



# CITY OF LONG BEACH

DEPARTMENT OF ECONOMIC DEVELOPMENT

333 WEST OCEAN BOULEVARD • LONG BEACH, CA 90802 • (562) 570-6099 • Fax (562) 570-6380

## H-2

December 4, 2018

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

### RECOMMENDATION:

Receive the supporting documentation into the record, conclude the public hearing, and consider an amendment to a proposed property sale that promotes an economic opportunity pursuant to California Government Code, Section 52201(a)(1);

Adopt a Resolution approving the sale of property and finding that the sale will create an economic opportunity; and,

Authorize the City Manager, or designee, to execute any and all documents necessary to amend the requirements of a Purchase and Sale Agreement, with Atlantic and Artesia, LLC, a California limited liability company, an affiliate of Frontier Real Estate Investments, LLC, a California limited liability company, or affiliate (Buyer/Developer), reducing the purchase price from \$2,100,000 to \$1,100,000, for 601-685 East Artesia Boulevard/6600-6620 Atlantic Avenue, Assessor Parcel Numbers 7115-003-901, -902, -903, -904, -905, -906, and -907 (Subject Property). (District 9)

### DISCUSSION

On August 2, 2016, the City Council approved the sale of the Subject Property located at 601-685 East Artesia Boulevard/6600-6620 Atlantic Avenue (Attachment A). The Subject Property is approximately 93,230 square feet and is assembled into a full block of vacant land. Formerly owned by the Redevelopment Agency of the City of Long Beach (Agency), the Subject Property was included in the Successor Agency's Long Range Property Management Plan (LRPMP), which was approved by the State of California Department of Finance (DOF) on March 10, 2015 and amended on June 24, 2015. The Subject Property has been categorized with a permissible use of "Future Development," allowing for the disposition of the Subject Property through a Request for Proposals (RFP) process for development consistent with the vision and intent of the North Long Beach Redevelopment Plan Area and its guiding documents. As further required in the LRPMP, the Subject Property has been conveyed to the City and is now a City-owned asset.

Through the RFP process conducted in March 2016, the Buyer/Developer was selected by a panel consisting of representatives from the Development Services and Economic Development Departments, and an outside real estate advisor, Keyser Marston & Associates, to purchase and develop the Subject Property. The panel unanimously selected the Buyer/Developer due to the firm's extensive experience in infill retail development and construction.

The proposed development concept (Attachment B) consisted of a 4,800-square foot retail building to be anchored by a commercial bank and an 8,400-square foot building with space for multiple restaurants.

Over the past two years, the Buyer/Developer has been working with City staff on the entitlement of the proposed project as required under the terms of the agreement. Through the entitlement process, City staff has further evaluated the conceptual design and requested significant changes and expansion of the project area. First, an approximate 4,800-square foot "parklet" will be introduced to the southwest corner of the project site and will be open to the public and patrons of the retail center. The space will be available for programming and community engagement to meet the needs for community gathering spaces that currently do not exist in the area. The Buyer/Developer will provide security during regular operating hours. Second, extensive architectural, landscape, and site modifications have been required increasing the quality of the project. The City has requested that the Buyer/Developer provide articulated building facades with brick veneer and smooth stucco finishes, large landscaped setbacks with tier landscaping, off-site landscaping, hardscape (multiple hardscape surfaces including stone pavers, concrete, and granite), and lighting improvements. Third, the Public Works Department has increased public dedication requirements of the project, thus reducing the anticipated area for development. Finally, the site plan has been modified to consist of four free standing buildings. The revised project design and new site plan are attached as Attachment C and D. The City-requested changes in the scope of the project have significantly increased the project costs, originally estimated at approximately \$8,000,000.

The success of the proposed project, with all the modifications in design and project features, is vital for the revitalization of the area. Under the current terms of the Purchase and Sale Agreement, the total purchase price for the Subject Property is \$2,100,000. To assist the Buyer/Developer in implementing the City requested community benefiting design features, staff recommends a reduction of the purchase price from \$2,100,000 to \$1,100,000.

Government Code section 52201 requires the City to prepare and make publicly available a report disclosing certain information regarding property sold to create an economic opportunity. Staff has prepared a report in regard to the proposed amendment, which is attached as Attachment E and it is available on the Department of Economic Development's website.

This matter was reviewed by Deputy City Attorney Richard F. Anthony on November 12, 2018 and by Budget Analysis Officer Julissa José-Murray on November 6, 2018.

