



COPY

**CITY OF SAN DIEGO
GROUND LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

**SAN DIEGO COMMUNITY LAND TRUST,
A CALIFORNIA NONPROFIT 501(C)(3) CORPORATION**

CITY OF SAN DIEGO
GROUND LEASE
[LAURISTON-PAXTON]

THIS CITY OF SAN DIEGO GROUND LEASE ("Lease") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and SAN DIEGO COMMUNITY LAND TRUST, a California nonprofit 501(c)(3) corporation ("LESSEE"), to be effective as of NOVEMBER 26, 2013 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

RECITALS

- I. CITY owns certain real property (the "Premises") consisting of sixteen (16) unimproved residential lots (the "Lots") on two (2) parcels (i.e., Assessor's Parcel Numbers 630-160-62 and 630-060-24), comprising approximately 3.3 acres of land located south of Elrose Drive between Lauriston Drive and Paxton Drive in San Diego, California 92154, and more particularly described in **Exhibit A: Premises Description**, attached hereto.
- II. LESSEE intends to develop the Premises with sixteen (16) affordable homeownership units which will be sold as permanently affordable housing to income-qualified buyers. If LESSEE decides to purchase the Premises, CITY and LESSEE will separately enter into the Real Estate Purchase and Sale Agreement ("Purchase & Sale Agreement") attached hereto as **Exhibit B: Purchase & Sale Agreement**.
- III. This Lease is for a public purpose. This Lease grants to LESSEE an option to purchase the Premises ("Purchase Option"). This Lease will allow LESSEE to conduct due diligence to determine the feasibility of purchasing the Premises. LESSEE's use of the Premises, if purchased, will be strictly restricted to developing affordable homeownership units on the Premises for sale as permanently Affordable Housing to Income-Qualified Buyers with an underlying land lease for each unit, and for no other purpose whatsoever. "Affordable Housing to Income-Qualified Buyers" shall mean long-term occupancy of a developed house structure by households whose combined annual gross income for all members does not exceed one hundred twenty percent (120%) of the "Area Median Income" as adjusted for household size as determined by the U.S. Department of Housing and Urban Development ("HUD") for the San Diego Standard Metropolitan Statistical Area. "Income-Qualified Buyer" shall mean a household whose combined annual gross income for all members does not exceed one hundred twenty percent (120%) of the Area Median Income as adjusted for household size as published by HUD for the San Diego Standard Metropolitan Statistical Area at the time of sale. Each underlying land lease will contain resale restrictions to assure that each home will be Affordable Housing to Income-Qualified Buyers in perpetuity.
- IV. If LESSEE exercises the Purchase Option:

- (a) title to the Premises shall be conveyed pursuant to a quitclaim deed with conditions and restrictive covenants to assure that each home will be Affordable Housing to Income-Qualified Buyers in perpetuity; and
- (b) within three (3) years after CITY transfers title to the Premises to LESSEE, LESSEE shall:
 - i. complete or cause the completion of the planned improvements consisting of up to one single-family home on each Lot; and
 - ii. make available exclusively to Income-Qualified Buyers for purchase a 99-year leasehold estate in each developed Lot at a price sufficiently below fair market value or otherwise adjusted to ensure purchase by Income-Qualified Buyers.

SPECIAL PROVISIONS

- A. City Council Authorization Required. LESSEE acknowledges and agrees that this Lease is expressly conditioned on the San Diego City Council's approval and authorization of this Lease, which may or may not be granted. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of the City Council's withholding of such Council authorization. LESSEE expressly waives any claim for expense or loss which LESSEE might incur if the Council does not authorize this Lease.

SECTION 1: PREMISES; USES

- 1.1 Leased Premises. Subject to the terms and conditions of this Lease, CITY hereby leases the Premises to LESSEE, and LESSEE hereby leases the Premises from CITY.
- 1.2 Allowed Uses. LESSEE may use the Premises for the purpose of conducting due diligence related to its potential purchase of the Premises, including without limitation conducting investigations, surveys, studies, measurements and analyses of the Premises, and for no other purpose whatsoever without CITY's prior written consent in each instance.
- 1.3 Due Diligence. During the term of this Lease (the "Due Diligence Period"), LESSEE may conduct its due diligence to determine, in LESSEE'S sole discretion, the feasibility of purchasing the Premises.
 - 1.3.1 Records Review. Upon reasonable prior notice to CITY, LESSEE may review records in the possession and control of CITY'S Real Estate Assets Department pertaining to the Premises. LESSEE acknowledges that additional Premises-related records may be in the possession and control of other CITY departments, including without limitation the Development Services Department. LESSEE shall be solely responsible for contacting such other CITY departments to

schedule a review of such additional records.

- 1.3.2 Preliminary Title Report; Approval. LESSEE shall obtain and deliver to CITY a Preliminary Title Report ("Report") for the Premises. If LESSEE disapproves of the Report, then LESSEE shall deliver to CITY a written notice of such disapproval within thirty (30) days after its receipt of the Report. LESSEE's failure to deliver such notice within the 30 days shall be deemed approval of the Report.
- 1.3.3 Unrecorded Liens. To the actual knowledge of CITY'S Real Estate Assets Department without further inquiry as of the Effective Date of this Lease, there are no unrecorded liens, leases or encumbrances against the Premises.
- 1.3.4 LESSEE'S Reports. LESSEE shall deliver to CITY at no charge true copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for LESSEE and pertaining to the Premises or any part thereof, and as and when received by LESSEE.
- 1.4 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 1.5 Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
- 1.6 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 1.7 Quiet Possession. LESSEE, while performing its obligations under this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Premises subject to the Reservation of Rights below. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.

1.8 Reservation of Rights.

1.8.1 Mineral Rights. CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.

1.8.2 Easements. CITY reserves the right to grant, establish, use, and maintain existing and future easements and rights-of-way over, under, along, across and through the Premises as it deems advisable for the public good.

1.8.3 Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.

1.9 Noninterference. CITY shall not substantially unreasonably interfere with LESSEE's use of the Premises pursuant to this Lease, nor shall LESSEE substantially unreasonably interfere with CITY's exercise of its rights under this Lease, including without limitation the Reservation of Rights, above.

1.10 Purchase Option. LESSEE shall have the option to purchase the Premises ("Purchase Option") at any time during the Term. The purchase and sale of the Premises shall be subject to the terms and conditions of the Purchase & Sale Agreement. The purchase price of the Premises (the "Purchase Price") shall be Sixteen Dollars (\$16).

