

PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“Agreement”) is entered into effective as of June __, 2022 (the “Effective Date”), by and between The City of Beaumont (“*Seller*”), and 5th Street Development, LLC, a California limited liability company, (“*Buyer*”), for acquisition by Buyer of certain real property hereinafter described.

RECITALS

WHEREAS, Buyer desires to acquire all of Seller’s right, interest, and title in and to the real property (“*Property*”) located in the City of Beaumont, California, and is further identified Exhibit “A” attached hereto and by this reference incorporated herein, as modified in accordance with the provisions of Section 1.1 herein; and

WHEREAS, the sale will be on an “as-is where-is” basis and subject to certain development and other covenants as provided in this Agreement; and

WHEREAS, Seller desires to sell to Buyer and Buyer desires to buy said Property subject to the conditions and covenants set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows.

SECTION 1 PURCHASE AND SALE

1.1 Property; Agreement to Purchase Property. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller that certain Property in accordance with the terms, covenants and conditions set forth in this Agreement the legal description of which is contained in Exhibit “A”, which is attached hereto and made a part hereof by this reference. The legal description in Exhibit “A” is subject to a Lot Line Adjustment recorded by Seller prior to the execution of this Agreement removing certain real property which serves as a parking lot to adjacent property

1.2 Purchase Price. The purchase price of the Property (“*Purchase Price*”) shall be the amount of One Million Two Hundred Eleven Thousand One Hundred and Fifty Dollars (\$1,211,150.00).

1.3 Payment. The Purchase Price will be paid by federal wire transfer to Escrow Agent in immediately available funds in accordance with an estimated closing statement consistent with this Agreement, prepared by “*Escrow Agent*”, identified in Section 9.7.1 below, and executed by Buyer and Seller (“*Closing Statement*”).

1.4 Amount and Deposit of Earnest Money. No later than two (2) business days after the Effective Date, Buyer shall deposit with Escrow, an earnest money deposit in the amount of Sixty Five Thousand Dollars (\$65,000.00) (hereinafter the “*Earnest Money*”). The Earnest Money

shall be deposited in Escrow Agent's non-interest bearing escrow/trust account pending disbursement pursuant to this Agreement. The sum of one hundred dollars (\$100.00) from the Earnest Money shall be nonrefundable and shall be paid to Seller in the event that Buyer cancels this Agreement in accordance with **Section 4**.

SECTION 2 ESCROW

2.1 Establishment of the Escrow. An escrow for this transaction ("**Escrow**") shall be established with Escrow Agent, and Escrow Agent shall be engaged to administer the Escrow. The Escrow shall continue in effect until the earlier of the date that (a) Buyer has purchased the Property or (b) this Agreement terminates.

2.2 Opening and Closing of Escrow. Immediately after the execution of this Agreement by both Buyer and Seller, Seller will deliver a fully executed copy of this Agreement to First American Title attn Jim Sardo Escrow Agent. The closing of Escrow (the "**Closing**") shall take place on the date Escrow Agent (i) is irrevocably committed to issue the Title Policy to Buyer pursuant to **Section 5.3**, and (ii) disburses proceeds of the sale to Seller in accordance with the approved Closing Statement. The date for the Closing ("**Closing Date**") shall be on the twenty first (21st) day after the expiration of the Due Diligence Period.

2.3 Acceptance of Escrow. By accepting this Escrow, Escrow Agent agrees to the terms of this Agreement solely as they relate to the duties of Escrow Agent.

2.4 Escrow Instructions. This Agreement constitutes escrow instructions to Escrow Agent. If Escrow Agent requires the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute those instructions; however, those instructions will be construed as applying only to Escrow Agent's engagement. If there are conflicts between the terms of this Agreement and the terms of the Escrow Agent's standard form printed escrow instructions, the terms of this Agreement will control.

2.5 Escrow Cancellation Charges. If Escrow fails to close because of Seller's default, Seller will pay all customary escrow cancellation charges. If Escrow fails to close because of Buyer's default, or for any other reason, Buyer shall pay all customary escrow cancellation charges.

SECTION 3 INFORMATION SECURED BY BUYER

3.1 Seller Deliverables. Within five (5) days of the Effective Date, Buyer shall order from First American Title Insurance Company ("**Title Company**"), the following:

3.1.1 Preliminary Title Report. A current preliminary title report (the "**Title Report**") for the Property prepared by Title Company along with copies of all documents referenced therein. Buyer shall provide a copy of the Title Report to the Seller within 30 days of the Effective Date.

