

## **RESOLUTION NO. 2014-0293**

Adopted by Sacramento City Council

August 26, 2014

### **APPROVAL OF SALE AND PURCHASE AGREEMENT FOR 730 I STREET FROM COUNTY OF SACRAMENTO AND APPROVAL OF AGREEMENT FOR SALE OF REAL PROPERTY WITH SB SACRAMENTO REAL ESTATE, LLC**

#### **BACKGROUND**

- A. In 1996 the County of Sacramento ("County") purchased improved real property at 730 I Street (APN 006-0034-019) for eventual County occupancy. At that time, the street address of the property was 900 Eighth Street.
- B. The City of Sacramento leased the facility as an interim City Hall then terminated the lease in 2005 upon the completion of new City Hall.
- C. In July 2005 the County Board of Supervisors ("Board") authorized staff to proceed with disposition of the property through a Request for Proposal process. After two attempts and a downturn in the market, the process was unsuccessful.
- D. In August 2011, the Board declared the property surplus and authorized staff to offer the property for sale. SB Sacramento Real Estate LLC submitted the only bid. They were not able to consummate the purchase at that time.
- E. This property is at a strategic location in the Downtown near the new Entertainment and Sports Center and the K Street corridor.
- F. SB Sacramento Real Estate, LLC wants to purchase the building and rehabilitate it for a new Sports Basement store.
- G. The City is interested in this property for it is at a strategic location in the Central Business District.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

Section 1. The above findings are true and correct.

- Section 2. The City Manager or his designee is authorized to execute the Sales and Purchase Agreement for 730 I Street with the County of Sacramento as included in Exhibit A.
- Section 3. The City Council finds that in accordance with City Code Section 3.88.090, it is in the best interests of the City to sell the property at 730 I Street to SB Sacramento Real Estate LLC.
- Section 4. The City Manager or his designee is authorized to execute the Agreement for Sale of Real Property included as Exhibit B with SB Sacramento Real Estate, LLC and related agreements for 730 I Street.

**Table of Contents**

- Exhibit A - Sales and Purchase Agreement with the County of Sacramento for 730 I Street
- Exhibit B - Agreement for Sale of Real Property with SB Sacramento Real Estate LLC

Adopted by the City of Sacramento City Council on August 26, 2014, by the following vote:

Ayes: Members Ashby, Cohn, Hansen, McCarty, Schenirer and Warren

Noes: None

Abstain: None

Absent: Member Fong and Mayor Johnson

Vacant: District 8

Attest:

**Shirley A. Concolino** Digitally signed by Shirley A. Concolino  
DN: cn=Shirley A. Concolino, o=City of Sacramento, ou=City Clerk, email=sconcolino@cityofsacramento.org, c=US  
Date: 2014.08.28 17:32:28 -07'00'

Shirley Concolino, City Clerk

RED File No: COP 25152  
OWNER: County of Sacramento  
APN: 006-0034-019  
Project: 730 I Street Sale

## **SALES AND PURCHASE AGREEMENT**

This Sales and Purchase Agreement, (hereinafter referred to as “**Agreement**”), dated for convenience as of the \_\_\_ day of \_\_\_\_\_, 20 \_\_\_, (hereinafter referred to as “**Agreement Date**”), is made by and between the **COUNTY OF SACRAMENTO**, a political subdivision of the State of California (hereinafter referred to as “**COUNTY**”), and the **CITY OF SACRAMENTO**, a municipal corporation, (hereinafter referred to as “**CITY**”), in consideration of the mutual covenants and agreements herein contained, and is subject to the conditions set forth below, and is made with reference to the following facts:

### **RECITALS**

- A. COUNTY is the owner of fee title to that certain real property located at 730 I Street, Sacramento, California 95814, known as Assessor’s Parcel Number (APN) 006-0034-019, consisting of approximately 51,401 square feet of land, together with all improvements, fixtures and personal property thereon, and all rights, hereditaments, easements, appurtenances thereto belonging or otherwise appertaining, all of which is more particularly described in **Exhibit “A”**, which is attached hereto and incorporated herein by reference (hereinafter referred to as the “**Property**”); and
- B. CITY desires to purchase from COUNTY and COUNTY desires to sell to CITY the Property, pursuant to the provisions of this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereto agree as follows:

#### **1. INCORPORATION OF RECITALS.**

The foregoing recitals are true and correct and are hereby incorporated by reference.

#### **2. PURCHASE AND SALE.**

COUNTY hereby agrees to sell and convey, and CITY hereby agrees to purchase through escrow, for the purchase price and upon the terms and conditions herein stated, the Property described above.

#### **3. PURCHASE PRICE.**

The purchase price for the Property shall be FIVE MILLION FOUR HUNDRED THOUSAND DOLLARS AND NO CENTS (\$5,400,000.00) (hereinafter referred to as the “Purchase Price”), payable in immediately available funds prior to Close of Escrow (hereinafter defined). On or before Close of Escrow, CITY shall deposit with Escrow Holder (hereinafter defined), the Purchase Price plus Escrow Holder’s estimate of CITY’s share of closing costs as described herein below.

#### 4. ESCROW INSTRUCTIONS.

A fully executed copy of this Agreement shall be deposited with Fidelity National Title Company at 8950 Cal Center Drive Building 3, Suite 100, Sacramento, CA 95826 (hereinafter referred to as the “**Escrow Holder**”) and such delivery shall constitute the opening of an escrow under Escrow Holder’s file number 14-**5016071**-PA with respect to the sale of the Property pursuant to this Agreement. Escrow Holder shall be concerned only with the provisions of this Paragraph 4. Said escrow shall be on the following terms and conditions:

- a. Payment of the Purchase Price. Prior to closing, CITY shall cause the Purchase Price to be deposited in escrow.
- b. Title. COUNTY shall execute and deliver to Escrow Holder a Grant Deed, in substantially the same form as set forth in **Exhibit “B”**, attached hereto and incorporated herein, conveying title to the Property to CITY. When all of the conditions to closing herein contained have been either satisfied or waived by the parties and so confirmed in writing, and escrow is ready to close, Escrow Holder shall cause the Grant Deed to be recorded and evidence of CITY’s acceptance thereof executed by a duly authorized representative of the CITY. Escrow Holder shall also deliver to CITY a CLTA Owner’s Policy of Title Insurance, in an amount equal to the Purchase Price, showing title to the Property vested in CITY, subject to those exceptions previously approved by CITY.
- c. Pro-rations. Escrow Holder is hereby instructed to segregate and pro-rate real estate taxes, assessments and similar charges as of the Close of Escrow, as hereinafter defined. Segregation and pro-rations of real estate taxes, assessments and similar charges shall be done based upon the most currently available information at the Close of Escrow. COUNTY shall be responsible for applying for any refund due for assessments or property taxes prepaid beyond the Close of Escrow.
- d. Costs of Escrow and Fees. Except as otherwise specifically provided herein, the cost of any escrow fees, the charge for preparation of escrow documents, the CLTA Policy of Title Insurance as described above, and all other costs of escrow and closing are to be paid by CITY. Any increased costs for an ALTA Policy of Title Insurance together with the cost of any associated survey shall be paid by CITY. COUNTY and CITY are exempt from the payment of transfer tax and recording fees.
- e. Close of Escrow. Upon the satisfaction or waiver of all conditions hereto, COUNTY and CITY instruct Escrow Holder to close escrow by recording the Grant Deed in the Official Records of Sacramento County and disbursing the Purchase Price to COUNTY, less any amounts payable by COUNTY hereunder (hereinafter referred to as “**Close of Escrow**”), as soon as practicable once this Agreement has been executed by all parties. Both COUNTY and CITY agree that time is of the essence in this matter and agree to take whatever steps are reasonably necessary to ensure that all conditions of this escrow are satisfied in a timely manner.
- f. Failure to Close Escrow. Notwithstanding the foregoing, if escrow does not close by September 10, 2014 as herein provided, or any extension thereof in writing, this escrow shall terminate, Escrow Holder shall return all documents, things, and refundable monies deposited in escrow, to the respective parties, less Escrow Holder’s fees and costs, and the parties shall release each other from any claims arising under the terms of this Agreement,

except those terms expressly stated to survive such termination.

