



CITY COUNCIL AGENDA REPORT



DEPARTMENT: City Manager's Office

MEETING DATE: May 15, 2018

PREPARED BY: Oliver Chi, City Manager /
Lauren Vasquez, Deputy City Manager

AGENDA LOCATION: AR-1

TITLE: Sale of Real Property Located at 1528 and 1532 South Primrose Avenue to 123 West Pomona, LLC, in the Amount of \$1,695,000

OBJECTIVE: To consider approval of a Purchase and Sale Agreement (Agreement) authorizing the sale of City owned real property located at 1528 and 1532 South Primrose Avenue for the above market price of \$1,695,000

BACKGROUND: In October 2014, the Wine of the Month Club, doing business as 123 West Pomona, LLC (Buyer), purchased 1.38 acres of property owned by the Successor Agency to the Monrovia Redevelopment Agency (Successor Agency) located at 123 West Pomona Avenue and 137 West Pomona Avenue (Pomona Avenue). Those properties, located adjacent to Monrovia's Station Square, were sold for \$2.225 million (or around \$37 / square foot).

Subsequently, in December 2016, the Buyer acquired two additional parcels located adjacent to Pomona Avenue from the Successor Agency. The properties (141 West Pomona Avenue and 145 West Pomona Avenue) constituted a total of 0.28 acres of land, and were purchased for a total price of \$442,298 (or around \$36 / square foot).

Since that time, the Buyer has begun contemplating the development of a reimagined mixed use project located on the properties at the northwest corner South Primrose Avenue and West Pomona Avenue, which would include the 1.66 acres of land that the Buyer previously purchased from the Successor Agency. In order to assess the feasibility of the proposed mixed-use project, the Buyer recently approached the City about the possibility of acquiring two remaining parcels located adjacent to the land already owned by the Buyer. The two properties in question (Parcels) are located at 1528 South Primrose Avenue and 1532 South Primrose Avenue.

The Parcels total 9,260 square feet in total land (approximately 0.21 acres in size), and based on conversations to date, staff has negotiated a proposed Purchase and Sale Agreement (Attachment A) that would authorize the City to sell the Parcels to the Buyer for a total above-market sales price of \$1,695,000, or around \$183 / square foot. It should be noted that an appraisal of the Parcels was conducted (copy on file with the City Clerk), and the land was valued at \$695,000.

ANALYSIS: After much discussion with the Buyer, the proposed transaction to sell the Parcels was developed based on the following terms:

- The Parcels would be sold for a total sales price of \$1,695,000, or +/- \$183 / square foot.
- The Buyer will be required to put an initial deposit of around 3% of the sales price (\$51,000) upon the opening of escrow.

AR-1

- The Purchase and Sale Agreement provides the Buyer an initial 12 month period within which to close escrow, however, the closing date can be extended for up to three (3) three-month extension periods. Each extension period that is exercised will, however, require that the Buyer deposit an additional \$30,000 into escrow.
- The Buyer has also agreed to incorporate at least 50 public parking spaces into any proposed future mixed-use project located on the overall project site.

Also, it is important to emphasize that while the Parcels were appraised at \$695,000 in value (+/- \$75 per square foot), the proposed sales price of \$1,695,000 (or \$183 / square foot) for the properties in question is nearly 2.5 times above the market valuation of the land in question.

FISCAL IMPACT: Pursuant to the negotiated Purchase and Sale Agreement, the agreed upon sales price for the Parcels is \$1,695,000.

ENVIRONMENTAL IMPACT: There are no environmental impacts associated with approving a Purchase and Sale Agreement with the Buyer.

OPTIONS: The following options are presented for consideration:

- 1) Approve the proposed Purchase and Sale Agreement with 123 West Pomona, LLC.
- 2) Do not approve the proposed Purchase and Sale Agreement with 123 West Pomona, LLC, and provide staff with additional direction.

RECOMMENDATION: Staff recommends Option 1, thereby approving the proposed Purchase and Sale Agreement with 123 West Pomona, LLC.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to approve the Purchase and Sale Agreement with 123 West Pomona, LLC, and authorize the City Manager to execute the necessary documents in a form approved by the City Attorney.