SECTION 4
MATTERS RELATING TO THE ESCROW PERIOD

4.1 Title and Survey Review.

4.1.1 **Survey.** Buyer may obtain an ALTA survey of the Property (the "**Survey**") at no cost to Seller provided that doing so does not delay the Closing. In the event Buyer obtains an ALTA survey, Buyer shall deliver a copy of the Survey to Seller and Escrow Agent promptly following its receipt of the same.

4.1.2 **Title Review; Cure.** Buyer will have sixty (60) days from the Effective Date (the "**Title Review Period**") to approve or disapprove any title matters disclosed by the Title Report. If Buyer is dissatisfied with any exception to title as disclosed in the Title Report, in Buyer's sole and arbitrary discretion, then Buyer may, by giving notice to Seller and Escrow Agent within the Title Review Period ("**Buyer's Objection Notice**"), either:

(a) Terminate this Agreement, in which case the Earnest Money shall be returned to Buyer; or

(b) Provisionally accept title subject to Seller's removal of any disapproved matters, exceptions or objections (the "**Disapproved Items**"), in which case Seller may, within five (5) days following receipt of Buyer's Objection Notice (the "**Title Cure Period**"), agree to remove some or all of the Disapproved Items prior to Closing or obtain endorsements to the Title Policy in form satisfactory to Buyer insuring against the Disapproved Items, by giving Buyer written notice ("**Seller's Cure Notice**") of the specific Disapproved Items which Seller agrees to so remove or endorse over (the "**Cure Items**"). If, during the Title Cure Period, Seller does not timely agree to remove or endorse over all of the Disapproved Items, then, at Buyer's election by written notice given within five (5) days following expiration of the Title Cure Period (i) this Agreement will be terminated and the Earnest Money refunded to Buyer, or (ii) Buyer may waive the Disapproved Items that Seller elected not to agree to remove or endorse over, and such matters shall be deemed Approved Title Exceptions, as defined in **Section 4.1.2(d) below**. If, within such 5-day period, Buyer fails to waive in writing the Disapproved Items that Seller elected not to agree to remove or endorse over, Buyer will be deemed to have elected to terminate this Agreement.

(c) Title to the Property will be conveyed to Buyer at the Closing subject only to the Approved Title Exceptions as defined below. Notwithstanding anything in this Agreement to the contrary, Seller agrees that title to the Property shall, at Closing, be free and clear of all monetary liens and encumbrances (other than the lien for current real property taxes and assessments not yet due and payable), including, but not limited to, any deeds of trust or mechanics liens, and all of such liens and encumbrances are hereby deemed to be Cure Items for the purposes of this **Section 4.1**, and Buyer need not give any Buyer's Objection Notice as to those items. Seller agrees that all such monetary liens and encumbrances, regardless of the amount, will be released from the Property by Seller at Seller's sole expense on or before the Closing.

(d) If Buyer does not (1) accept in writing the condition of title in whole, or (2) accept title provisionally as set forth in in **Section 4.1.2(b)**, as disclosed by the Title Report within the Title

Review Period, the Title Report shall be deemed disapproved by Buyer and this Agreement shall automatically terminate, and upon such termination, the Earnest Money shall be returned to Buyer. For purposes of this Agreement "***Approved Title Exceptions***" means:

(i) non-delinquent real property taxes and assessments due and payable in the fiscal tax year in which the Closing occurs (which shall be prorated at Closing pursuant to **Section 6.2.4 below**);

(ii) those matters approved or deemed approved by Buyer in accordance with this **Section 4.1** which are disclosed in the Title Report (other than the "standard exceptions") and the Survey, if obtained by Buyer; and

(iii) any other matters approved by Buyer in writing.

(e) Any requirements specified in the Title Report for the issuance of the Title Policy, together with any other requirements imposed by Escrow Agent on either or both Buyer or Seller for the issuance of the Title Policy, to the extent they are reasonable and customary in Riverside County, California, are referred to herein as the "***Title Requirements***".

4.2 Buyer's Right to Enter and Inspect the Property. From time to time following the Effective Date, Buyer and/or Buyer's representatives, contractors, and agents may enter the Property to examine the Property, to conduct non-invasive tests, inspections, studies. Buyer's studies may include, but are not limited to, survey, soils and geotechnical reports and Phase I and Phase II environmental assessments. If the Closing fails to close for any reason not the fault of Seller, Buyer shall transfer all of the forgoing documents to Seller.

4.2.1 Buyer Restoration and Indemnity. Buyer will restore any physical damage to the Property caused by Buyer's Studies, and will indemnify, defend and hold harmless Seller and Seller's public officials, Council Members and employees ("Related Parties") from, and against any Claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs caused by Buyer's Studies (unless resulting from Seller's or its Related Parties' negligent acts or omissions or willful misconduct) and this indemnity will survive the Closing or the termination of this Agreement. In addition Buyer and/or Buyer's representatives who enter the Property will maintain comprehensive general liability insurance with coverage of at least one million dollars (\$1,000,000) per occurrence and provide a certificate of insurance showing Seller as an additional insured thereon prior to entering the Property.