g. Conditions Precedent. The Close of Escrow is expressly conditioned upon the occurrence of the following events:

(1) To CITY's Obligation. The following shall be conditions precedent to CITY's obligation to acquire the Property:

- i. Escrow Holder is ready to issue, as of the Close of Escrow, the title policy required by Paragraph 4.b. hereof.
- ii. COUNTY's compliance with each of its agreements herein, and the accuracy in all material respects of each of its representations and warranties as of the Close of Escrow.
- iii. Approval of this Agreement and terms hereof by City Council and execution of the Agreement by a duly authorized representative of CITY.

(2) To COUNTY's Obligation. The following shall be conditions precedent to the COUNTY's obligation to convey the Property at Close of Escrow.

- i. CITY's compliance with each of its agreement herein, and the accuracy in all material respects of each of its representations and warranties as of the Close of Escrow.
- ii. Approval of this Agreement and terms hereof by COUNTY'S Board of Supervisors and execution of the Agreement by a duly authorized representative of COUNTY.

h. Standard Escrow Instructions. For those escrow matters not specifically addressed herein, Escrow Holder's standard escrow instructions entitled "**General Provisions**", a copy of which is attached hereto as **Exhibit "C"**, shall be applicable. Where there is a conflict between the provisions of this Agreement and the provisions of Escrow Holder's standard escrow instructions, the provisions of this Agreement shall control.

## **5. FUTURE SALE OF PROPERTY TO THIRD PARTY; EQUITABLE DISTRIBUTION OF SALES PROCEEDS IN EXCESS OF PURCHASE PRICE.**

In the event the CITY, after taking title, sells the Property to a third party ("Third Party Sale"), and the Third Party Sale is for an amount that exceeds \$5.4 M, the CITY shall remit to COUNTY fifty percent (50%) of the difference in the Third Party Sale purchase price and \$5.4M ("Profit"). The City's obligation to remit and the County's right to receive the portion of the Profit proceeds addressed herein shall terminate and expire three hundred and sixty-five days after recordation of the Grant Deed and title vesting in the name of the City.

**This Paragraph 5 shall survive the Close of Escrow and shall not merge into the Grant Deed and the recordation thereof.**

## **6. RISK OF LOSS.**

Risk of loss shall transfer upon Close of Escrow.

**7. PRESERVATION OF PROPERTY.**

COUNTY agrees that the Property herein described shall remain as it now is until Close of Escrow, and that COUNTY will prevent and refrain from any use of the Property for any purpose or in any manner which would adversely affect the value of the Property. Except as otherwise provided, COUNTY shall not transfer, lease or encumber any interest in the Property prior to the Close of Escrow. In the event of such actions, CITY may, without liability, refuse to accept the conveyance of title, or alternatively may elect to accept conveyance of title to the Property or a portion thereof, in which case there may be an equitable adjustment of the Purchase Price based on the change in circumstance.

**8. AS-IS SALE.**

CITY acknowledges that, except as expressly contained in this Agreement, neither COUNTY nor anyone acting for or on behalf of the COUNTY has made any representation, warranty or promise to CITY concerning the physical aspects or condition of the Property; the feasibility or desirability of the Property for any particular use; the conditions of soils, sub-soils, groundwater and surface waters; or the presence or absence of any other physical aspect of the Property; and that in entering into the Agreement, CITY has not relied on any representation, statement or warranty of COUNTY or anyone acting for or on behalf of COUNTY, other than as may be expressly contained in this Agreement, and that all matters concerning the Property shall be independently verified by CITY and that CITY shall purchase the Property on CITY's own examination thereof; and that if CITY elects to acquire the Property, is purchasing the Property in its "as is" condition and its "as is" state of repair as of the Close of Escrow.

**9. POSSESSION.**

COUNTY will deliver possession of the Property to CITY at the Close of Escrow.

**10. BINDING.**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

**11. NOTICE.**

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, or (ii) if mailed, on the date of posting by the United States Post Office.

TO COUNTY: County of Sacramento  
Asset Management Section  
3711 Branch Center Road  
Sacramento, CA 95827

Telephone: (916) 876-6200

TO CITY: City of Sacramento  
Real Estate Section  
5730 24<sup>th</sup> Street, Building 4  
Sacramento, CA 95822  
Telephone: ( )

TO ESCROW HOLDER: Fidelity National Title Company  
8950 Cal Center Drive  
Building 3, Suite 100  
Sacramento, CA 95826  
Telephone: (916) 364-4070

Notice of change of address shall be given by written notice in the manner described in this Paragraph.

## 12. MISCELLANEOUS.

- a. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, or is found to be prohibited by law, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable or prohibited, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- b. **Waivers.** No waiver of any breach of any covenant or provision hereof shall be deemed a waiver of any preceding or succeeding breach hereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of delay.
- c. **Entire Agreement.** This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understanding with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and lawful assignees.
- d. **Authority of Signators.** Each party to this Agreement warrants to the other that it is duly organized and existing and each signatory hereto represents to the other party that it has full right and authority to enter into and consummate this Agreement and all related documents.
- e. **Survival of Representations.** Notwithstanding any provisions of this Agreement, the covenants, representations, warranties, hold harmless and indemnification obligations



made by each party herein shall survive (1) the Close of Escrow and shall not merge into the Grant Deed and the recordation thereof, and (2) the termination and/or cancellation of this Agreement.

- f. **Attorneys' Fees.** Any party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and each party shall be responsible for its own attorney's fees and costs.
- g. **Commission.** There is no real estate, finders or other commission due or payable by reason of this transaction. Each party shall indemnify the other for any actions which may cause the other party to be liable for a real estate brokerage or sales commission arising here from.
- h. **Governing Law.** This Agreement shall be governed by the laws of the State of California.
- i. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns or the parties hereto.
- j. **Time of Essence.** COUNTY and CITY hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.
- k. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture or any other association between COUNTY and CITY.
- l. **Construction of Agreement.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. It is agreed and acknowledged by the parties hereto that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.
- m. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, by all of which, together, shall constitute one and the same instrument.

*Remainder of Page Intentionally Left Blank*



**IN WITNESS WHEREOF, the parties have executed the Agreement the day and year first above written as follows:**

**COUNTY:**

County of Sacramento, a political subdivision of the State of California

Date: \_\_\_\_\_

By: \_\_\_\_\_

MICHAEL M. MORSE, Director  
Department of General Services

Under delegated authority by:

Resolution No.: \_\_\_\_\_

Dated: \_\_\_\_\_

**REVIEWED AND APPROVED BY  
COUNTY COUNSEL**

\_\_\_\_\_  
Stephanie G. Percival  
Deputy County Counsel

**CITY:**

City of Sacramento, a municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Under delegated authority by:

Resolution No.: \_\_\_\_\_

Dated: \_\_\_\_\_

**REVIEWED AND APPROVED BY  
CITY LEGAL COUNSEL**

\_\_\_\_\_  
Name: \_\_\_\_\_  
City Attorney

**EXHIBIT "A" to Agreement**  
**Page 1 of 1**

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

All of Lots 1, 2, 3 and 4 in the block bounded by I and J, Seventh and Eighth Streets, of the City of Sacramento, according to the official plat thereof, described as follows:

Beginning at the northwest corner of said Lot 1, said corner being the intersection of the southerly line of said I Street with the easterly line of said Seventh Street; thence from said point of beginning along the southerly line of said I Street South 71 deg. 20'20" East 322.34 feet to the northeast corner of said Lot 4, said corner being the intersection of the southerly line of said I Street with the westerly line of said Eighth Street; thence along the westerly line of said Eighth Street South 18 deg. 32'00" West 160.63 feet to the southeast corner of said Lot 4, said corner being the intersection of the westerly line of said Eighth Street with the northerly line of the twenty foot alley in said block bounded by I and J, Seventh and Eighth Streets; thence along the northerly line of said alley north 71 deg. 21'00" West 322.25 feet to the southwest corner of said Lot 1, said corner being the intersection of the northerly line of said alley with the easterly line of said Seventh Street; thence along said easterly line North 18 deg. 30'00" East 160.69 feet to the point of beginning.

APN 006-0034-019

**EXHIBIT "B" to Agreement**

**Page 1 of 4**

Grant Deed

**WHEN RECORDED RETURN TO AND  
SEND TAX/ASSESSMENT BILLS TO:**

City of Sacramento  
DGS Facilities & Real Property  
5730 24<sup>th</sup> Street, Building 4  
Sacramento, CA 95822  
Attn: Supervisor, Real Estate Section

No Fee Document - Per Government Code 27383  
No Document Transfer Tax- Per R & T Code 11922

APN: \_\_\_\_\_  
Project Name & Dept: 006-0034-019 \_\_\_\_\_ **THIS SPACE FOR RECORDER'S USE ONLY**  
730 I Street Sale (DGS) \_\_\_\_\_

**GRANT DEED**

The COUNTY OF SACRAMENTO, a political subdivision of the State of California, does hereby grant to the CITY OF SACRAMENTO, a municipal corporation, all that real property in the City of Sacramento, County of Sacramento, State of California, bounded and described as follows, to-wit:

**See Exhibit "A" attached hereto and made a part hereof.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

**County of Sacramento, a political subdivision of the State of California**

\_\_\_\_\_  
**Michael M. Morse, Director**  
**Department of General Services**  
Under delegated authority by:  
Resolution No.: \_\_\_\_\_  
Dated: \_\_\_\_\_

**SALELOGNO.**

M:\RealEstateTemplates\RES Asset Management\Fee Deeds Conveying Property\Grant Deed to Outside Grantee.dot 09112008.SGP

**EXHIBIT "B" to Agreement**  
**Page 2 of 4**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

<p>STATE OF _____ )          COUNTY OF _____ )</p> <p>On _____ before me, _____, notary public,  <small>date name of notary public</small></p> <p>personally appeared _____,  <small>name(s) of signer(s)</small></p> <p>_____</p> <p>who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.</p> <p>I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.</p> <p>WITNESS my hand and official seal.</p> <p>_____          Signature of Notary</p>	<p align="center">-----OPTIONAL SECTION-----</p> <p><b>CAPACITY CLAIMED BY SIGNER</b></p> <p>Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.</p> <p><input type="checkbox"/> INDIVIDUAL  <input type="checkbox"/> CORPORATE OFFICER(S)</p> <p align="center">Title(s)</p> <p><input type="checkbox"/> PARTNER(S)    <input type="checkbox"/> LIMITED  <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT  <input type="checkbox"/> TRUSTEE(S)  <input type="checkbox"/> GUARDIAN/CONSERVATOR  <input type="checkbox"/> OTHER: _____</p> <p>_____          _____</p> <p><b>SIGNER IS REPRESENTING:</b>  <b>Name of Person(s) or entity(ies)</b></p> <p>_____          _____</p>
<p><b>OPTIONAL SECTION:</b></p> <p><small>DATA REQUESTED HERE IS NOT REQUIRED BY LAW.</small></p> <p>TITLE OR TYPE OF DOCUMENT: _____</p> <p>NUMBER OF PAGES _____ DATE _____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE _____</p>	

**EXHIBIT “B” to Agreement**  
**Page 3 of 4**

**REAL PROPERTY ACCEPTANCE**

This is to certify that the City of Sacramento, a municipal corporation, acting by and through its City Manager and the Director of the Department of General Services, hereby accepts the real property, or interest therein, conveyed by the within document and consents to the recordation thereof. The undersigned is authorized to execute this acceptance by the Sacramento City Charter and by Resolution No. 84-537, passed and adopted by the City Council of Sacramento, June 26, 1984, pursuant to Section 27281 of the Government Code of the State of California, and recorded in the office of the County Recorder of Sacramento County, in Book 84-07-10, at Page 970, Official Records.

Dated: \_\_\_\_\_

\_\_\_\_\_  
REINA J. SCHWARTZ  
Director, Department of General Services  
(Formerly, Department of Public Works)

**EXHIBIT "B" to Agreement**  
**Page 4 of 4**

**EXHIBIT "A" to Grant Deed**

**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

All of Lots 1, 2, 3 and 4 in the block bounded by I and J, Seventh and Eighth Streets, of the City of Sacramento, according to the official plat thereof, described as follows:

Beginning at the northwest corner of said Lot 1, said corner being the intersection of the southerly line of said I Street with the easterly line of said Seventh Street; thence from said point of beginning along the southerly line of said I Street South 71 deg. 20'20" East 322.34 feet to the northeast corner of said Lot 4, said corner being the intersection of the southerly line of said I Street with the westerly line of said Eighth Street; thence along the westerly line of said Eighth Street South 18 deg. 32'00" West 160.63 feet to the southeast corner of said Lot 4, said corner being the intersection of the westerly line of said Eighth Street with the northerly line of the twenty foot alley in said block bounded by I and J, Seventh and Eighth Streets; thence along the northerly line of said alley north 71 deg. 21'00" West 322.25 feet to the southwest corner of said Lot 1, said corner being the intersection of the northerly line of said alley with the easterly line of said Seventh Street; thence along said easterly line North 18 deg. 30'00" East 160.69 feet to the point of beginning.

APN 006-0034-019

## EXHIBIT "C" to Agreement



# Fidelity National Title Company

8950 Cal Center Drive, Bldg. 3, Suite 100, Sacramento, CA 95826  
916 364-4070 • FAX 916 364-4093

## General Provisions

### 1. DEPOSIT OF FUNDS

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub escrow account prior to disbursement of any funds. Only cash or wire transferred funds can be given immediate availability upon deposit. Cashier's checks, teller's checks and Certified checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all fundings should be wire transfer. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account or accounts of Fidelity National Title Company - C & I, with any state or national bank, or savings and loan association (the "depository Institution") and may be transferred to any other such general escrow account or accounts. The parties to this escrow acknowledge that the maintenance of such escrow accounts with some depository institutions may result in Escrow Holder's being provided with an array of bank services, accommodations or other benefits by the depository institution. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations and other benefits shall accrue to Escrow Holder and Escrow Holder shall have no obligation to account to the parties to this escrow for the value of such services, accommodations or other benefits.

Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account. All disbursements shall be made by check of Fidelity National Title Company - C & I. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

To the extent provided by law, if for any reason funds are retained or remain in escrow following the close of escrow, you are to deduct therefrom a reasonable monthly charge as custodian thereof of not less than \$10.00 per month.

### 2. PRORATIONS AND ADJUSTMENTS

All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. You are to use information contained on last available tax statement, rental statement as provided by the Seller, beneficiary's statement and fire insurance policy delivered into escrow for the prorations provided for herein.



### **3. SUPPLEMENTAL TAXES**

The within described property may be subject to supplemental real property taxes due to the change of ownership taking place through this escrow. Any supplemental real property taxes arising as a result of the transfer of the property to Buyer shall be the sole responsibility of Buyer and any supplemental real property taxes arising prior to the closing date shall be the sole responsibility of the Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

### **4. UTILITIES/POSSESSION**

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

### **5. PREPARATION AND RECORDATION OF INSTRUMENTS**

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

### **6. AUTHORIZATION TO FURNISH COPIES**

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Broker(s) and Lender(s) named in this escrow.

### **7. RIGHT OF CANCELLATION**

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver one copy of such notice to each of the other principals at the addresses stated in this escrow. UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED IN YOUR OFFICE BY A PRINCIPAL WITHIN TEN (10) DAYS AFTER DATE OF SUCH MAILING, YOU ARE AUTHORIZED TO COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF YOUR CANCELLATION CHARGES. If written objection is filed, you are authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the principals' mutual written instructions, or by final order of a court of competent jurisdiction.

### **8. PERSONAL PROPERTY**

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Agent to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

### **9. RIGHT OF RESIGNATION**

Escrow Holder has the right to resign upon ten (10) days written notice delivered to the principals herein. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

### **10. AUTHORIZATION TO EXECUTE ASSIGNMENT OF HAZARD INSURANCE POLICIES**

Either Buyer, Seller and/or Lender may hand you the insurance agent's name and insurance policy information, and you are to execute, on behalf of the principals hereto, form assignments of interest in any insurance policy (other than title insurance) called for in this escrow, forward assignment and policy to the insurance agent, requesting that the insurer consent to such transfer and/or attach a loss payable clause and/or such other endorsements as may be required, and forward such policy(s) to the principals entitled thereto. It is not your responsibility to verify the information handed you or the assignability of said insurance. Your sole duty is to forward said request to insurance agent at close of escrow.

Further, there shall be no responsibility upon the part of Escrow Holder to renew hazard insurance policy(s) upon expiration or otherwise keep it in force either during or subsequent to the close of escrow. Cancellation of any existing hazard insurance policies is to be handled directly by the principals, and outside of escrow.

### **11. ACTION IN INTERPLEADER**

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend

or incur in such interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise.

#### **12. TERMINATION OF AGENCY OBLIGATION**

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due Fidelity National Title Company - C & I, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

#### **13. CONFLICTING INSTRUCTIONS**

Upon receipt of any conflicting instructions, you are to take no action in connection with this escrow until non-conflicting instructions are received from all of the principals to this escrow (subject to sections 7, 9, 11 and 12 above).

#### **14. REIMBURSEMENT ATTORNEY FEES/ESCROW HOLDER**

In the event that a suit is brought by any party or parties to these escrow instructions to which the Escrow Holder is named as a party which results in a judgment in favor of the Escrow Holder and against a principal or principals herein, the principals or principals' agent agree to pay said Escrow Holder all costs, expenses and reasonable attorney's fees which it may expend or incur in said suit, the amount thereof to be fixed and judgment therefore to be rendered by the court in said suit.

#### **15. DELIVERY/RECEIPT**

Delivery to principals as used in these instructions unless otherwise stated herein is to be by regular mail, and receipt is determined to be 72 hours after such mailing. All documents, balances and statements due to the undersigned are to be mailed to the address shown herein.

#### **16. STATE/FEDERAL CODE NOTIFICATIONS**

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Pursuant to State Law, prior to the close of escrow, Buyer will provide Escrow Holder with a Preliminary Change of Ownership Report. In the event said report is not handed to Escrow Holder for submission to the CITY in which subject property is located, upon recording of the Grant Deed, Buyers acknowledge that the applicable fee will be assessed by said CITY and Escrow Holder shall debit the account of Buyer for same at close of escrow.

Buyer and Seller herein represent and warrant that they will seek and obtain independent legal advice and counsel relative to their obligations under the "Foreign Investors In Real Property Act", and any other applicable federal and/or state laws regarding same, and will take all steps necessary in order to comply with such requirements and hereby hold you harmless relative to their compliance therewith.

#### **17. ENCUMBRANCES**

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be correct shall be settled between the parties direct and outside of escrow.

#### **18. ENVIRONMENTAL ISSUES**

Fidelity National Title Company - C & I has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow. Fidelity National Title Company - C & I is released of any responsibility and/or liability in connection therewith.

#### **19. USURY**

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

#### **20. DISCLOSURE**

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

#### **21. CLARIFICATION OF DUTIES**

Fidelity National Title Company - C & I serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS.

**FIDELITY NATIONAL TITLE COMPANY CONDUCTS ESCROW BUSINESS UNDER CERTIFICATE OF AUTHORITY NO. 2597-3 ISSUED BY THE CALIFORNIA DEPARTMENT OF INSURANCE**

File No.: SAL- \_\_\_\_\_  
Project: \_\_\_\_\_  
APN(s): \_\_\_\_\_  
Escrow #: \_\_\_\_\_  
Title Company: \_\_\_\_\_  
Preliminary Report of Title: \_\_\_\_\_

**AGREEMENT FOR SALE OF REAL PROPERTY**

This Agreement for Sale of Real Property (“Agreement”) is entered into on August \_\_\_\_, 2014 (“Effective Date”), by and between **SB Sacramento Real Estate, LLC**, a California limited liability company (“Buyer”), and **City of Sacramento**, a municipal corporation (“City” or “Seller”), individually referred to as “Party” and collectively referred to as “Parties.”