**AGREEMENT FOR PURCHASE AND SALE
AND ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS (this "Agreement") is dated as of _____, 2018 ("**Effective Date**"), and is entered into by and between **123 WEST POMONA, LLC**, a California limited liability company ("**Buyer**"), and the **CITY OF MONROVIA**, a California municipal corporation ("**Seller**"). Upon the execution of this Agreement by Seller, Seller shall promptly deliver a copy of the fully-executed Agreement to Buyer in accordance with Section 9 below.

RECITALS

A. Seller is the owner of certain vacant land located at the northeast corner of Pomona Avenue and Primrose Avenue in the Station Square area of the City of Monrovia (the "**Property**"). The Property includes +/- 0.28 acres of land, commonly known as 1528 and 1532 South Primrose Avenue, Monrovia, California, and legally described in "**Exhibit A**" attached hereto.

B. Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller.

NOW, THEREFORE, in consideration of the mutual terms and covenants herein, and other consideration, the sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **PURCHASE PRICE; DEPOSIT.**

1.1 **Sale and Purchase.** Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property upon the terms and conditions hereafter set forth.

1.2 **Purchase Price.** The full purchase price to be paid by Buyer to Seller for the Property shall be ONE MILLION SIX HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$1,695,000.00) ("**Purchase Price**").

1.3 **Deposit.** Within five (5) business days after the opening of escrow under Section 4.2 below, Buyer shall make an initial deposit of the sum of FIFTY-ONE THOUSAND DOLLARS (\$51,000.00), into the escrow with Escrow Holder (as hereinafter defined) (together with such other deposits as may be made pursuant to Section 4.3 hereof, and accrued interest thereon, the "**Deposit**"). Escrow Holder shall hold the Deposit in an interest-bearing account. Upon the Close of Escrow, the Deposit shall be credited against the Purchase Price. If the Close of Escrow does not occur as a result of a termination of this Agreement due to the failure of a condition to closing or the default of the Seller, the Deposit shall be returned to Buyer. If the Close of Escrow does not occur due to a default by Buyer, then the Deposit shall be delivered to Seller as liquidated damages under Section 1.4 below.

1.4 If Buyer breaches any obligation hereunder, and fails to cure such breach within ten (10) business days after receipt of written notice from Seller, then Seller may terminate this Agreement and the Escrow by giving notice, in writing, of such termination to

Buyer and Escrow Holder, and the Deposit shall be delivered by Escrow Holder to Seller to retain as liquidated damages for Buyer's failure to purchase the Property, as Seller's sole and exclusive remedy.

IF CLOSING FAILS TO OCCUR SOLELY BECAUSE OF BUYER'S DEFAULT, SELLER WILL BE DAMAGED AND WILL BE ENTITLED TO COMPENSATION FOR THOSE DAMAGES, BUT SUCH DAMAGES WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN. BUYER DESIRES TO LIMIT THE AMOUNT OF DAMAGES FOR WHICH BUYER MIGHT BE LIABLE SHOULD BUYER BREACH THIS AGREEMENT. BOTH BUYER AND SELLER WISH TO AVOID THE COSTS AND LENGTHY DELAYS THAT WOULD RESULT IF SELLER FILED A LAWSUIT TO COLLECT ITS DAMAGES FOR A BREACH OF THIS AGREEMENT. IF CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT, THEN THE DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE AND FINAL ESTIMATE OF SELLER'S DAMAGES AND SHALL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES AS SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

BUYER'S INITIALS

SELLER'S INITIALS

2. TITLE.

2.1 General. Title to the Property shall be conveyed by a grant deed in the form attached hereto as "**Exhibit B**" ("**Grant Deed**") and shall be evidenced by a CLTA Standard Coverage Form of Owner's Policy of Title Insurance, the cost of which will be borne by Seller, or an ALTA Extended Coverage Form Policy if Buyer elects such coverage as provided in Section 2.3 hereof ("**Title Policy**"), the additional cost of which shall be borne by Buyer, issued by a licensed title insurance company ("**Title Company**") selected by Buyer, subject to the consent of Seller's City Manager, which consent will not be unreasonably withheld or delayed, with liability in the full amount of the Purchase Price, insuring title to the Property as vested in Buyer, free and clear of all liens and encumbrances and other matters affecting title to the Property, except the following (which shall constitute "**Approved Title Exceptions**" under Section 2.4 below):

2.1.1 Non-delinquent real property taxes;

2.1.2 The fact that the Property is (or was) located in a Redevelopment Project Area; and

2.1.3 Such other matters as are approved by Buyer.

2.2 Acts After Date of Agreement. During the period from the Effective Date of this Agreement through the Close of Escrow, Seller shall not record, or file for record or permit to be recorded or filed for record any document or instrument which will affect the title to or use of the Property without the prior written consent of the Buyer, which consent shall not be unreasonably withheld.