4.3 Investigation and Entitlement Contingency; Extension. Buyer shall have until one hundred and eighty (180) days following the Effective Date to complete the Buyer's inspections and approve or disapprove any and all aspects of the Property ("Due Diligence Period"). Buyer's failure to timely approve or disapprove shall be deemed disapproval of the Property. Buyer has the right to extend the Due Diligence Period by up to three (3) additional periods of thirty (30) days provided that Buyer shall have provided written notice to Seller of its election to so extend the Due Diligence Period and pay the sum of Five Thousand Dollars (\$5,000.00) by cashier's check or wire transfer directly to Seller at least five business days prior to the expiration of the then applicable Due Diligence Period for each such extension for a possible total of Fifteen

Thousand Dollars (\$15,000.00), which sum shall be applied to the Purchase Price but is otherwise non-refundable unless Seller defaults in the sale of the Property to Buyer. If Buyer disapproves the Property in writing to Seller prior to the expiration of the Due Diligence Period, or is deemed to have disapproved the Property by failing to timely deliver written notice of its approval of the Property, this Agreement shall terminate, and upon such termination the Earnest Money shall be returned to Buyer. During the Due Diligence Period, Buyer may seek the entitlement of the Property from the City of Beaumont. However, the City of Beaumont shall be under no contractual obligation to approve the entitlement of the Property under this Agreement, but shall act in compliance with applicable law as it is obligated to do for all applicants with respect to Buyer's entitlement efforts. The entitlement of the property in the manner sought by Buyer shall be processed in accordance with City ordinances, policies and applicable state and federal law. Buyer understands and agrees that the development process is not guaranteed and may require additional information and processes under applicable laws and policies and of City and other governmental agencies that can be time consuming and complex and that no promise or guaranteed or expedited time frames, results or outcomes can or are being made to Buyer.

SECTION 5 CLOSING DOCUMENTS; TITLE POLICY

5.1 Seller's Closing Documents. No later than 48 hours before the Closing Date, Seller will deposit the following documents into the Escrow for delivery at the Closing, each of which will have been duly executed, endorsed and, where appropriate, acknowledged, and will be in form and substance reasonably satisfactory to Buyer, Buyer's legal counsel and Escrow Agent:

5.1.1 Closing Statement. Approval of the estimated Closing Statement.

5.1.2 Grant Deed. A Grant Deed conveying the Property to Buyer ("Grant Deed").

5.1.3 FIRPTA Affidavit. An affidavit, signed and acknowledged by Seller under penalty of perjury, certifying that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and 7701 of the Internal Revenue Code of 1986 and the associated Treasury Regulations.

5.1.4 California Withholding Certificate. A duly executed California Franchise Tax Board ("*FTB*") Form 593-C Withholding Certificate and such other documents required by Escrow Agent in order to comply with California withholding requirements.

5.1.5 Owner's Affidavit. Title Company's customary Owner's Affidavit executed by Seller.

5.1.6 Additional Documents. Such other documents as may be necessary, appropriate or reasonably required by Escrow Agent to transfer and convey the Property to Buyer and to otherwise close this transaction and issue the Title Policy to Buyer in accordance with the terms of this Agreement.

5.2 Buyer's Closing Deliveries. Prior to Close, Buyer will deposit into the Escrow the

following funds and documents for delivery to Seller at the Closing, each of which, where appropriate, will have been duly executed and acknowledged and will be in form and substance satisfactory to Seller and Seller's legal counsel and Escrow Agent:

5.2.1 Closing Statement. Approval of the estimated Closing Statement.

5.2.2 Preliminary Change of Ownership Report. A Preliminary Change of Ownership Report as required by law.

5.2.3 Additional Documents. Such other documents as may be necessary, appropriate or reasonably required by Escrow Agent to close this transaction in accordance with the terms of this Agreement.

5.2.4 Buyer's Closing Funds. The cash portion of the Purchase Price, less the Earnest Money, plus Buyer's Closing costs in accordance with the approved Closing Statement, will be paid at Closing by federal wire transfer to Escrow Agent in immediately available funds.

