

**PURCHASE AND SALE AGREEMENT**  
**(N Avenue)**

THIS PURCHASE AND SALE AGREEMENT (N Avenue) (“Agreement”) dated as of the \_\_\_ day of \_\_\_\_\_, 2024, by and between Walter and Louise Morawa, Trustees of the Walter Morawa and Louise Morawa Joint Living Trust (“Seller”), and the City of National City (“Purchaser”).

RECITALS

A. The Seller owns the fee interest to that certain strip of real property generally located along N Street, South of East 9<sup>th</sup> Street in the City of National City, County of San Diego, California, which is legally described on Exhibit A attached hereto and made a part hereof (“Property”). Seller and Purchaser desire for Seller to sell the Property to Purchaser and for Purchaser to purchase the Property from Seller.

B. The Seller agrees to sell the Property to Purchaser for One Hundred Sixty-Four Thousand and No/100 Dollars (\$164,000.00), which amount shall be payable by Purchaser to Seller in cash at Closing.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are acknowledged, Purchaser and Seller hereby agree as follows:

1. Effectiveness of Agreement and Purchase and Sale.

(a) Effectiveness of Agreement. This Agreement shall be effective and binding upon all parties hereto concurrently with the last to occur of the following: (i) this Agreement has been duly executed by Purchaser and delivered by Purchaser to Seller; (ii) this Agreement has been formally approved by resolution of the City of National City; and (iii) this Agreement has been duly executed by Seller and delivered by Seller to Purchaser. The Seller hereby acknowledges that the Purchaser is prohibited by law from purchasing the Property, without the approval of the City Council of the City of National City. Under no circumstances will this Agreement be effective before all of the preceding have occurred.

(b) Purchase and Sale of the Property. In consideration of the mutual covenants set forth in this Agreement, and on the terms and conditions set forth herein, Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller on the terms and conditions set forth herein, provided the various conditions to Closing set forth in this Agreement are satisfied or waived as provided herein. At Closing, Seller shall convey to Purchaser title to the Property by recordation of the Grant Deed. The Escrow Agent shall issue the Title Policy (as defined below) to the Purchaser at Closing.

(c) Possession of the Property. The Seller shall deliver possession of the Property to Purchaser at Closing. Possession of the Property shall be delivered to Purchaser entirely vacant, subject only to the Property Documents and the Permitted Exceptions. After Closing, the Purchaser shall install a new sidewalk, curb and gutter along N Avenue, an ADA-compliant access ramp to the building entrance on N Avenue and a retaining wall with metal fencing and a gate along the Property-frontage on N Avenue. Purchaser shall not block or deny access to the Seller's property, except to the extent reasonably necessary to construct the new sidewalk, curb and gutter along N Avenue and to repair and maintain the same. Provided, however, Purchaser shall cooperate with Seller to minimize the disturbance of and inconvenience to tenants and occupants of the Seller's property.

2. Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Agreement” means this Purchase and Sale Agreement between the Seller and the Purchaser.

“Business Day” means any day other than a Saturday, Sunday or any other day on which Purchaser or Escrow Agent is not open for business. In the event any date, deadline or due date set forth in this Agreement falls on a day that is not a Business Day, then such deadline or due date shall automatically be extended to the next Business Day.

“Close” or “Closing” means the close of Escrow as provided herein, which shall occur on the Closing Date.

“Closing Date” means the close of Escrow as provided herein, which shall be one (1) Business Day after the latest of: (i) the date all of the Conditions Precedent for the Benefit of the Seller have been satisfied; and (ii) the date all of the Conditions Precedent for the Benefit of the Purchaser have been satisfied. The Closing shall occur on or before December 31, 2024.

“Conditions Precedent for the Benefit of the Seller” shall have the meaning set forth in Section 5 of this Agreement.

“Conditions Precedent for the Benefit of the Purchaser” shall have the meaning set forth in Section 6 of this Agreement.

“Due Diligence Period” means the period of time commencing on the Effective Date and ending at 5:00 p.m. Pacific time on \_\_\_\_\_ (30 days after the Effective Date).

“Effective Date” means \_\_\_\_\_, 2024, which may or may not be the date this Agreement was executed and delivered by the Seller or the Purchaser.

“Escrow” means the escrow depository and disbursement services to be performed by Escrow Agent pursuant to the provisions of this Agreement.

“Escrow Agent” means Carla Burchard at Stewart Title Guaranty Company, 7676 Hazard Center Drive, San Diego, California 92108.

“Grant Deed” means a duly executed and acknowledged grant deed conveying fee simple title to the Property from Seller to Purchaser.

