PARALLEL LINE, NORTH 14°45'24" WEST 269.59 FEET TO THE NORTHERLY LINE OF SAID LOT 2; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 2, NORTH 81°23'38" EAST 44.27 FEET TO THE POINT OF BEGINNING.

APN: 8707-019-909

EXHIBIT B

DESCRIPTION OF THE PROJECT

The parties desire the Project to be consistent with the following description:

The Project will consist of up to four light industrial/manufacturing buildings with ancillary office totaling approximately 210,000 square feet. The Project will include the required parking, landscaping and improvements.

Final specifications and footages will be specified in the Approvals.

[illegible]

CHINO VALLEY 71 FREEWAY

EXHIBIT C

Deed

FREE RECORDING REQUESTED BY
City Clerk
City of Pomona
505 S Garey Avenue
Box 660
Pomona, CA 91769

AND WHEN RECORDED MAIL THIS DEED
AND TAX STATEMENTS TO:

Seventh Street Development, Inc.
3780 Kilroy Airport Way, Suite 520
Long Beach, CA 90806
Attn: Craig Furniss

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEE PER GOV. CODE § 27383

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF POMONA, a California municipal corporation ("Grantor"), hereby grants to Seventh Street Development, Inc., a California corporation ("Grantee") the real property located in the City of Pomona, County of Los Angeles, State of California, as more particularly described in Attachment 1 attached hereto and incorporated herein by this reference (the "Property") and all rights, privileges, easements and appurtenances to the Property, if any, including, without limitation, all of Seller's right, title and interest, if any, in and to all minerals, oil, gas and other hydrocarbon substances, development rights and water stock relating thereto, all strips and gores; and all of Seller's right, title and interest in and to any easements and other appurtenances used or connected with the beneficial use or enjoyment of the Property.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf as of the date written below.

CITY OF POMONA,
a California municipal corporation

Mayor

ATTEST:

Pomona City Clerk

MAIL TAX STATEMENTS AS DIRECTED ABOVE

Attachment 1 to Grant Deed

Legal Description of the Property

THE PROPERTY IS THAT CERTAIN REAL PROPERTY LOCATED IN THE CITY OF POMONA, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF LOT 2 OF [TRACT NO. 4581](#), IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 52, PAGES 2 AND 3 OF MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

ON THE NORTH BY THE NORTH LINE OF SAID LOT; ON THE EAST BY THE CENTER LINE OF ROAD VII-L.A. 77-B AS SAID CENTER LINE IS SHOWN ON COUNTY SURVEYOR'S MAP B-1268-1; ON THE SOUTH BY THE NORTH LINE OF THE 100 FOOT RIGHT OF WAY FOR BREA CANYON ROAD (NOW KNOWN AS MISSION BOULEVARD) AS DESCRIBED IN THE DEED RECORDED IN [BOOK 11545, PAGE 290 OF OFFICIAL RECORDS](#); AND BOUNDED ON THE WEST BY A LINE PARALLEL WITH THAT COURSE IN THE WESTERLY LINE OF SAID LOT 2 SHOWN ON SAID MAP HAVING A BEARING OF NORTH 14°15'30" WEST AND A LENGTH OF 957.02 FEET, WHICH LINE INTERSECTS THE NORTHERLY LINE OF SAID LOT 2, DISTANT EASTERLY THEREON 585.08 FEET FROM THE NORTHWEST CORNER OF SAID LOT.

EXCEPT THEREFROM THAT PORTION OF SAID LAND AS FURTHER DESCRIBED AS PARCEL 1A OF THE DEED TO STATE OF CALIFORNIA, STATE LANDS COMMISSION ACTING AS THE SCHOOL LAND BANK TRUSTEE, RECORDED NOVEMBER 12, 1997 AS [INSTRUMENT NO. 97-1793633 OF OFFICIAL RECORDS](#).