5.3 Title Policy. Closing is contingent upon Title Company's issuance of the Title Policy. Seller, at Seller's expense, will satisfy all of Title Company's Title Requirements (as defined in 4.1.2(e) above) for issuance of the Title Policy other than those, if any, within Buyer's control or those which Buyer is obligated to satisfy under this Agreement. Buyer, at Buyer's expense, will satisfy all of Escrow Agent's Title Requirements for issuance of the Title Policy other than those, if any, within Seller's control or those which Seller is obligated to satisfy under this Agreement. In the event that the preliminary title report approved by Buyer during the Due Diligence Period is subject to changes as regards the exceptions, after the Due Diligence Period and prior to the Closing, Buyer may accept such changes and proceed to close Escrow or it may cancel the transaction and receive a full refund of the Deposit and the parties shall have no further rights or obligation to one another.

SECTION 6 CLOSING THE TRANSACTION

6.1 Closing Deadline. The Closing shall occur on or before the Closing Date.

6.2 Closing Costs and Prorations.

6.2.1 Escrow Fees. Seller and Buyer will each pay one-half (1/2) of the Escrow fees.

6.2.2 Title Insurance Fees. Seller will pay for the Title Report and the premium for a ALTA standard coverage owner's Title Policy and Buyer shall pay the portion of the Title Policy premium attributable to upgrading to ALTA extended coverage, the cost of any endorsements, if requested by Buyer.

6.2.3 Recording Fees. Seller will pay the recording fees for recording the Grant Deed, the documentary transfer tax and any City or County transfer tax or similar fee, and all title clearance costs to remove liens, encumbrances or other title matters which are Seller's responsibility under this Agreement.

6.2.4 Prorations. Seller is responsible for paying all taxes, assessments, fees, and other charges for the period prior to the Closing and any supplemental taxes attributable to periods prior to Closing, if any. All such items due and payable in the year of the Closing will be prorated in Escrow as of Closing, based upon the most current information then available to Escrow Agent. If, at the Closing, actual tax or assessment information is not available, then, following the Closing and within thirty (30) days of receipt by either Buyer or Seller of the actual tax or assessment information, Buyer and Seller will re-prorate real estate taxes and assessments among themselves and make any necessary adjusting payments.

6.2.5 Miscellaneous Closing Costs. Any other closing costs not otherwise expressly provided for in this Agreement will be paid by Buyer and Seller as they shall mutually agree or, in the absence of such agreement, according to the usual and customary practice in Riverside County, California.

6.3 Seller's Obligation to Deposit Additional Funds. Seller hereby authorizes Escrow Agent to use so much of the proceeds otherwise payable to Seller at Closing as is necessary to pay all costs and other amounts payable by or otherwise chargeable to Seller pursuant to this Agreement.

6.4 Buyer's Obligation to Deposit Additional Funds. On or before the Closing Date, Buyer will deposit with Escrow Agent cash in an amount sufficient to pay all costs and other amounts payable by or otherwise chargeable to Buyer pursuant to this Agreement.

6.5 Closing Conditions. In addition to the other conditions to Closing contained in this Agreement, Buyer's obligation to close the transaction hereunder shall be subject to the satisfaction or waiver by Buyer of the following conditions precedent:

6.5.1 Seller shall have caused the reconfiguration of the Property in accordance with the provisions of Section 1.1 and the Property shall constitute legal parcels;

6.5.2 Seller's representations and warranties contained in this Agreement shall be true and correct in all material respects as of the Effective Date and as of the Closing;

6.5.3 Seller shall have performed all of its covenants and obligations which are required to be performed pursuant to this Agreement; and

SECTION 7 ADDITIONAL COVENANTS

7.1 Possession. At the Closing, Seller shall deliver possession of the Property to Buyer free and clear of all tenancies and occupants.

7.2 Risk of Loss. Except as to any matter caused by the act, omission, negligence or willful misconduct of a party hereunder, in which cases such party shall be responsible; except as provided in Section 4.2 or as otherwise provided herein; and subject to the express indemnities

contained in this Agreement with respect to the Property, the risk of loss or damage to the Property and all liability to a Third Party will be with the party that owns fee simple title to the Property at the time the loss, damage or liability is suffered or incurred. In the event of loss or damage to the Property prior to the Closing, the parties agree that if such loss is greater than ten percent (10%) of the Purchase Price, Buyer shall have the right, but not the obligation, to terminate this Agreement in which event Buyer shall be entitled to a return of its Earnest Money. Alternatively, Buyer may proceed to the Closing with no reduction in the Purchase Price and accept the Property in its then current condition subject to such loss or damage. In the event the loss or damage to Property is less than ten percent (10%) of the Purchase Price, Seller may repair the damage prior to the Closing. In the event Seller does not make the repairs to Buyer's reasonable satisfaction, Buyer shall be entitled to a reduction in the purchase price or an assignment of insurance proceeds, if any, in an amount equal to the loss or damage.