2.3 Option for ALTA Coverage. Buyer shall have the option of obtaining an ALTA Extended Coverage Form Policy of Title Insurance or a CLTA Standard Coverage Form Owners Policy of Title Insurance. If Buyer elects to obtain the ALTA Extended Coverage Form Policy of Title Insurance, Buyer shall, at its expense, procure the ALTA Extended Coverage Survey (the “**Survey**”). The cost of the Survey and the amount by which the cost of an ALTA Extended Coverage Form Policy of Title Insurance exceeds the cost of a CLTA Standard Coverage Form Owners Policy of Title Insurance shall be borne by Buyer.

2.4 Title Review. Not later than thirty (30) days after the Effective Date, Buyer shall obtain a current title report from Title Company for the Property and copies of the title exception documents and, except as otherwise provided in Section 2.1 above, Buyer shall have the right to disapprove the title report and title exceptions and terminate this Agreement by written notice to Seller given within sixty (60) days after Title Company delivers the title report and title exceptions to Buyer (“**Title Delivery Date**”). If Buyer desires ALTA title insurance, Buyer shall conduct a Survey and shall deliver it to the Title Company and shall have the right to disapprove matters disclosed by the Survey and terminate this Agreement by written notice to Seller within ninety (90) days after the Title Delivery Date. If Buyer does not timely terminate, then the following (in addition to the matters described in Section 2.1) shall be “**Approved Title Exceptions**”: (i) all matters in said title report and the Survey, (ii) if Buyer fails to obtain a title report, then all matters affecting title then of record, and (iii) if Buyer fails to obtain a Survey, all matters that would have been revealed or disclosed by an accurate ALTA Survey (the “**Approved Title Exceptions**”).

3. RIGHT OF ENTRY.

3.1 Seller hereby grants Buyer and its agents, employees, contractors and subcontractors (collectively “**Representatives**”) the right of entry to the Property at reasonable times after the Effective Date and prior to the expiration of the Investigation Period, as hereinafter defined, for the purpose of conducting soils and geological investigation and testing for toxic or hazardous substances and other contamination. Such investigation shall be at Buyer’s expense. If Buyer desires to terminate this Agreement as a result of its inspection, Buyer may do so by written notice to Seller given on or before the expiration of the Investigation Period.

3.2 Buyer shall deliver advance written notice to the Seller of its intention to enter the Property to conduct activities pursuant to this Section 3 at least one (1) business day

prior to any entry onto the Property. Such notice of entry shall include the proposed dates and times of such entry, and the nature, specific location and scope of any test, investigation, or other activity upon the Property, and shall be subject to the prior approval of the Seller which shall not be unreasonably delayed or withheld. Seller and its representatives shall have the right to accompany and observe all of Buyer's and its Representatives' activities on the Property.

3.3 All work performed by Buyer and its Representatives will be performed diligently and in a manner consistent with the standards of care, diligence and skill exercised by recognized consulting firms for similar services, and in accordance with all regulatory and good management standards and the requirements of any governmental agency or entity and all applicable laws.

3.4 Buyer and its Representatives shall promptly notify the Seller of any discovery, spill, release, or discharge of any "**Hazardous Materials**", as defined in Section 6.4, on, under or about the Property which is discovered, encountered, or results from or is related to the Buyer's or its Representatives' access to and/or use of the Property under this Agreement.

3.5 Buyer and its Representatives shall remove from the Property any wastes and Hazardous Materials used in or generated by the activities of Buyer or its Representatives on the Property no later than the date of completion of their environmental investigation activities and operations on the Property.

3.6 In connection with the use of the Property by Buyer and its Representatives, Buyer shall, at its own cost and expense, take any necessary action to keep the Property, and any improvements and personalty thereon, in good order and repair and safe condition to the extent that such Property, improvements or personalty were in such condition prior to its entry, and the whole of the Property, in a clean, sanitary and orderly condition, including, without limitation, ensuring that any holes, ditches or other indentations, as well as any mounds or other inclines created by any excavation by Buyer or its Representatives are regraded, resurfaced and compacted. If any portion of the Property or an adjacent property, including improvements and fixtures, suffers damage or alteration by reason of the access and activities of Buyer or its Representatives on the Property, Buyer shall, at its own cost and expense, promptly repair all such damage and restore the Property or adjacent property to as good a condition as before such damage or alteration occurred, or if it cannot be repaired, Buyer shall replace such damaged or altered property to the extent possible.