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PARCEL 2:

THE WESTERLY 50.00 FEET OF THAT PORTION OF LOT 2 OF [TRACT NO. 4581](#), IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 52, PAGES 2 AND 3 OF MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE NORTH 81°29'33" EAST 585.08 FEET, ALONG THE NORTH LINE OF SAID LOT 2; THENCE SOUTH 14°39'20" EAST, PARALLEL WITH THE EAST LINE OF LOT 3 IN SAID [TRACT NO. 4581](#), A DISTANCE OF 383.20 FEET, MORE OR LESS, TO A POINT THAT IS 381.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF SAID LOT 2, TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 14°39'20" EAST 868.18 FEET TO A POINT ON THE NORTH LINE OF MISSION BOULEVARD AS DESCRIBED BY DEED RECORDED SEPTEMBER 23, 1952 AS [INSTRUMENT NO. 3276, IN BOOK 39907, PAGE 305 OF OFFICIAL RECORDS](#), SAID NORTH LINE ALSO BEING 80 FEET NORTH, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF MISSION BOULEVARD; THENCE NORTH 81°27'15" EAST 275.00 FEET, ALONG THE NORTH LINE OF MISSION BOULEVARD, TO THE SOUTHWEST CORNER OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 12, 1997 AS [INSTRUMENT NO. 97-1793639 OF OFFICIAL RECORDS](#); THENCE ALONG THE WESTERLY LINE OF SAID LAST MENTIONED DEED, NORTH 11°01'03" WEST 129.16 FEET; THENCE NORTH 8°31'46" WEST 733.97 FEET TO THE INTERSECTION WITH THE LINE THAT IS SOUTHERLY 381.00 FEET, MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF SAID LOT 2; THENCE ALONG SAID LINE, SOUTH 81°29'33" WEST 362.04 FEET, ALONG SAID LINE TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL DEPOSITS, INCLUDING BUT NOT LIMITED TO, OIL AND GAS, OTHER GASES, INCLUDING BUT NOT LIMITED TO NONHYDROCARBON AND GEOTHERMAL GASES, OIL SHADE, COAL, PHOSPHATE, ALUMINA, SILICA, FOSSILS OF ALL GEOLOGICAL AGES, SODIUM, GOLD, SILVER, METALS AND THEIR COMPOUNDS, ALKALI, ALKALI EARTH, SAND, CLAY, GRAVEL, SALTS AND MINERAL WATERS, URANIUM, TRONA, GEOTHERMAL RESOURCES, TOGETHER WITH THE RIGHT OF THE STATE OR PERSONS AUTHORIZED BY THE STATE TO PROSPECT FOR, DRILL FOR, EXTRACT, MINE AND REMOVE SUCH DEPOSITS OR RESOURCES AND TO OCCUPY AND USE SO MUCH OF THE SURFACE OF THE LANDS AS MAY BE NECESSARY THEREFOR, AS RESERVED BY THE STATE OF CALIFORNIA IN PATENT RECORDED NOVEMBER 12, 1997 AS [INSTRUMENT NO. 97-1793635](#), AND RE-RECORDED JULY 03, 2001 AS [INSTRUMENT NO. 01-1144689](#), BOTH OF OFFICIAL RECORDS.

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PARCEL 3:

THAT PORTION OF LOT 2 OF [TRACT NO. 4581](#), IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 52, PAGES 2 AND 3 OF MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF SAID LOT 2, BEING DISTANT THEREON NORTH 81°23'38" EAST 585.08 FEET FROM THE NORTHWESTERLY CORNER OF SAID LOT; THENCE PARALLEL WITH THE WESTERLY LINE OF SAID LOT 2, SOUTH 14°45'24" EAST 297.00 FEET; THENCE NORTH 68°36'23" WEST 54.51 FEET TO A LINE PARALLEL WITH THE WESTERLY LINE OF SAID LOT 2; THENCE ALONG SAID PARALLEL LINE, NORTH 14°45'24" WEST 269.59 FEET TO THE NORTHERLY LINE OF SAID LOT 2; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 2, NORTH 81°23'38" EAST 44.27 FEET TO THE POINT OF BEGINNING.