7.3 Condemnation. If all or any portion of the Property is condemned (or sold and conveyed in lieu of condemnation) prior to the Closing or if such a condemnation proceeding is commenced or threatened prior to Closing, Seller shall notify Buyer in writing (a "***Condemnation Notice***") and Buyer may terminate this Agreement by giving written notice of termination to Seller within ten (10) days following receipt of a Condemnation Notice. If Buyer elects to terminate pursuant to this Section 7.3 the Earnest Money will be returned to Buyer and the Agreement will be canceled. If Buyer does not elect to terminate pursuant to this Section then (i) this Agreement shall continue in effect, (ii) Seller shall not settle or compromise any condemnation or convey any portion of the Property in lieu of condemnation without Buyer's prior written consent, (iii) if Closing occurs Buyer will receive all awards or payments made by the condemning authority to which Seller would otherwise be entitled and (iv) to the extent Seller receives an award with respect to the Property prior to Closing, Seller shall pay the entire award to Escrow Agent to be held in Escrow pending (i) the Closing, in which case the award shall be applied to the Purchase Price due at Closing and paid to Seller, or (ii) in the event of termination of this Agreement the award shall be disbursed to Seller.

7.4 Brokerage. Buyer and Seller each represent and warrant that they have not engaged the services of any broker, agent or other Person entitled to receive a commission, finder's fee or other such compensation in connection with the execution of this Agreement or the consummation of the transactions contemplated by this Agreement except that Buyer has retained Nick Wirick of Lee & Associates and Buyer shall be solely liable for any commission to them. If any other Person asserts a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming will indemnify, defend and hold the other party and the other party's Related Parties harmless for, from, and against any Claims related thereto. This indemnity will survive the Closing or the termination of this Agreement.

7.5 Representations and Warranties.

7.5.1 Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer the following, which shall survive the Closing for a period of twelve (12) months:

(a) Seller has the legal right, power and authority to enter into this Agreement and to perform Seller's obligations hereunder.

(b) This Agreement constitutes the legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms. Neither this Agreement or the consummation of any of the transactions contemplated hereby violated or shall violate any provisions of any agreement or document to which Seller is a party or to which Seller is bound. Except as provided in this Agreement, no consent from any third party is required before any of the Property may be conveyed to Seller.

(c) Seller is the owner of the Property.

(d) No suit, action, arbitration, or legal, administrative, investigation, inquiry, or other proceeding is pending or has been threatened against the Property or against Seller with respect to the Property.

(e) No bankruptcy, insolvency, rearrangement, or similar action or proceeding, whether voluntary or involuntary, is pending or threatened against Seller and Seller has no intention of filing or commencing any such action or proceeding.

To the best of Seller's actual knowledge with no duty of inquiry as determined by its employee Kyle Warsinski, during Seller's ownership of the Property there has been no Hazardous Substances released on the Property. Notwithstanding anything to the contrary, under no circumstances shall Mr. Warsinski have any personal liability to Buyer or its successors and assigns or any other party or be subject to any claim, demand or cost with regards to any and all matters concerning the Real Property at any time and further Buyer and its successors and assigns hereby knowingly release and hold harmless Mr. Warsinski with respect to the forgoing. The term "Hazardous Substance" shall mean all of the following:

(i) Any substance, material, or waste that is included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances", "toxic materials", "toxic waste", or words of similar import in any applicable state or federal law;

(ii) Those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and

(iii) Any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, urea-formaldehyde, lead paint, flammable, explosive, radioactive, freon gas, radon, classified or regulated as dangerous, harmful or deleterious to health, or a pesticide, herbicide, or any other agricultural chemical and including all types and species of mold.

(f) To the best of Seller's actual knowledge with no duty of inquiry as determined by its employee Kyle Warsinski, there are no outstanding violations of law with respect to the Property, nor have any notices of any uncorrected violations of any laws, statutes, ordinances, rules, or regulations been received by Seller. Notwithstanding anything to the contrary, under no circumstances shall Mr. Warsinski have any personal liability to Buyer or its successors and assigns or any other party or be subject to any claim, demand or cost with regards to any and all matters concerning the Real Property at any time and further Buyer and its successors and assigns hereby knowingly release and hold harmless Mr. Warsinski with respect to the forgoing.

(g) Except provided in Section 1.1, there are no leases or occupancy agreements for the Property or any portion thereof.

(h) There are no known pending or, to the best of Seller's knowledge, contemplated eminent domain or condemnation proceedings affecting or which may affect any portion of the Property.