“Hazardous Materials” means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United State Government. Provided, however, the term “Hazardous Materials” shall not include substances typically used in the ordinary course of developing, operating and maintaining apartment complexes in California or small amounts of chemicals, cleaning agents and the like commonly employed in routine household uses in a manner typical of occupants in other similar properties, provided that such substances are used in compliance with applicable laws.

“Immediately Available Funds” means a bank wire transfer or a certified bank or cashier’s check.

“Permitted Exceptions” means (i) the printed exceptions and exclusions in the Title Policy; (ii) the exceptions to title set forth in Schedule B to the Title Report (as defined in Section 4(e) below) which are approved by Purchaser in writing, or deemed approved by Purchaser, as provided in Section 4(e) below; (iii) real property taxes and assessments which are a lien but not yet payable; (iv) any title exceptions caused, consented to or preapproved by Purchaser; and (v) all applicable building, zoning and use restrictions and/or regulations of any municipality, township, county or state; (vii) defects that would be shown by an inspection or by a survey of the Real Property; and (viii) any reserved oil, water and/or mineral rights. Notwithstanding anything to the contrary herein, no deed of trust or mortgage is a Permitted Exception.

“Property” means that certain real property in the City of National City, County of San Diego, California, which is legally described on Exhibit A attached hereto and made a part hereof.

“Property Documents” means a conditions imposed by any governmental authorities which affect the development or use of the Property, soils reports, engineering studies or surveys, studies and reports concerning the possibility of Hazardous Materials on or near the Property, active contracts, drawings, plans, specifications, with respect to the Property that are in Seller’s possession.

“Purchase Price” means One Hundred Sixty-Four Thousand and No/100 Dollars (\$164,000.00).

“Purchaser” means the City of National City.

“Seller” means Walter and Louise Morawa, Trustees of the Walter Morawa and Louise Morawa Joint Living Trust.

“Title Policy” means a CLTA Owner’s Policy of Title Insurance in the amount of the Purchase Price, insuring that title to the fee interest in the Property is vested in the Purchaser

subject only to the Permitted Exceptions, which Title Policy shall be obtained through the Escrow Agent. Seller shall pay the cost of the CLTA Owner's Policy of Title Insurance. Purchaser shall pay the cost of any endorsements it desires. Purchaser may obtain an ALTA Owner's Policy of Title Insurance in which event Purchaser shall pay the cost difference between the cost of the ALTA Owner's Policy of Title Insurance and the cost of a CLTA Owner's Policy of Title Insurance.

3. Purchase Price. The purchase price to be paid by the Purchaser for all of the Property shall be the One Hundred Sixty-Four Thousand and No/100 Dollars (\$164,000.00) Purchase Price. Notwithstanding any provision to the contrary contained in this Agreement, Purchaser shall pay to Seller the amount of One Hundred and No/100 Dollars (\$100.00) as independent consideration for the rights extended to Purchaser under this Agreement.

(a) No Deposit. No deposit shall be required under this Agreement.

(b) LIQUIDATED DAMAGES. IF ESCROW FAILS TO CLOSE AS A RESULT OF PURCHASER'S DEFAULT HEREUNDER, THE SOLE REMEDY OF THE SELLER SHALL BE TO TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE THEREOF TO PURCHASER AND ESCROW AGENT, WHEREUPON THE SELLER SHALL BE ENTITLED TO RECEIVE THE SUM TOTAL OF \$1,000.00 FROM THE PURCHASER AS LIQUIDATED DAMAGES (AND, THE SELLER WAIVES ANY RIGHT TO SPECIFICALLY ENFORCE THIS AGREEMENT SET FORTH IN CALIFORNIA CIVIL CODE SECTION 1680 OR 3389). THEREAFTER, NO PARTY HERETO SHALL HAVE ANY FURTHER LIABILITY OR OBLIGATION TO ANY OTHER PARTY HERETO EXCEPT FOR: (i) THE SELLER'S RIGHT TO RECEIVE AND RETAIN SUCH LIQUIDATED DAMAGES; AND (ii) THE OBLIGATION OF THE PARTIES TO PAY AMOUNTS INTO ESCROW TO PAY THE FEES AND COSTS OF ESCROW. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE SELLER'S ACTUAL DAMAGES IN THE EVENT OF PURCHASER'S DEFAULT HEREUNDER ARE UNCERTAIN IN AMOUNT AND DIFFICULT TO ASCERTAIN, AND THAT SUCH AMOUNT OF LIQUIDATED DAMAGES IS REASONABLE UNDER THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ., CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE HEREOF INCLUDING, WITHOUT LIMITATION, THE RELATIONSHIP OF SUCH AMOUNT TO THE RANGE OF POTENTIAL HARM TO THE SELLER THAT CAN REASONABLY BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES RESULTING FROM SUCH DEFAULT WOULD BE COSTLY AND INCONVENIENT. BY PLACING ITS INITIALS IN THE SPACE BELOW, EACH PARTY HERETO SPECIFICALLY CONFIRMS THE ACCURACY OF THE FOREGOING AND THE FACT THAT SUCH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

THE PROVISIONS OF THIS SECTION 3(B) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

\_\_\_\_\_  
Seller's Initials

\_\_\_\_\_  
Purchaser's Initials

(c) Delivery of Purchase Price into Escrow. Not less than one (1) Business Day prior to the Closing Date, the Purchaser shall cause Immediately Available Funds to be delivered to the Escrow Agent in an amount equal to the Purchase Price, and plus or minus any adjustments for prorations and expenses required under this Agreement.

(d) Disbursement to the Seller. Immediately after the Closing, the Escrow Agent shall disburse to the Seller the funds that the Seller is entitled to receive hereunder.

#### 4. Due Diligence.

(a) Due Diligence Period. During the Due Diligence Period the Purchaser may determine in the Purchaser's sole and absolute discretion, whether to proceed with the purchase of the Property. During the Due Diligence Period, the Purchaser may terminate this Agreement for any reason or for no reason at all by delivering written notice of such termination to the Seller and Escrow. After expiration of the Due Diligence Period, the Purchaser's right to terminate this Agreement for any reason, or for no reason at all, shall expire. If this Agreement is terminated during the Due Diligence Period, then: (i) all rights and liabilities of the Purchaser and the Seller with respect to this Agreement shall immediately terminate, except for rights and liabilities that specifically survive such termination; (ii) Escrow Agent shall return to the Purchaser all funds or other things deposited in Escrow by the Purchaser, less any fees and costs charged by the Escrow Agent; and (iii) Escrow Agent shall return to the Seller all funds or other things deposited in Escrow by the Seller.

(b) Due Diligence Deliveries. Not later than three (3) Business Days after execution and delivery of this Agreement to the Escrow Agent, the Seller shall provide the Purchaser with true and correct copies of the Property Documents, to the extent the same are in the Seller's possession, by any of the following methods provide physical copies or digital copies (e.g. a pdf, tif or jpg file) by email or on a memory medium.

(c) Access to the Property. During the Due Diligence Period, Purchaser and its representatives, consultants and attorneys shall have access to the Property. Purchaser shall defend and shall indemnify the Seller and the Seller's agents and employees and the Property from and against, and shall hold the Seller, the Seller's agents and employees and the Property harmless from, any actions, losses, costs, damages, claims and/or liabilities, including but not limited to, mechanics' and materialmen's liens and attorney fees, proximately caused by the actions of Purchaser and/or its contractors or agents upon the Property. The Purchaser shall repair any damage caused to the Property by the Purchaser or its agents, employees or contractors. The Purchaser shall not permit any mechanic's, materialman's, contractor's, subcontractor's or other lien arising from any work done by the Purchaser or its agents pursuant to this Agreement to stand against the Property. If any such lien shall be filed against the Property, the Purchaser shall cause the same to be discharged or bonded by payment, deposit, bond or otherwise, within thirty (30) days after actual notice of such filing. The Purchaser's obligations under this Section 4(d) shall survive the termination or expiration of this Agreement. If Purchaser desires to do any invasive testing at the Property, the Purchaser may do so only after obtaining Seller's prior written consent to the same, which consent may be withheld or granted on conditions in Seller's reasonable

discretion. The Purchaser shall promptly restore the Property to the condition the Property was in immediately prior to any such tests, at the Purchaser's sole cost and expense. The Purchaser shall provide the Seller with a complete set of plans, drawings and specifications ("Invasive Testing Plans") that define to the sole satisfaction of the Seller the invasive testing to be performed on the Property and the names of all environmental and other consultants, contractors and subcontractors who will be performing such invasive testing (collectively "Purchaser's Consultants"). The Purchaser shall deliver the names of the Purchaser's Consultants and the Invasive Testing Plans to the Seller concurrently with its request to the Seller that the Purchaser desires to perform invasive testing.

(d) Title. Purchaser's obligation to purchase the Property is contingent upon Purchaser's approval of all matters affecting title to or use of the Real Property (collectively, "Title Matters"). The intent of this Section 4(d) is to allow the parties to have certainty regarding the condition of title and the Title Matters which are acceptable to the Purchaser. The procedure set forth in this Section 4(d) shall not affect or otherwise limit the Purchaser's right to terminate this Agreement for any reason or no reason at all as set forth in Section 4, above. Seller shall use commercially reasonable efforts to cause the Title Company to deliver to Purchaser within five (5) Business Days of the Effective Date, a current preliminary title report for the Real Property and, to the extent possible, legible copies of all documents referred to therein ("Title Report"). Purchaser shall have fifteen (15) Business Days thereafter, to approve or object to any items disclosed by the Title Report. If Purchaser does not give written notice to Seller of Purchaser's approval or disapproval of any items disclosed by the Title Report within said time period, then Purchaser shall be deemed to have approved the items disclosed by the Title Report. If Purchaser gives written notice to Seller of Purchaser's disapproval of any items disclosed by the Title Report within said time period and Seller does not give written notice to Purchaser within five (5) Business Days thereafter of either: (i) Seller's elimination of or agreement to eliminate those disapproved matters prior to the close of Escrow; or (ii) Seller's agreement to provide at Seller's sole expense such title insurance endorsements relating thereto as are acceptable to Purchaser in Purchaser's sole discretion prior to the close of Escrow (each, a "Cure Notice"), then this Agreement shall terminate immediately, unless Purchaser affirmatively agrees in writing within five (5) Business Days thereafter that this Agreement will remain in full force and effect and that the previously disapproved items disclosed by the Title Report are approved by Purchaser. If the Title Company issues a supplemental title report prior to the close of Escrow showing additional exceptions to title ("Title Supplement"), Purchaser shall have five (5) Business Days from the date of receipt of the Title Supplement and a copy of each document referred to in the Title Supplement in which to give Seller written notice of disapproval as to any additional exceptions; provided, however, Purchaser may not disapprove any exceptions that were contained in the original Title Report or are otherwise Permitted Exceptions. Purchaser's failure to deliver any such written notice of disapproval of the Title Supplement within such five (5) Business Day period shall be deemed to mean that Purchaser has approved all such additional exceptions. If Purchaser disapproves any additional exception shown in the Title Supplement, then Purchaser and Seller will have the same rights and obligations set forth above in this Section regarding Purchaser's original review and approval of the Title Report. Notwithstanding the foregoing, Seller shall cause all Title Matters which are mechanics' liens or deeds of trust to be eliminated as exceptions to title on the Title Policy at Seller's sole expense prior to the close of Escrow, and shall not record any documents against the Property from and after the Effective Date without Purchaser's prior written consent.

5. Conditions Precedent for the Benefit of the Seller. The Seller's obligation to Close shall be conditioned upon the satisfaction or emailed or written waiver by the Seller of all of the conditions precedent ("Conditions Precedent for the Benefit of the Seller") set forth in this Section 5. Any of the Conditions Precedent for the Benefit of the Seller may be waived by the Seller unilaterally; and if so waived, such conditions shall be of no further effect hereunder. Any such waiver shall be effective only if the same is expressly waived by Seller by either: (i) email from the Seller to the Purchaser and Escrow Agent; or (ii) in a writing signed by the Seller and delivered to the Purchaser and Escrow Agent. If the Conditions Precedent for the Benefit of the Seller set forth in this Section 5 are not satisfied by the deadlines or expressly waived, the Seller (provided the Seller is not in default hereunder) may provide emailed or written notice of the Seller's conditional termination of this Agreement to the Purchaser and Escrow Agent. After receipt of such notice of conditional termination, the Purchaser shall have ten (10) Business Days to cure any non-satisfaction of a condition or other default specified in the notice of conditional termination. If such matter remains unsatisfied or the default remains uncured after the expiration of such ten (10) Business Day period, then this Agreement Instructions shall terminate at the close of business on such tenth (10<sup>th</sup>) Business Day. In the event of termination of this Agreement (and by operation of law the Escrow) pursuant to this Section 5, then: (w) as set forth in the liquidated damages provision of Section 3(b), above, all rights and liabilities of the Purchaser and the Seller with respect to this Agreement shall immediately terminate except those which specifically survive such termination; (x) the Purchaser shall pay \$1,000.00 to the Seller; (y) Escrow Agent shall return to the Seller all funds or other things deposited in Escrow by the Seller; and (z) Escrow Agent shall return to the Purchaser all funds or other things deposited in Escrow by the Purchaser, less all fees and costs charged by the Escrow Agent. Notwithstanding the preceding clause (w) of this Section 5, in the event of termination of this Agreement pursuant to this Section 5, the Seller and the Purchaser shall cooperate with one another, execute all documents reasonably necessary and take all reasonable steps as may be required by Escrow Agent in order to accomplish the purposes of this Section 5. The Conditions Precedent for the Benefit of the Seller are:

(a) The delivery by the Purchaser into Escrow, at least one (1) Business Day prior to Closing of Immediately Available Funds equal to the Purchase Price (plus or minus expenses and prorations) as required by Section 3(c) above.

(b) The delivery by the Purchaser into Escrow at least one (1) Business Day prior to Closing of all other documents and instruments required by this Agreement or reasonably required by Escrow to complete the Closing.

(c) Purchaser not being in default of any of its representations or warranties under this Agreement, or any other material terms or conditions related to Purchaser, and all of the Purchaser's representations and warranties under this Agreement being true and correct as of the Closing Date.

(d) As of the Closing Date, the Purchaser has not made an assignment for the benefit of creditors, filed a bankruptcy petition, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of, or trustee for, the Purchaser, or commenced any proceeding relating to the Purchaser under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect.

6. Conditions Precedent for the Benefit of the Purchaser. The Purchaser's obligation to Close shall be conditioned upon the satisfaction or emailed or written waiver by the Purchaser of all of the conditions precedent ("Conditions Precedent for the Benefit of the Purchaser") set forth in this Section 6. Any of the Conditions Precedent for the Benefit of the Purchaser may be waived by the Purchaser unilaterally; and if so waived, such conditions shall be of no further effect hereunder. Any such waiver shall be effective only if the same is expressly waived by email from the Purchaser to the Seller and Escrow Agent or in writing signed by the Purchaser and delivered to the Seller and Escrow Agent. If the Conditions Precedent for the Benefit of the Purchaser are not satisfied by the deadlines set forth in this Section 6 or expressly waived, the Purchaser (provided the Purchaser is not in default hereunder) may provide emailed or written notice of the Purchaser's conditional termination of this Agreement to the Seller and Escrow Agent. After receipt of such notice of conditional termination, the Seller shall have ten (10) Business Days to cure any non-satisfaction of a condition or other default specified in the notice of conditional termination. If such matter remains unsatisfied or the default remains uncured after the expiration of such ten (10) Business Day period, then this Agreement shall terminate at the close of business on such tenth (10<sup>th</sup>) Business Day. In the event of termination of this Agreement (and by operation of law the Escrow) pursuant to this Section 6, then: (w) the same shall be a default by the Seller; (x) Escrow Agent shall return to the Seller all funds or other things deposited in Escrow by the Seller; (y) Escrow Agent shall upon receipt of unilateral notice from the Purchaser, return to the Purchaser all funds or other things deposited in Escrow by the Purchaser; and (z) all fees and costs charged by the Escrow Agent shall be paid by the Seller. Purchaser is not waiving any default by the Seller and nothing contained in this Section 6, including, without limitation, the immediately foregoing sentence shall be a waiver of any right of Purchaser to recover damages from the Seller for any default by Seller hereunder. Notwithstanding the foregoing clause (w) of this Section 6, in the event of termination of this Agreement pursuant to this Section 6, the Purchaser and the Seller shall cooperate with one another, execute all documents reasonably necessary and take all reasonable steps as may be required by Escrow Agent in order to accomplish the purposes of this Section 6. The Conditions Precedent for the Benefit of Purchaser are:

(a) The deposit by the Seller into Escrow at least one (1) Business Day prior to Closing of the Grant Deed, duly executed and acknowledged, conveying fee simple title to the Property to the Purchaser.

(b) The deposit by the Seller into Escrow at least one (1) Business Day prior to Closing of the Assignment, duly executed, conveying title to the Personal Property to the Purchaser.

(c) The deposit by Seller into Escrow at least one (1) Business Day prior to Closing of a duly executed affidavit in the form prescribed by federal regulations that Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7761(a)(30) of the Internal Revenue Code of 1986, as amended.



(d) The deposit by Seller into Escrow at least one (1) Business Day prior to Closing of a duly executed California Form 593(c) or other evidence that withholding of any portion of the Purchase Price is not required by the Revenue and Taxation Code of California with respect to Seller.

(e) The deposit by the Seller into Escrow at least one (1) Business Day prior to Closing of all additional documents and instruments as are reasonably required by the Escrow Agent to complete the Closing.

(f) The Escrow Agent is prepared and obligated to issue the Title Policy in Purchaser's favor, upon the recordation of the Grant Deed and there are no exceptions to the Title Policy, except for the Permitted Exceptions.

(g) As of the Closing Date, there exists no deed of trust, mortgage, lease, tenancy or occupancy agreement affecting the Property, except for the Property Documents.

(h) Seller not being in default of any of its representations or warranties under this Agreement, or any other material terms or conditions related to Seller, and all of Seller's representations and warranties under this Agreement being true and correct as of the Closing Date.

(i) As of the Closing Date there is not pending, or threatened to be pending, any action or proceeding by any person or before any government authority, the outcome of which could prohibit the use of the Property as intended by the Purchaser.

(j) The Escrow Agent is prepared and obligated to issue the Title Policy in Purchaser's favor, upon the recordation of the Grant Deed and there are no exceptions to the Title Policy, except for the Permitted Exceptions.

7. Representations, Warranties and Covenants; Waivers and Releases. When making the representations and warranties set forth in this Section 7, each party making a representation and/or warranty represents that the same are true, correct and complete as of the date hereof and shall be and are true, correct and complete as of the Closing Date. The representations and warranties shall survive the Closing.

(a) Representations and Warranties Regarding Authority. The Seller and the Purchaser each hereby represents and warrants to the other that this Agreement and all documents or instruments executed by them which are to be delivered at or prior to the Closing are, or on the Closing Date will be, duly authorized, executed and delivered by the Seller or the Purchaser, as applicable.

(b) Representations and Warranties Regarding Enforceability of Agreement. The Seller and the Purchaser each hereby represents and warrants to the other that this Agreement and all documents required hereby to be executed by them shall be valid, legally binding obligations of, and enforceable against, the Seller or the Purchaser, as applicable, in accordance with their terms.

(c) Representations and Warranties Pertaining to Legal Matters. The Seller hereby represents and warrants to the Purchaser that:

(1) The Seller is the sole owner of the fee title interest to the Real Property.

(2) To the current actual knowledge of Seller, there is no pending or threatened proceeding in eminent domain or otherwise, which would adversely affect the Property, or any portions thereof.

(d) Seller Representations and Warranties Pertaining to Options. As of the Effective Date, Seller hereby represents and warrants to the Purchaser that no person has any option or right of first refusal to purchase Seller's interest in the Property or any parts thereof.

(e) Seller Representation and Warranty Regarding Operation of the Property. The Seller hereby represents and warrants to the Purchaser that to the current actual knowledge of Seller, the Property Documents and the Permitted Exceptions constitute all of the oral and written agreements or understandings concerning the Property by which the Purchaser would be bound following the Closing.

(f) Seller Representations and Warranties Regarding Discovery of New Information. The Seller hereby represents and warrants to the Purchaser that if the Seller discovers any information or facts prior to Closing that would materially change any of the foregoing representations and warranties or cause any of the foregoing representations and warranties to be untrue or misleading in any respect, the Seller will promptly give the Purchaser notice of those facts and information.

(g) AS IS CONDITION. PURCHASER HEREBY ACKNOWLEDGES, REPRESENTS, WARRANTS, COVENANTS AND AGREES THAT AS A MATERIAL INDUCEMENT TO SELLER TO EXECUTE AND ACCEPT THIS AGREEMENT AND IN CONSIDERATION OF THE PERFORMANCE BY SELLER OF ITS DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT THAT, EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 7 OF THIS AGREEMENT, THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS, WHERE IS" BASIS, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO: (1) THE EXISTENCE OF HAZARDOUS MATERIALS OR MOLD UPON THE PROPERTY OR ANY PORTION THEREOF; (2) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND FAULTING; (3) WHETHER OR NOT AND TO THE EXTENT TO WHICH THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER,

FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (4) DRAINAGE; (5) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING; (6) USES OF ADJOINING PROPERTIES; (7) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, DURABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY RIGHTS OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, WHETHER OR NOT THE IMPROVEMENTS COMPLY WITH THE REQUIREMENTS OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. §§ 12181-12183, 12186(B) – 12189 AND RELATED REGULATIONS; (8) THE PRESENCE OF HAZARDOUS MATERIALS IN OR ON, UNDER OR IN THE VICINITY OF THE PROPERTY; (9) THE SQUARE FOOTAGE OF THE PROPERTY OR THE IMPROVEMENTS THEREON; (10) IMPROVEMENTS AND INFRASTRUCTURE; (11) DEVELOPMENT RIGHTS AND EXTRACTIONS; (12) WATER OR WATER RIGHTS; (13) THE DEVELOPMENT POTENTIAL FOR THE PROPERTY; (14) THE ABILITY OF PURCHASER TO REZONE THE PROPERTY OR CHANGE THE USE OF THE PROPERTY; (15) THE ABILITY OF PURCHASER TO ACQUIRE ADJACENT PROPERTIES; (16) THE EXISTENCE AND POSSIBLE LOCATION OF ANY UNDERGROUND UTILITIES; (17) THE EXISTENCE AND POSSIBLE LOCATION OF ANY ENCROACHMENTS; (18) THE CHARACTER OF THE NEIGHBORHOOD IN WHICH THE PROPERTY IS SITUATED; (19) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; AND/OR (20) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (PURCHASER AFFIRMING THAT PURCHASER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE). NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, SELLER IS NOT RELEASED FROM ANY LIABILITY TO PURCHASER FOR FRAUD OR BREACH OF ANY EXPRESS COVENANT, REPRESENTATION OR WARRANTY SET FORTH IN THIS AGREEMENT.

8. Condemnation of the Property.

(a) Condemnation. If between the Effective Date and the Closing Date, any condemnation or eminent domain proceedings are commenced that will result in the taking of any part of the Property, Purchaser may, at Purchaser's election, either:

(1) Terminate this Agreement by giving written or emailed notice to the Seller and the Escrow Agent (in which event all remaining funds or other things deposited in Escrow by Purchaser shall be returned to the Purchaser immediately from Escrow, and all fees and costs

charged by the Escrow Agent shall be paid one-half (1/2) by the Seller and one-half (1/2) by the Purchaser); or

(2) Proceed with the Closing and have Seller assign to Purchaser all of Seller's right, title and interest to any award made for the condemnation or eminent domain action.

(b) Notice. If Seller obtains notice of the commencement of or the threatened commencement of eminent domain or condemnation proceedings with respect to the Property, Seller shall notify the Purchaser in writing.

9. Broker's Commission. Seller and Purchaser each hereby represents and warrants to one another that neither of them has engaged the services of any real estate agent or broker. Seller and Purchaser each agree that, to the extent any real estate commission or brokerage and/or finder's fee shall be earned or claimed in connection with this Agreement or the Closing, the payment of such fee or commission, and the defense of any action in connection therewith, shall be the sole and exclusive obligation of the party who requested the services of the broker and/or finder. In the event that any claim, demand or cause of action or brokerage and/or finder's fee is asserted against the party to this Agreement who did not request such services, the party through whom the broker or finder is making the claim shall indemnify, defend (with an attorney of the indemnitee's choice) and hold harmless the other from and against any and all such claims, demands and causes of action and expenses related thereto, including (without limitation) attorneys' fees and costs.

10. Assignment. The Purchaser may assign this Agreement to an entity in which the Purchaser has a controlling or majority interest without the prior written consent of the Seller. Except as set forth in the immediately preceding sentence, no party shall assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party hereto. Any attempted assignment or delegation of this Agreement by the Purchaser or Seller in violation of this Section 10 shall be void.

11. Notices. All notices under this Agreement shall be in writing and sent (a) by certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) Business Days after deposit, postage prepaid in the United States Mail, (b) overnight by a nationally recognized overnight courier such as UPS Overnight, or FedEx, in which case notice shall be deemed delivered one (1) Business Day after deposit with that courier, (c) by personal delivery, in which case notice shall be deemed delivered upon the actual date of delivery, or (d) by email, in which case notice shall be deemed delivered upon the actual date of delivery. All notices shall be delivered to the following addresses (unless changed by written notice to the other persons given in accordance with this Section 11:

To Purchaser:

City of National City  
1243 National City Boulevard  
National City, California 91950  
Attn: Steve Manganiello  
Email: [smanganiello@nationalcityca.gov](mailto:smanganiello@nationalcityca.gov)

Copy to: Christensen & Spath LLP  
401 West A Street, Suite 2250  
San Diego, California 92101  
Attn. Walter F. Spath, Esq.  
Email: [wfs@candslaw.net](mailto:wfs@candslaw.net)

To Seller: Walter and Louise Morawa  
43757 La Cruz Drive  
Temecula, CA 92590-3369  
Email: [morawaw@yahoo.com](mailto:morawaw@yahoo.com)

12. No Prorations. The Purchaser is purchasing a strip of real property and the Property once purchased by the Purchaser will not be subject to real property taxes and assessments, therefore no prorations shall be made with regard to the Property.

13. General Provisions.

(a) Governing Law. This Agreement shall be interpreted and construed in accordance with California law.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions of this Agreement.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, heirs and permitted assigns.

(e) Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge or change is sought.

(f) Entire Agreement. This Agreement contains the entire agreement between the parties relating to Purchaser's acquisition of the Property from Seller and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded.