1.10.1 To exercise the Purchase Option, LESSEE shall deliver all of the following to CITY, subject to City's satisfaction and approval in each instance:

1.10.1.1 A written notice to CITY at least five (5) business days prior to the anticipated closing of the purchase and sale transaction, which notice shall state the desired closing date.

1.10.1.2 Two (2) originals of the Purchase & Sale Agreement signed by LESSEE.

1.10.1.3 The Purchase Price in cash or certified check.

1.10.1.4 LESSEE's development plan for the Premises (the "Development Plan"), together with evidence, reasonably satisfactory to CITY, that the Development Plan has completed all reviews and approvals by all competent governmental authorities as shall be required prior to commencement of construction on the Premises. Such reviews and approvals shall have considered LESSEE's complete development of the entire Premises (i.e., LESSEE's project as a whole, rather than piecemeal). The quitclaim deed conveying title to the Premises shall contain conditions and covenants restricting development of the Premises to the Development Plan.

1.10.1.5 True copies of all reports, studies and other documentation produced by or for LESSEE and related to the Premises, the Development Plan

and LESSEE's development of the Premises, which shall include without limitation: (a) a certified engineering and drainage analysis ("Certified Analysis") of flooding and water drainage conditions and issues for the Premises, including with regard to existing drainage easements, the Premises in its to-be-developed condition, and the adjacent drainage channel and culvert facilities of the Metropolitan Transit System's trolley crossing to the south of the Premises, including without limitation recommendations for development of the Premises and improvements of the drainage channel and all related drainage facilities to minimize and or prevent future flooding of the Premises; and (b) a "Cycle Issues" report and conclusions of a "Preliminary Review," including a specific cycle issue review by City of San Diego Stormwater and Engineering personnel, done by the City of San Diego's Development Services Department ("DSD") for the proposed development of the Premises and all related development improvements based on the Development Plan.

1.10.1.6 A faithful performance bond in the amount of one hundred percent (100%) of the estimated construction costs of developing the Premises pursuant to the Development Plan. If LESSEE constructs any drainage, culvert or stormwater improvements, such performance bond shall include all drainage, culvert and stormwater improvements on the Premises as identified and required in both the Certified Analysis and the Preliminary Review and Cycle Issues report from DSD. The performance bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that all construction commenced by LESSEE shall be completed in accordance with the Development Plan, or at the option of CITY, that LESSEE shall remove the uncompleted construction and restore the Premises to a condition reasonably satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified in this section, or at CITY's option may be placed in an escrow approved by CITY.

1.10.1.7 Flood and Commercial General Liability insurance policies (with quotes and binders) for comprehensive defense and indemnification of CITY relating to any future flooding incidents at the Premises, to be maintained in perpetuity in favor of CITY after transfer of title to the Premises to LESSEE pursuant to the Purchase & Sale Agreement.

SECTION 2: TERM

2.1 Term. The initial term of this Lease ("Term") shall be five (5) years, commencing on the Effective Date. As used in this Lease, "Lease Year" shall mean each twelve-month period during the Term.

- 2.2 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to two (2) times the then fair market rent for the Premises' highest and best use, as determined by an appraisal prepared by a qualified appraiser chosen by CITY in its sole discretion, which rent shall be effective as of the first day of the holdover period, retroactively applied as necessary.
- 2.3 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them to CITY free and clear of all liens and encumbrances, and in a condition reasonably satisfactory to CITY. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

SECTION 3: RENT

- 3.1 Rent. LESSEE shall pay rent to CITY in the amount of One Dollar (\$1) for the entire Term, due upon execution and delivery of this Lease.
- 3.2 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease and not approved by CITY in writing, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

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- 3.3 Place of Payment. All rent payments shall made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 3.4 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

SECTION 4: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 4.1 Recordation of Lease. A Memorandum of Lease, the form of which is attached as **Exhibit C: Form of Memorandum of Lease**, shall be executed and recorded, at LESSEE's sole expense, in the Official Records of the San Diego County, California, Recorder, against the Premises upon execution of this Lease. Said Memorandum of Lease shall remain recorded for the Term of this Lease, or until complete transfer of title of the Premises pursuant to the Purchase & Sale Agreement.

- 4.2 Leasehold Encumbrances. Subject to CITY's prior written consent, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts, upon the express condition that the proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of improving, repairing or maintaining the Premises. Each such encumbrance shall be subject to all of the terms, covenants and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all CITY encumbrances on that fee interest.
- 4.3 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises, or grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, contractors and guests, to use or occupy the Premises or any part of the Premises without CITY's prior written consent. Any such consent shall not be deemed consent to any subsequent assignment, subletting, occupation or use by another person. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals or controlling shareholders.
- 4.3.1 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
- 4.3.2 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease must be reviewed and approved by CITY.
- 4.3.3 Additional Consideration to CITY. If this Lease is assigned or a majority of the Premises are subleased, or in the event of a refinancing that encumbers the leasehold, LESSEE shall pay to CITY an amount equal to: (a) for assignments, three percent (3%) of the gross amount paid for the leasehold; (b) for majority subleases, three percent (3%) of all amounts paid to LESSEE in consideration of such sublease; and (c) in the case of a refinancing, three percent (3%) of the amount of any new loan over and above the sum of the balance of the old loan plus, if applicable, the cost of new permanent improvements constructed on the Premises as required or allowed under this Lease. The amount upon which such three-percent payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the

market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, majority subletting or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or the source of the refinancing as to the amount due CITY. The additional consideration payable to CITY for each assignment and/or refinancing shall be paid concurrently with the closing of the proposed transaction. For majority subleases, such additional consideration shall be payable to CITY when accrued regardless of actual receipt by LESSEE. The applicable three-percent payment required by this section shall not apply to:

- (a) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants of the individual who is the owner of a controlling interest in LESSEE; or
- (b) an assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 5: DEFAULT AND REMEDIES

5.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease when due;
- (b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

5.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights

through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 6.2(a) and 6.2(b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 6.2(c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

5.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- (a) CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- (b) CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary,

or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and

- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- 5.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.
- 5.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

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SECTION 6: EMINENT DOMAIN

- 6.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
- 6.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 6.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 6.1.3 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 6.1.4 Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- 6.1.5 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 7: INDEMNITY; HOLD HARMLESS; INSURANCE

- 7.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that

LESSEE's duty to indemnify and hold CITY harmless shall not include any claims or liability arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents.

- 7.2 Insurance. LESSEE shall obtain and maintain throughout the term of this Lease, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Lease. Notwithstanding any provision of this Lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Lease. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and all relevant endorsements for (and subject to CITY's written approval of same):
- (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - (b) Commercial Automobile Liability Insurance, if and when LESSEE uses vehicles on the Premises and/or in connection with LESSEE's use of the Premises, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease.
 - (c) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees, if any, who work on the Premises and/or in connection with LESSEE's use of the Premises, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- 7.2.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising

out of: (a) ongoing operations performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the Premises.

- 7.2.2 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.
- 7.2.3 Severability of Interest. Each policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 7.2.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 7.2.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 7.2.6 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.

- 7.2.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 7.2.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 7.2.9 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Lease Use or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

SECTION 8: IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

- 8.1 Waste, Damage or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY.
- 8.2 Acceptance of Premises "As-Is." LESSEE shall take possession of the Premises "as is." LESSEE acknowledges and agrees that potential flooding liabilities exist on the Premises and LESSEE shall take possession with full knowledge and awareness of such potential. LESSEE is not relying on any representation or warranty of any kind, express or implied, oral or written, made by CITY or its elected officials, officers, employees, representatives or agents with respect to the prospective use, zoning or physical condition of the Premises, or with respect to the existence or absence of hazardous substances in, on, under or affecting the Premises. CITY has not and does not make any representation or warranty, express or implied, with respect to the legality, fitness or desirability of the Premises for LESSEE's intended use, any particular use, or as to its quality or merchantability, nor does the CITY assume any obligation to alter or improve the Premises. CITY shall not be liable or bound in any manner by any warranties, guarantees, promises, statements, representations or information, either express or implied, pertaining to the Premises and made or furnished by any real estate agent, broker, employee, servant or other person representing or purporting to represent CITY, except as made in this Lease. LESSEE has relied and will rely solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.

- 8.2.1 Flood Plain. The Premises are located within a Special Flood Hazard Area, as shown in **Exhibit D: Special Flood Hazard Area**, attached hereto. LESSEE acknowledges and agrees that it is accepting possession of the Premises with full knowledge of such fact and understands the risks associated therewith. LESSEE shall hold CITY, and all its elected officials, officers, employees, representatives and agents, harmless from any and all claims, costs and expenses related to LESSEE's use and possession of the Premises under this Lease; provided, however, that LESSEE's duty to hold CITY harmless shall not include any claims or liability arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives or agents. If LESSEE exercises the Purchase Option as provided in this Lease, LESSEE shall be solely responsible for the costs and/or performance of any construction and/or improvement of the drainage channel, drainage facilities and/or conditions that become necessary for the development of the Premises, and shall be further liable for any claims, costs and expenses that may arise related to or caused by said construction and/or improvement.
- 8.3 Entry and Inspection. CITY may at all times enter and inspect the Premises and the operations conducted on the Premises.
- 8.4 Maintenance. LESSEE shall maintain the Premises in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY.
- 8.5 Improvements/Alterations. No improvements, structures or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 8.6 Utilities. LESSEE shall order, obtain and pay for all water, utilities and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 8.7 Liens. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

8.8 Taxes. Subject to the provisions of Article XIII, Section 3(d) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

8.9 Ownership of Improvements and Personal Property.

8.9.1 Improvements. LESSEE shall own all improvements, fixtures, structures and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

8.9.2 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's Property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

8.9.3 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be

calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by qualified CITY staff.

- 8.9.4 CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.
- 8.10 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
- 8.11 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a hazardous substance or hazardous waste.
- 8.11.1 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- 8.11.2 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- 8.11.3 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring hazardous materials

or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

8.11.4 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

8.11.5 Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

8.11.6 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any hazardous substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in

what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 9: GENERAL PROVISIONS

- 9.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

SAN DIEGO COMMUNITY LAND TRUST
Attn: Joseph P. Mayer, Vice President
3295 Meade Avenue
San Diego, California 92116

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

- 9.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations and requirements of competent governmental authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE.
- 9.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act. LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

- 9.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee, contractor, and subcontractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 9.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
- 9.6 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
- 9.6.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- 9.6.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- 9.6.3 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 9.6.4 Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code

and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

9.6.4.1 LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

9.6.4.2 LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

9.7 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

9.7.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition.

9.7.2 Establish a drug-free awareness program to inform employees about all of the following:

- (a) The dangers of drug abuse in the workplace;
- (b) LESSEE's policy of maintaining a drug-free workplace;
- (c) Any available drug counseling, rehabilitation and employee assistance programs; and
- (d) The penalties that may be imposed upon employees for drug abuse violations.

9.7.3 LESSEE shall include in each of its sublicenses and contracts related to this Permit language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

9.8 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of

the City Council.

- 9.9 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 9.10 Water Quality Assurances. LESSEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.
- 9.10.1 NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Lease (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.
- 9.10.2 Municipal Code. LESSEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Stormwater Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program and in accordance with the Land Development Manual – Storm Water Standards.
- 9.10.2.1 Within the first thirty (30) days of the Term, LESSEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants," as defined by the Stormwater Code, and other sediments discharged from the Premises. LESSEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith. CITY may review the Prevention Plan periodically and require updates/revisions accordingly.
- 9.10.2.2 Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to CITY's satisfaction. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances and regulations.
- 9.10.2.3 LESSEE shall at all times keep and maintain "Best Management Practices" as required by the Prevention Plan in a manner which controls and prevents discharge of Pollutants to the "Maximum Extent

Practicable” (as defined in the Stormwater Code).

- 9.11 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use, or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.
- 9.12 Cumulative Remedies. CITY’s rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY’s rights or remedies at law or in equity.
- 9.13 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 9.14 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 9.15 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 9.16 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Lease and LESSEE’s occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto.
- 9.17 Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 9.18 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity’s articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

SAN DIEGO COMMUNITY LAND TRUST, a
California nonprofit 501(c)(3) corporation

Date: 9/5/2013

By: [Signature]

Name: Joseph P. Mayer
Title: Vice President

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 11/26/13

By: [Signature]

James F. Barwick, CCIM
Director, Real Estate Assets Department

COPY

Approved as to form and legality:

JAN I. GOLDSMITH, CITY ATTORNEY

By: [Signature]

Name: Jeremy Fonseca
Title: Deputy City Attorney

Exhibit A: Premises Description
Exhibit B: Purchase & Sale Agreement
Exhibit C: Form of Memorandum of Lease
Exhibit D: Special Flood Hazard Area

Exhibit A: Premises Description

PARCEL 2: APN: 630-060-24

LOTS 47, 48, 49, 50 AND 51 OF STORY BOOK PARK UNIT NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5439, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5439, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 7, 1964.