7.5.2 Seller shall promptly notify Buyer of any facts that would cause any of the representations or warranties contained in this Agreement to be untrue as of the Closing, and Seller confirms that the representations and warranties contained in this Agreement continue to be true as of the Closing.

7.5.3 Limitation of Seller Representations and Warranties. Except for Seller's express representations and warranties set forth in this Agreement, Seller hereby specifically disclaims any warranty (oral or written) or obligation to disclose information concerning: (i) the nature and condition of the Property and the suitability thereof for any and all activities and uses that Buyer elects to conduct thereon; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements on the Property; (iii) the compliance of the Property with any laws, rules, ordinances or regulations of any government or other body; and (iv) the content or accuracy of any documents or materials delivered by Seller to Buyer. Except for Seller's express representations and warranties set forth in this Agreement, Buyer is relying solely upon, and will have conducted, its own, independent inspection, investigation and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including, without limitation, an analysis of any and all matters concerning the condition of the Property and its suitability for Buyer's intended purposes, and a review of all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, taxes, zoning and land use) affecting the development, use, occupancy or enjoyment of the Property. If the Buyer discovers any material information that is different from what has been represented by Seller or that was not disclosed by Seller, Buyer as its sole and only remedy shall have the right to terminate this Agreement and recover its Earnest Money. *Except for Seller's express representations and warranties set forth in this Agreement* (i) the sale of the Property is made on a strictly "AS IS", "WHERE IS", "WITH ALL FAULTS" basis as of the date of Closing, and (ii) Seller makes no warranty or representation, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of quantity, quality, condition, habitability, merchantability, suitability or fitness for a particular purpose of the Property, any improvements located thereon or any soil or environmental conditions related

thereto.

7.5.4 Buyer Waiver and Release. Buyer specifically acknowledges that Buyer is not relying on (and Seller hereby disclaims and renounces) any representations or warranties made by or on behalf of Seller of any kind or nature whatsoever, except for those particular representations and warranties expressly provided in this Agreement. Except for Claims related to breach of Seller's express representations and warranties and covenants in this Agreement, Buyer, for Buyer and Buyer's successors and assigns, hereby releases Seller from, and waives any and all Claims and liabilities against Seller for, related to, or in connection with, any environmental or physical condition at the Property (or the presence of any matter or substance relating to the environmental condition of the Property), including, but not limited to, Claims and/or liabilities relating to (in any manner whatsoever) any Hazardous Substances, toxic or dangerous materials or substances located in, at, about or under the Property, or for any and all Claims or causes of action (actual or threatened) based upon, in connection with, or arising out of any Environmental Law, or any other claim or cause of action including any federal or state based statutory, regulatory or common law cause of action related to environmental matters or liability with respect to, or affecting, the Property. Buyer represents to Seller that Buyer has conducted, or will conduct prior to Closing, such investigations of the Property, including but not limited to, the physical and environmental conditions thereof, as Buyer deems necessary to satisfy itself as to the condition of the Property and the existence or nonexistence of, or curative action to be taken with respect to, any Hazardous Substances or toxic substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by, or on behalf of, Seller, its agents and employees with respect thereto.

7.5.5. Recordation of Covenant at Closing. At the Closing Buyer and seller agree that as per California Government Code Section 54233 the Buyer and Seller will record a Covenant against the Property in the form attached hereto as Exhibit "B" and made a part hereof by this reference against the title to the Property. The forgoing covenant shall be recorded at the Closing immediately subsequent to the Grant Deed.

SECTION 8 REMEDIES

8.1 Seller's Remedies. If the Closing does not occur due to any default by Buyer, then Seller shall provide Buyer and Escrow Agent with written notice specifying the nature of Buyer's Default. If Buyer has not cured the default within five (5) days after receipt of Seller's notice, then Seller shall have the right as Seller's sole and exclusive remedy to terminate this Agreement by giving written notice of cancellation to Buyer and Escrow Agent and the Earnest Money shall be paid to Seller with no further instruction to Escrow Holder from Buyer.

BUYER AND SELLER HEREBY AGREE THAT IF SELLER TERMINATES THIS AGREEMENT DUE TO BUYER'S FAILURE TO CLOSE THE TRANSACTION HEREUNDER IN DEFAULT OF THIS AGREEMENT, THEN IN SUCH EVENT THE EXACT AMOUNT OF SELLER'S DAMAGES WOULD BE EXTREMELY DIFFICULT TO ASCERTAIN AND THEREFORE THE EARNEST MONEY DEPOSITED INTO ESCROW SHALL BE DEEMED TO CONSTITUTE A REASONABLE

ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTION 1671 OF THE CALIFORNIA CIVIL CODE AND SELLER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF SUCH BUYER'S DEFAULT SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND COLLECTION OF SUCH LIQUIDATED DAMAGES.