(g) Partial Invalidity. Any provision of this Agreement which is unenforceable, invalid, or the inclusion of which would adversely affect the validity, legality, or enforcement of this Agreement shall have no effect, but all the remaining provisions of this Agreement shall remain in full effect.

(h) Survival; No Merger. This Agreement, including without limitation, all representations, warranties, covenants, agreements, indemnities and other obligations of Seller and Purchaser in this Agreement, shall survive the Closing of this transaction and will not be merged into the Grant Deed or any other document.

(i) No Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies.

(j) Time Of Essence. Time is of the essence in this Agreement.

(k) Attorneys' Fees. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Agreement shall be entitled to their expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court. All claims, disputes, causes of action or controversies shall be subject solely to the jurisdiction of the San Diego Superior Court, Downtown Branch.

(l) Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between Purchaser and Seller or between either or both of them and any third party.

(m) Recording. This Agreement shall not be recorded.

(n) Purchaser Approval. Where this Agreement refers to an action or approval of the Purchaser, it shall mean the approval of the Executive Director of the Purchaser, or designee, unless otherwise provided.

(o) Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

(p) Independent Counsel. Seller and Purchaser each acknowledge that: (i) they have been given the opportunity to be represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel, if such counsel was retained; and (iii) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel, if such counsel was retained. The fact that this Agreement was prepared or negotiated by Purchaser's or Seller's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against either party due to the fact that Purchaser's or Seller's counsel prepared or negotiated this Agreement in its final form.

(q) Capacity and Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, represent

and warrant to the other party that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**SELLER:**

Walter Morawa and Louise Morawa Joint Living Trust

By: \_\_\_\_\_  
Walter Morawa, Trustee

By: \_\_\_\_\_  
Louise Morawa, Trustee

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**PURCHASER:**  
City of National City

By: \_\_\_\_\_  
Benjamin A. Martinez, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Barry J. Schultz, City Attorney



**Exhibit A**

**Legal Description of the Property**

All that certain real property situated in the City of National City, County of San Diego, State of California, described as follows:

(PORTION OF PARCEL APN 557-250-38)

THAT PORTION OF 40 ACRE LOT 1, QUARTER SECTION 132 OF RANCHO DE LA NACION, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 166, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOW:

BEGINNING AT A 3/4 INCH IRON PIPE AND DISC ILLEGIBLE ACCORDING TO PARCEL MAP NUMBER 20521 FILED IN THE OFFICE OF THE COUNTY RECORDER ON JUNE 27, 2008 BEING THE SOUTHEASTERLY CORNER OF THE NORTHWESTERLY QUARTER OF SAID 40 ACRE LOT 1, BEING ALSO THE SOUTHEASTERLY CORNER OF PARCEL 1 DESCRIBED ON INSTRUMENT NUMBER 1998-0639957 RECORDED ON OCTOBER 5, 1998 OFFICIAL RECORDS, SAN DIEGO COUNTY RECORDER'S OFFICE;

THENCE NORTH 17° 46' 29" WEST 134.25 FEET ALONG THE NORTHEASTERLY LINE OF SAID NORTHWESTERLY QUARTER TO THE NORTHEASTERLY CORNER OF SAID PARCEL 1;

THENCE SOUTH 71° 59' 32" WEST 20.00 FEET ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 1;

THENCE PARALLEL TO SAID NORTHEASTERLY LINE OF SAID PARCEL 1, SOUTH 17° 46' 29" EAST 134.22 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF SAID NORTHWESTERLY QUARTER WHICH IS SOUTH 72° 06' 02" WEST 20.00 FEET FROM SAID SOUTHEASTERLY CORNER OF SAID NORTHWESTERLY QUARTER;

THENCE PARALLEL TO SAID NORTHEASTERLY LINE OF SAID PARCEL 1, SOUTH 17° 46' 29" EAST 8.04 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF PARCEL 2 DESCRIBED ON SAID INSTRUMENT 1998-0639957;

THENCE NORTH 50° 12' 52" EAST 21.57 FEET ALONG SAID SOUTHEASTERLY LINE OF PARCEL 2 TO THE SOUTHEASTERLY CORNER OF SAID PARCEL 1, BEING ALSO THE POINT OF BEGINNING;

AREA: 2765.11 SQFT (0.063 AC) MORE OR LESS.

BASIS OF BEARING: CALIFORNIA COORDINATE SYSTEM NAD 83, ZONE 6, BETWEEN POINT NUMBERS 1236 AND 1237 AS SHOWN ON ROS 14492.