PARCEL 3: APN 630-160-62

LOTS 23 THROUGH 33 INCLUSIVE OF MOTGOMERY PARK ESTATES, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7693, FILED IN THE COUNTY OF SAN DIEGO COUNTY, JULY 9, 1973.

EXCEPTING THEREFROM HALF OF ALL OIL AND MINERAL RIGHTS AS RESERVED BY GEORGE MILTON WALLACE AND ISABEL C. WALLACE IN DEED RECORDED JANUARY 21, 1952 IN BOOK 4348, PAGE 183 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM REMAINING ONE-HALF OF ALL, GAS, MINERAL AND HYDROCARBON RIGHTS AND SUBSTANCES IN AND UNDER THE LAND, BUT BENEATH A PLANCE OF 500 FEET BELOW THE SURFACE OF THE LAND, BUT WITHOUT ANY RIGHT OF SURFACE ENTRY.

Exhibit B: Purchase & Sale Agreement

[TO FOLLOW BEHIND THIS PAGE]

REAL ESTATE PURCHASE AND SALE AGREEMENT

[LAURISTON-PAXTON]

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO COMMUNITY LAND TRUST, a California nonprofit 501(c)(3) corporation ("BUYER"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY owns certain real property (the "Property;" Assessor's Parcel Numbers 630-160-62 and 630-060-24) consisting of sixteen (16) unimproved residential lots (the "Lots") on two (2) parcels (i.e., Assessor's Parcel Numbers 630-160-62 and 630-060-24), comprising approximately 3.3 acres of land located south of Elrose Drive between Lauriston Drive and Paxton Drive in San Diego, California 92154, and more particularly described in **Exhibit A: Property Description**, attached hereto.
- B. CITY and BUYER have entered into that certain CITY OF SAN DIEGO GROUND LEASE (the "Lease") dated _____, under which BUYER has an option to purchase the Property during the term of the Lease. BUYER intends to develop the Property with up to one affordable homeownership unit per Lot, which will be sold as permanently affordable housing to income-qualified buyers. The Property must be developed as required by this Agreement.
- C. BUYER has elected to purchase the Property. The purchase and sale of the Property will be made under the terms and conditions of this Agreement.
- D. The sale of the Property is for a public purpose. A quitclaim deed to the Property will strictly restrict the use of the Property and each Lot to developing and maintaining an affordable homeownership unit for sale as permanently affordable housing to income-qualified buyers with an underlying land lease for the Lot. Each such underlying land lease will contain resale restrictions to assure that each home will be affordable in perpetuity.
- E. The parties acknowledge and agree that an open storm water drainage channel runs along the southerly boundary of the Property within a public drainage easement, and that the Property has incurred damage due to flooding of this drainage channel prior to this transaction. Also, drainage easements exist over certain portions of the Property for the purpose of water drainage from the Property. CITY, in its capacity as a public governmental entity, has responsibility for the maintenance of the public drainage facilities in their current condition. The parties acknowledge that the drainage facilities in their current condition may be insufficient to prevent future flood damage to the Property. The parties further acknowledge that BUYER shall be solely responsible for all costs of developing the Property, appurtenant drainage easements, and the adjacent drainage channel and facilities, including all costs for drainage, culvert and storm water improvements thereon. CITY shall not be responsible for the maintenance of the drainage facilities to the extent that the drainage channel, drainage facilities and/or Property conditions are changed from their current state as a result of

BUYER's improvements or development of the Property. BUYER acknowledges that a condition precedent to this Agreement is that BUYER shall fully protect, defend, indemnify, hold harmless and release CITY for any and all future flooding incidents or related liabilities at the Property resulting from or related to the drainage facilities, physical conditions of the drainage facilities in their current state, and any conditions of the drainage facilities caused by or contributed to by BUYER's development, use and maintenance of one or more of the Lots and the Property as a whole.

- F. BUYER has delivered to CITY evidence reasonably satisfactory to CITY that BUYER has a development plan (the "Development Plan," attached hereto and made a part hereof as **Exhibit B: Development Plan**) for the Property that has completed all reviews and approvals by all competent governmental authorities as required prior to commencement of construction on the Property. Such reviews and approvals have considered BUYER's complete development of the entire Property (i.e., BUYER's project as a whole, rather than piecemeal). The quitclaim deed conveying title to the Property will contain conditions and covenants restricting development of the Property to the Development Plan.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Purchase and Sale.** Under the terms and conditions of this Agreement, CITY shall sell and convey to BUYER, and BUYER shall purchase from CITY, all of CITY's right, title and interest in and to the Property. The Property shall be more particularly described in a quitclaim deed substantially in the form and with conditions and restrictive covenants as set forth in the form attached hereto as **Exhibit C: Form of Quitclaim Deed** (the "Quitclaim Deed").
2. **Purchase Price.** The purchase price of the Property ("Purchase Price") shall be Sixteen Dollars (\$16).
3. **Public Purpose.** The purchase of the Property is for the purpose of the development, sale and maintenance of permanently Affordable Housing to Income-Qualified Buyers with an underlying land lease for each Lot, and for no other purpose whatsoever. "Affordable Housing to Income-Qualified Buyers" shall mean long-term occupancy of a developed house structure by households whose combined annual gross income for all members does not exceed one hundred twenty percent (120%) of the "Area Median Income" as adjusted for household size as determined by the U.S. Department of Housing and Urban Development ("HUD") for the San Diego Standard Metropolitan Statistical Area. "Income-Qualified Buyer" shall mean a household whose combined annual gross income for all members does not exceed one hundred twenty percent (120%) of the Area Median Income as adjusted for household size as published by HUD for the San Diego Standard Metropolitan Statistical Area at the time of sale. Each underlying land lease shall contain resale restrictions to assure that each Lot and home thereon shall only be Affordable Housing to Income-Qualified Buyers in perpetuity. BUYER's purchase of the Property under this Agreement shall be conditioned and restricted to the foregoing use in the Quitclaim Deed.