BUYER'S INITIALS: 

SELLER'S INITIALS: _____

8.2 Buyer's Remedies. If Seller fails to perform when due any act required by this Agreement to be performed or otherwise breaches this Agreement and such failure or breach continues for a period of five (5) days after Seller receives written notice thereof, then, as an alternative to all other remedies that are available to Buyer at law or in equity, Buyer may either: (i) seek specific performance of this Agreement (but only in the event that Buyer has deposited the Purchase Price with Escrow and Seller fails to deliver the Grant Deed to the Escrow Agent at the Closing and provided further that), or (ii) terminate this Agreement and the Escrow, such cancellation to be effective immediately upon Buyer giving written notice of cancellation to Seller and Escrow Agent, and the Earnest Money and any other deposits or payments by Buyer to Seller shall be returned to Buyer and the parties shall have no further liability to one another. Notwithstanding the foregoing, in the event Seller is in breach of any of its express representations or warranties set forth herein, which breach is not discovered by Buyer until after the Closing (but subject to the limitations on survival of such representations and warranties set forth herein), Buyer shall have such rights and remedies as are available at law or equity only for a period of one hundred and eighty (180) days after the Closing.

**SECTION 9
GENERAL PROVISIONS**

9.1 Assignment. This Agreement may not be assigned in whole or part without the express written consent of both parties. However, Buyer shall have the right to assign this Agreement to an affiliated entity to be formed by Buyer, without Seller's written consent, by providing notice to Seller provided that the original party shall remain liable hereunder.

9.2 Binding Effect. The provisions of this Agreement are binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns, including, without limitation, all members of Seller irrespective of any dissolution of Seller after execution of this Agreement or after consummation of a Closing.

9.3 Attorneys' Fees. If any action is brought by either party in respect to its rights under this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs as determined by the court.

9.4 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

9.5 Construction. This Agreement will be construed according to the laws of the State of California, without giving effect to its conflict of laws principles. References in this Agreement to “Sections” are to the Sections in this Agreement, unless otherwise noted. This Agreement shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had an equal role in its negotiation and preparation.

9.6 Time of the Essence. Time is of the essence of this Agreement.

9.7 Notices.

9.7.1 Any demand, notice or communication required or permitted to be given under this Agreement must be in writing and is deemed given on (a) the day personally delivered, (b) the third business day after the date of mailing by certified or registered first class mail, postage prepaid, return receipt requested, or (c) one business day after accepted for next business day delivery by a national commercial delivery service which provides package tracking services (“*Overnight Delivery*”), or (d) when transmitted by e-mail or telephone facsimile (provided that such Notice is confirmed on the same day by sending a copy to the addressee(s) by Overnight Delivery), in each case addressed to the parties at their respective addresses set forth below (or to such other address as the Parties hereto may designate by notice in the manner set forth herein). Notices which are rejected or refused or which cannot be delivered because of changed address of which no notice was given shall be deemed delivered.

Notice to Seller shall be sent to:

City of BEAUMONT
Attn: City Manager
Beaumont Civic Center
550 E. Sixth St.
Beaumont, CA 92223

John Pinkney, City Attorney
1800 East Tahquitz Canyon Way
Palm Springs, CA 92262

Notice to Buyer shall be sent to:

5th Street Development LLC
ATTN: Chris Peto
1011 Camino Del Mar #258
Del Mar, CA 92014
Email: cpeto@halferty.com

With a copy to:

Mark E. Abramson, Esq.
1600 Rosecrans Ave., Media Center, 4th Floor
Manhattan Beach, CA 90266
Email: mark@markalaw.com

Notice to Escrow Agent shall be sent to:

First American Title
ATTN: Jim Sardo and Linda Slavik
4380 La Jolla Village Drive, Suite 110
San Diego, CA 92122

Each party may change their address for the purpose of this Section by giving written notice of such change to the other party in the manner provided in this Section.

9.8 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

9.9 Time Periods. Except as expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 p.m. (California time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday. Any reference in this Agreement to "days" shall mean calendar days unless the Agreement expressly states "business" days.

9.10 No Third Party Beneficiary. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a party hereto and no such Person shall have any right or cause of action hereunder.

9.11 Headings and Counterparts. The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement. This

Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.

9.12 Entire Agreement. This Agreement, which includes the Exhibits constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by Buyer and Seller.