TIMING CONSIDERATIONS

City Council action is requested on December 4, 2018, to allow entitlement to occur in a timely manner. The Buyer/Developer will commence construction in the first quarter of 2019.

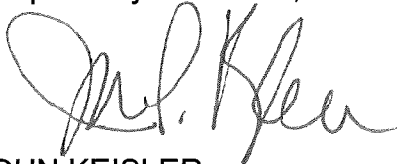
FISCAL IMPACT

Under the revised terms of the Purchase and Sale Agreement, the Buyer/Developer will pay a \$1,100,000 purchase price (instead of the originally agreed upon \$2,100,000). The purchase price, less recovery of escrow fees, closing fees and administrative costs, will be remitted to the Los Angeles County Auditor-Controller for distribution to the affected taxing entities based on their share of the 1 percent tax rate. The City's share is approximately 21 percent of the net sales proceeds. Consistent with City Council direction, 75 percent of the City's share shall be retained for projects within North Long Beach Redevelopment Plan Area and 25 percent shall be used for Citywide economic development priorities. Approval of this recommendation will provide continued support for the local economy and further the intent of the North Long Beach Redevelopment Plan Area.

**SUGGESTED ACTION:**

Approve recommendation.

Respectfully submitted,



JOHN KEISLER  
DIRECTOR OF ECONOMIC DEVELOPMENT

Attachments:

Resolution

Attachment A: Subject Property

Attachment B: Development Concept

Attachment C: Revised Project Design

Attachment D: Site Plan

Attachment E: Summary Report

APPROVED:

  
PATRICK H. WEST  
CITY MANAGER

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF LONG BEACH AUTHORIZING THE EXECUTION  
OF A FIFTH AMENDMENT TO PURCHASE AND SALE  
AGREEMENT RELATING TO CERTAIN PROPERTY  
LOCATED AT 6600-6620 ATLANTIC AVENUE / 601-685 E.  
ARTESIA BOULEVARD AND MAKING CERTAIN FINDINGS  
IN CONNECTION THEREWITH

WHEREAS, the City of Long Beach currently owns the property located at  
6600-6620 Atlantic Avenue / 601-685 E. Artesia Boulevard ("Subject Property"); and

WHEREAS, the Subject Property was originally acquired by the former  
Redevelopment Agency of the City of Long Beach, and was transferred to the City via the  
Successor Agency to the Redevelopment Agency of the City of Long Beach ("Successor  
Agency") in accordance with State of California legislative actions ABx1 26, AB 1484 and  
SB 107 commonly known as the RDA Dissolution Laws; and

WHEREAS, the Subject Property is included in the Successor Agency's Long  
Range Property Management Plan; and

WHEREAS, pursuant to that certain Purchase and Sale Agreement and  
Escrow Instructions dated as of January 4, 2017 (as the same has previously been  
amended, the "Agreement") by and between City and Atlantic and Artesia LLC ("Buyer"),  
City has agreed to sell the Subject Property to Buyer; and

WHEREAS, City and Buyer have agreed to certain covenants regarding the  
development of the Subject Property meant to benefit the public, and City and Buyer wish  
to execute a Fifth Amendment to the Agreement (the "Amendment") in order to amend the  
Agreement to reflect a reduction in the purchase price of the Subject Property in connection  
with such development covenants; and

1 WHEREAS, in accordance with California Government Code Section 52201,  
2 City (i) prepared a report summarizing the details of the Amendment and made such report  
3 available for public inspection, and (ii) held a duly noticed hearing regarding the proposed  
4 Amendment;

5 NOW, THEREFORE, the City Council of the City of Long Beach resolves as  
6 follows:

7 Section 1. The foregoing recitals are true and correct and are a  
8 substantive part of this Resolution.

9 Section 2. The City Council finds and determines that the proposed sale  
10 and development of the Subject Property will result in an increase of at least fifteen percent  
11 (15%) of total property tax generated by the Subject Property at full implementation when  
12 compared to the year prior to the year in which the Subject Property was acquired by City,  
13 or its governmental predecessors-in-interest.

14 Section 3. The City Council finds and determines that the consideration to  
15 be paid by Buyer to City for the Subject Property is not less than the fair reuse value at the  
16 use and with the covenants and conditions and development costs authorized and/or  
17 required by (i) the Agreement and (ii) other development conditions of approval.