- 3.1. BUYER, together with its successors and assigns shall, within three (3) years after the close of escrow, 1) complete or cause the completion of the planned improvements consisting of one single-family home per Lot, and 2) make available exclusively to Income-Qualified Buyers for purchase a 99-year Leasehold estate in each developed Lot, at a price sufficiently below fair market value or otherwise adjusted to ensure purchase by Income-Qualified Buyers.
4. Closing. BUYER has delivered the Purchase Price to CITY. In no less than five (5) business days, CITY shall deliver title to the Property to BUYER by promptly executing and delivering to BUYER the Quitclaim Deed, subject to all acts done or suffered by BUYER, or claims made by, through or under BUYER. BUYER shall promptly thereafter have the Quitclaim Deed recorded in the Official Records of the San Diego County, California, Recorder. Such recordation shall close the transaction (the "Closing").
- 4.1. Parties to Sign Documents. Prior to the Closing, the parties shall execute and deliver all instruments and documents reasonably required by the other party to effect the Closing.
- 4.2. Taxes. All ad valorem taxes and special taxes or assessments levied or assessed against the Property for the year of the Closing, if any, shall be prorated at the Closing, effective as of the date of the Closing. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall use the tax rate and the assessed valuation for the preceding tax year. The prorating of ad valorem taxes shall be subject to later adjustment once the actual tax statements for the year of the Closing have been received, which agreement to re-prorate taxes shall survive the Closing. However, CITY shall not be responsible for any increase in ad valorem taxes resulting from improvements made to the Property by BUYER after the Closing.
- 4.3. Costs. BUYER shall pay: (a) Preliminary Title Report fees; (b) all San Diego County documentary transfer taxes; (c) the fee for a standard-coverage California Land Title Association ("CLTA") Title Insurance Policy; and (d) all charges for document drafting and recording, (e) the incremental cost of any additional or extended-coverage title insurance beyond a CLTA Title Insurance Policy, if requested by BUYER.
5. Development and Use Requirements. With regard to development, improvement and construction at the Property, BUYER shall comply with all applicable local, state and federal laws, regulations and requirements, including without limitation the San Diego Municipal Code ("SDMC"), the SDMC Land Development Code, and the SDMC Building Regulations.
6. Due Diligence. BUYER acknowledges and agrees that it has completed all of its due diligence to determine the feasibility of purchasing the Property, and there are no contingencies to its purchase of the Property.
7. Acceptance of Property "As-Is". BUYER shall purchase the Property "as-is." BUYER acknowledges and agrees that potential flooding liabilities exist on the Property and BUYER

shall take possession with full knowledge and awareness of such potential. BUYER is not relying on any representation or warranty of any kind, express or implied, oral or written, made by CITY or its elected officials, officers, employees, representatives or agents with respect to the prospective use, zoning or physical condition of the Property, or with respect to the existence or absence of hazardous substances in, on, under or affecting the Property. CITY has not and does not make any representation or warranty, express or implied, with respect to the legality, fitness or desirability of the Property for BUYER's intended use, any particular use or as to its quality or merchantability, nor does the CITY assume any obligation to alter or improve the Property. CITY shall not be liable or bound in any manner by any warranties, guarantees, promises, statements, representations or information, either express or implied, pertaining to the Property and made or furnished by any real estate agent, broker, employee, servant or other person representing or purporting to represent CITY, except as made in this Agreement. BUYER has relied and will rely solely on its own independent investigations of the condition and suitability of the Property, and is satisfied with the condition thereof.

- 7.1. Flood Plain. The Property is located within a Special Flood Hazard Area, as shown in **Exhibit D: Special Flood Hazard Area**, attached hereto. BUYER acknowledges and agrees that it is accepting possession of the Property with full knowledge of such fact and understands the risks associated therewith. BUYER shall hold CITY, and all its elected officials, officers, employees, representatives and agents, harmless from any and all claims, costs and expenses related to BUYER's use and possession of the Property under this Agreement; provided, however, that BUYER's duty to hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives or agents. BUYER shall be solely responsible for the costs and/or performance of any construction and/or improvement of the drainage channel, drainage facilities and/or conditions that become necessary for the development of the Property, and shall be further liable for any claims, costs and expenses that may arise related to or caused by said construction and/or improvement.
- 7.2. Indemnity and Hold Harmless. BUYER shall protect, defend, indemnify and hold CITY and its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with any flood damage or environmental liabilities related to or deriving from BUYER'S possession development, use or occupancy of the Property or any part thereof, including without limitation all claims of and liabilities to third parties, including from home owners on the Property, for inverse condemnation or design defect caused by any aspect or conditions of the Property or of the adjacent drainage channel, appurtenant drainage facilities, or of any modifications or improvements thereto. If CITY commences legal proceedings related to performance or enforcement of this Agreement, or to defend against any action taken or filed against CITY, its elected officials, officers, representatives, agents or employees, related to flooding or flood-related claims at the Property or any part thereof, then BUYER shall pay all legal costs in connection therewith, including reasonable costs and attorneys' fees. BUYER shall hold CITY

harmless from any and all claims related to flooding that occur as a result of new construction in or improvement to the adjacent drainage channel, appurtenant or adjacent drainage facilities and/or Property conditions. CITY shall not be held liable for BUYER's failure to make the Property reasonably safe from flooding.

- 7.3. BUYER'S Waiver. Notwithstanding any provision of this Agreement to the contrary, if CITY makes any representation or warranty regarding the Property and BUYER learns that such representation or warranty is or might be untrue prior to the Closing and BUYER elects to purchase the Property anyway, then BUYER shall be deemed to have waived any right to bring an action or proceeding against CITY, its agents, employees or brokers regarding the representation or warranty as to the Property.
- 7.4. Sophistication of BUYER. BUYER represents and warrants it is a sophisticated buyer familiar with the ownership and operation of real estate projects similar to the Property and that it will acquire the Property solely on the basis of and in reliance on its own examinations and the title insurance protection obtained pursuant to this Agreement, and not on any information provided or to be provided to BUYER by CITY. BUYER agrees that the BUYER'S Due Diligence Period has provided BUYER with adequate opportunity to complete all physical and economic examinations of the Property as BUYER requires.
- 7.5. Property Information. Information regarding the Property and provided to BUYER by CITY shall be deemed only an accommodation to BUYER. CITY shall not be obligated to make any investigation or verification of any information provided to BUYER, regardless of the source of such information. CITY makes no representation, and expressly disclaims any responsibility for the accuracy or completeness of such information.
8. Release. With the exception of any claims arising from CITY'S fraud or intentional misrepresentation, effective from and after the Closing, BUYER, for itself, its successors, assignees, representatives, employees, officers and agents, releases and forever discharges CITY, its elected officials, officers, representatives, agents, employees, successors-in-interest and assigns, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties or other theory of recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which BUYER now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of this Agreement, the Property or any part thereof, or the condition of the Property or any part thereof, including without limitation all claims or liabilities asserted or in any manner directly or indirectly connected with any flood damage or environmental liabilities related to or deriving from BUYER'S possession, development, use or occupancy of the Property or any part thereof, and including without limitation any and all known or unknown claims resulting from the alleged or actual acts or omissions of CITY, its elected officials, officers, representatives, agents or employees.