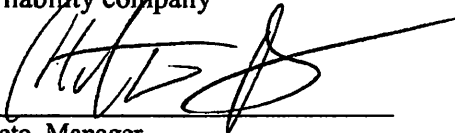
THIS AGREEMENT SHALL NOT BE EFFECTIVE UNLESS AND UNTIL APPROVED BY THE VOTE OF CITY OF BEAUMONT CITY COUNCIL AT DULY CONVENED REGULAR MEETING AND EXECUTED BY A DULY AUTHORIZED REPRESENTATIVE OF THE CITY.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth above.

SELLER:
CITY OF BEAUMONT

BUYER:
5th Street Development, LLC, a California limited liability company

By: _____

By: 
Chris Peto, Manager

Its: _____

Date: 6/6/2022

Date: _____

ATTEST:

, Secretary

APPROVED AS TO FORM:
SBEMP LLP

John O. Pinkney, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Beaumont, County of Riverside, State of California, described as follows:

LEGAL DESCRIPTION TO BE PROVIDED BY TITLE COMPANY

APNS: 418-190-004, 418-190-005, 418-190-006, 418-190-007, 418-140-028 and 418-140-029.

EXHIBIT "B"

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

City Clerk
City of Beaumont

Space Above This Line For
Recorder's Use Only

COVENANT AND RESTRICTION PER GOVERNMENT CODE SECTION 54233

This COVENANT AND RESTRICTION PER GOVERNMENT CODE SECTION 54233 ("Covenant") is made and entered into this _____ day of _____, 2022 by and between the _____ ("Owner") and the City of Beaumont (the "City") with reference to the following facts:

RECITALS

A. City conveyed certain real property to Owner located within the City of Beaumont, County of Riverside, State of California, as more particularly on Exhibit "A"(the "Property") and as a material part of the sales transaction the City imposed the requirements for this Covenant n accordance with California law.

B. The Surplus Lands Act Government Code Section 54220 et. seq. requires City to follow certain procedures and substantive requirements with regards to surplus land, including the Property;

C. Government Code Section 54222 requires that prior to disposing of surplus land, including the Property, that the City circulate a written notice of availability of the Property to certain public agencies and entities which notice has been provided by the City with respect to the Property;

D. The City did not receive any request to negotiate for the sale of the Property from any of the applicable entities and is conveying the Property to Owner for valuable consideration including the recordation of this Covenant;

E. Government Code Section 54233 requires that the conveyance of the Property to Owner be made subject to a covenant running with the land and restriction regarding the use of the property if developed for residential purposes.

COVENANT

NOW, THEREFORE:

1. Owner hereby covenants and agrees for itself and its successors and assigns as follows:

If ten (10) or more residential units are developed on the Property, not less than 15 percent of the total number of residential units developed on the property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the California Health and Safety Code, or affordable rent, as defined in Section 50053 of the California Health and Safety Code, to lower income households, as defined in Section 50079.5 of the California Health and Safety Code. Rental units shall remain affordable to and occupied by lower income households for a period of 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of 65915 of the California Government Code. These requirements shall be covenants or restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the California Government Code.

2. This Covenant is necessary to comply with conditions and covenants of the City's sale of the Property to the Owner.

3. This Covenant shall not be amended in any manner or terminated without the prior written approval of the City nor without the recordation of any such approval by the City in compliance with the California Government Code.

5. The terms and conditions of this Covenant shall constitute a covenant running with and binding the land in accordance with the provisions of California Civil Code Section 1468. Accordingly, the Property shall hereafter be held, sold, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the aforementioned conditions, all of which shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

6. Any of the following persons or entities shall have the right to enforce this Covenant under Government Code Section 54222.5 ("this section"):

- (a) The local agency that disposed of the property.

- (b) A resident of a unit subject to this section.
- (c) A residents association with members who reside in units subject to this section.
- (d) A former resident of a unit subject to this section who last resided in that unit.
- (e) An applicant seeking to enforce the covenants or restrictions for a particular unit that is subject to this section, if the applicant conforms to all of the following:
 - (1) Is of low or moderate income, as defined in Section 50093 of the Health and Safety Code.
 - (2) Is able and willing to occupy that particular unit.
 - (3) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing this section.
- (f) A person on an affordable housing waiting list who is of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and who is able and willing to occupy a unit subject to this section.

In the event of any such action to enforce this Covenant, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation court costs and attorneys' fees, as awarded by a court of competent jurisdiction.

IN WITNESS WHEREOF, this Covenant is executed by the parties hereto as of the day and year first above written.

OWNER:

ACCEPTED BY:

City of Beaumont, a California general law city

By: _____
Elizabeth Gibbs-Urtiaga, Interim City Manager

APPROVED AS TO FORM:

By: _____
John Pinkney, City Attorney

EXHIBIT "A"

All that certain real property in the City of Beaumont, County of Riverside, State of California, described as follows: