

CONDITIONAL PROPERTY CONVEYANCE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

DATED

OCTOBER 15, 2019

BY AND BETWEEN

CITY OF REDLANDS,
a municipal corporation

AND

REDLANDS RAILWAY DISTRICT, LLC
a limited liability company,

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CONDITIONAL PROPERTY CONVEYANCE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This Conditional Property Conveyance Agreement and Joint Escrow Instructions ("Agreement") is made and entered into this 15th day of October, 2019 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Redlands Railway District, LLC, a California limited liability company ("District"), for the purpose of setting forth the agreement of City and District, and to provide instructions to Escrow Agent, with respect to the transactions contemplated by this Agreement. City and District are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, City is the owner of an undivided fee simple interest in certain real property located in the city of Redlands, county of San Bernardino ("County"), State of California, known as County Assessor Parcel Numbers 0169-281-64-0000 and 0169-281-23-0000, and an unimproved portion of what is commonly referred to as "3rd Street," located south of Stuart Avenue, which has not been given a designated Assessor's Parcel Number by the county of San Bernardino, all of which is more particularly described on Exhibit "A," attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, the purpose of this Agreement is to establish a framework for the conveyance of the Property to District, and the submittal to City and processing of a proposed development project ("Project") by District on the Property; and

WHEREAS, City is willing to convey fee title ownership of the Property to District on the terms and conditions set forth in this Agreement, and District is willing to propose to undertake development of the Project upon the Property; and

WHEREAS, City and District desire to enter into this Agreement to set forth a general framework relating to: (i) the conveyance of the Property to District, (ii) the development review process for the Project that will be proposed by District, and (iii) District's subsequent grant of an easement to City relating to public parking upon the Property; and

WHEREAS, this Agreement memorializes the terms that have been negotiated between the Parties for City's conveyance of the Property to District, but is not intended to create any binding contractual obligations with respect to the processing by City of District's Project, or to commit any Party to a particular course of action with respect to the Project; and

WHEREAS, City has further determined that approval of this Agreement and conveyance of the Property to District is subject to the procedural and substantive requirements of Government Code section 53083 relating to the granting of certain economic incentives by City;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and District hereby agree, and instruct Escrow Agent (as hereinafter defined), as follows:

AGREEMENT

1. CONVEYANCE OF PROPERTY.

1.1 Description, Conveyance, and Acceptance. Subject to and upon all of the terms and conditions of this Agreement, City agrees to convey to District, and District agrees to accept and acquire from City, the Property. As used in this Agreement, the term Property shall mean, collectively, all of City's right, title, and interest in and to the Property and all improvements thereon ("Improvements"); and all of the rights, privileges, appurtenances, easements, reversions, and remainders pertaining to or used in connection with the Property and/or any of the Improvements.

2. ESCROW.

2.1 Opening of Escrow. District and City shall cause an escrow ("Escrow") to be opened with First American Title Insurance Company ("Title Company") located at 3281 East Guasti Road, Suite 440, Ontario, California 91761, Attention: Erin Graeber Bougie (or other Title Company representative mutually agreed to by the Parties) egraeerbougie@firstam.com ("Escrow Agent") by delivery to Escrow Agent of a fully executed copy of this Agreement. Escrow Agent shall thereafter promptly deliver to District and City written notice of the date of the "Opening of Escrow." As used herein, the term "Opening of Escrow" means the day on which Escrow Agent receives a fully executed copy of this Agreement and has notified each Party in writing of such receipt and the specific date deemed to be Opening of Escrow by Escrow Agent for purposes of this Agreement.

2.2 Escrow Instructions. This Agreement shall constitute escrow instructions to Escrow Agent, as well as the agreement of the Parties for conveyance of the Property, the processing of the Project, and the conveyance of an easement to City. In the event that any other printed escrow instructions are requested of the Parties and the terms thereof conflict or are inconsistent with any provision of this Agreement, or any deed, instrument, or document executed or delivered in connection with the transaction contemplated hereby, the provisions of this Agreement, or such deed, instrument, or document, shall control. Escrow Agent is instructed to deliver, pursuant to the terms of this Agreement, the documents and any funds to be deposited into Escrow as herein provided.

2.3 Termination/Cancellation. Upon any termination or cancellation (the terms being used interchangeably herein) by either of the Parties as expressly allowed under this Agreement (including, without limitation, any deemed termination or cancellation), (i) all documents, instruments, and funds delivered into Escrow shall be returned to the Party that delivered the same into Escrow, and (ii) the Parties shall thereafter be relieved from further liability hereunder, except with respect to any obligations under this Agreement that are expressly stated to survive any termination of this Agreement. A copy of any notice of termination allowed under this Agreement shall be sent to Escrow Agent by the Party electing to terminate.

3. ACTIONS PENDING CLOSE OF ESCROW.

3.1 Due Diligence. Within five (5) days following City's receipt from Escrow Agent of the written notice specifying the date of Opening of Escrow, City shall, at City's sole cost and expense and to the extent within the City's possession or control, provide to District true, correct, and complete copies of all of the following documents (collectively, the "Property Materials"):

3.1.1 Any and all surveys for the Property;

3.1.2 Any existing, proposed or draft site plans, maps, plats, landscaping plans, construction plans and drawings, and development plans for the Property (including, without limitation, with respect to offsite development related to the Property);

3.1.3 Any existing environmental reports for the Property;

3.1.4 Any leases, occupancy agreements, operating agreements, and licenses that affect the Property;

3.1.5 Any zoning stipulations, agreements, and requirements that affect or that are proposed to affect the Property; and

3.1.6 Any archaeological, biological, soil, geological, grading, drainage, and hydrology reports, surveys, or assessments and any other engineering reports for the Property.

3.1.7 Further, prior to the Due Diligence Termination Date (as defined in Section 3.2 hereof), upon not less than twenty-four (24) hours prior written notice by District to City, City shall make available to District at City's offices, and District shall have the right to review, all other records in City's possession or control relating to the Property.

3.1.8 City shall promptly furnish to District for its review (i) any of the items described in this Section 3.1 that may come into City's possession or control from and after the date of this Agreement, and (ii) any additional documents and information in the possession or control of City, reasonably requested in writing by District. District understands and acknowledges that neither City nor any of City's representatives makes any representation or warranty to District as to the accuracy or completeness of the Property Materials, and that City and City's representatives shall have not made or will not make any attempt to verify the data contained therein. District agrees that City, and City's representatives, shall not have any liability to District as a result of District's use of the Property Materials.

3.1.9 District's Diligence Tests.

3.1.9.1 For sixty (60) days from the Opening of Escrow, District and its employees, agents, consultants, and contractors shall be entitled, at District's sole cost and expense, to: (i) enter onto the Property to perform any inspections, investigations, studies, and tests of the Property (including, without limitation, physical, engineering, soils, geotechnical, and environmental tests) that District deems reasonable; (ii) review all Property Materials; and (iii) investigate such other matters pertaining to the Property as District may desire. Notwithstanding the foregoing, District shall not conduct any invasive testing on the Property without the prior

written consent of City's City Manager, which consent shall not be unreasonably withheld, and with the prerequisite that any entry by District onto the Property shall be subject to, and conducted in accordance with, all applicable laws. If during the course of District's diligence testing any hazardous materials contamination of the Property is determined by District to exist, or leakage from underground storage tanks is discovered, District shall have an additional thirty (30) days to evaluate such results and determine an appropriate course of action pursuant to its rights herein. District shall have no right to effectuate the removal of any tanks or undertake any remediation of hazardous materials contamination of the Property prior to the Close of Escrow as defined in Section 6.1, except with the prior written consent and written agreement of City. City agrees to not unreasonably withhold its consent to any such request of District to undertake hazardous materials remediation of the Property, and will reasonably cooperate with District in setting forth the rights, duties, and obligations of the Parties with respect to such proposed remediation.

3.1.9.2 District shall keep the Property free and clear of any mechanics' liens, and defend, indemnify, and hold City and City's elected and appointed officials, officers, employees, and agents (each an "Indemnified Party" and collectively, the "Indemnified Parties") harmless from and against any and all claims (including, without limitation, claims for mechanic's liens or materialman's liens), causes of action, demands, obligations, losses, damages, liabilities, judgments, costs, and expenses (including, without limitation, reasonable attorneys' fees, charges, and disbursements) (collectively, "Claims") in connection with or arising out of any inspections of the Property carried on by or on behalf of District pursuant to the terms hereof, provided, however, that District shall have no responsibility or liability for (i) the negligence or willful misconduct of any Indemnified Party; (ii) any adverse condition or defect on, or affecting, the Property not caused by District or its employees, agents, consultants, or contractors but discovered or impacted during their inspections including, without limitation, the pre-existing presence or discovery of any matter (such as, but not limited to, any Hazardous Substance (as hereinafter defined)); and/or (iii) the results or findings of any inspection.

3.1.9.3 Upon completion of District's inspections, District shall promptly repair any material damage to the Property caused by its entry thereon and restore the Property to substantially the same conditions as it existed prior to District's entry under this Section 3.1.

3.1.9.4 The provisions of this Section 3.1 shall survive the Closing or the earlier termination of this Agreement.

3.2 District's Termination Right. District shall have the right at any time on or before the date sixty (60) days following the Opening of Escrow (the "Due Diligence Termination Date") to terminate this Agreement by delivering a written notice of such termination to City and Escrow Agent if District determines, in its sole and absolute discretion, that the Property is not acceptable to District for any reason. District shall indicate its satisfaction and/or waiver of the Due Diligence condition described in this Section 3.2 by delivering written notice of such satisfaction and/or waiver ("Feasibility Notice") to City and Escrow Agent on or prior to the Due Diligence Termination Date. In the event District fails to timely deliver a Feasibility Notice, then this Agreement and the Escrow shall be automatically deemed terminated. In the event this Agreement is terminated in accordance with this Section 3.2, then the Parties shall thereafter be relieved from further liability hereunder, except with respect to any obligations under this Agreement that are expressly stated to survive any termination of this Agreement.

3.3 Title of Property.

3.3.1 Deliveries by City. Within ten (10) Business Days after City's receipt of written notice from Escrow Agent specifying the date of the Opening of Escrow, City shall cause Title Company ("Title Insurer") to issue and deliver to District (i) a current commitment for an CLTA standard coverage Owner's Policy of Title Insurance for the Property (the "Title Report") and (ii) legible copies of all documents referenced therein (collectively with the Title Report, the "Title Documents").

3.3.2 District's Review of Title. District shall have until the date thirty (30) days following the Opening of Escrow ("Title Review Date") to notify City in writing of any objection that District may have to any matters reported or shown in any survey or the Title Documents or any amendments or updates thereof ("District's Objection Letter") (provided, however, that if any such amendments or updates are received by District after or within five (5) Business Days before the Title Review Date, District shall have five (5) Business Days following District's receipt of such amendment or update and copies of all documents referenced therein to notify City of objections to matters shown on any such amendment or update that were not disclosed on the previously delivered survey or Title Documents and the Closing Date shall automatically be extended as necessary to facilitate such notice period and any subsequent periods for City's response and District's election as provided in subsections (i) and (ii), below). Matters shown as exceptions to coverage in the Title Report (or any amendments or updates thereof) that are not timely objected to by District as provided above shall be deemed to be "Permitted Exceptions." City shall cooperate, at no cost to City, with District to eliminate matters objected to by District, but, except as set forth in the last sentence of this Section 3.3.2, City shall have no obligation to cure or correct any matter objected to by District. On or before the fifth (5th) Business Day following City's receipt of District's Objection Letter, City may elect, by delivering written notice of such election to District and Escrow Agent ("City's Response"), to cause Title Insurer to remove or insure over any matters objected to in District's Objection Letter. If City fails to deliver City's Response within the period set forth above, it shall be deemed an election by City not to cause Title Insurer to so remove or insure over such objections. If City elects or is deemed to have elected not to cause Title Insurer to so remove or insure, or if District determines, in its sole discretion, that any proposed endorsement for or insurance over an objected matter is unsatisfactory, then District must elect, by delivering written notice of such election to City and Escrow Agent on or before the earlier to occur of (i) the fifth (5th) Business Day following District's receipt of City's Response or (ii) if no City's Response is received by District, the fifth (5th) Business Day following the date on which City shall have been deemed to have responded, as provided above, to: (i) terminate this Agreement, or (ii) proceed with this transaction, in which event those objected to exceptions or matters that City has not elected to cause Title Insurer to so remove or insure shall be deemed to be Permitted Exceptions. In the event that District fails to make such election on a timely basis, then District shall be deemed to have elected to terminate this Agreement. Notwithstanding anything else stated herein, in all events, regardless of whether District has given notice of objection as stated above City shall be obligated to satisfy and otherwise remove all monetary and financial liens and encumbrances in existence as of the Effective Date or incurred by City on or before Close of Escrow hereunder (other than current taxes not yet due) and any additional encumbrances incurred by City after the Effective Date in violation of any provision of this Agreement, and, except as may be otherwise specifically set forth in this Agreement, terminate all leases, possessory agreements, licenses, and operating agreements

that affect the Property and District need not object to any such matters. In furtherance thereof, City agrees not to cause or create any additional encumbrances or other matters affecting title to the Property to be incurred following the Effective Date that are not satisfied or otherwise removed on or before Close as contemplated above.