**BACKGROUND**

A. The County of Sacramento (“County”) owns that certain real property located at 730 I Street, identified as Sacramento County Assessor Parcel Number 006-0034-019 (the “Property”), consisting of approximately 51,401 square feet and more particularly described in **Exhibit “A,”** attached and incorporated herein by this reference;

B. Pursuant to that certain Sales and Purchase Agreement (the “Underlying Contract”) between County and City, City intends to purchase the Property from County; and

C. City and Buyer desire that City concurrently sell the Property to Buyer, in accordance with the terms and conditions contained in this Agreement.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the City proceeding to purchase the Property from County and Buyer’s commitment to purchase the Property from City, the Parties agree as follows:

**ARTICLE 1. CONVEYANCE OF PROPERTY**

**1.1. Sale and Purchase.** City agrees to sell and convey to Buyer, and Buyer agrees to accept and purchase from City, the Property for the Purchase Price (as defined below), with the transaction to be implemented through Escrow (as defined below), and subject to the terms and conditions herein stated.

**1.2 Purchase Price.** The “Purchase Price” for the Property is Five Million Four Hundred Thousand Dollars (\$5,400,000.00), payable by Buyer as follows:

**1.2.1 Deposit; Independent Consideration.** The sum of Five Thousand Dollars (\$5,000) shall be deposited by Buyer into Escrow within two (2) business days of the Effective Date as a deposit to be applied to the Purchase Price at the close of Escrow (the “Deposit”). The Deposit shall be payable by federal wire transfer, certified check or cashier’s check drawn to the order of the Escrow Holder named in Section 2.01. The Deposit being delivered by Buyer includes the amount of One Hundred Dollars (\$100) as independent consideration for City’s performance under this Agreement (the “Independent Consideration”), which shall be retained by City, with the resulting credit of Four Thousand Nine Hundred Dollars (\$4,900.00) being applied toward the Purchase Price. If Escrow does not close or if this Agreement is terminated for any reason, then

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the Escrow Holder shall nonetheless disburse the Independent Consideration to City from the Deposit. The Independent Consideration shall be nonrefundable under all circumstances and shall not be applied to the Purchase Price. Buyer and City expressly acknowledge and agree that (i) the Independent Consideration has been bargained for as consideration for Seller's execution and delivery of this Agreement and for Buyer's review, investigation and termination rights during the Due Diligence Period (as defined below), and (ii) such consideration is adequate for all purposes under all applicable laws and judicial decisions.

**1.2.2 Balance of Purchase Price.** The balance of the Purchase Price shall be deposited by Buyer in Escrow no later than 5:00 p.m. Pacific Standard Time on August 22, 2014. This amount shall be payable in cash or by federal wire transfer, certified check or cashier's check drawn to the order of the Escrow Holder named in Section 2.1. The Purchase Price shall be released to City upon the Close of Escrow, subject to the provisions of Section 2.1. If any of the conditions set forth in Section 5.1.1 through 5.1.4 fail to occur or the City is otherwise unable to purchase the Property from County and cannot perform to transfer the Property to Buyer by the Closing Date (as defined below), then the funds deposited by Buyer, minus the Independent Consideration and Buyer's share of Escrow Fees, shall be immediately returned to Buyer without the need for any further instructions, consents or authorizations from the City.

## ARTICLE 2. ESCROW, TITLE and FEES

**2.1 Escrow.** An escrow account (the "Escrow") has been opened to consummate the sale of the Property according to the terms of this Agreement at the office of Fidelity National Title Company (the "Escrow Holder"), 8950 Cal Center Drive, Building 3, Suite 100, Sacramento, California, Escrow Number XXXXXXXX. After the Parties have executed this Agreement, a copy shall be deposited with Escrow Holder, who shall acknowledge receipt and accept its terms. This Agreement shall serve as "Escrow Instructions;" provided, however, that the Parties shall execute such additional escrow instructions consistent with the terms of this Agreement as may be required by Escrow Holder to fully effectuate this transaction. The Escrow shall be implemented on the following terms and conditions:

**2.1.1 Close of Escrow.** The Escrow shall be deemed closed on the date that the grant deed conveying the Property from City to Buyer in the form provided as **Exhibit B**, attached and incorporated herein by this reference, (the "Grant Deed") is recorded with the Sacramento County Recorder and the Title Policy (as defined below) is issued to Buyer (the "Closing Date"). On the Closing Date, exclusive possession of the Property, subject only to the Permitted Exceptions, shall be delivered by City to Buyer. The Escrow shall be considered to be in a condition to close when the Escrow Holder is authorized under this Agreement to record the Grant Deed and issue the Title Policy (as defined below) to Buyer. The Closing Date shall occur on or before the earlier of (a) September 10, 2014, or (b) the tenth (10<sup>th</sup>) day after all of the following events occurs, whichever date is later: (i) the Board of Supervisors ("Board") of the County of Sacramento ("County") approval of the Underlying Contract, (ii) the County's execution and delivery of the Underlying Contract to City, and (iii) the City's execution and delivery of the Underlying Contract to County. [The Closing Date may be extended by Buyer and/or Seller upon written notice thereof to the other Party and Escrow Holder, provided that the conditions listed in Section 5 are satisfied (or waived, if applicable). The Closing Date shall be extended from time to time as reasonably necessary to cause the conditions in Article 5 to be satisfied, but in no event shall the closing date occur later than October 31, 2014 (the "Outside Closing Date"). If Escrow does not close by the Outside Closing Date either party may terminate this Agreement by providing written notice to the other party, whereupon the Deposit (less the Independent Consideration) shall be returned immediately to Buyer.



**2.1.2 Payment of Escrow Fees and Incidental Costs.** Prior to the Closing Date, Buyer shall deposit with the Escrow Holder the Escrow Holder's estimate of Buyer's Closing Costs (as defined in Section 2.1.6), the cost for the Title Policy (as referenced in Section 2.1.6) and Escrow Holder's estimate of Buyer's Incidental Costs (as defined in Section 2.1.7). "Escrow Fees" to include, without limitation, Escrow Holder's charges for preparation of escrow documents, recording costs, the policy of title insurance, and all other costs of escrow and closing. "Incidental Costs" include, without limitation, appraisal reports and survey costs.

**2.1.3 Preliminary Title Report.** Upon the opening of Escrow, City shall obtain a Preliminary Title Report on the Property and provide a copy to Buyer no later than the Effective Date. Within ten (10) days after delivery of the Preliminary Title Report, Buyer shall notify City, in writing, of any objection to any title encumbrance listed in the report. If Buyer makes a timely objection to any title encumbrance which is not eliminated by City before the scheduled Closing Date, then Buyer, at Buyer's election, may do either of the following:

- (1) Terminate this Agreement for its convenience with Buyer receiving a refund of the Purchase Price minus the Independent Consideration and Buyer share of the Escrow expenses incurred by the Escrow Holder to the date of the termination notice; or
- (2) Purchase the Property without a reduction in the Purchase Price and without any liability on the part of City for the items which are not removed from title.

Buyer's failure to timely object to any title encumbrance shall constitute an approval by Buyer of that item. Time is of the essence in performance of the obligations set forth in this Agreement.

**2.1.4 Title.** City shall execute and deliver to Escrow Holder the Grant Deed conveying fee title of the Property to Buyer, free from all liens, charges, encroachments, encumbrances, restrictions, easements, tenancies (including, without limitation, the current parking lease between the County and Priority Parking and other title defects except as follows (the "Permitted Exceptions")):

City shall not be required to remove: (1) easements or rights-of-way for public roads or public entities, if any.

**2.1.5 Conditions of Close of Escrow.** When all of the conditions to closing have been either satisfied or waived by the Parties in writing, and Escrow is ready to close, Escrow Holder shall cause the Grant Deed to be recorded and the Title Policy (as defined below) to be issued to Buyer.

**2.1.6 Title Policy.** Buyer may obtain at Buyer's sole cost a current ALTA owner's policy of title insurance with coverage in the amount of the Purchase Price insuring that good and marketable title to the Property is vested solely in Buyer upon the recording of the Grant Deed, subject only to the Permitted Exceptions (the "Title Policy").

Buyer may request the Escrow Holder to issue to Buyer a commitment for title insurance (the "Commitment"), indicating all easements, covenants, restrictions, reservations and other matters of record affecting title to the Property. The Escrow Holder shall provide copies of all instruments referred to as exceptions or conditions in the Commitment, with a copy of the deed conveying the Property from the County to City. City agrees to

- provide any information or documents and to execute any documents needed or required by the Escrow Holder in order to issue the title policy.

If, after the Commitment has been issued, Buyer fails to purchase the Property, Buyer shall pay Escrow Holder for the cost of preparing the Commitment.

**2.1.7 Buyer's Costs.** In accordance with Chapter 3.88.090 of the Sacramento City Code, the Buyer shall pay the Escrow Fees and Incidental Costs pertaining to this transaction, as well as any commissions for Buyer's agent, if any, and Buyer's attorney and consultant fees and costs. City shall be solely responsible for its attorney and consultant fees and costs.

**2.1.8 Commission** All commissions, fees, and costs owed to these real estate brokers are solely the responsibility of Buyer. Buyer shall indemnify City for any actions of Buyer that may cause City to be liable for real estate brokerage or sales commission for this transaction. City has not engaged any real estate brokers for this transaction. . The Parties' representations and obligations under this Section 2.1.8 shall survive the expiration or earlier termination of this Agreement.

**2.1.9 Proration and Costs.** Taxes, assessments, and similar charges as listed in the Preliminary Title Report, and charges for utilities (including water, sewer, electric and gas) for the current fiscal year are to be prorated as of the Closing Date. However, the Parties acknowledge that neither County nor City are subject to payment of property taxes.

**2.1.10 Standard Escrow Instructions.** For those escrow matters not specifically addressed herein, Escrow Holder's standard escrow instructions shall be applicable. Where there is a conflict between the provisions of this Agreement and the provisions of Escrow Holder's standard escrow instructions, the provisions of this Agreement shall control.

### **ARTICLE 3. ADDITIONAL TERMS AND CONDITIONS**

**3.1 Condition of Property.** Buyer is purchasing the Property in its "As is" Where is" condition. Seller makes no representations or warranties regarding the condition of the Property or its suitability for Buyer's intended purposes. Buyer has independently obtained from County information regarding the condition of the Property and Seller has no liability for any failure of County to fully disclose information in the possession of County regarding the Property. Buyer hereby acknowledges City (and it's officers, agents and employees) has not and does not hereby make any representation or warranty to Buyer concerning the Property's compliance with hazardous waste laws or any other statutes, ordinances, rules or regulations, or need for land use entitlements.

**3.2 Development of the Property.** Buyer understands and agrees that any responsibility to obtain land use entitlements and building permits, and the cost thereof, for development and improvement of the Property for Buyer's intended use is solely the responsibility of Buyer. Buyer acknowledges that it is acquiring the Property subject to all existing laws, ordinances, rules and regulations, and that neither City nor any of City's agents or employees have made any warranties, representations, or statements regarding any laws, ordinances, rules, or regulations of any governmental or quasi-governmental body, entity, district, or agency having authority with respect to the use, condition, or occupancy of the Property. Buyer shall perform and rely solely upon its own independent investigation concerning the Property and the Property's compliance with any applicable law. City makes no commitment or representation with respect to issuing any permits or approvals required for development and improvement of the Property, and



reserves all of its land use authority and discretion in reviewing any application for any entitlements and permits.

**3.3 Assignment of County Warranties.** At Closing, City shall assign to Buyer, on a non-exclusive basis, City's rights to any warranties and indemnities received by City from County pursuant to the Underlying Contract affecting the Property. If any of the warranties, indemnities or any other obligations of County assigned to Buyer are not enforceable by Buyer, then City shall, upon Buyer's request and at Buyer's cost, exercise good faith efforts to enforce such warranties, indemnities or other obligations for the benefit of City and/or Buyer, as required under the circumstances. The obligation of City under this Section shall survive the Closing and the recordation of the Grant Deed.

**3.4 Underlying Contract.** Seller shall provide Buyer with copies of the executed Underlying Contract promptly upon receipt of the same from the County. Seller covenants and agrees that Seller shall comply with the terms and conditions of the Underlying Contract (to the extent applicable to Seller) and shall, to the extent necessary to avoid any waiver of any rights thereunder, enforce the terms and conditions thereof against County. Once executed, Seller shall not voluntarily terminate the Underlying Contract or allow the same to lapse without Buyer's prior written consent, which consent may be withheld in Buyer's sole and absolute discretion. Seller shall promptly provide Buyer with copies of all notices from County received by City relating to the Underlying Contract.

**3.5 Natural Hazards Disclosures.** As of the Closing, to the extent permitted by law, Buyer shall be deemed to have knowingly, voluntarily and intentionally waived the right to the disclosures ("Natural Hazards Disclosures") set forth in: (i) California Government Code Section 8589.3 (a special flood area); (ii) California Government Code Section 8589.4 (dam failure inundation area); (iii) California Government Code Section 51183.5 (earthquake fault zone); (iv) California Public Resources Code Section 2621.9 (seismic hazard zone); (v) California Public Resources Code Section 4136 (wildland fire area); and (vi) California Public Resources Code Section 2694 (high fire severity area). This waiver by Buyer includes, to the extent permitted by law, any remedies Buyer may have for Seller's nondisclosure of the Natural Hazards Disclosures. At its sole discretion and expense, Buyer may elect to engage a consulting firm to conduct a natural hazards audit to ascertain whether or not the Property is subject to any natural hazards.

**3.6 Flood Protection.** Buyer acknowledges that the Property lies adjacent to the Sacramento River and the American River is protected from flooding by levees. While City as Seller may have had some obligation in the past, is currently, and/or in the future may have some obligation to maintain the levees; Seller does not warrant the condition of the levees or that the Property will not be subject to flooding, either in a 100 year storm or in the event of a levee failure. Buyer assumes the risk that the Property may be subject to flooding in the future and Buyer shall be deemed to have knowingly, voluntarily and intentionally waived any liability against Seller for such risk.

**3.7 Building Energy Use.** In addition to other disclosures set forth in this Agreement regarding the condition of the existing Property, Seller hereby discloses in compliance with Section 25402.10 of the Public Resources Code (AB 1103, Chapter 533, Statutes of 2007), that information regarding the energy use of the building on the Property during the most recent 12-month can be obtained from County.

#### **ARTICLE 4. RIGHTS AND RELEASE**

**4.1 Right of Buyer to Enter Property.** City represents and warrants to Buyer it has obtained the consent of the County to allow City and/or City's agents the right to enter the Property to conduct tests or investigations (the "acts") provided that:

- (a) The acts shall be conducted at the sole cost and expense of Buyer;
- (b) The acts do not unreasonably interfere with use of the Property by County nor damage the Property; and
- (c) Buyer shall indemnify and hold City harmless from any costs or liability resulting from the acts; provided, however, that Buyer shall have no obligation to indemnify or hold the City harmless no such obligation to indemnify for, or any liability for: (i) latent defects; (ii) Seller's or County's actions or inactions; (iii) hazardous materials not placed on the Property by Buyer; or (iv) discovering conditions, facts or circumstances that adversely affect (or may adversely affect) the value of the Property.

**4.2 Release and Indemnification of City.** Buyer acknowledges that it is being afforded access to the Property and the right to make on-site inspections and the right to examine documents relating to the Property and will otherwise investigate the Property to Buyer's satisfaction. Buyer shall perform and rely upon its own independent investigation of the physical condition of the Property.

Seller has no information, other than that provided to Buyer by Seller or County, in its possession regarding the potential presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances on or in the building, soil or groundwater, or the existence of any and underground storage tanks in or about the Property. Seller does not represent or warrant that the Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Property.

From and after the Closing Date, Buyer hereby releases and completely indemnifies City and its officers, directors, agents and employees from all responsibility and liability regarding the condition, including, but not limited to, the condition of the soil, presence of toxic or hazardous materials or contaminants and all other physical characteristics, and valuation or utility of the Property, regardless of any rights or remedies Buyer may have either now or in the future under any State or Federal law or regulation; provided, however, that Buyer shall have no obligation to indemnify the City or its officers, directors, agents or employees to the extent any loss or liability arises from the acts or omission of any of them.

It is specifically the intention of the Parties that as to the presence of toxic or hazardous materials, Buyer is assuming full and complete responsibility for all costs associated with cleanup requirements, any associated damages or other costs and expenses, and that City shall have no liability whatsoever therefor except to the extent the presence of such toxic or hazardous materials are present on the Property as a result of the acts of omission of the City or any of its officers, directors, agents or employees. The obligation of Buyer under this Section shall survive the Closing and the recordation of the Grant Deed.

## **ARTICLE 5. CLOSING CONDITIONS**

**5.1 Buyer's Conditions Precedent.** In addition to the other terms and provisions of this Agreement, Buyer's obligations hereunder are subject to the timely satisfaction or written waiver by the respective dates designated below (or if no date is designated, then by the Closing Date) of the following conditions precedent for Buyer's benefit:

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**5.1.1 Seller's Compliance with Agreement.** City's compliance with each of Seller's duties and obligations herein, and the accuracy of each of City's representations and warranties as of the Close of Escrow.

**5.1.2 County Approval of Underlying Contract.** Approval of the Underlying Contract by the Board and execution and delivery of the Underlying Contract by a duly authorized representative of County.

**5.1.3 City Approval of Underlying Contract and Agreement.** Approval of the Underlying Contract and this Agreement by the City and execution and delivery thereof by a duly authorized representative of City.

**5.1.4 Simultaneous Closing.** The closing of the escrow established with Escrow Holder for City's purchase of the Property pursuant to the Underlying Contract simultaneously with this Escrow; provided, however, that (i) if the failure to close under this Agreement is due to a default of County under the Underlying Contract, City shall have no liability to Seller, and (ii) if the failure to close under this Agreement is due to a default of Seller under the Underlying Contract, then Buyer shall have the right to exercise any or all of its rights and remedies available hereunder, at law or in equity, including, without limitation, the right to bring an action against City for specific performance.

**5.1.5 Title Policy.** Escrow Holder's issuance of the Title Policy.

The foregoing are solely for the benefit of Buyer and may be waived by Buyer in writing. In the event any of the foregoing are not satisfied by the respective dates designated hereunder for any reason other than a default by Seller or Buyer hereunder, then this Agreement shall terminate, the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement except for those which this Agreement expressly provides shall survive any termination.

## **ARTICLE 6. MISCELLANEOUS PROVISIONS**

**6.1 Additional Documents.** The City and Buyer agree to execute such other documents and instruments as may be reasonably requested by the other party or Escrow Holder in connection with the property conveyances that are the subject of this Agreement, consistent with the provisions of this Agreement.

**6.2 Amendments.** No amendment or modification to this Agreement will be valid unless executed in writing and approved by the governing bodies of the parties.

**6.3 Assignment.** Buyer may not assign this Agreement without City's prior written consent. The valid assignment of this Agreement shall not relieve Buyer of liability under this Agreement.

**6.4 Authority of Signatories.** Each party to this Agreement warrants to the other that it is duly organized and existing and each signatory hereto represents to the other party that it has full right and authority to enter into and consummate this Agreement and all related documents.

**6.5 Binding Effect.** This Agreement shall be binding on and inure to the benefits of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

**6.6 Counterparts; Electronic Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument. Signatures to this Agreement or any amendment hereof

transmitted by telecopy or electronic mail shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original of this Agreement (and any amendment hereto) with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement (or any amendment hereto), it being expressly agreed that each party to this Agreement shall be bound by its own telecopied or e-mailed signature and shall accept the telecopied or e-mailed signature of the other party to this Agreement.

## 6.7 Default.

6.7.1 Buyer's Default. **IF BUYER'S BREACH IS FAILING TO CLOSE THIS ESCROW WHEN OBLIGATED (AND IS NOT DUE TO SELLER'S ACTS OR OMISSIONS OR SELLER'S DEFAULT OR BREACH), SELLER'S DAMAGES WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN. THE PARTIES HAVE DISCUSSED AND NEGOTIATED IN GOOD FAITH UPON THE QUESTION OF THE DAMAGES TO BE SUFFERED BY SELLER IN THE EVENT BUYER BREACHES THIS AGREEMENT BY FAILING TO CLOSE ESCROW WHEN OBLIGATED AND HAVE ENDEAVORED TO REASONABLY ESTIMATE SUCH DAMAGES. THE PARTIES AGREE THAT, BY REASON OF THE AFORESAID CONSIDERATIONS: (i) SUCH DAMAGES ARE AND WILL BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX; (ii) LIQUIDATED DAMAGES IN THE AMOUNT OF THE DEPOSIT ARE AND WILL BE REASONABLE; (iii) IN THE EVENT OF SUCH BREACH, SELLER SHALL BE ENTITLED TO BE PAID AND RETAIN THE DEPOSIT IN SATISFACTION OF SUCH LIQUIDATED DAMAGES AS SELLER'S SOLE REMEDY; AND (iv) IN CONSIDERATION OF THE PAYMENT OF SUCH LIQUIDATED DAMAGES, SELLER SHALL BE DEEMED TO HAVE WAIVED ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF THE DEPOSIT AS 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. SELLER WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389.**

Initialed by Buyer(s): \_\_\_\_\_

Initialed by City: \_\_\_\_\_

6.7.2 Seller Default. If Seller defaults in its obligations hereunder, then Buyer shall be entitled to all remedies available at law or in equity.

**6.8 Entire Agreement.** This Agreement and the attached Exhibit(s) constitute the entire agreement between the parties relating to the sale of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Buyer and City.

**6.9 Exhibits Incorporated.** All exhibits referred to herein and attached hereto are fully incorporated into this Agreement as if such exhibits were set forth in their entirety at this place.

**6.10 Governing Law.** This Agreement shall be construed and interpreted in accordance with, and the validity of this Agreement shall be adjudged by, the laws of the State of California. The place of this Agreement and its situs or forum is at all times in the County of Sacramento, State of California, in which county and state all matters, whether sounding in contract or in tort relating to the validity, construction, interpretation, and enforcement of this Agreement, shall be determined.

**6.11 Headings.** The headings of the articles and sections of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

**6.12 Interpretation.** This Agreement is the result of the joint efforts and negotiations of all parties, and all parties agree that this Agreement will be interpreted as though each of the parties participated equally in the drafting and composition of this Agreement and each and every part hereof. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls on a Saturday, Sunday, or California state holiday, such time for performance shall be extended to the next business day (i.e., a day other than Saturday, Sunday, and California State holidays). Whenever required by the context of this Agreement, the singular shall include the plural and vice versa.

**6.13 Incorporation of Recitals.** The recitals set forth above are incorporated by reference.

**6.14 Legal Proceedings; Attorneys' Fees.** Subject to Section 5.3, above, either party may initiate legal action to enforce any term or condition of this Agreement, at law or in equity. Further, in any such legal action, the party not prevailing in such action shall pay any and all costs and expenses reasonably incurred by prevailing party in connection therewith, including, and without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by any party in enforcing a judgment in its favor shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from and to survive and not be merged into any such judgment.

**6.15 Notices.** Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed, or sent by wire or other telegraphic communication in the manner provided in this section to the following persons:

(a)	<u>If to Buyer:</u>	(b)	<u>If to City:</u>
	SB Real Estate Sacramento LLC		City of Sacramento
	c/o The Sports Basement		Dept. of Economic Development
	PO Box 29570		
	San Francisco, CA 94129-0570		915 I Street, 4th floor
	Attn: Eric Prosnitz		Sacramento, CA 95814
	E-mail: eprosnitz@sportsbasement.com		Attn: Leslie Fritzsche

With a copy to: Miller Starr Regalia  
1331 N. California Blvd., 5th Flr.  
Walnut Creek, CA 94596  
Attn: Hans Lapping  
E-mail: hans.lapping@msrlegal.com

Either party may change that party's address for these purposes by giving written notice of the change to the other party. Notice of change of address shall be given by written notice in the manner described in this section. A notice sent in compliance with the provisions of this Section shall be deemed given on the date of receipt (or attempted delivery if delivery is refused), except that any notice sent via electronic mail shall be deemed given on the date sent (as evidenced by the sender's "sent mail" mailbox and by the absence of a delivery failure message) if sent prior to 5:00 p.m. Pacific Time on a business day and, otherwise, on the next succeeding business day.

**6.16 No Joint Venture.** No party nor its agents, consultants or contractors are or shall be considered to be agents of any other party in connection with the performance of this Agreement.



Nothing in this Agreement shall be construed to create a joint venture, partnership or other relationship between the parties.

**6.17 No Third-Party Beneficiary.** This Agreement is not intended to, and will not be interpreted as conferring, any benefit or right whatsoever upon any person or entity that is not a party hereto.

**6.18 Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, or is found to be prohibited by law, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable or prohibited, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**6.19 Successors.** The provisions of this Agreement shall bind the Parties' successor entities and authorized assigns.

**6.20 Survival of Provisions.** Notwithstanding any provisions of this Agreement to the contrary, the provisions of this Agreement shall survive the Close of Escrow and shall not merge into the Grant Deed and the recordation thereof, and the covenants, representations, warranties, hold harmless and indemnification obligations made by each party herein shall survive the recording of the Grant Deed.

**6.21 Survival of Warranties.** All warranties, covenants, releases and other obligations described in this Article and elsewhere in this Agreement shall survive recording of the Grant Deed.

**6.22 Term.** This Agreement shall become effective on the date it is fully executed by all parties and shall remain in effect until the earlier of (a) termination by the mutual written agreement of all parties, and (b) the Outside Closing Date.

**6.23 Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

**6.24 Loss & Destruction.** The parties agree that the Uniform Vendor and Purchaser Risk Act set forth in Civil Code 1662 and its provisions governing the allocation of risk of loss shall govern this transaction, except where a contrary result is specified herein. Civil Code Section 1662 states: Any contract hereafter made in this State for the purchase and sale of real property shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise: (a) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that has been paid; (b) If, when either the legal title or possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid. This section shall be so interpreted and construed as to effectuate the general purpose to make uniform the law of those states which enact it.

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

**SELLER:**

**CITY OF SACRAMENTO,  
A municipal corporation**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
For John F. Shirey, City Manager

Dated: \_\_\_\_\_

**BUYER:**

**SB SACRAMENTO REAL ESTATE, LLC, a  
California limited liability company**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

**ATTEST:**

By: \_\_\_\_\_  
City Clerk



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**EXHIBIT "A"**

**Description of Property**

That certain real property situated in the City of Sacramento, County of Sacramento, State of California described as follows:

**All of Lots 1, 2, 3 and 4 in the block bounded by I and J, Seventh and Eighth Streets, of the City of Sacramento, according to the official plat thereof, described as follows:**

**Beginning at the northwest corner of said Lot 1, said corner being the intersection of the southerly line of said I Street with the easterly line of said Seventh Street; thence from said point of beginning along the southerly line of said I Street South 71 deg. 20'20" East 322.34 feet to the northeast corner of said Lot 4, said corner being the intersection of the southerly line of said I Street with the westerly line of said Eighth Street; thence along the westerly line of said Eighth Street South 18 deg. 32'00" West 160.63 feet to the southeast corner of said Lot 4, said corner being the intersection of the westerly line of said Eighth Street with the northerly line of the twenty foot alley in said block bounded by I and J, Seventh and Eighth Streets; thence along the northerly line of said alley north 71 deg. 21'00" West 322.25 feet to the southwest corner of said Lot 1, said corner being the intersection of the northerly line of said alley with the easterly line of said Seventh Street; thence along said easterly line North 18 deg. 30'00" East 160.69 feet to the point of beginning.**

**APN 006-0034-019**

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**EXHIBIT "B"**

**Grant Deed Form**

**RECORDING REQUESTED BY AND  
AND FOR THE BENEFIT OF  
CITY OF SACRAMENTO**

**NO FEE DOCUMENT  
Government Code Section 6103**

**Grantor is a government agency and is Exempt  
from the payment of Transfer Tax pursuant to  
Revenue and Taxation Code Section 11922**

**WHEN RECORDED MAIL TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

*(Space Above for Recorder's Use)*

**MAIL TAX STATEMENTS TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF SACRAMENTO, a municipal corporation, ("**Grantor**"), hereby grants to \_ SB SACRAMENTO REAL ESTATE, LLC, a California limited liability company ("**Grantee**"), all of Grantor's right, title, and interest in and to that certain real property situated in the City of Sacramento, County Sacramento, State of California, as described in Exhibit A, which is attached hereto and incorporated herein by this reference.

Grantor has caused this Grant Deed to be duly executed on \_\_\_\_\_, 2014.

**GRANTOR:**

City of Sacramento, a municipal corporation

By: \_\_\_\_\_  
John F. Shirey, City Manager

***[Notary Acknowledgment Required]***