3.7 Buyer agrees, at its sole cost and expense, to defend, protect, indemnify, and hold free and harmless Seller and its employees, agents, and representatives, and their successors, and assigns (individually as "**Indemnitee**" and collectively, "**Indemnitees**"), free and harmless from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever ("**Claims**"), including fees of accountants, attorneys, expert witnesses, or other professionals, and all costs associated therewith, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of Buyer or any of its Representatives arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to entry upon the Property pursuant to this Section 3,

except for that portion or percentage of a Claim against an Indemnitee based on the comparative negligence, gross negligence or willful misconduct of such Indemnitee.

3.8 The period from the Effective Date until and including the one hundred twentieth (120th) day after the Effective Date shall be referred to herein as the “**Investigation Period.**” If for any reason Buyer is not satisfied with the physical condition or legal status of the Property (including but not limited to applicable zoning and other regulatory matters and restrictions or conditions on the ability of the owner of the Property to develop the Property), Buyer shall have the right to terminate this Agreement by written notice to Seller on or before the end of the Investigation Period. Upon such termination the Deposit shall be returned to Buyer and Buyer and Seller shall be deemed to have released each other from any and all liability and obligations relating to the Property and this Agreement, except Buyer’s indemnity and other obligations under Section 3.7 of this Agreement.

3.9 Notwithstanding anything to the contrary contained herein, the provisions of this Section 3 shall survive the termination of this Agreement.

4. ESCROW.

4.1 Agreement to Constitute Escrow Instructions. This Agreement shall constitute escrow instructions and a copy hereof shall be deposited with the Escrow Holder for this purpose.

4.2 Escrow Holder. The escrow shall be opened with Stewart Title Insurance Company (“**Escrow Holder**”), within five (5) business days following the Effective Date by Buyer and Seller depositing a copy of this Agreement (or copies of executed counterparts of this Agreement) with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions as Escrow Holder may reasonably require in order to clarify the duties and responsibilities of Escrow Holder. If Escrow Holder shall require further escrow instructions, Escrow Holder shall promptly prepare such escrow instructions on its usual form for the purchase and sale of the Property upon the terms and provisions hereof. Provided such further escrow instructions are consistent with this Agreement and satisfactory in form and substance to Buyer and Seller, they shall be promptly signed by Buyer and Seller within five (5) business days after delivery thereof to each party. The further escrow instructions shall incorporate each and every term of this Agreement and shall provide that in the event of any conflict between the terms and conditions of this Agreement and such further escrow instructions, the terms and conditions of this Agreement shall control.

4.3 Close of Escrow. For the purposes of this Agreement, “**Close of Escrow**” shall be the date on which a grant deed for the Property in favor of Buyer is recorded in the Official Records of the Los Angeles County Recorder’s Office. Provided all of Seller’s and Buyer’s obligations to be performed on or before Close of Escrow have been performed and all the conditions to the Close of Escrow set forth in this Agreement have been satisfied, escrow shall close on the earlier (the “**Closing Date**”) of (a) the seventh (7th) business day after Buyer gives notice to Seller, or (b) the earlier of (i) thirty (30) days following the date on which all necessary entitlements for the construction of the Buyer’s proposed project (as the project is described in that certain correspondence to the Seller dated _____, 2018) become

final (i.e., after all appeal periods with respect to the entitlements shall have expired without any appeal having been filed or, if an appeal is filed, such appeal shall have been resolved in favor of the grant of the entitlements), or (ii) the first (1st) anniversary of the Effective Date; provided, however, that Buyer with respect to (b)(ii) above may extend the Closing Date for up to three (3) additional three-month periods by giving notice to Seller prior to the date specified in (b)(ii) of its election to extend the Closing Date and concurrently increasing the Deposit by Thirty Thousand Dollars (\$30,000.00) for each such extension. All risk of loss or damage with respect to the Property shall pass from Seller to Buyer at the Close of Escrow. Possession of the Property shall be delivered to Buyer upon the Close of Escrow.