- 8.1. Section 1542 Waiver. BUYER acknowledges and agrees that the release of liability provision set forth above is a general release, and with the exception of any claims that may arise from CITY'S fraud or intentional misrepresentation, further expressly waives and assumes the risk of any and all claims against CITY arising from this Agreement, the Property or any part thereof, or the condition of the Property or any part thereof, and which exist as of the Closing, but of which BUYER does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect BUYER'S decision to enter into this Agreement and complete the Closing. BUYER expressly waives, as demonstrated by the signature set forth immediately below, the benefits and provisions of Section 1542 of the California Civil Code, and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

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

Waived by: SAN DIEGO COMMUNITY LAND TRUST, a
California nonprofit 501(c)(3) corporation

BY: _____
Name: _____
Title: _____

9. No Real Estate Commission. BUYER and SELLER, each, represents, warrants and agrees that no real estate commission, finder's fee or broker's fee has been or will be incurred or paid in connection with the purchase and sale of the Property. The rights and obligations of BUYER and SELLER pursuant to this section shall survive the Closing or termination of this Agreement.
10. Mandatory Disclosure of Business Interests. Pursuant to San Diego City Charter section 225, BUYER shall make a full and complete disclosure of the name and identity of each person directly or indirectly involved in the transaction contemplated by this Agreement and the precise nature of their interest.
11. Default and Remedies.
- 11.1. CITY'S Pre-Closing Default. If CITY is in default of this Agreement prior to the Closing, BUYER may, at its option and as its exclusive remedy for such default, either: (a) terminate this Agreement by written notice to CITY; or (b) if the default resulted from a failure to convey the Property to BUYER at a Closing, seek and enforce specific performance of this Agreement.

- 11.2. CITY'S Post-Closing Default. BUYER may seek and enforce any remedy available at law or in equity: (a) if CITY defaults on its obligations under this Agreement after the Closing; and (b) for any claim related to this Agreement arising from the sole negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents. Notwithstanding the foregoing, CITY shall not be liable for any consequential or punitive damages.
- 11.3. BUYER'S Default. If BUYER is in default of this Agreement at any time, CITY may terminate this Agreement by written notice to BUYER and/or seek and enforce any other remedy available at law or in equity.
- 11.4. Limited Liability. CITY'S liability for damages resulting from or under this Agreement shall be limited to either the Property or to BUYER'S funds received by CITY and related to the Property, and without resort to any other CITY assets.
12. Time of Essence. Time is of the essence to the performance of each and every obligation under this Agreement.
13. Interpretation. This Agreement shall be governed by the laws of the State of California. The section headings are for convenience only and shall not interpret, define or limit the scope or content of this Agreement. If any party is made up of more than one person or entity, then all are identified in the singular in this Agreement. If any right of approval or consent by a party is provided for in this Agreement, the party shall exercise the right promptly and reasonably, unless this Agreement expressly gives such party the right to use its sole discretion.
14. CITY'S Consent, Approval. Unless otherwise expressly provided, whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor").
15. Amendments. The terms and provisions of this Agreement may only be modified or amended pursuant to a written instrument signed by all parties hereto.
16. Successors and Assigns. The provisions of this Agreement shall inure to and bind the successors and assigns of the parties.
17. Assignment. BUYER shall not assign this Agreement in whole or in part without CITY'S prior written consent.

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18. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed as follows:

CITY: THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

BUYER: SAN DIEGO COMMUNITY LAND TRUST
Attn: Joseph P. Mayer, Vice President
3295 Meade Avenue
San Diego, California 92116

19. Partial Invalidity. If any term, covenant, condition or provision of this Agreement is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
20. Waiver. The Property is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of BUYER'S obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a breach or default shall not be a waiver of any other breach or default. Any waiver of a breach or default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S failure to discover a breach or default or take prompt action to require the correction of any breach or the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the correction of any breach or the cure of any default.
21. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and BUYER, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of BUYER or any other party or entity.
22. Survival. Any obligation which accrues under this Agreement prior to its termination or a Closing shall survive such termination or the Closing.
23. Entire Agreement. This Agreement represents the entire agreement between the parties for the purchase and sale of the Property, and supersedes all prior negotiations, representations or agreements, either oral or written.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

25. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: _____ SAN DIEGO COMMUNITY LAND TRUST, a California
nonprofit 501(c)(3) corporation

BY: _____
Name: _____
Title: _____

Date: _____ THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____

Date: _____ THE CITY OF SAN DIEGO Transportation & Storm
Water Department, Storm Water Division

BY: _____
Name: _____
Title: _____

Approved as to form and legality:

JAN I. GOLDSMITH, San Diego City Attorney

BY: _____
Name: _____
Title: _____

Exhibit A: Property Description
Exhibit B: Development Plan
Exhibit C: Form of Quitclaim Deed
Exhibit D: Special Flood Hazard Area

Exhibit A: Property Description

PARCEL 2: APN: 630-060-24

LOTS 47, 48, 49, 50 AND 51 OF STORY BOOK PARK UNIT NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5439, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5439, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 7, 1964.

PARCEL 3: APN 630-160-62

LOTS 23 THROUGH 33 INCLUSIVE OF MOTGOMERY PARK ESTATES, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7693, FILED IN THE COUNTY OF SAN DIEGO COUNTY, JULY 9, 1973.

EXCEPTING THEREFROM HALF OF ALL OIL AND MINERAL RIGHTS AS RESERVED BY GEORGE MILTON WALLACE AND ISABEL C. WALLACE IN DEED RECORDED JANUARY 21, 1952 IN BOOK 4348, PAGE 183 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM REMAINING ONE-HALF OF ALL, GAS, MINERAL AND HYDROCARBON RIGHTS AND SUBSTANCES IN AND UNDER THE LAND, BUT BENEATH A PLANCE OF 500 FEET BELOW THE SURFACE OF THE LAND, BUT WITHOUT ANY RIGHT OF SURFACE ENTRY.