3.3.3 Condition of Title at Closing. Upon the Close of Escrow, City shall convey to District fee simple title to the Property by a duly executed and acknowledged grant deed in the form of Exhibit "B" attached hereto (the "Grant Deed"), subject only to the Permitted Exceptions and the reservations and other matters, if any, referenced or described in said Grant Deed.

4. DISTRICT'S CONDITIONS FOR CLOSE OF ESCROW

4.1 District's Closing Conditions. The obligation of District to complete the transaction contemplated by this Agreement is subject to the following conditions precedent, and conditions concurrent, with respect to deliveries to be made by City at the Close of Escrow (the "District's Closing Conditions"), which conditions may be waived, or the time for satisfaction thereof extended, by District only, in a writing executed by District:

4.2 Title. Title Insurer shall be irrevocably and unconditionally prepared and committed to issue to District (with an effective date not earlier than the Closing Date), a CLTA standard coverage owner's policy of title insurance ("CLTA Standard Policy") in favor of District for the Property (i) showing fee title to the Property vested in District, (ii) with liability coverage in an amount equal to \$_____, (iii) with those endorsements reasonably requested by District including, without limitation, and (iv) containing no exceptions other than the Permitted Exceptions and the reservations and other matters referenced or described in the Grant Deed (the "Owner's Title Policy"). District may, at its expense, obtain from the Title Company an ALTA extended coverage owner's policy provided the issuance of such ALTA form title policy shall not be a condition to Close of Escrow and shall cause no delay to the Close of Escrow. In the event District elects to obtain an ALTA extended coverage policy, District shall obtain an ALTA Survey, at its sole cost and expense, in a timely manner so as to facilitate the issuance of the ALTA extended coverage policy upon the Close of Escrow.

4.3 City's Due Performance. All of the representations and warranties of City set forth in Section 8 shall be true, correct, and complete in all material respects as of the Close of Escrow, and City, on or prior to the Close of Escrow, shall have complied with and/or performed all of the obligations, covenants, and agreements required on the part of City to be complied with or performed pursuant to the terms of this Agreement on or prior to the Close of Escrow.

4.4 Physical Condition of Property. The physical condition of the Property shall be substantially the same on the Close of Escrow as on the Effective Date, except for reasonable wear and tear and any damages due to any act of District or District's representatives.

4.5 Bankruptcy. No action or proceeding shall have been commenced by or against City under the federal bankruptcy code or any state law for the relief of debtors or for the enforcement of the rights of creditors, and no attachment, execution, lien, or levy shall have attached to or been issued with respect to City's interest in the Property or any portion thereof.

4.6 No Default. Prior to the Close of Escrow, City shall not be in Default under the terms of this Agreement, and all representations and warranties of City contained herein shall be true and correct in all material respects.

4.7 Execution of Documents. City shall have executed and acknowledged the Memorandum of Agreement and any other documents required hereunder and delivered such documents into Escrow.

4.8 Litigation. There shall be no proceedings or litigation pending which would adversely affect conveyance of, or the use or development of, the Property.

5. CITY'S CONDITION FOR CLOSE OF ESCROW. City's obligation to proceed with the Closing of Escrow and the conveyance of the Property is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below ("City's Conditions Precedent to Closing"), which are solely for the benefit of City, and which shall be fulfilled or waived within the time periods provided for herein:

5.1 No Default. Prior to the Closing, District shall not be in Default under the terms of this Agreement, and all representations and warranties of District contained herein shall be true and correct in all material respects.

5.2 Execution of Documents. District shall have executed and acknowledged the Memorandum of Agreement and any other documents required hereunder and delivered such documents into Escrow.

5.3 Title. District shall have notified City of District's approval of the condition of title to the Property.

5.4 Physical Condition. District shall have notified City of District's approval of the physical condition of the Property.

5.5 District's Due Performance. All of the representations and warranties of District set forth in Section 7 shall be true, correct, and complete in all material respects as of the Close of Escrow, and District, on or prior to the Close of Escrow, shall have complied with and/or performed all of the obligations, covenants, and agreements required on the part of District to be complied with or performed pursuant to the terms of this Agreement on or prior to the Close of Escrow.

5.6 Bankruptcy. No action or proceeding shall have been commenced by or against District under the federal bankruptcy code or any state law for the relief of debtors or for the enforcement of the rights of creditors.

5.7 Litigation. There shall be no proceedings or litigation pending which would adversely affect conveyance of, or the use or development of the Property.

5.8 Entitlements. District shall have obtained each of the discretionary entitlements and ministerial permits including, but not limited to, grading and building permits, required by City

for the construction of the Project.

6. CLOSE OF ESCROW.

6.1 Closing Date. Subject to the provisions of this Agreement, the Close of Escrow shall take place within thirty (30) days after date of City and District's joint written notification to Escrow Agent of City's approval of all discretionary and ministerial entitlements and permits including, but not limited to, entitlements for the Project. As used herein, the "Close of Escrow" shall mean the recordation of the Grant Deed in the official records of the County.

6.2 Deliveries by City. At least three (3) days before the Close of Escrow, City, at its sole cost and expense, shall deliver or cause to be delivered into Escrow the following items, documents, and instruments, each dated as of the Close of Escrow, fully executed and, if appropriate acknowledged, and, if applicable, in proper form for recording:

6.2.1 Grant Deed. The Grant Deed conveying the Property to District;

6.2.2 Non-Foreign Affidavit. A Non-Foreign Affidavit in the form attached hereto as Exhibit "C" (the "Non-Foreign Affidavit");

6.2.3 State Affidavit. A California Franchise Tax Board Form 593-C (the "State Affidavit");

6.2.4 Owner's Affidavit. An owner's affidavit or City's certificate duly executed by City in the form customarily required by title insurance companies in the County in connection with the issuance of title insurance, to remove standard exceptions for mechanics liens, the gap period from the latest title update of District's title insurance commitment and Parties in possession;

6.2.5 Proof of Authority. Such proof of City's authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individuals executing or delivering any instruments, documents, or certificates on behalf of City to act for and bind City as may be reasonably required by Title Insurer or Escrow Agent; and

6.2.6 Other. Such other items, documents, and instruments as may be reasonably required by District, Title Insurer, Escrow Agent, or otherwise in order to effectuate the provisions of this Agreement and the Close of Escrow and/or otherwise to fulfill the covenants and obligations to be performed by City at the Close of Escrow pursuant to this Agreement.

6.3 Deliveries by District. At least three (3) days before the Close of Escrow, District, at its sole cost and expense, shall deliver or cause to be delivered into Escrow the following funds and the following items, documents, and instruments, each dated as of the Close of Escrow, fully executed and, if appropriate acknowledged, and, if applicable, in proper form for recording:

6.3.1 Proof of Authority. Such proof of District's authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individuals executing or delivering any instruments, documents, or certificates

on behalf of District to act for and bind District as may be reasonably required by Title Insurer or Escrow Agent; and

6.3.2 Other. Such other items, documents, and instruments as may be reasonably required by City, Title Insurer, Escrow Agent, or otherwise in order to effectuate the provisions of this Agreement and the Close of Escrow and/or otherwise to fulfill the covenants and obligations to be performed by District at the Close of Escrow pursuant to this Agreement.

6.4 Actions by Escrow Agent. Provided that Escrow Agent shall not have received written notice from District or City of the failure of any condition to the Close of Escrow or of the termination of the Escrow and this Agreement, when District and City have deposited into Escrow the documents and any funds required by this Agreement, and Title Insurer is irrevocably and unconditionally prepared and committed to issue the Owner's Title Policy in accordance with the terms hereof, Escrow Agent shall, in the order and manner herein below indicated, take the following actions:

6.4.1 Recording. Cause the Grant Deed and any other documents customarily recorded and/or that the Parties hereto may mutually direct to be recorded in the official records of the County and obtain conformed copies thereof for distribution to City and District.

6.4.2 Funds. Disburse all funds as follows:

6.4.2.1 Pursuant to the Closing Statement (as hereinafter defined), retain for Escrow Agent's own account all escrow fees and costs, disburse to Title Insurer the fees and expenses incurred in connection with the issuance of the Owner's Title Policy, and disburse to any other persons or entities entitled thereto the amount of any other Closing Costs;

6.4.2.2 Deliver to City (i) one original of all documents deposited into Escrow (other than the Grant Deed, the other documents recorded pursuant to the terms of this Agreement, the Non-Foreign Affidavit, the State Affidavit and the General Assignment), (ii) one copy of the Non-Foreign Affidavit, the State Affidavit and the General Assignment, and (iii) one conformed copy of each document recorded pursuant to the terms of this Agreement; and deliver to District, (i) one original of all documents deposited into Escrow (other than the Grant Deed and the other documents recorded pursuant to the terms of this Agreement, but including, without limitation, the Non-Foreign Affidavit and the State Affidavit), and (ii) the one conformed copy of each document recorded pursuant to the terms of this Agreement. Originals of any documents recorded at Close of Escrow shall be delivered after such recording as indicated thereon.

6.4.2.3 Owner's Title Policy. Cause Title Insurer to issue or be irrevocably and unconditionally prepared and committed to issue the Owner's Title Policy to District.

6.5 Pro-rations/Appportionment.

6.5.1 Method of Pro-ration. Taxes and assessments affecting the Property shall be pro-rated between District and City as of the Close of Escrow based on a 365-day year. All non-delinquent real estate taxes and assessments on the Property shall be pro-rated based on the actual current tax bill, but if such tax bill has not yet been received by City by the Close of Escrow or if supplemental taxes are assessed after the Close of Escrow for the period prior to the Close of

Escrow, the Parties shall make any necessary adjustment after the Close of Escrow by cash payment to the Party entitled thereto so that City shall have borne all real property taxes, including all supplemental taxes, allocable to the period prior to the Close of Escrow and District shall bear all real property taxes, including all supplemental taxes, allocable to the period from and after the Close of Escrow. If any real property taxes or assessments or any expenses attributable to the Property and allocable to the period prior to the Close of Escrow are discovered or billed after the Close of Escrow, the Parties shall make any necessary adjustment after the Close of Escrow by cash payment to the Party entitled thereto within five (5) Business Days following the discovery thereof or the receipt by any Party of the bill therefor, as the case may be, so that City shall have borne all real property taxes, assessments and expenses allocable to the period prior to the Close of Escrow and District shall bear all real property taxes, assessments and expenses allocable to the period from and after the Close of Escrow.

6.5.2 Survival. The obligations under this Section 6.5 shall survive the Close of Escrow and the delivery and recordation of the Grant Deed for the Property.