4.4 Buyer Required to Deliver. Not less than two (2) business days prior to the Close of Escrow, Buyer shall deposit into escrow the following (properly executed, notarized and acknowledged, if applicable):

4.4.1 The Purchase Price;

4.4.2 Costs to be paid by Buyer under Section 4.9 below;

4.4.3 All other documents contemplated by this Agreement and required by Escrow Holder to be deposited by Buyer to carry out this escrow.

4.5 Seller Required to Deliver. Within fifteen (15) days after the end of the Investigation Period, and within ten (10) days after demand if such demand is made after the Investigation Period, Seller shall deposit into escrow the following:

4.5.1 A grant deed conveying the Property to Buyer, in the form attached hereto as "Exhibit B" and duly executed by Seller and acknowledged (the "**Grant Deed**");

4.5.2 A California 593 certificate and a federal non-foreign affidavit with respect to Seller, if required by Escrow Holder; and

4.5.3 Any other documents contemplated by this Agreement or required by Escrow Holder or the Title Company to be deposited by Seller to carry out this escrow.

4.6 Conditions to the Close of Escrow. Escrow shall not close unless and until both parties have timely deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. The failure of a party to timely deposit any such sums and/or documents shall constitute a default by such party, subject to reasonable cure as provided in this Agreement. Buyer's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Buyer's benefit and may be waived only by Buyer:

4.6.1 Seller shall have performed all agreements to be performed by Seller hereunder;

4.6.2 All refuse and other personal property shall have been removed from the Property, and the weeds abated to the reasonable satisfaction of Buyer; as of the Close

of Escrow, there shall have been no material adverse changes in the physical condition of the Property caused by Seller after Buyer's approval of the condition of the Property;

4.6.3 Title Company shall have issued or shall have committed to issue the Title Policy to Buyer, for the amount of the Purchase Price showing fee title to the Property to be vested in Buyer, subject only to the Approved Title Exceptions; and

4.6.4 All legal prerequisites to the sale of the Property from the City shall have been satisfied.

In the event that the conditions to Close of Escrow are not timely satisfied for a reason other than a default of Buyer or Seller under this Agreement, then upon termination of this Agreement, Escrow Holder shall promptly return to Buyer all funds (and all interest accrued thereon) and documents deposited by Buyer in escrow and to return to Seller all funds and documents deposited by Seller in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.11 below).

4.7 Recordation of Grant Deed; Delivery of Funds; Delivery of Possession. Upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Los Angeles County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges) to Seller. Upon Close of Escrow, Seller shall deliver possession and legal title of the Property to Buyer, free and clear of any leases or occupancies.

4.8 Prorations. All real and personal property taxes and shall be prorated between Buyer and Seller as of the Close of Escrow, which in the case of taxes and assessments shall be based on the latest available tax information. Any supplemental or escape real estate taxes and assessments on the Property attributable to the period prior to the Close of Escrow shall be paid by Seller outside of the escrow. All prorations shall be determined on the basis of a 360-day year. All taxes and assessments applicable to the Property from the date of Close of Escrow and thereafter shall be the Buyer's sole responsibility.

4.9 Costs of Escrow.

4.9.1 Seller shall pay:

- (a) The premium for the CLTA Standard Title Policy;
- (b) One-half (½) of the escrow fees and reasonable and customary escrow costs; and
- (c) Any other closing costs or charges not expressly provided for herein and customarily paid by a Seller of real property in Los Angeles County, California.

4.9.2 Buyer shall pay:

- (a) One-half (1/2) of the escrow fees and reasonable and customary escrow fees;
- (b) The cost of recording the Grant Deed, if any;
- (c) The cost of documentary transfer taxes in connection with the recordation of the Grant Deed, if any;
- (d) The excess cost of an ALTA extended title policy, if Buyer has so elected; and
- (e) Any other closing costs or charges not expressly provided for herein and customarily paid by a Buyer of real property in Los Angeles County, California.

4.10 Broker's Commission. Buyer and Seller represent to one another that no broker or finder has been engaged in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party. Buyer hereby agrees to indemnify, defend, protect and hold harmless Seller and its employees, agents, representatives, council members, attorneys, successors and assigns, from and against all claims of any agent, broker, finder or other similar party arising from or in connection with its activities relating to the sale of the Property to Buyer by Seller.