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EXHIBIT D

SCHEDULE OF PERFORMANCE

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
1.	Purchaser executes and delivers this Purchase and Sale Agreement ("PSA") to Seller	Prior to 9/21/19 (ENA expiration date)	
2.	Seller approves or disapproves PSA and, if approves, executes PSA	Prior to 9/21/19 (ENA expiration date)	
3.	Open Escrow	Within 3 Business Days after execution of PSA by the parties	2
4.	Seller delivers to Purchaser Title Insurance Commitment and Title Documents	Within 5 days from Opening of Escrow	5
5.	Purchaser approves or disapproves title exceptions	Within 30 days after delivery to Purchaser of Title Documents	5
6.	Seller delivers notice to Purchaser as to whether it will cure disapproved exceptions	Within 10 Business Days after receipt of Purchaser's notice	5
7.	Seller delivers to Purchaser the Materials for review and evaluation	Within 10 days of the Opening of Escrow	8.1
8.	From Opening of Escrow to the end of the Contingency Period, Seller shall make Property Available for inspection by Purchaser	After 48-hours prior notice	8.2
9.	Purchaser approves or disapproves the environmental and physical condition of the Property or waives condition	Within the Contingency Period	8.5
10.	Purchaser submits application for Approvals, including building elevations, materials board, and conceptual landscaping plan, CUP, signage and other discretionary actions for public hearing	Within 90 days the approval of the transfer of the Property to Purchaser by the US Secretary of the Department of the Interior	7.1; 7.2; 8.3

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
11.	City Planning Commission approves or disapproves Purchaser's application for Approvals	Within 60 days of Purchaser's submittal of applications for Approvals	
12.	City Council approves or disapproves Purchaser's application for Approvals	Prior to Close of Escrow and within 30 days of Planning Commission decision	
13.	Purchaser prepares and submits to City construction plans, drawings and specifications prepared in accordance with City approvals	Within 120 days after Closing	7.1
14.	Seller provides plan check comments	Within 60 days of Purchaser's submittal; provided that Purchaser may request expedited review subject to payment of City's standard expediting costs	7.1
15.	Purchaser completes construction	Within 30 months of Issuance of a Building Permit by City	7.1
16.	Escrow Agent gives notice of fees, charges, and costs to close escrow	One (1) week prior to Closing	
17.	Deposits into escrow by Seller:		
	a) Executed Deed	On or before 1:00 p.m. on the Business Day preceding the Closing Date	4.1.1
	b) Payment of Seller's Share of Escrow Costs	On or before 1:00 p.m. on the Business Day preceding the Closing Date	4.1.5; 9
	c) FIRPTA Certificate, Executed Closing Statement, Closing Documents	On or before 1:00 p.m. on the Business Day preceding the Closing Date	4.1.2; 4.1.3, 4.1.4
18.	Deposits into escrow by Purchaser:		
	a) The Initial Deposit	Within 5 Business Days after execution of PSA	3.1

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
	b) The Additional Deposit	On the date that is the expiration date of the Contingency Period	3.1
	c) The Purchase Price less the Deposit plus or minus closing pro-rations, adjustments and costs related to closing	On or before 1:00 p.m. on the Business Day preceding the Closing Date	3.2; 4.2.1; 9
	d) Preliminary Change of Ownership Statement	Prior to Closing Date	4.2.2
19.	e) Additional Closing Items	Prior to Closing Date	4.3
20.	Close of escrow; recordation and delivery of documents	Within 30 days following the later of: (i) the expiration of the Contingency Period, or (ii) the date Purchaser obtains the Approvals (which, per Section 8.3 must be on the later to occur of the expiration of the Contingency Period or consistent with the Schedule of Performance).	11

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Purchaser and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. All time periods are subject to Force Majeure provisions of Section 29.7 of the Agreement.