18 Section 4. This resolution shall take effect immediately upon its adoption  
19 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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I hereby certify that the foregoing resolution was adopted by the City Council  
of the City of Long Beach at its meeting of \_\_\_\_\_, 2018 by the  
following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

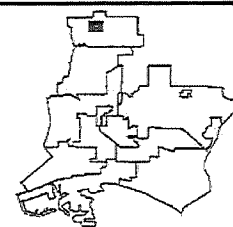
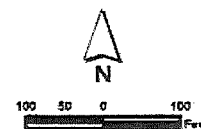
\_\_\_\_\_

\_\_\_\_\_  
City Clerk

ARTESIA FWY



**Council District: 9**



## Project Rendering

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**Attachment B**

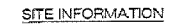
**FRONTIER**

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**Attachment C**



### PARKING INFORMATION

\* PARTIAL REPT FOR PREVIOUSLY DELETED INFORMATION CODE  
\*\* CREDIT GIVEN FOR ONLY FULL

MIN. DRIVE AISLE WIDTH: 24'-0"  
STANDARD PARKING STALL: 8'-6" x 15'-0"

ALL UTILITIES TO BE UNDERGROUNDED.

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- VICINITY MAP



F 1105 1674 = 1. ungu. Romanus. *Antiquus de Antiquitate Christianorum* (1674) = 1. ungu.  
Plein. ungu.



6600 ATLANTIC AVENUE  
LONG BEACH, CALIFORNIA

## **ATTACHMENT E**

### **SUMMARY REPORT**

#### **PURSUANT TO GOVERNMENT CODE § 52201**

#### **REGARDING A FIFTH AMENDMENT TO A PURCHASE AND SALE AGREEMENT WITH ATLANTIC AND ARTESIA, LLC, FOR THE SALE OF PROPERTY LOCATED AT 601-685 EAST ARTESIA BOULEVARD/6600-6620 ATLANTIC AVENUE**

Pursuant to Government Code § 52201, the City Council of the City of Long Beach must hold a noticed public hearing and, prior to the public hearing, provide the following information in written form and available to the public and through the City's website, regarding the sale or lease of property to create economic opportunity. This report sets forth certain details of the proposed Fifth Amendment to a Purchase and Sale Agreement between the City of Long Beach ("City") and Atlantic and Artesia, LLC, an affiliate of Frontier Real Estate Investments, LLC ("Buyer") for the purchase of 601-685 East Artesia Boulevard/6600-6620 Atlantic Avenue ("Subject Property"). Notice was published in the Long Beach Press Telegram for a public hearing to be held on December 4, 2018.

The following Summary Report was prepared pursuant to Government Code § 52200 and 52201.

#### **Economic Opportunity [§52200.2(b)]:**

The City completed assembly of the Subject Property in 2010, at which time the annual property taxes for the Subject Property were \$24,406. Given project costs of approximately \$9,000,000, anticipated annual property taxes at full implementation will be \$90,000, a 268% increase in annual property taxes to affected taxing entities.

- I. Proposed Sale of City Owned Property [§52201(a)(2)(A)]:** The City assembled the Subject Property through the acquisition of various parcels (approximately 93,230 square feet) and entered into a Purchase and Sale Agreement with the Buyer. The Fifth Amendment amends the purchase price based on certain requirements imposed on the Buyer, by the City, for community-serving purposes, and certain development standards above those otherwise required by applicable zoning. A copy of the Purchase and Sale Agreement and Proposed Fifth Amendment are attached as Exhibit 1 and Exhibit 2 to this Summary Report.
- II. Cost of the Agreement to the City[§52201(a)(2)(B)(i)]:** The cost of the agreement to the City is approximately \$7,790,000 in land acquisition costs through negotiated settlement and the use of eminent domain. Relocation and clearance costs are unknown.
- III. Estimated Value of the Interests to be Conveyed Determined as the Highest and Best Uses Permitted Under the General Plan or Zoning[§52201(a)(2)(B)(ii)]:** The estimated value of the interests to be conveyed is \$2,100,000. The City conducted a Request for Proposal process requesting proposals consistent with the vision and intent of the North

Long Beach Redevelopment Project Area and its guiding documents. Of the proposals received, the Buyer's proposal was selected at a purchase price of \$2,100,000 offering the best value to the City with a development concept design that offered a well-balanced land use transition while complementing the surrounding residential neighborhood.