4.11 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

5. EMINENT DOMAIN OR TAKING; PHYSICAL DAMAGE OR DESTRUCTION.

5.1 If, prior to the Close of Escrow, any material portion of the Property is taken or if the access thereto or available parking area therefor is reduced or restricted by eminent domain or otherwise (or becomes the subject of a pending, threatened or contemplated taking which has not been consummated, other than any such taking prosecuted by or on behalf of the Buyer), Seller shall immediately notify Buyer of such fact. In such event, Buyer shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to Seller given not later than ten (10) business days after receipt of Seller's notice. If Buyer does not exercise this option to terminate this Agreement, neither party shall have the right to terminate this Agreement, but the Seller shall assign and turn over to Buyer, and the Buyer shall be entitled to receive and keep, all awards for the taking by eminent domain which accrue to Seller, and the parties shall proceed to the Close of Escrow pursuant to the terms hereof, without modification of the terms of this Agreement and without any reduction in the Purchase Price. Unless and until this Agreement is terminated, Seller shall take no action with respect to

any eminent domain proceeding without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

5.2 If, prior to the Close of Escrow, any material portion of the Property is physically damaged or destroyed due to any cause, natural or otherwise, including, without limitation, (i) fire or flooding, (ii) any destructive seismic or geological conditions such as any earthquake or tremor, subsidence, or unstable subsurface conditions; or (iii) a condition arising from any discharge of Hazardous Materials or other violation of any Environmental Laws, Seller shall immediately notify Buyer of such fact. In such event, Buyer shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to Seller given not later than ten (10) business days after receipt of Seller's notice. If Buyer does not exercise this option to terminate this Agreement, neither party shall have the right to terminate this Agreement, but the Seller shall assign and turn over, and the Buyer shall be entitled to receive and keep, all insurance proceeds paid by Seller's insurer in connection with such damage or destruction, and the parties shall proceed to the Close of Escrow pursuant to the terms hereof, without modification of the terms of this Agreement and without any reduction in the Purchase Price. Unless and until this Agreement is terminated, Seller shall take no action with respect to any such damage and destruction without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

6. CONDITION OF PROPERTY; "AS-IS" SALE; INDEMNITY AND RELEASE.

6.1 There are no representations or warranties of any kind whatsoever, express or implied, made by Seller, including, without limitation, any representation or warranty concerning the potential use, development or physical condition of the Property (including the presence of any hazardous or toxic substances or the structural condition of any buildings or improvements) or any income, expenses, or any other matter or thing arising or related to the Property. Except as otherwise provided for herein, the purchase of the Property hereunder is and will be made on an "AS IS AND WITH ALL FAULTS" basis. Seller shall not be required to make any repairs, alterations or improvements to the Property, except as provided in this Agreement. The Buyer shall fully investigate the Property, including, but not limited to, analysis of soils and hazardous materials, zoning and use issues and other matters which a prudent purchaser would deem necessary, and in the event Buyer shall purchase the Property, Buyer will be relying entirely on its own investigation of the Property.

6.2 BUYER HEREBY WAIVES ITS RIGHT TO RECOVER FROM AND FULLY AND IRREVOCABLY RELEASES SELLER, AND ITS OFFICERS, COUNCILMEMBERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND CONTRACTORS (COLLECTIVELY, THE "**RELEASED PARTIES**") FROM ANY AND ALL CLAIMS, RESPONSIBILITY AND/OR LIABILITY THAT BUYER MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST ANY OF THE RELEASED PARTIES FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES, CLAIMS, DEMANDS, ACTION OR CAUSE OF ACTION ARISING FROM HAZARDOUS MATERIALS IN, ON OR UNDER THE PROPERTY. THIS RELEASE INCLUDES CLAIMS OF WHICH BUYER IS PRESENTLY UNAWARE OR WHICH BUYER DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY BUYER, WOULD MATERIALLY AFFECT BUYER'S RELEASE OF THE RELEASED PARTIES. IF THE PROPERTY IS NOT IN A CONDITION SUITABLE FOR THE

INTENDED USE OR USES, THEN IT IS THE SOLE RESPONSIBILITY AND OBLIGATION OF BUYER TO TAKE SUCH ACTION AS MAY BE NECESSARY TO PLACE THE PROPERTY IN A CONDITION SUITABLE FOR DEVELOPMENT.

THE BUYER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH IS SET FORTH BELOW:

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

BY INITIALING BELOW, BUYER HEREBY WAIVES THE PROVISIONS OF CIVIL CODE SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

Buyer's Initials

The waivers and releases by Buyer herein contained shall survive the Close of Escrow and the recordation of the Grant Deed and shall not be deemed merged into the Grant Deed upon its recordation.