6.6 Closing Costs. Each Party shall pay its own costs and expenses arising in connection with the Close of Escrow (including, without limitation, its own attorneys' and advisors' fees, charges, and disbursements), except the following costs (the "Closing Costs"), which shall be allocated between the Parties as follows:

6.6.1 Escrow Agent's escrow fees and costs shall be paid one-half by City and one-half by District;

6.6.2 The cost of the Owner's Title Policy attributable to the standard coverage portion shall be paid by City;

6.6.3 The cost of the Owner's Title Policy attributable to the extended coverage portion shall be paid by District;

6.6.4 District shall pay the cost of any documentary transfer taxes in connection with the recording of the Grant Deed;

6.6.5 District shall pay all recording costs for recording the Grant Deed; and

6.6.6 All other closing fees and costs shall be charged to and paid by City and District in accordance with customary practices in the County.

6.7 Closing Statement. At least three (3) Business Days prior to the Close of Escrow, Escrow Agent shall deliver to each of the Parties for their review and approval a preliminary closing statement (the "Preliminary Closing Statement") setting forth: (i) the pro-rata amounts allocable to each of the Parties pursuant to Section 6.5; and (ii) the Closing Costs allocable to each of the Parties pursuant to Section 6.6. Based on each of the Party's comments, if any, regarding the Preliminary Closing Statement, Escrow Agent shall revise the Preliminary Closing Statement and deliver a final, signed version of a closing statement to each of the Parties at the Close of Escrow (the "Closing Statement").

6.8 Deliveries Outside of Escrow. Upon the Close of Escrow, City shall deliver sole and exclusive possession of the Property to District, subject only to the Permitted Exceptions. Further, City hereby covenants and agrees to deliver to District, on or prior to the Close of Escrow, including, without limitation, the original Property Materials to the extent within City's possession or control. Effective immediately upon the Close of Escrow, any personal property remaining on the Property shall be deemed abandoned and may be removed and disposed of by District at its sole cost and expense. This Section 6.8 shall survive the Close of Escrow.

7. DISTRICT'S REPRESENTATIONS AND WARRANTIES. District represents and warrants to City, as of the Effective Date and as of the Close of Escrow, as follows:

7.1 Due Organization. District is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of California and is authorized to do business in the State of California.

7.2 District's Authority; Validity of Agreements. District has full right, power, and authority to acquire the Property from City as provided in this Agreement and to carry out its obligations hereunder. The individuals executing this Agreement and the instruments referenced herein on behalf of District has/have the legal power, right, and actual authority to bind District to the terms hereof and thereof. This Agreement is, and all other instruments, documents, and agreements to be executed and delivered by District in connection with this Agreement shall be, duly authorized, executed, and delivered by District and the valid, binding, and enforceable obligations of District (except as enforcement may be limited by bankruptcy, insolvency, or similar laws) and do not, and as of the Close of Escrow will not, violate any provision of any law, statute, ordinance, rule, regulation, agreement or judicial order to which District is a Party or to which District is subject.

7.3 No Conflict. District's performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which District is a party or by which it is bound.

7.4 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent or delay the ability of District to perform its obligations under this Agreement.

7.5 Knowledge. Until the expiration or earlier termination of this Agreement, District shall, upon learning of any fact or condition which would cause any of the foregoing warranties and representations not to be true, immediately give written notice of such fact or condition to City.

7.6 Survival. All of the representations, warranties, and agreements of District set forth in this Agreement shall be true upon the Effective Date, shall be deemed to be repeated at and as of the Close of Escrow and shall survive the delivery of the grant deed and the closing for a period of one (1) year. Prior to any termination of this Agreement, District shall not take any action, fail to take any required action, or willfully allow or consent to any action that would cause any of District's representations or warranties to become untrue.

8. CITY'S REPRESENTATIONS AND WARRANTIES. City represents, and warrants to and agrees with District, as of the effective date and as of the close of escrow, as follows:

8.1 Due Organization. City is a municipal corporation duly formed under the laws of the State of California.

8.2 City's Authority; Validity of Agreements. City has full right, power, and authority to convey the Property to District as provided in this Agreement and to carry out its obligations hereunder. The individuals executing this Agreement and the instruments referenced herein on behalf of City have the legal power, right, and actual authority to bind City to the terms hereof and thereof. This Agreement is, and all other instruments, documents and agreements to be executed, and delivered by City in connection with this Agreement shall be, duly authorized, executed, and delivered by City and the valid, binding, and enforceable obligations of City (except as enforcement may be limited by bankruptcy, insolvency, or similar laws) and do not, and as of the Close of Escrow will not result in any violation of, or conflict with, or constitute a default under, any provisions of any agreement of City or any mortgage, deed of trust, indenture, lease, security agreement, or other instrument, covenant, obligation, or agreement to which City or the Property is subject, or any judgment, law, statute, ordinance, writ, decree, order, injunction, rule, ordinance, or governmental regulation or requirement affecting City or the Property.

8.3 No Third-Party Rights. Except as disclosed in the Title Report, City is not aware of any leases or occupancy agreements that grant third-parties any possessory or usage rights to all or any part of the Property.

8.4 Litigation. City is not aware of (i) any actions, investigations, suits, or proceedings pending or threatened that affect the Property, the ownership or operation thereof, or the ability of City to perform its obligations under this Agreement, and (ii) there are no judgments, orders, awards, or decrees currently in effect against City with respect to the ownership or operation of the Property that have not been fully discharged prior to the Effective Date.

8.5 No Violations of Environmental Laws. To City's knowledge and except as disclosed in the Property Materials: (i) the Property is not in, nor has it been or is it currently under investigation for violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene, worker health and safety, or to the environmental conditions in, at, on, under, or about the Property, including, but not limited to, soil and groundwater conditions ("Environmental Laws"); (ii) the Property has not been subject to a deposit of any Hazardous Substance; (iii) neither City nor any third Party has used, generated, manufactured, stored, or disposed in, at, on, or under the Property any Hazardous Substance; and (iv) there is not now in, on, or under the Property, any above ground storage tanks or surface impoundments, any asbestos containing materials, or any polychlorinated biphenyls used in hydraulic oils, electrical transformers, or other equipment. City hereby assigns to District as of the Closing all claims, counterclaims, defenses, and actions, whether at common law or pursuant to any other applicable federal, state or other laws that City may have against any third Party or Parties relating to the existence or presence of any Hazardous Substance in, at, on, under, or about the Property. For purpose of this Agreement, the term "Hazardous Substance" shall be deemed to include any wastes, materials, substances, pollutants, and other matters regulated by Environmental Laws.

8.6 No Other Commitments. Except as may be disclosed in the Title Report, City has not made any commitment or representation to any governmental authority, or any adjoining or surrounding property owner, that would in any way be binding on District or would interfere with District's ability to develop and improve the Property, and City shall not make any such commitment or representation that would affect the Property or any portion thereof, without District's written consent.

8.7 Actual Knowledge. For purposes hereof, "City is not aware" or "to City's knowledge," or like terms shall mean the current actual knowledge of Chris Boatman, without implying any duty of investigation or inquiry. In furtherance thereof, City hereby warrants and represents that Chris Boatman is City's representative most knowledgeable regarding the Property.

8.8 Survival. All of the representations, warranties, and agreements of City set forth in this Agreement shall be true upon the Effective Date, shall be deemed to be repeated at and as of the Close of Escrow, and shall survive the delivery of the Grant Deed and the Close of Escrow for a period of one (1) year. Prior to any termination of this Agreement, City shall not take any action, fail to take any required action, or willfully allow or consent to any action that would cause any of City's representations or warranties to become untrue.

9. POSSESSION/REMOVAL OF PERSONAL PROPERTY. Upon the Close of Escrow, City shall deliver exclusive possession of the Property to District. Prior to the Close of Escrow, City shall have the right to remove any or all Improvements and City's equipment, trade fixtures or other personal property. Any such salvage and removal shall be performed pursuant to all required permits, in accordance with all laws, rules and regulations, and in such manner that the Property is delivered upon the Close of Escrow without any safety issues on site, such as large holes, partially razed structures, or any other similarly unsafe conditions. Any Improvements or personal property of City remaining on the Property after the Close of Escrow shall be conclusively deemed abandoned by City (the "Abandoned Personal Property"). City waives and relinquishes all rights, title, interest and claims in any such Abandoned Personal Property and effective upon abandonment, transfers, conveys and assigns all of its right, title and interest in such Abandoned Personal Property to District for disposition as determined by District in District's sole and absolute discretion.

"AS-IS" PROPERTY CONDITION. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE AS FOLLOWS: (i) DISTRICT IS A SOPHISTICATED DISTRICT WHO IS FAMILIAR WITH THIS TYPE OF PROPERTY; (ii) EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE DEED, AND/OR ANY OTHER DOCUMENT OR INSTRUMENT DELIVERED BY CITY AT CLOSE OF ESCROW (THE "EXPRESS REPRESENTATIONS"), NEITHER CITY NOR ANY OF ITS AGENTS, REPRESENTATIVES, BROKERS, OFFICERS, Elected or Appointed Officials, OR EMPLOYEES HAS MADE OR WILL MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY; AND (iii) THE PROPERTY IS BEING SOLD TO DISTRICT IN ITS PRESENT "AS IS" CONDITION SUBJECT TO THE EXPRESS REPRESENTATIONS. SUBJECT TO THE EXPRESS REPRESENTATIONS AND THE TERMS HEREOF, DISTRICT WILL BE AFFORDED THE OPPORTUNITY TO MAKE ANY AND ALL INSPECTIONS OF THE PROPERTY AND SUCH RELATED MATTERS AS

DISTRICT MAY REASONABLY DESIRE AND, ACCORDINGLY, SUBJECT TO THE EXPRESS REPRESENTATIONS, DISTRICT WILL RELY SOLELY ON ITS OWN DUE DILIGENCE AND INVESTIGATIONS IN PURCHASING THE PROPERTY IN CONNECTION WITH THE FOREGOING, DISTRICT EXPRESSLY AGREES TO WAIVE ANY AND ALL RIGHTS WHICH DISTRICT MAY HAVE UNDER SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH 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.”

10. RISK OF LOSS.

10.1 Condemnation. If, prior to Close of Escrow, all or any portion of the Property is taken by condemnation or eminent domain (or is the subject of a pending or contemplated taking which has not been consummated), City shall immediately notify District in writing of such fact. In such event, District shall have the option to terminate this Agreement upon written notice to City given within ten (10) Business Days after receipt of such notice from City. Notwithstanding the foregoing, District's failure to provide written notice of District's election to terminate within such ten (10) Business Day period shall be deemed District's election to terminate this Agreement. Prior to any termination or deemed termination of this Agreement, District shall have the right to participate in any proceedings and negotiations with respect to the taking and any transfer in lieu of taking (and City shall not consummate any transfer in lieu of taking without District's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed). If District waives the right to terminate this Agreement and elects to proceed with the Close of Escrow, then City, at, and as a condition precedent to District's obligation to proceed with the Close of Escrow, must: (i) pay to District the amount of all awards for the taking (and any consideration for any transfer in lieu of taking) actually received by City; and (ii) assign to District by written instrument reasonably satisfactory to District all rights or claims to any future awards for the taking (and any consideration for any transfer in lieu of taking); and (b) the Parties shall proceed to the Close of Escrow pursuant to the terms hereof without further modification of the terms of this Agreement.

10.2 Casualty. Prior to the Close of Escrow, and notwithstanding the pendency of this Agreement, the entire risk of loss or damage by earthquake, hurricane, tornado, flood, landslide, fire, sinkhole, contamination by hazardous materials or other casualty shall be borne and assumed by City. If, prior to the Close of Escrow, any portion of the Property is damaged as a result of any earthquake, hurricane, tornado, flood, sinkhole, landslide, fire, contamination by hazardous materials or other casualty, City shall immediately notify District in writing of such fact. In such event, District shall have the option to terminate this Agreement upon written notice to City given within ten (10) Business Days after receipt of any such notice from City, in which event the Deposit shall be returned to District. Notwithstanding the foregoing, District's failure to provide written notice of District's election to terminate within such ten (10) Business Day period shall be deemed District's election to terminate this Agreement.

12. REMEDIES.

12.1. Default by City. If City shall breach any of the terms or provisions of this Agreement or otherwise fail to perform any of City's obligations under this Agreement at or prior to Close of Escrow, and if such failure continues without cure by City for five (5) Business Days after District provides City and Escrow Agent with written notice thereof (a "City Default"), and provided District is not then in default, then District may, as District's sole remedies for such failure, but without limiting District's right to recover attorneys' fees pursuant to Section 31.11 below: (i) waive the effect of such matter and proceed to consummate this transaction; (ii) cancel this Agreement and recover from City the reasonable out-of-pocket expenses incurred by District related to the Property and this transaction, which amounts shall be payable by City to District within five (5) Business Days following receipt by City of written request therefor from District together with copies of invoices evidencing such expenses; or (iii) proceed with any remedies available to District at law or in equity, which may, without limitation, include the bringing of an action against City for specific performance and/or recovery of the Deposit and any other damages suffered or incurred by District as a result of any breach or failure by City to perform any of City's obligations under this Agreement.

12.2. Default by District. IF DISTRICT SHALL BREACH ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR OTHERWISE FAIL TO PERFORM ANY OF DISTRICT'S OBLIGATIONS UNDER THIS AGREEMENT AND IF SUCH FAILURE CONTINUES WITHOUT CURE BY DISTRICT FOR FIVE (5) BUSINESS DAYS AFTER CITY PROVIDES DISTRICT AND ESCROW AGENT WITH WRITTEN NOTICE THEREOF, AND PROVIDED CITY IS NOT THEN IN DEFAULT, THEN CITY MAY WAIVE SUCH BREACH AND PROCEED TO CONSUMMATE THIS TRANSACTION IN ACCORDANCE WITH THE TERMS HEREOF, OR CITY MAY, AS ITS EXCLUSIVE REMEDY (BUT WITHOUT LIMITING CITY'S RIGHT TO RECOVER ATTORNEYS' FEES PURSUANT TO SECTION 31.11 BELOW), CANCEL THIS AGREEMENT.

12.3. Brokers. Neither Party has been represented in this transaction by a broker. Each Party hereby represents and warrants to and agrees with each other that it has not had, and shall not have, any dealings with any third party to whom the payment of any broker's fee, finder's fee, commission, or other similar compensation shall or may become due or payable in connection with the transaction contemplated hereby. City shall indemnify, defend, protect, and hold District harmless for, from, and against any and all claims incurred by District by reason of any breach or inaccuracy of the representation, warranty, and agreement of City contained in this Section. District shall indemnify, defend, protect, and hold City harmless from and against any and all claims incurred by City by reason of any breach or inaccuracy of the representation, warranty, and agreement of District contained in this Section. The provisions of this Section shall survive the Close of Escrow or earlier termination of this Agreement.

13. DEVELOPMENT REVIEW.

13.1. Development Review Process. District has represented to City that District is acquiring the Property for, among other purposes, the construction of an approximately three (3) story parking structure (within which two hundred parking spaces shall be available for City public parking purposes pursuant to an easement granted by District to City substantially in the form

attached hereto as Exhibit “D”) and associated retail uses (the “Project”). District shall submit applications to City for the development of the Project in accordance with the Schedule of Performance. Compliance with the requirements of the California Environmental Quality Act (“CEQA”) shall occur prior to, and as a condition of, any approval by City of the Project. City shall not undertake any actions concerning the Project that would have a significant effect on the environment or limit the choice of alternatives or mitigation measures before completion of CEQA compliance. If approved by City, District shall develop and construct the Project substantially in accordance with any drawings, plans and documents submitted to and approved by City.

13.2. Permits and Approvals. Before commencement of construction of the Project upon the Property, District at its sole expense shall secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required by City and any other governmental agency having jurisdiction over the Project, including all required environmental review pursuant to CEQA, and shall construct the Project in accordance with all applicable federal, state and local laws and requirements (the “Governmental Requirements”). City’s staff will work cooperatively with District to assist in coordinating the expeditious processing and consideration of all necessary permits, entitlements and approvals. However, the execution of this Agreement does not constitute the granting of, or a commitment by City to provide, any funding associated with development of the Project or a commitment by City to issue any land use permits, entitlements or approvals to District. District and City expressly acknowledge and agree that District is at an exploratory stage in the development process, and that at the time of execution of this Agreement District has not prepared and submitted to City any development plans or drawings for the Project which would serve as a basis for environmental analysis of the Project. This Agreement does not preclude City from considering development alternatives to the Project, and nothing in this Agreement prevents City, in its absolute discretion, to disapprove the Project. City retains the absolute sole discretion to, (i) modify the Project as necessary to comply with CEQA; (ii) select other feasible alternatives to avoid significant impacts; or (iii) balance the benefits of the Project against any significant impacts prior to taking final action on the Project if such significant impacts cannot be avoided.

13.3. Obligation to Commence Construction. District shall commence construction of the Project, subject to any Enforced Delay, within twelve (12) months from the Effective Date of this Agreement. “Commencement of Construction,” for purposes of this Section, shall mean the commencement of physical construction of any building on the Property, pursuant to a building permit issued by City.

13.4. Schedule of Performance. District shall satisfy all obligations and conditions of this Agreement within the time established therefore in the Schedule of Performance in the attached Exhibit E. District may from time to time request changes to the Schedule of Performance which may, in his or her sole discretion not to be unreasonably withheld, be approved or disapproved in writing by City’s City Manager.

13.5. Cost of Construction. The cost of developing the Project, including but not limited to any Property preparation and mitigation, conditions of development, utility relocation, and development impact fees and permits, shall be borne solely by District. In addition, District will be responsible for all costs and fees associated with preparing, filing, processing, and obtaining approval of any subdivision or parcel map, City and/or other governmental entitlement, permit or

approval required to develop the Project. City shall not have any responsibility whatsoever for the costs associated with the development of the Property, nor shall City have any proprietary interest in the Project. This Section shall survive any termination of this Agreement.

13.6. Compliance with Laws; Indemnity; Waiver. District shall construct the Project in conformity with all applicable Governmental Requirements, including all applicable state labor laws and standards, all applicable Public Contract Code requirements, City's applicable zoning and development standards, building, plumbing, mechanical and electrical codes, all other applicable provisions of City's Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq. District warrants and represents in connection with the foregoing that District is a sophisticated, experienced developer of projects similar to the Project and is fully conversant with, and informed, concerning the Governmental Requirements with which District must comply pursuant to this Section.

District shall defend, indemnify and hold harmless City and its elected officials, officers, employees, agents and representatives from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, for purposes of this Section, "Claims"), arising out of or in any way connected with District's obligation to comply with all Governmental Requirements with respect to the work for the Project, including all applicable state labor laws and standards and the Public Contract Code, except to the extent such Claims result from actions of City, or its elected officials, officers, employees, agents or representatives, which prevent District from complying with Governmental Requirements. If, at any time, District believes that City, or its elected officials, officers, employees, agents or representatives, are preventing District from complying with Governmental Requirements, then District shall provide notice to City of the basis of such conclusion by District to enable City to take such actions as may be necessary or appropriate to enable District to comply with Governmental Requirements. This Section shall survive any termination of this Agreement.

13.7 District Acknowledgement.

13.7.1 DISTRICT ACKNOWLEDGES THAT CITY HAS MADE NO REPRESENTATION, EXPRESS OR IMPLIED, TO DISTRICT OR ANY PERSON ASSOCIATED WITH DISTRICT REGARDING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION, INSTALLATION OR OPERATION OF THE PRIVATE WORKS OF IMPROVEMENT CONSTITUTING THE PROJECT MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE OF CALIFORNIA, PURSUANT TO LABOR CODE SECTIONS 1720, ET SEQ. DISTRICT AGREES WITH CITY THAT DISTRICT SHALL ASSUME THE RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION, INSTALLATION OR OPERATION OF THE PRIVATE WORKS OF IMPROVEMENT CONSTITUTING THE PROJECT MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE OF CALIFORNIA, PURSUANT TO LABOR CODE SECTION 1720 ET SEQ. DISTRICT SHALL

USE ALL REASONABLE EFFORTS AND EXERCISE DUE DILIGENCE TO MAKE A DETERMINATION IF SUCH PREVAILING WAGES ARE REQUIRED TO BE PAID PURSUANT TO APPLICABLE LAW, AND SHALL PAY SUCH PREVAILING WAGES IF THE APPLICABLE LAW SO REQUIRES.

13.7.2 DISTRICT, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM PURSUANT TO LABOR CODE SECTIONS 1726 OR 1781. DISTRICT ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 309, WHICH READS 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.”

BY INITIALING BELOW, DISTRICT KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 13.7.


District's Initials

13.7.3 ADDITIONALLY, DISTRICT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, PURSUANT TO THIS SECTION 13.7, AGAINST ANY CLAIMS PURSUANT TO LABOR CODE SECTIONS 1726 AND 1781 ARISING FROM THIS AGREEMENT OR THE CONSTRUCTION, INSTALLATION OR OPERATION OF ALL OR ANY PORTION OF THE PRIVATE WORKS OF IMPROVEMENT CONSTITUTING THE PROJECT.

13.7.4 ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, DISTRICT SHALL ENSURE THAT ALL LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION OR INSTALLATION OF ANY PUBLIC IMPROVEMENTS CONSTRUCTED BY HIP SHALL BE PAID NO LESS THAN THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE OF CALIFORNIA, PURSUANT TO LABOR CODE SECTION 1720 ET SEQ.


District's Initials

14. DEFAULTS AND REMEDIES.

14.1. Default Remedies. Failure by any Party to perform any action or covenant required by this Agreement within the time periods provided herein following notice shall constitute a “Default” under this Agreement. A Party claiming a Default shall give written

Notice of Default to the other Party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against the other Party if such Party within thirty (30) days after the date of such Notice of Default immediately cures, corrects or remedies such failure or delay.

14.2. Institution of Legal Actions. Except as otherwise specifically provided herein, upon the occurrence of a Default, and the expiration of the applicable cure period pursuant to Section 14.1 above, the non-defaulting Party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County, or in the Federal District Court for the Central District of the State of California. Notwithstanding anything herein to the contrary, a Party's right to recover damages in the event of a Default by the other Party shall be limited to recovery of actual damages and shall exclude consequential damages.

14.3. Termination. This Agreement may be terminated: (i) if there is an uncured Default, by written notice from the Party not in Default, or (ii) if there is a failure of an express condition (which is not waived by the Party whom the condition benefits) by notice from the Party whom the condition benefits.

14.4. Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party, except as otherwise expressly provided herein.

14.5. Inaction Not a Waiver of Default. Any failures or delays by any Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

14.6. Reacquisition Option. City shall have the additional right at its option, following expiration of the notice and cure period described in Section 12, to reacquire the Property at no cost to City (the "Reacquisition Option") if, after Close of Escrow, District (i) fails to commence construction of the Project within the time specified in Section 13.3, and as such date may be extended pursuant to Section 13.4, or (ii) voluntarily or involuntarily transfers or conveys the Property or this Agreement in violation of Section 18. The Reacquisition Option period will be for sixty (60) days following District's failure to commence construction of the Project, and the expiration of the notice and cure period described in Section 14.1. The Reacquisition Option period will be computed by excluding the first day and including until 5:00 p.m. on the last day or, if the last day is a holiday, the next business day.

14.7. Notice of Exercise of Option. Exercise of the Reacquisition Option shall be as follows:

14.7.1. If all conditions to the exercise of the Reacquisition Option are satisfied by City, City may exercise the Reacquisition Option for the Property by (i) executing and delivering to District, before expiration of the Reacquisition Option period, a written notice of the same; and (ii) executing and depositing escrow instructions and documents necessary to open escrow for reacquisition of the Property with the Escrow Agent. Escrow shall close thirty (30) days after the opening of escrow, unless agreed otherwise by the Parties. All title and closing costs for the Reacquisition Option escrow shall be paid by the parties in accordance with the title and closing costs set forth in Section 6.6 of this Agreement.