- IV. **Estimated Value of the Interests to be Conveyed at Highest Use and With Conditions, Covenants and Development Costs[§52201(a)(2)(B)(iii)]:** The estimated value of the interests to be conveyed at Highest Use and with Conditions, Covenants and Development Costs is approximately \$1,100,000.
- V. **Explanation of Why the Acquisition, Sale, or Lease of the Property Will Assist in the Creations of Economic Opportunity[§52201(a)(2)(B)(iv)]:** An economic opportunity is created through the sales agreement which will increase property tax revenues to all property tax collecting entities, by at least 15 percent of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the City.

The City completed assembly of the Subject Property in 2010, at which time the annual property taxes for the Subject Property was \$25,115. Given project costs of approximately \$9,000,000, anticipated annual property taxes at full implementation is \$90,000, a 258% increase in annual property taxes to affected taxing entities.



## EXHIBIT 1 TO SUMMARY REPORT

### PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

(6600 Atlantic)

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement"), dated as of January 4, 2017, is entered into pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on August 2, 2016, by and between the CITY OF LONG BEACH, a municipal corporation ("Seller"), and ATLANTIC AND ARTESIA LLC, a California limited liability company ("Buyer").

#### RECITALS

A. Seller is the owner of that certain real property and improvements, located in the City of Long Beach, County of Los Angeles, State of California, more particularly described in Exhibit A ("Property") and commonly referred to as 6600 Atlantic Avenue, Long Beach, CA. The Property was formerly owned by the Redevelopment Agency of the City of Long Beach ("Agency"), which was dissolved pursuant to certain recent State of California legislative actions commonly known as ABx1 26, AB 1484 and SB 107 (collectively, the "Dissolution Statute").

B. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer, on the terms and subject to the conditions contained in this Agreement.

C. The parties desire that Buyer develop the Property in accordance with this Agreement and that such development eliminates blighting influences, enhances economic development opportunities adjacent to the Property, generates new jobs, and increases property tax revenues.

D. As required by the Dissolution Statute, this Agreement has been approved by the City Council of the City of Long Beach.

In consideration of the mutual covenants, agreements and representations contained in this Agreement, Seller and Buyer agree as follows:

#### ARTICLE I

##### PURCHASE AND SALE; BUYER'S ANTICIPATED USE; DISSOLUTION STATUTE

**1.1 Purchase and Sale.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer, on and subject to the conditions, covenants and terms contained in this Agreement.

**1.2 Buyer's Anticipated Use.** As a material consideration inducing Seller to convey the Property to Buyer, Buyer has advised Seller that Buyer is acquiring the Property to construct or cause to be constructed several buildings (the "Buildings") on the Property and operate the Property primarily as a retail center ("Buyer's Anticipated Use"). Buyer acknowledges that Seller has agreed to sell the Property to Buyer in part in reliance on this representation. Specific obligations between the parties with respect to Buyer's Anticipated Use and the construction of the Buildings shall be expressly defined in the Covenant attached hereto as Exhibit E.

**1.3 Dissolution Statute.** Buyer acknowledges that this Agreement and the Property are subject to the Dissolution Statute and the ongoing interpretation thereof by certain governmental authorities tasked with the administration of the Dissolution Statute.

## EXHIBIT 1 TO SUMMARY REPORT

### ARTICLE II PURCHASE PRICE AND DEPOSITS

**2.1 Escrow.** Within one (1) business day after this Agreement is executed by both parties, Seller and Buyer shall open an escrow ("Escrow") with International City Escrow, Attention: Patreece Coburn ("Escrow Agent"), by delivering an executed copy of this Agreement to Escrow Agent ("Opening of Escrow"). Concurrently with the Opening of Escrow, Buyer shall deliver the Deposit (as defined in Section 2.2A) to Escrow Agent. The Escrow Agent shall deposit the Deposit into a federally insured interest bearing account as designated by Seller. The closing of the Escrow ("Close of Escrow") shall be in accordance with Article IV of this Agreement. This Agreement shall constitute joint primary escrow instructions to the Escrow Agent; provided, however, that the parties shall execute such additional instructions as requested by the Escrow Agent not inconsistent with the provisions hereof. This Agreement and any such escrow instructions executed by the parties shall constitute the escrow instructions for this transaction. In the event of any inconsistency between such escrow instructions and this Agreement, this Agreement shall control the rights and obligations of the parties.

**2.2 Purchase Price.** The total purchase price ("Purchase Price") for the Property shall be Two Million One Hundred Thousand Dollars (\$2,100,000), which shall be deemed to be allocated among the separate legal parcels constituting the Property on a uniform valuation per square foot.