6.3 To the full extent permitted by law, Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, losses, damages, costs and expenses arising from or relating to the presence of Hazardous Materials in, on or under the Property, other than those known by Seller to be present at the Close of Escrow but not disclosed to Buyer prior to the Inspection Deadline. This Section 6.3 shall survive the Close of Escrow and the recordation of the Grant Deed.

6.4 The term “Hazardous Materials” as used in this Agreement shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 et seq.; industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; any substance defined as a “hazardous substance” in California

Civil Code Section 2929.5(e)(2) or California Code of Civil Procedure Section 736(f)(3); and any other substance or material regulated by any Environmental Laws, defined below.

6.5 The term “Environmental Laws” as used in this Agreement shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect on or prior to the Effective Date hereof relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act 42 U.S.C. Section 6901 et seq.; as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Section 9601 et seq.; as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq.; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq.; and state and local environmental statutes and ordinances, and implementing regulations and rules.

7. INCORPORATION OF EXHIBITS. All exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

8. ATTORNEYS’ FEES. In any action between Buyer and Seller seeking enforcement of any of the terms and provisions of this Agreement, or in connection with the Property, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, reasonable attorneys’ fees and reasonable fees of expert witnesses.

9. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Seller: City of Monrovia
415 S. Ivy Avenue
Monrovia, CA 91016
Attn: Oliver Chi, City Manager
Email: ochi@ci.monrovia.ca.us

To Buyer: 123 West Pomona, LLC
P.O. Box 660220
Arcadia, CA 91066
Attn: Paul Kalemkarian
Email: paul@womclub.com

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

10. ASSIGNMENT. Neither this Agreement nor any interest herein may be assigned by either party without the prior written consent of the other party.

11. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

12. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

13. HEADINGS. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

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

15. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

16. THIRD PARTIES. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

17. SEVERABILITY. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the transactions contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten (10) business days after the party giving such notice becomes aware of such invalidity, illegality or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

18. ADDITIONAL DOCUMENTS. Each party hereto agrees to perform any further acts and to execute, acknowledge and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

19. GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to conflict laws, principles or rules). All legal actions under, or in connection with this Agreement shall be filed and maintained by Buyer and Seller in courts located in Los Angeles County.

20. BUSINESS DAY. If the final day of any period or any date of performance (including the Investigation Period) under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of such performance shall be extended to the next business day.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BUYER:

123 WEST POMONA, LLC,
a California limited liability company

By: _____
Paul Kalemkiarian
Manager

SELLER:

CITY OF MONROVIA,
a California municipal corporation

By: _____
Oliver Chi
City Manager

Attest:

Alice D. Atkins, CMC
City Clerk

APPROVED AS TO FORM:
Richards, Watson & Gershon

Craig A. Steele
City Attorney

EXHIBIT A
DESCRIPTION OF THE PROPERTY

That real property in the City of Monrovia, County of Los Angeles, State of California described as follows:

[to be provided].

EXHIBIT B
FORM OF GRANT DEED

RECORDING REQUESTED BY:

City of Monrovia

AND WHEN RECORDED RETURN TO
AND SEND TAX STATEMENTS TO:

123 West Pomona, LLC
P.O. Box 660220
Arcadia, CA 91066
Attention: Paul Kalemkiarian

APNs: 8507-002-907 & 8507-002-908

Space Above This Line For Recorder's Use

*This Grant Deed is exempt from Recording Fees
pursuant to California Government Code Sections 6103 and 27383*

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARES:

Documentary Transfer Tax: \$ _____

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the **CITY OF MONROVIA**, a California municipal corporation, (the "**Grantor**"), hereby grants to **123 WEST POMONA, LLC**, a California limited liability company (the "**Grantee**"), that certain real property described in Exhibit A attached hereto (the "**Property**") and incorporated herein by this reference, together with all improvements located thereon and all of Grantor's right title and interest in and to all easements, privileges and rights appurtenant to the Site.

SUBJECT TO:

General and special real property taxes and assessments and supplemental assessments for the current fiscal year;

All liens, encumbrances, easements, covenants, conditions and restrictions of record;

All matters which would be revealed or disclosed in an accurate ALTA survey of the Property.

Exhibit A to Grant Deed

That real property in the City of Monrovia, County of Los Angeles, State of California described as follows:

[to be provided].