14.7.2. While the Reacquisition Option period is in effect, District shall not sell, convey or otherwise transfer title to the Property to any party other than City.

14.7.3. If City fails to exercise the Reacquisition Option for the Property in accordance with Section 14.6 within the Reacquisition Option period, the Reacquisition Option shall terminate. In the event of such termination, within five (5) days after request by District, City will execute, acknowledge and deliver to District a quitclaim deed, release and/or any other document reasonably required to verify termination of the Reacquisition Option for the Property.

14.8 Memorandum of Reacquisition Option. The Parties shall cause a memorandum of the rights granted City in Section 14.6 to be recorded in the official records of the County at the time of Close of Escrow for conveyance of the Property to District. In lieu of such memorandum, in City's discretion, the rights afforded City pursuant to this Section 14.8 may be described in the Grant Deed. City will not withhold consent to reasonable requests for subordination of the Reacquisition Option to deeds of trust provided for the benefit of construction lenders provided that the instruments effecting such subordination include reasonable protections to City in the event of default, including without limitation, extended notice and cure rights.

15. RELATIONSHIP BETWEEN CITY AND DISTRICT. It is hereby acknowledged that the relationship between City and District is not that of a partnership or joint venture and that City and District shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Property or the Project. District shall indemnify, protect, hold harmless and defend City from any claim made against City by District or District's lenders, creditors, contractors, subcontractors, tenants, agents, employees, representatives, partners, shareholders, members, officers or directors arising from a claimed relationship of partnership or joint venture between City and District with respect to the development, operation, maintenance or management of the Property or the Project.

16. ASSIGNMENT OF PROJECT/CONSENT REQUIRED. District shall not, except as hereinafter provided, assign or transfer this Agreement or any rights hereunder with respect to the Project without the prior written approval of City. City's City Manager shall approve or disapprove any requested transfer or assignment within ten (10) business days after receipt of a written request for approval from District, together with such documentation as may be reasonably required by City's City Manager to evaluate the proposed transaction and the proposed assignee's/transferee's experience and qualifications, including the proposed assignment and assumption agreement by which the assignee expressly agrees to assume all rights and obligations of District under this Agreement arising after the effective date of the assignment, and in which

the assignee agrees to assume, or District expressly remains responsible for, all performance and obligations of District arising prior to the effective date of the assignment. The assignment and assumption agreement shall be in a form reasonably acceptable to City's legal counsel. City's City Manager shall not unreasonably withhold approval of a transfer or assignment to a proposed transferee/assignee who in the reasonable opinion of City's City Manager is financially capable and has the development qualifications and experience to perform the duties and obligations of District. No later than the date the assignment becomes effective, District shall deliver to the City a fully executed counterpart of the assignment and assumption agreement.

17. PERMITTED TRANSFERS. Notwithstanding any other provision of this Agreement to the contrary, City's approval of a transfer or assignment of this Agreement, the Project or any interest therein, shall not be required in connection with any transfer or assignment to an affiliate of District in connection with which such transferee or assignee assumes the rights and obligations of District under this Agreement pursuant to an assignment and assumption agreement reasonably acceptable to the City's legal counsel. "Affiliate" means an entity in which District retains a direct beneficial economic interest and in which District retains effective direct management and control of the transferee entity, subject only to major events requiring the consent or approval of the other owners of such entity ("Permitted Transfer"). District shall give the City prior written notice of any Permitted Transfer together with evidence reasonably supporting the fact that such transfer is a Permitted Transfer.

18. LIMITATION ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DISTRICT. The qualifications and identity of District are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with District. No voluntary or involuntary successor in interest of District shall acquire any interest in the Project or any rights or powers under this Agreement, except as expressly set forth herein.

19. TITLES AND CAPTIONS. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

20. INTERPRETATION. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by the Parties.

21. INACTION NOT A WAIVER OF DEFAULT. Any failures or delays by any Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

22. SEVERABILITY. If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law,

unless the enforcement of this Agreement or such term, provision, condition or covenant would be grossly inequitable under all the circumstances, or would frustrate the purpose of this Agreement.

23. COMPUTATION OF TIME. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code.

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

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

26. CONFLICTS OF INTEREST. No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

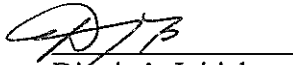
27. DISTRICT'S INDEMNITY.

27.1. Third Party Claims. District shall indemnify, defend (with counsel reasonably acceptable to City), protect and hold City and its elected and appointed officials, officers, employees, agents and representatives, harmless from, all third-party claims, demands, damages, defense costs or liability of any kind or nature relating to the development of the Project, including damages to property or injuries to persons, accidental death, and reasonable attorneys' fees and costs, which may be caused by any of District's activities under this Agreement, whether such activities or performance thereof be by District or by anyone directly or indirectly employed or contracted with by District and whether such damage shall accrue or be discovered before or after termination of this Agreement. District's indemnity obligations under this Section shall not extend to claims, demands, damages, defense costs or liability for property damage, bodily injury or death to the extent (i) occasioned by any action by City or its officers, employees, agents or representatives undertaken prior to the Effective Date this Agreement or (ii) occasioned by the negligence or willful misconduct of City or its officers, employees, agents or representatives for any actions undertaken by City after the Effective Date of this Agreement. The provisions of this Section shall survive any termination of this Agreement.

Proceedings to Challenge Approvals. District, and its successors and assigns, shall defend, indemnify and hold harmless City and its elected and appointed officials, officers, agents and employees, from and against any and all claims, actions, and proceedings to attack, set aside, void or annul any approval of this Agreement or the Project by City, or brought against City due to City's acts or omissions in any way associated with the processing of, and any possible approval of the Project. This indemnification shall include, but not be limited to, damages, fees, costs, liabilities, and expenses incurred in such actions or proceedings, including damages for the injury to property or persons, including death of a person, and any award of attorneys' fees. In the event any such action is commenced to attack, set aside, void or annul all, or any, provisions of this Agreement, or is commenced for any other reason against City for acts or omissions relating to this Agreement or the Project, within fourteen (14) Business Days of the same, District shall file with City a performance bond or irrevocable letter of credit (together, the "Security") in a form and in an amount satisfactory to City to ensure District's performance of its defense and indemnity obligations under this Section 27. The failure of District to provide the Security shall be deemed an express acknowledgement and agreement by District that City shall have the authority and right, without objection by District, to rescind this Agreement and revoke any and all entitlements granted for the Project pursuant to this Agreement. City shall have no liability to District for the exercise of City's right to rescind this Agreement or revoke any entitlements for the Project. District's indemnity obligations under this Section shall not extend to claims, actions, or proceedings to the extent occasioned by the negligence or willful misconduct of City or its officers, employees, agents or representatives.

28. NO LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY. No elected or appointed official, officer or employee of City shall be personally liable to District, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to District or its successors, or on any obligations under the terms of this Agreement. District hereby waives and releases any claim it may have against the elected and appointed officials, officers or employees of City with respect to any Default or breach by City or for any amount which may become due to District or its successors, or on any obligations under the terms of this Agreement. District makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the 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."


District's Initials

29. ESTOPPEL CERTIFICATES. Upon request of District, City shall deliver to District, or its lenders, partners, tenants, and any of their respective successors and assigns, in form and substance reasonably acceptable to District, an estoppel certificate confirming the continued existence of this Agreement, that there are no defaults under this Agreement or if any such defaults are claimed to exist, listing same with particularity, describing the remaining items to be completed by District pursuant to this Agreement, certifying as to the completeness of this Agreement and any amendments, that the addressee may rely upon this certificate, and such other matters as may

reasonably be requested by District. District shall draft or cause to be drafted any estoppel certificate in a form that is reasonably acceptable to City. City's approval of an estoppel certificate shall not be unreasonably withheld; provided, however, that as a precondition of the issuance of any estoppel certification, District shall pay to City the costs reasonably incurred by City's staff in the review and preparation of the estoppel certificate. The City Manager of City may execute any such estoppel certificate without further authorization from City.

30. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall confer upon any person or entity, other than the Parties and their respective successors and permitted assigns, any rights or remedies.

31. MISCELLANEOUS PROVISIONS.

31.1. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between District and City pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, term sheets, negotiations, and discussions, whether oral or written, of the Parties, and there are no warranties, representations, or other agreements, express or implied, made to either Party by the other Party in connection with the subject matter hereof except as specifically set forth herein or in the documents delivered pursuant hereto or in connection herewith.

31.2. Modification; Waiver. No supplement, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

31.3. Notices. All notices, consents, requests, reports, demands or other communications hereunder (collectively, "Notices") shall be in writing and may be given personally, by registered or certified mail, by electronic mail, by courier, or by Federal Express (or other reputable overnight delivery service) for overnight delivery, as follows:

To District: Redlands Railway District, LLC
380 New York Street
Redlands, California 92373
Attention: Donald J. Berry, Jr.
Telephone: (909) 793-2853 x2252
Email: dberry@esri.com

With A Copy To: Legal Department
380 New York Street
Redlands, California 92373
Attention: Sim Saran
Telephone: (909) 793-2853 x3821
Email: ssaran@esri.com

To City: City of Redlands

P.O. Box 3005
Redlands, California 92373
Attention: City Clerk
Telephone: (909) 798-7531
Email: jdonaldson@cityofredlands.org

With A Copy To: City Attorney
City of Redlands
Attention: Daniel J. McHugh
Telephone: (909) 798-7595
Email: dmchugh@cityofredlands.org

To Escrow Agent: First American Title Insurance Company
3281 E. Guasti Road, Suite 440
Ontario, California 91761
Attention: Erin Graeber Bougie
Telephone: (909) 510-6211
Email: egraeerbougie@firstam.com

or to such other address or such other person as the addressee Party shall have last designated by Notice to the other Party and Escrow Agent. All Notices shall be deemed to have been given three (3) days following deposit in the United States Postal Service (postage prepaid) or, upon receipt, if sent by overnight delivery service, courier, facsimile transmission (so long as confirmed by the appropriate automatic confirmation page), electronic mail (so long as receipt is acknowledged or otherwise confirmed), or personally delivered. Notice to a Party shall not be effective unless and until each required copy of such Notice is given. The inability to deliver a Notice because of a changed address of which no Notice was given or an inoperative facsimile number for which no Notice was given of a substitute number, or any rejection or other refusal to accept any Notice, shall be deemed to be the receipt of the Notice as of the date of such inability to deliver or rejection or refusal to accept. Any Notice to be given by any Party hereto may be given by legal counsel for such Party. Telephone numbers are provided herein for convenience only and shall not alter the manner of giving Notice set forth in this Section 31.3.

31.4. Expenses. Subject to the provision for payment of the Closing Costs in accordance with the terms of Section 6.6 of this Agreement and of any other provision of this Agreement, whether or not the transaction contemplated by this Agreement shall be consummated, all fees and expenses incurred by any Party hereto in connection with this Agreement shall be borne by such Party.

31.5. Counterparts. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the different Parties hereto on separate counterparts, each of which, when so executed, including, without limitation, by .pdf scanned counterparts of any initialed or executed pages delivered via electronic mail, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

31.6. Governing Law; Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of California without regard to conflicts-of-laws principles that would require the application of any other law. Each Party hereby consents to the exclusive jurisdiction of any court of competent jurisdiction in the County in any action related to or arising under this Agreement.

31.7. Headings. The Section headings of this Agreement are for convenience of reference only and shall not be deemed to modify, explain, restrict, alter, or affect the meaning or interpretation of any provision hereof.

31.8. Time of Essence. Time shall be of the essence with respect to all matters contemplated by this Agreement.

31.9. Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered by City and District, during the term of this Agreement and after the Close of Escrow, City and District agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered any and all such further acts, instruments, deeds, and assurances as may be reasonably required to consummate the transaction contemplated hereby. In furtherance of the foregoing, so long as District is not in default under the terms of this Agreement, City will cooperate, as reasonably needed, and at no cost to City, in District's feasibility review process, which shall include but not be limited to City's consent to District's unrestricted access to agencies, representatives, tenants, consultants and other parties familiar with the Property and the execution and delivery of such applications or other documents as reasonably requested by District.

31.10. Construction. As used in this Agreement, the masculine, feminine, and neutral gender and the singular or plural shall each be construed to include the other whenever the context so requires. This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction causing this Agreement or any part of it to be construed against the Party causing the Agreement to be written. The Parties acknowledge that each has had a full and fair opportunity to review the Agreement and to have it reviewed by counsel. If any words or phrases in this Agreement have been stricken, whether or not replaced by other words or phrases, this Agreement shall be construed (if otherwise clear and unambiguous) as if the stricken matter never appeared and no inference shall be drawn from the former presence of the stricken matters in this Agreement or from the fact that such matters were stricken.

31.11. Attorneys' Fees. In the event that either Party hereto brings an action or proceeding against the other Party to enforce or interpret any of the covenants, conditions, agreements, or provisions of this Agreement, the prevailing Party in such action or proceeding shall be awarded all costs and expenses of such action or proceeding, including, without limitation, attorneys' fees (including fees for a Party's use of in-house counsel), charges, disbursements, and the fees and costs of expert witnesses. If any Party secures a judgment in any such action or proceeding, then any costs and expenses (including, but not limited to, attorneys' fees and costs) incurred by the prevailing Party in enforcing such judgment, or any costs and expenses (including, but not limited to, attorneys' fees and costs) incurred by the prevailing Party in any appeal from such judgment in connection with such appeal shall be recoverable separately from and in addition to any other amount included in such judgment. The preceding sentence is intended to be severable from the

other provisions of this Agreement, and shall survive and not be merged into any such judgment. This Section 31.11 shall survive Close of Escrow and any earlier termination or expiration of this Agreement.

31.12. Business Days. As used herein, the term “Business Day” shall mean a day that is not a Saturday, Sunday, or legal holiday. In the event that the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday, or legal holiday, the date for performance thereof shall be extended to the next Business Day. Similarly, in the event that the day for the performance of any covenant or obligation under this Agreement involving Escrow Agent shall fall on a Business Day on which Escrow Agent is closed for business to the public, the date for performance thereof shall be extended to the next Business Day on which Escrow Agent is open for business to the public.

32. MEMORANDUM OF AGREEMENT. District and City shall execute, and City shall cause to be recorded concurrently with District’s acquisition of the Property, the memorandum of agreement referencing this Agreement and serving as notice of its existence and contents.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date of this Agreement.

CITY:

CITY OF REDLANDS, a municipal
Corporation

By: 
Paul W. Foster, Mayor

ATTEST:


Jeanne Donaldson, City Clerk

DISTRICT:

Redlands Railway District, LLC, a California
limited liability company

By its Manager:
Judson & Brown, LLC, a Nevada Limited Liability
Company

By: 
Donald I. Berry, Jr., Manager

ESCROW AGENT:

The undersigned Escrow Agent hereby accepts the foregoing Conditional Property Disposition Agreement and Joint Escrow Instructions, agrees to act as Escrow Agent under this Agreement in strict accordance with its terms, agrees to insert as the "Agreement Date" on page 1 hereof, if not otherwise dated, the latest date this Agreement was signed by City and District and delivered to Escrow Agent, and agrees to comply with the applicable provisions of the Internal Revenue Code with respect to the transactions contemplated hereby.

First American Title Company

Date: _____

By: _____

Name: Erin Graeber Bougie

Title: Escrow Agent

LIST OF EXHIBITS

EXHIBIT "A" LEGAL DESCRIPTION

EXHIBIT "B" GRANT DEED

EXHIBIT "C" NON-FOREIGN AFFIDAVIT

EXHIBIT "D" EASEMENT FOR PUBLIC PARKING PURPOSES

EXHIBIT "E" SCHEDULE OF PERFORMANCE

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Third Street:

THAT PORTION OF THIRD STREET IN A PORTION OF BLOCK "C" AS SHOWN ON THE CENTRAL TOWN SITE, RECORDED IN BOOK 8 OF MAPS, PAGE 57, OFFICIAL RECORDS OF THE COUNTY RECORDER, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS"

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF THIRD STREET AND THE NORTH LINE OF THE S.B.V. RY RIGHT OF WAY AS SHOWN ON RECORD OF SURVEY 03-161, RECORDED IN BOOK 144, PAGE 53 OF SURVEYS, RECORDS OF SAID COUNTY; THENCE NORTH 89°57'40" WEST 27.00 FEET ALONG SAID NORTH RIGHT OF WAY LINE OF S.B.V RY TO THE WEST RIGHT OF WAY LINE OF SAID THIRD STREET AS SHOWN ON SAID RECORD OF SURVEY; THENCE NORTH 00°00'00" EAST 173.68 FEET ALONG SAID WEST RIGHT OF WAY LINE, PARALLEL WITH AND 27.00 FEET WEST OF SAID THIRD STREET CENTER LINE TO THE SOUTH LINE OF A ROADWAY EASEMENT PER DOCUMENT NUMBER 2009-0191826, OFFICIAL RECORDS OF SAID COUNTY AND THE BEGINNING OF A NON-TANGENT 827.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH AND TO WHICH POINT A RADIAL LINE BEARS SOUTH 09°37'50" EAST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°49'09", A DISTANCE OF 55.12 FEET TO THE EAST RIGHT OF WAY LINE OF SAID THIRD STREET AND THE SOUTHWEST CORNER OF A ROADWAY EASEMENT PER DOCUMENT NUMBER 2009-0191827 OFFICIAL RECORDS OF SAID COUNTY AND TO WHICH POINT A RADIAL LINE BEARS SOUTH 13°26'59" EAST; THENCE SOUTH 00°00'00" EAST 184.74 FEET, PARALLEL WITH AND 27.00 FEET EAST OF SAID CENTERLINE THIRD STREET TO THE NORTH LINE OF SAID S.B.V RY RIGHT OF WAY; THENCE NORTH 89°57'40" WEST 27.00 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

CONTAINING 9,660 SQUARE FEET, MORE OR LESS

APN 0169-281-23:

An irregular shaped parcel of land in the City of Redlands, County of San Bernardino, State of California, being all those portions of Lots 18, 20, 21 to 26, inclusive and the 15 foot wide alley (now vacated) lying Southerly of said Lot 20, all being in Block "C" of the Central Townsite, as said Lots and alley are shown on Plat recorded in Book 8 of Maps, Page 57, records of said County, more particularly described as follows:

Beginning at a point in the Easterly line of said Lot 26, distant Northerly along said Easterly line 14.10 feet from the Southeasterly corner of said Lot 26;

thence Northerly along said Easterly line and its Northerly prolongation and along the Easterly line of said Lots 18 and 20, also being the Westerly line of Third Street, 54 feet wide, a distance of 168.90 feet to a point in a line that is parallel with and distant Northerly 3.00 feet, measured at right angles from the Northerly line of said Lot 20, said parallel line also being the Southerly line of Stuart Avenue;

thence Westerly along said parallel line, 122.00 feet;

thence Southwesterly in a direct line 22.63 feet to a point in the Westerly line of said Lot 20, said point being distant Southerly along said Westerly line 13.00 feet from the Northwesterly corner of said Lot 20;

thence Southerly along the Westerly line of said Lot 20 and its Southerly prolongation and along the Westerly line of said Lot 21, a distance of 152.90 feet to a point in a line that is parallel with and distant Northerly 14.10 feet, measured at right angles from the Southerly line of said Lots 21 to 26, inclusive;

thence Easterly along said parallel line 138.00 feet to the point of beginning.

Excepting and reserving all oil, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface of said land, together with the right to drill into, through, and to use and occupy all parts of said land lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said or other lands but without, however, any right to use either the surface of said land or any portion of said land within 500 feet of the surface for any purpose or purposes whatsoever, as reserved by David F. Rettig, et al, in Deed recorded May 12, 1986, as Instrument No. 86-122368, Official Records.

APN 0169-281-19:

Parcel No. 1:

The South 24.8 feet of Lot 17 and all of Lots 19, 27, 28, 29, 30, 31 and 32, of Block "C", Amended Map of Central Townsite, in the City of REDLANDS, County of SAN BERNARDINO, State of California, as per Map recorded in Book 8, Page 57, of Maps, in the office of the County Recorder of said County.

Parcel No. 2:

This 15 foot alley between Lot 19 of Block "C" on the North and Lots 27 to 32, inclusive, Block "C" on the South, as shown on Amended Map of Central Townsite, in the City of REDLANDS, County of SAN BERNARDINO, State of California, as per map recorded in Book 8, page(s) 57, of Maps, in the office of the County Recorder of said County.

EXHIBIT "B"

GRANT DEED

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

(Space Above for Recorder's Use)

GRANT DEED

The undersigned Grantor declares that Documentary Transfer Tax is not shown pursuant to Section 11932 of the California Revenue and Taxation Code, as amended.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, CITY OF REDLANDS, a municipal corporation ("Grantor"), hereby grants to Redlands Railway District LLC, a California limited liability company, the real property in the City of Redlands, County of San Bernardino, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.

THIS GRANT AND CONVEYANCE IS MADE AND ACCEPTED SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, RIGHTS OF WAY AND EASEMENTS NOW OF RECORD.

[signature page follows]

MAIL TAX STATEMENTS TO:

IN WITNESS WHEREOF, the Grantor has executed this grant deed as of _____ 2019.

GRANTOR:

CITY OF REDLANDS, a municipal corporation

By: _____
Paul W. Foster, Mayor

ATTEST:

Jeanne Donaldson, City Clerk

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2019, before me, _____
_____, Notary Public, personally appeared _____
_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they/executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public
In and For Said County and State

EXHIBIT "A"
TO GRANT DEED

Document No. _____

Recorded _____, 2019

STATEMENT OF TAX DUE AND REQUEST THAT TAX DECLARATION
NOT BE MADE A PART OF THE PERMANENT RECORD IN THE OFFICE
OF THE COUNTY RECORDER (PURSUANT TO SECTION 11932
REVENUE AND TAXATION CODE)

TO: Recorder
County of San Bernardino

Request is hereby made in accordance with the provisions of the Documentary Transfer Tax Act that the amount of the tax due not be shown on the original document which names:

Grantor: CITY OF REDLANDS, a municipal corporation

Grantee: Redlands Railway District, LLC, a California limited liability company

The property described in the accompanying document is located in the City of Redlands, County of San Bernardino.

The amount of tax due on the accompanying document is \$_____, computed on the full value of the property conveyed.

(Signature of Grantor or Agent)

CITY OF REDLANDS, a municipal
corporation

By: _____
Paul W. Foster, Mayor

ATTEST:

Jeanne Donaldson, City Clerk

Note: After the permanent record is made, this form will be affixed to the conveying document and returned with it.

EXHIBIT "C"

NON-FOREIGN AFFIDAVIT

STATE OF _____)
) ss.
County of _____)

The undersigned, as authorized agent of CITY OF REDLANDS, a municipal corporation ("Transferor"), after being duly sworn upon his oath deposes and says that:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform [Company's Name], LLC, a California limited liability company ("Transferee"), that withholding of tax is not required upon the disposition of Transferor's interest in a U.S. real property interest, the undersigned hereby certifies the following:

1. Transferor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of § 1445 and § 7701 of the Internal Revenue Code and the treasury regulations promulgated thereunder;
2. Transferor is not a disregarded entity as defined in Treas. Reg. § 1.1445-2(b)(2)(iii);
3. Transferor's U.S. taxpayer identification number is: _____;
4. Transferor's business address is:

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury Transferor declares that it has examined this certification and to the best of its knowledge and belief this certification is true, correct, and complete. The undersigned agent declares that he has the authority to sign this document on behalf of Transferor.

TRANSFEROR:

CITY OF REDLANDS, a municipal
corporation

By: _____
Paul W. Foster, Mayor

ATTEST:

Jeanne Donaldson, City Clerk

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

STATE OF CALIFORNIA)
)
) SS.
COUNTY OF _____)

On _____, 2019, before me, _____
_____, Notary Public, personally appeared _____
_____, who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they/ executed the same in his/her/their authorized capacity(ies) and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

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

WITNESS my hand and official seal.

Notary Public
In and For Said County and State

EXHIBIT “D”

EASEMENT FOR PUBLIC PARKING PURPOSES

TO BE FINALIZED BY THE PARTIES FOLLOWING THE EXECUTION OF THIS
AGREEMENT

PARKING EASEMENT AGREEMENT

This Parking Easement Agreement (this "Agreement") is dated for reference purposes as of the ____ day of _____, 2020 ("Agreement Date"), and is entered into by and between Redlands Railway District LLC, a California Limited Liability Company ("District"), and the City of Redlands, a general law city and a municipal corporation duly organized and existing under the Constitution and the laws of the State of California ("City"). District and City are sometimes hereinafter referred to individually as a "Party" and, together, as the "Parties." District also includes the successors and assigns of District, and City also includes the successors and assigns of City. This Agreement shall become effective upon "completion" of construction of the Parking Structure as such term is defined below in section 2 hereof ("Effective Date").

RECITALS

WHEREAS, District is the owner of fee title to that certain real property situated in the city of Redlands, California, that is more particularly described on Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"). As of the Agreement Date, District proposes to develop a new 3-story parking structure on the Property that will consist of up to approximately 374 parking spaces, restaurant and retail uses, and incidental improvements and facilities (collectively, the "Parking Structure"); and

WHEREAS, District desires to convey to City, and City desires to acquire from District, certain irrevocable and permanent easement rights on, in, over, and across portions of the third floor (the "Easement Area") of the Parking Structure which District proposes to construct on the Property, and driveways and pedestrian pathways that provide ingress and egress to and from the adjacent public streets and the Parking Structure for City's provision of public parking of a minimum of two hundred (200) spaces, which Easement Area is more particularly described and depicted in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, District and City acknowledge that the fair market value of the easement rights being conveyed by District to City pursuant to this Agreement is the sum of One Million Eight Hundred Eighty Thousand Dollars (\$1,880,000), which represents fair consideration for City's prior conveyance of the Property to District and City's in-kind services contribution as described in Section 3, below;

NOW, THEREFORE, based upon the foregoing Recitals, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, District and City agree as follows:

AGREEMENT

Section 1. Recitals. The foregoing Recitals are true and correct and incorporated herein by this reference.

Section 2. Grant of Easement. District hereby grants to City, and City hereby accepts from District, an exclusive easement on, in, over, and across the Easement Area for the purposes

and uses identified in Section 4 below, and a non-exclusive floating easement for necessary ingress and egress over, across, in and through the Property to the Easement Area. In accordance with the Recitals hereof, this easement shall be effective upon the date of District's written notice to City that District has completed construction of the Parking Structure.

Section 3. In-Kind Services Contribution. In further consideration of District's long term maintenance obligations undertaken for the Parking Structure as described herein, City shall provide a credit to District in the amount of Eighty Thousand Dollars (\$80,000), commencing as of the Effective Date of this Agreement, which shall be applied by City towards District's obligation for payment of any fees associated with City's staff's processing of City land use entitlements or permits associated with any District or its affiliated company development project applications submitted to City subsequent to the Effective Date of this Agreement.

Section 4. Use of Easement Area. City shall be entitled to utilize the Easement Area for City's provision of public parking of standard passenger vehicles and for any other uses of City's choosing that are reasonably ancillary thereto, excepting the following (collectively, the "Prohibited Uses"): (i) the storage, handling, or transport of explosives; (ii) the storage, handling, or transport of Hazardous Materials (as defined in Section 12); (iii) the storage, handling, or transport of sand, gravel, and similar construction materials; (iv) the storage, handling, or transport of highly flammable or combustible materials, including gasoline or other fuel products; (v) manufacturing uses; and (vi) any uses prohibited by law. District shall not obstruct City's access to or use of the Easement Area consistent with the foregoing except to the extent reasonably necessary to maintain, repair, improve, and replace improvements within the Easement Area as provided herein, and with the understanding that District and City shall mutually and reasonably agree upon the time, place and manner of any entry by District onto the Easement Area for such purposes.

Section 5. Easement Area Rights and Obligations.

A. Parking Space Signs/Markings. City shall be responsible for the cost of any signs and markings desired or requested by City to indicate the reserved or designated nature of the parking spaces within the Easement Area.

B. Enforcement and Towing. District shall cooperate with City and take reasonable actions to enforce City's rights to reserved use of the designated parking spaces within the Easement Area including, without limitation, providing for the issuance of parking citations and/or towing of unauthorized vehicles.

C. Reasonable Care in Exercise of Rights. City agrees to use reasonable care in exercising the rights granted by this Agreement and agrees to not unreasonably increase the burden on District's use of the Parking Structure.

D. Parking Charges. City shall have the sole right and discretion to determine whether any fees or charges shall be imposed for the use by the public of parking spaces within the Easement Area. Should the City elect to charge the public for parking spaces, any and all obligations and costs associated with collecting said charges shall be borne exclusively by City.

Section 6. Term. Subject to Sections 19 and 21 herein below, this Agreement and the rights and obligations set forth herein shall continue in effect in perpetuity.

Section 7. Insurance. During the entire Term of this Agreement, District shall obtain, maintain in effect, and pay for a policy or policies of insurance against loss or damage to the Parking Structure and the Property resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies. Insurance limits shall be not less than one hundred percent (100%) of the full insurable value of the Parking Structure and the improvements on the Property, including without limitation the portion of the Parking Structure in the Easement Area. As used herein, the term "full insurable value" means actual replacement cost, excluding the cost of excavation, foundations, and footings below the lowest floor and without deduction for depreciation, of the improvements on the Property immediately before such casualty or other loss, including the cost of construction, architectural and engineering fees, and inspection and supervision. Such insurance coverage shall be with an insurer with a minimum Best's Insurance Guide rating of A:VII (or equivalent, if such insurance guide is discontinued or not available), such insurance shall be primary and not contributing with any insurance maintained from time to time by City, and the policy shall contain such an endorsement. The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City. District shall provide City with continuous proof that such insurance remains in effect not less than fifteen (15) days prior to the expiration or termination of District's then-existing insurance policy or otherwise as may be reasonably requested by City, with the form and content of such proof to be reasonably satisfactory to City. In addition to the foregoing, during the entire Term of this Agreement, City shall obtain and maintain in effect commercial general liability, automobile liability, and worker's compensation insurance meeting the minimum requirements set forth in Exhibit "C" attached hereto and City shall at all times comply with the provisions set forth therein. City may request in writing to District that City be permitted to self-insure to cover any risk of loss required to be insured by City hereunder and, in such event, District shall not unreasonably disapprove such request.

Section 8. Indemnity. Each Party shall defend and indemnify the other Party as follows:

A. District shall indemnify, defend, and hold harmless City and City's elected and appointed officials, officers, employees, agents, contractors, representatives, successors, and assigns (collectively, the "City Indemnified Parties") from and against any and all losses, damages, liens, liabilities, statutory fines or penalties, claims, and causes of action which any such City Indemnified Party may suffer or incur as a consequence of District's activities or failure to act pursuant to the scope of duties allotted to District under Sections 9 and 10 of this Agreement, including, without limitation, (i) any such loss, damage, or liability arising due to the lack of availability for an unreasonable time period of the Easement Area for the purposes provided herein; (ii) the failure of District to perform Capital Repair/Replacement Work or any maintenance work within a reasonable time frame that is District's responsibility within or with respect to the Easement Area, including without limitation structural supports; (iii) any personal injury or death or property damage, (iv) any actual or alleged violation by District or any of its permittees of any Hazardous Materials Laws (as that term is defined in Section 12 herein below); (v) any loss,

damage, or liability arising due to any liens placed upon the Easement Area; and/or (vi) any liability incurred by City based upon District's breach of this Agreement; provided, however, the foregoing indemnification obligations of District shall not apply to any losses, damages, liens, liabilities, statutory fines or penalties, claims, and causes of action to the extent caused by the gross negligence or intentional misconduct of City or any of the City Indemnified Parties.

B. City shall indemnify, defend, and hold harmless District and District's partners, members, managers, principals, employees, shareholders, officers, directors, agents, contractors, consultants, lenders, representatives, heirs, successors, and assigns (collectively, the "District Indemnified Parties") from and against any and all losses, damages, liens, liabilities, statutory fines or penalties, claims, and causes of action which any such District Indemnified Party may suffer or incur as a consequence of City's or City's permittees' entry upon, or actions with respect to, this Agreement, the Easement Area, and City's Uses, including, without limitation, (i) any loss, damage, or liability arising due to any liens placed upon the Easement Area and/or the Property (other than liens for real property taxes and assessments, (ii) any personal injury or death or property damage, (iii) any actual or alleged violation by City or any of its permittees of any Hazardous Materials Laws (as that term is defined in Section 13 herein below); and/or (iv) any liability incurred by District based upon City's breach of this Agreement; provided, however, the foregoing indemnification obligations of City shall not apply to any losses, damages, liens, liabilities, statutory fines or penalties, claims, and causes of action to the extent caused by the gross negligence or intentional misconduct of District or any of the District Indemnified Parties. Notwithstanding the foregoing portion of this Section 8, the City shall not be responsible to District or to any third parties in any way for (a) any defects in the plans and specifications for the Parking Structure or any Capital Repair/Replacement Work, or (b) any structural or other defects, latent or patent, in any work done according to the approved plans and specifications for the Parking Structure or any Capital Repair/Replacement Work. District shall hold harmless, indemnify and defend the City Indemnified Parties from and against any claims or suits for damages to property or injuries to persons (including death) arising out of or in any way relating to defects, latent or patent, in the plans and specifications or the actual construction work and improvements comprising the Parking Structure or any Capital Repair/Replacement Work, including, without limitation, the violation of any governmental regulations, or arising out of or in any way relating to any defects in any work done and/or improvements completed according to approved plans and specifications therefor.

C. This Section 8 shall survive any termination of this Agreement as to City acts or omissions occurring prior to the termination of this Agreement.

Section 9. Maintenance of Easement Area. District shall be responsible for and shall pay for all costs for maintenance, repair, and replacement of all improvements, furnishings, fixtures, and equipment, and personal property situated within the Easement Area from time to time, with no contribution by City (except as provided in Section 3 hereof); provided, however, that said responsibility of District shall exclude that portion of the Capital Repair/Replacement Work that is City's responsibility in accordance with Section 10 of this Agreement. In addition, City shall be responsible for and shall pay for all costs for repair and replacement of any of the improvements, furnishings, fixtures, and equipment, and personal property situated from time to time within the Easement Area that result from damages caused by City or any of City's permittees,

Not by way of limitation of the foregoing, City's maintenance, repair, and replacement obligations shall include, but shall not be limited to, the following: (i) maintenance of asphalt parking, and driving surfaces within the Easement Area (except superstructure and concrete surfaces which are the responsibility of District) in a smooth condition evenly covered with the type of surface material originally installed thereon, or such substitute thereof as shall be in all material respects equal thereto in quality and durability; (ii) removal of all oil drippings, papers, debris, filth, and refuse from the Easement Area (other than designated trash receptacles); (iii) cleaning, maintaining, and replacing lighting fixtures within the Easement Area, and re-lamping and re-ballasting the same as needed; (iv) repainting of striping, markers, and directional signs within the Easement Area as needed; and (v) the lighting system as installed by District. The Easement Area shall be maintained in good condition in accordance with any standards imposed by any government authority having jurisdiction over the Easement Area. Notwithstanding the above, District shall be responsible for all costs for repair and replacement of any of the improvements, furniture, fixtures, and equipment and personal property situated from time to time within the Easement Area that result from damages caused by District or any of District's permittees.