Exhibit B: Development Plan

Exhibit C: Form of Quitclaim Deed

Recording requested by:
The City of San Diego

When Recorded Mail to:
OFFICE OF THE CITY CLERK
THE CITY OF SAN DIEGO
202 "C" ST., 2ND FLOOR, MS 2A
SAN DIEGO, CA 92101

APN 630-060-24 and 630-160-02

SPACE ABOVE FOR RECORDER'S USE.
NO RECORDING FEE DUE: CALIF. GOV. CODE §6103

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged,

THE CITY OF SAN DIEGO,
a California municipal corporation ("GRANTOR"),

HEREBY REMISES AND QUITCLAIMS TO

SAN DIEGO COMMUNITY LAND TRUST,
a California nonprofit 501(c)(3) corporation ("GRANTEE"),

ALL THAT REAL PROPERTY (the "Property;" APN 360-060-24 and 630-160-02) in San Diego, California, comprised of approximately 3.3 acres of land, together with all rights and appurtenances thereto. The Property is more particularly described as follows:

APN: 630-060-24: LOTS 47, 48, 49, 50 AND 51 OF STORY BOOK PARK UNIT NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5439, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5439, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 7, 1964.

APN 630-160-02: LOTS 23 THROUGH 33 INCLUSIVE OF MOTGOMERY PARK ESTATES, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7693, FILED IN THE COUNTY OF SAN DIEGO COUNTY, JULY 9, 1973.

EXCEPTING THEREFROM HALF OF ALL OIL AND MINERAL RIGHTS AS RESERVED BY GEORGE MILTON WALLACE AND ISABEL C. WALLACE IN DEED RECORDED JANUARY 21, 1952 IN BOOK 4348, PAGE 183 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM REMAINING ONE-HALF OF ALL, GAS, MINERAL AND HYDROCARBON RIGHTS AND SUBSTANCES IN AND UNDER THE LAND, BUT BENEATH A PLANCE OF 500 FEET BELOW THE SURFACE OF THE LAND, BUT WITHOUT ANY RIGHT OF SURFACE ENTRY.

CONDITIONS AND RESTRICTIVE COVENANTS: GRANTOR's conveyance of the Property to GRANTEE is strictly conditioned on the satisfaction of all conditions contained in this Quitclaim Deed. GRANTEE hereby covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property, that the Property is restricted by the following conditions and restrictive covenants, and in addition, GRANTEE hereby covenants to honor and satisfy all said conditions:

1. Affordable Housing. The Property shall be used solely and exclusively for developing affordable homeownership units for sale as permanently Affordable Housing to Income-Qualified Buyers with an underlying land lease for each unit thereon, and for no other purpose whatsoever. "Affordable Housing to Income-Qualified Buyers" shall mean long-term occupancy of a developed house structure by households whose combined annual gross income for all members does not exceed one hundred twenty percent (120%) of the "Area Median Income" as adjusted for household size as determined by the U.S. Department of Housing and Urban Development ("HUD") for the San Diego Standard Metropolitan Statistical Area. "Income-Qualified Buyer" shall mean a household whose combined annual gross income for all members does not exceed one hundred twenty percent (120%) of the Area Median Income as adjusted for household size as published by HUD for the San Diego Standard Metropolitan Statistical Area at the time of sale. If HUD ceases to publish an established Area Median Income as aforesaid, any other reasonably comparable method of computing Area Median Income and/or the "Annual Housing Cost" used by the San Diego Housing Commission shall apply.
2. Resale Restrictions. Each underlying land lease to Income-Qualified Buyers shall contain resale and transfer restrictions to assure that the home will be Affordable Housing to Income-Qualified Buyers in perpetuity.
3. Property Development. Development of the Property is subject to timeframes, conditions and other requirements agreed to by GRANTEE and contained in that certain REAL ESTATE PURCHASE AND SALE AGREEMENT dated _____, 20____, between GRANTOR and GRANTEE (the "Purchase & Sale Agreement"). Any and all development of the Property shall be strictly restricted to the "Development Plan" incorporated as part of the Purchase & Sale Agreement.
4. No Encumbrances. The Property shall not be encumbered or used to secure the payment of any lien or loan without GRANTOR's prior written approval in each instance. Any "Uniform Community Land Trust Ground Lease Rider" or other encumbrance or creation of interest that would interfere with or modify the conditions and restrictive covenants in this Quitclaim Deed shall constitute a breach of this Quitclaim Deed.
5. Release. GRANTEE, for itself, its successors, assignees, representatives, employees, officers and agents, releases and forever discharges GRANTOR and its elected officials, officers, representatives, agents, employees, successors-in-interest and assigns of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties or other theory of

recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which GRANTEE now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of this Quitclaim Deed, the Property or any part thereof or the condition of the Property or any part thereof, including without limitation all claims or liabilities asserted or in any manner directly or indirectly connected with any flood damage or environmental liabilities related to or deriving from GRANTEE's possession, development, use or occupancy of the Property or any part thereof, and including without limitation any and all known or unknown claims resulting from the alleged or actual acts or omissions of GRANTOR, its elected officials, officers, representatives, agents or employees.

- 5.1 Section 1542 Waiver. GRANTEE acknowledges and agrees that the release of liability provision set forth above is a general release, and with the exception of any claims that may arise from GRANTOR'S fraud or intentional misrepresentation, further expressly waives and assumes the risk of any and all claims against GRANTOR arising from this Quitclaim Deed, the Property or any part thereof or the condition of the Property or any part thereof, and which exist as of the date this Quitclaim Deed is recorded in the Official records of the San Diego County, California, Recorder, but of which GRANTEE does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect GRANTEE'S decision to acquire the Property. GRANTEE expressly waives, as demonstrated by the signature set forth immediately below, the benefits and provisions of Section 1542 of the California Civil Code, and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

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

Waived by: SAN DIEGO COMMUNITY LAND TRUST, a
California nonprofit 501(c)(3) corporation

BY: _____
Name: _____
Title: _____

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If any condition or covenant in this Quitclaim Deed is breached, GRANTOR and any of its executors, successors and assigns reserves and retains the right, at its option and at any time, to terminate GRANTEE's estate herein created, to re-enter and take possession of the Property, and exercise GRANTOR's reversionary interest in GRANTEE's forfeited estate. In such an event, no use or interest in the Property shall be deemed to have been acquired so as to divert or render ineffective the power of termination and reversionary interest hereby retained by GRANTOR. GRANTEE acknowledges that GRANTOR is a public entity that holds said power of termination and reversionary interest in trust for the benefit of the citizens of the City of San Diego, and that any failure by GRANTOR to discover a breach or take prompt action to enforce any of its rights under this Quitclaim Deed, or at law or in equity, shall not result in an equitable estoppel, but GRANTOR shall at all times have the legal right to enforce such rights.