Section 10. Capital Repair/Replacement Work. Subject to City's limited responsibilities in Section 9, District shall be responsible for performing any Capital Repair/Replacement Work that may be required from time to time with respect to the Parking Structure and the Property, and any ingress and egress to and from the Parking Structure and public streets, with no contribution by City. As used herein, the term "Capital Repair/Replacement Work" shall include repair and replacement, as needed, of the foundations, superstructure, walls, exit stairs, access ramps, the concrete flooring and parking surfaces, walls, ceilings, and structural elements of the Parking Structure in and about the Easement Area. District and City must mutually agree with respect to any such Capital Repair/Replacement Work that either Party believes is or may be required and with respect to the time, place, and manner for performance of such work, subject to their mutual agreement that the Parking Structure shall be maintained in compliance with all applicable laws and regulations promulgated and enforced by governmental agencies with jurisdiction over the Property and in good condition and repair, consistent with District's use of the Property.

Section 11. Alterations and Improvements; No Operating Covenant. Subject to compliance with all applicable laws and regulations promulgated and enforced by governmental agencies with jurisdiction over the Property, District shall have the right to expand, contract, or otherwise alter the portion of the Parking Structure outside the Easement Area at its sole cost and expense without City's prior written consent, as long as District's alterations do not obstruct, impair, or diminish City's use of the Easement Area.

Section 12. No Liens. City shall not allow to be recorded against the other than with respect to the Easement Area on a basis subordinate to a first trust deed loan which affects the Property any mechanics' or materialmen's, lis pendens, or other lien arising out of its use of the Easement Area or this Agreement. If any such lien other than as permitted pursuant to the foregoing portion of this Section 12 shall at any time be recorded against the Property and City fails, within ten (10) days after the date of City's receipt of notice of the imposition of any such lien, to either pay or discharge the same, then District may pay such claim and the amount so expended by District shall be reimbursed by City within five (5) days after receipt of District's

invoice therefor. If City desires to contest the validity of any such lien or claim in good faith, it shall notify District of its intention to do so within five (5) days after the filing of the lien and, as a condition thereto, City shall at its expense post an appropriate bond for the benefit of District and the Property, in an amount sufficient to protect the District from any loss as a result of the lien or claim. In the event of any such contest, City shall protect and indemnify District against all loss, cost, expense, and damage resulting therefrom.

Section 13. Compliance with Laws. City shall, at its sole cost and expense, (i) comply with all federal, state, and local laws, statutes, ordinances, building codes, rules, and regulations applicable to this Agreement and City's occupancy and use of the Easement Area, including, without limitation, all Hazardous Materials Laws. As used herein, the term "Hazardous Material Law" means any federal, state, or local law, ordinance, or regulation, any order, demand, or guidance document of any governmental agency or any licenses or permits relating to any Hazardous Material. As used herein, the term "Hazardous Material" means any substance, material, or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance, or waste which is (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code; (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code; (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) a polychlorinated biphenyl; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (xii) any other substance, whether in the form of a solid, liquid, gas, or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful to the environment or capable of posing a risk of injury to public health and safety. In the event City or any of City's permittees causes a release, spill, or discharge of Hazardous Materials on, in, under, or in the vicinity of the Property City shall promptly remediate such release, spill, or discharge in compliance with all applicable Hazardous Materials Laws and at no expense to District and, not by way of limitation of the foregoing obligation, City's indemnity obligations set forth in Section 6 of this Agreement shall apply.

Section 14. Estoppel Certificates. Each Party, upon the written request of the other Party (which may not be more frequent than two (2) times during any calendar year), shall issue to the requesting Party, the requesting Party's existing or prospective mortgagee or a potential successor of such requesting Party, within ten (10) business days of receipt of any such request, an estoppel certificate stating (i) whether the responding Party knows of any default under this Agreement by it or the requesting Party and, if there are known defaults, specifying the nature thereof; (ii) that the Agreement has not, to such responding Party's knowledge, been modified or amended in any

way, except as may be of record or otherwise disclosed by the responding Party; (iii) that to the responding Party's knowledge, this Agreement is in full force and effect; and (iv) those amounts, if any or applicable, then owed by the requesting Party or the responding Party under this Agreement.

Section 15. Amendment. This Agreement shall not be amended orally, and no executory agreement shall be effective to waive, change, modify, or discharge it, in whole or in part, unless such executory agreement is in writing and is signed by the Party against whom enforcement of any waiver, change, modification, or discharge is sought.

Section 16. Assignment. District may assign any and all of its rights and obligations with respect to this Agreement without the prior consent of City, to any purchaser of the Property. City may assign any and all of its rights and obligations with respect to this Agreement only to a party that is responsible for operation of City's Uses with respect to the Property. From and after the date of any assignment that is permitted in accordance with this Agreement, the assignor/transferor automatically shall be released from each and every obligation, responsibility, and liability arising under this Agreement and the other Party's sole recourse hereunder shall be against the assignee/transferee. Any unpermitted assignment shall be null and void unless approved by both Parties in writing, with each Party reserving the right to disapprove such assignment in its sole and absolute discretion. At the time of any permitted assignment the assignor/transferor, assignee/transferee, and the other Party to this Agreement shall enter into an assignment and assumption agreement reasonably satisfactory to all parties consistent with the foregoing.

Section 17. Agreement Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties.

Section 18. Subordination; Mortgagee Protection. This Agreement and City's rights hereunder shall be senior and superior to the rights of the holder of any deed of trust, mortgage, or other security instrument encumbering the Property (collectively, a "Mortgage"). In the event there is an outstanding Mortgage encumbering the Property on the Effective Date of this Agreement, or District is causing a Mortgage to be recorded against the Property concurrently with the recordation of this Agreement, District shall cause the holder of such Mortgage to execute and deliver to City and/or record against the Property an agreement acknowledging the senior and superior status of City's rights hereunder and this Agreement to the rights and security interest of the holder of the Mortgage in and to the Property ("Subordination Agreement"), and the form and content of the Subordination Agreement shall be reasonably acceptable to City's counsel. Subject to the foregoing, no violation or breach of any of the covenants, agreements, and restrictions set forth in this Agreement shall affect or impair the liens and rights of a holder of a Mortgage which is now or hereafter recorded against the Property or any portion thereof, or the rights of any person or entity who acquires the Property based upon the foreclosure of such Mortgage or through a conveyance by deed in lieu of foreclosure, or any successor or assignee of any of them. The Parties shall amend this Agreement to make such commercially reasonable modifications to this Section 17 as may be required by any existing or prospective holder of a Mortgage.

Section 19. Casualty Loss. District shall not be deemed to be in default of this Agreement if the Parking Structure within which a portion of the Easement Area is situated is damaged or destroyed due to a casualty loss. In such event, however, District and City shall consult and cooperate with one another as to appropriate repair and replacement solutions and District shall be responsible to commence and complete the repair and replacement of the damaged or destroyed elements of the Parking Structure (and any other destroyed or damaged improvements within the Easement Area) as promptly as practical with the objective of restoring the same as closely as practical to the condition such improvements were in immediately prior to the casualty loss. Promptly following City's request therefor, District shall provide to City all available plans and specifications, names of design professionals and contractors, and construction contracts for such work. District shall have the right to expand, contract, or otherwise modify the Parking Structure (i) subject to City's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed so long as such change does not have any non-diminimus adverse effect on City's use or enjoyment of the Easement Area upon completion of the work, nor impose any additional expense or charge on City; or (ii) as required by applicable law.

Section 20. Defaults and Remedies.

A. Failure by any Party to perform any action or covenant required by this Agreement within the time periods provided herein, or otherwise, following notice shall constitute a "Default" under this Agreement. A Party claiming a Default shall give written Notice of Default to the other Party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against the other Party if such Party within thirty (30) days after the date of such Notice of Default immediately cures, corrects or remedies such failure or delay.

B. Except as otherwise specifically provided herein, upon the occurrence of a Default, and the expiration of the applicable cure period pursuant to subsection A above, the non-defaulting Party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California, or in the Federal District Court for the Central District of the State of California. Notwithstanding anything herein to the contrary, a Party's right to recover damages in the event of a Default by the other Party shall be limited to recovery of actual damages and shall exclude consequential damages.

C. The rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party, except as otherwise expressly provided herein.

D. Any failures or delays by any Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 21. Reversion. If City determines that it no longer has need of the Easement Area, as determined in its sole and absolute discretion, City shall notify District in writing of same ("Disposition Notice") no less than sixty (60) days before its intent to discontinue use of the Easement Area. Upon City providing District with the Disposition Notice, this Agreement shall terminate and the Easement Area shall automatically revert back to District exclusively together with all rights and privileges afforded herein

Section 22. Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Parking Structure to the general public or for any public use or purpose whatsoever, it being the intention of the Parties and their successors and permitted assigns that nothing in this Agreement, express or implied, shall confer upon any person, other than the Parties and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 23. Attorneys' Fees. If any action is commenced to enforce or interpret any provision of this Agreement, or arising out of this Agreement, the prevailing Party, as determined by a final court judgment, shall be entitled to recover from the other Party, in addition to costs and any other relief, such reasonable attorneys' fees incurred in the action as the court may award, including attorneys' fees for a Party's use of in-house counsel.

Section 24. Authority. The individuals executing this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of their respective principals.

Section 25. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to conflicts of law principles.

Section 26. Time and Excusable Delays. The time for performance of an obligation, other than the payment of money, shall be extended for the period during which a Party is prevented from performing by the act or omission of another Party to this Agreement, acts of God, government, or other force or event without the fault and beyond the reasonable control of such Party.

Section 27. Waiver. No right or remedy under this Agreement shall be deemed to have been waived unless the waiver is in writing and signed by the Party to be charged. One waiver shall not be interpreted as a continuing waiver.

Section 28. Exhibits. All Exhibits attached and referred to in this Agreement are hereby incorporated herein as though fully set forth herein and shall be deemed to be a part of this Agreement.

Section 29. Entire Agreement. This Agreement, and the exhibits referenced herein or attached hereto, set forth and contain the entire understanding and agreement of the Parties with respect to the subject matter addressed herein, and there are no oral or written representations, understandings, or ancillary covenants, undertakings, or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations,

understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date of this Agreement.

CITY OF REDLANDS

REDLANDS RAILWAY DISTRICT, LLC
a California limited liability company

BY ITS MANAGER:
JUDSON & BROWN, LLC,
a Nevada limited liability company

By: _____
Paul W. Foster, Mayor

By:  _____
Donald J. Berry, Jr., Manager

ATTEST:

Jeanne Donaldson, City Clerk

EXHIBIT “E”

SCHEDULE OF PERFORMANCE

Summary of selected obligations - this schedule does not include all obligations which the Parties are required to perform in accordance with this Agreement; in addition, because this Schedule of Performance contains summarized information, the body of this Agreement should be referred to for the particular terms and conditions pertaining to each action

1. In accordance with Section 2.1 of this Agreement, Opening of Escrow and execution of escrow instructions.
2. Within thirty (30) days of the Effective Date of this Agreement, District to submit a completed application for the proposed project (anticipated conditional use permit, commission review and approval, and demolition permit applications, traffic impact analysis, socio-economic cost benefit study, and cultural resources phase ii investigation), applicable fees, and environmental technical studies as required by staff to comply with CEQA (the “Application Package”).
3. Within fourteen (14) days of District’s submittal of the Application Package, City’s development review committee (“DRC”) meets and reviews the Application Package and City staff forwards any deficiencies/questions to district.
4. Within forty-five (45) days of City’s written request for deficiencies/questions, District to resubmit application package, if necessary, to address deficiencies/questions identified during the DRC meeting.
5. Within thirty (30) days of City’s determination that District has submitted a “complete” application package, city to prepare initial study and Socio-Economic Cost/Benefit Study and for CEQA recommendation and Measure “U” compliance, and determine if proposed project is exempt from environmental review, or whether a mitigated negative declaration or EIR will be prepared for the proposed project.
6. At the next available meeting, Planning Commission review of the Project and CEQA document, socio-economic cost benefit study, and entitlements for the proposed project.
7. Close of Escrow, within thirty (30) days after date of joint written notice, from City and District to Escrow Agent, of City’s approval of all discretionary and ministerial permits for the proposed project, and satisfaction of conditions precedent.
8. District commences construction of the proposed project within one (1) year from date of Close of Escrow.