IN WITNESS WHEREOF, this Quitclaim Deed is executed to be effective upon its recordation in the Official records of the San Diego County, California, Recorder.

GRANTOR: THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____

GRANTEE: SAN DIEGO COMMUNITY LAND TRUST, a California nonprofit 501(c)(3) corporation

BY: _____
Name: _____
Title: _____

San Diego City Council Authorizing Resolution No. R-_____

Date of Final Passage: _____

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY: _____
Name: _____
Title: _____

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ (date) before me, _____
(name and title of the officer) personally appeared _____
_____ (name(s) of signer(s)), 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 D: Special Flood Hazard Area

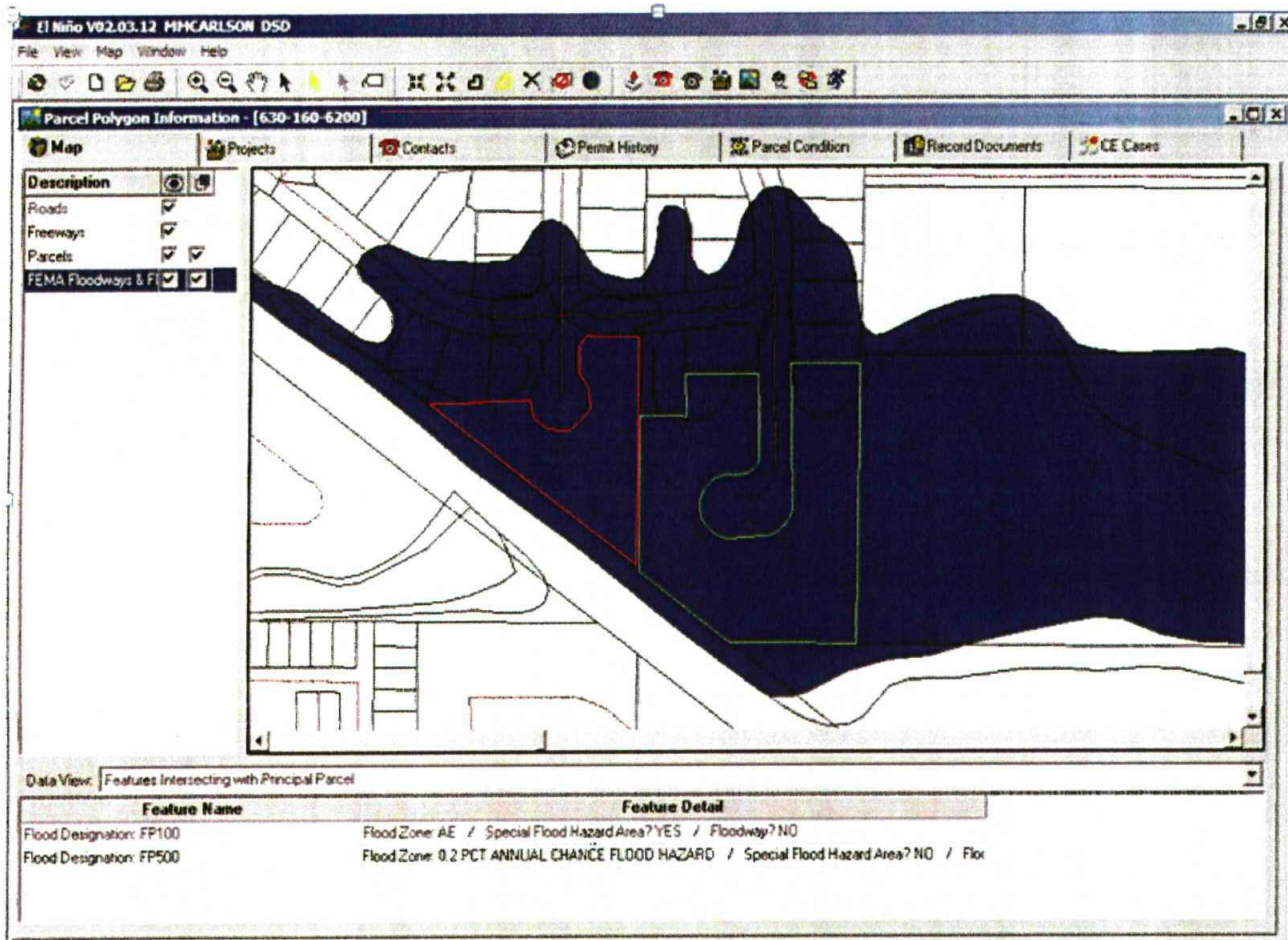


EXHIBIT C: Form of Memorandum of Lease

*Recording requested by and
when recorded return to:*

APNs 630-160-62 and 630-060-24

Space above for Recorder's use

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is effective as of _____, 20____ (the Effective Date”).

1. THE CITY OF SAN DIEGO, a California municipal corporation, as lessor, with an office at 1200 Third Avenue, M.S. 51A, San Diego, CA 92101-4155, and SAN DIEGO COMMUNITY LAND TRUST, a California nonprofit 501(c)(3) corporation, as lessee, with an office at 3295 Meade Avenue, San Diego, California 92116, entered into that certain CITY OF SAN DIEGO GROUND LEASE (“Lease”) dated _____, 20____, for the purpose of conducting due diligence to determine the feasibility of purchasing the leased premises, as set forth in the Lease.
2. The land which is the subject of the Lease is described in the attached Exhibit “A.”
3. The Lease contains an option to buy the leased premises, subject to certain conditions, restrictions and covenants further articulated in the Lease and the related Real Estate Purchase and Sale Agreement and exhibits thereto.
4. The term of the Lease is five (5) years and commenced on _____, 20__.

IN WITNESS WHEREOF, this Memorandum of Lease is executed to be effective as of the Effective Date.

THE CITY OF SAN DIEGO,
a California municipal corporation

SAN DIEGO COMMUNITY LAND TRUST,
a California nonprofit 501(c)(3) corporation

BY: _____
Name: _____
Title: _____

BY: _____
Name: _____
Title: _____

Approved as to form and legality:

Jan I. Goldsmith, City Attorney

BY: _____
Name: _____
Title: _____

Exhibit D: Special Flood Hazard Area