A. Deposit. Concurrently with the Opening of Escrow, Buyer shall deliver to Escrow Agent the amount of Fifty Thousand Dollars (\$50,000) (together with all interest earned in Escrow on such funds, if any, the "Deposit"). Buyer and Seller hereby acknowledge that ONE HUNDRED AND 00/100 DOLLARS (\$100.00) of the Deposit constitutes independent contract consideration (the "Independent Contract Consideration") for this Agreement, which sum shall be paid to Seller upon any termination of this Agreement (except arising from a default by Seller hereunder) and shall be non-refundable to Buyer, but which shall be applied against the Purchase Price at Closing.

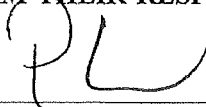
B. Balance of Purchase Price. Upon the Close of Escrow, the amount of the Deposit shall be credited toward the Purchase Price. Buyer shall deposit with the Escrow Agent the balance of the Purchase Price (the "Purchase Funds") in accordance with Section 2.3, in sufficient time such that the Escrow Agent will be able to disburse the cash proceeds accruing to Seller on the Close of Escrow.

**Liquidated Damages.** IF THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT IS NOT CONSUMMATED DUE TO A BREACH OR DEFAULT OF BUYER THAT IS NOT CURED IN ACCORDANCE WITH THIS AGREEMENT, THEN SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT AND RECEIVE AND RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AS SELLER'S SOLE AND EXCLUSIVE REMEDY, EXCEPT THIS SECTION SHALL NOT LIMIT SELLER'S CLAIMS FOR ATTORNEYS' FEES UNDER THIS AGREEMENT. THE RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO THE CALIFORNIA CIVIL CODE. BUYER AND SELLER AGREE THAT (I) THE AMOUNT OF LIQUIDATED DAMAGES IS REASONABLE CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, INCLUDING THAT ASCERTAINING THE AMOUNT OF SELLER'S ACTUAL DAMAGES WOULD BE COSTLY AND INCONVENIENT; AND (II) THE AMOUNT OF THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER, INCLUDING THE COST OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE

## EXHIBIT 1 TO SUMMARY REPORT

MARKETPLACE AND OTHER COSTS INCURRED IN CONNECTION WITH THIS AGREEMENT. BUYER HAS REVIEWED THE EFFECT OF THIS PROVISION WITH LEGAL COUNSEL AND HAS AGREED THAT SUCH DAMAGES ARE A REASONABLE AND FAIR ESTIMATE OF THE DAMAGES SELLER WILL SUSTAIN IF AN EVENT OF DEFAULT BY BUYER OCCURS. UPON ANY BREACH OR DEFAULT BY BUYER UNDER THIS AGREEMENT THAT HAS NOT BEEN CURED IN ACCORDANCE WITH THE TERMS HEREOF, AT SELLER'S ELECTION (WHICH SHALL BE IN ITS SOLE DISCRETION) THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EXCEPT FOR THE RIGHT OF SELLER TO RECEIVE AND RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES IN ACCORDANCE WITH THIS SECTION. BY INITIALING THIS SECTION IMMEDIATELY BELOW, SELLER AND BUYER ACKNOWLEDGE THEIR APPROVAL OF THIS LIQUIDATED DAMAGES PROVISION AND AFFIRM THEIR RESPECTIVE AGREEMENTS CONTAINED IN THIS SECTION.

  
\_\_\_\_\_  
Buyer's Initials

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

**2.3 Form of Payment.** All money payable under this Agreement, for the Deposit, the Purchase Funds or otherwise, shall be paid in cash, by wire transfer, or by a cashier's check or certified check of immediately available Federal funds of the United States.

### ARTICLE III CONDITIONS PRECEDENT

The purchase and sale under this Agreement shall be subject to the satisfaction of the conditions precedent set forth in this Article III (unless waived in writing by the party to whom the benefit of such condition runs) on or before the Closing Date (defined below) or such earlier date as is specified in this Agreement, each of which conditions shall be a covenant of the party required to perform such condition.

**3.1 Conditions to Buyer's Obligations, Due Diligence Period and Entitlement Period.** Buyer's obligation to close Escrow under this Agreement is expressly contingent upon satisfaction of the following conditions, and Buyer shall not be required to close Escrow under this Agreement unless all of the following conditions have been satisfied or waived in writing by Buyer.

A. Delivery of Title Report; Seller's Cure. Seller shall cause North American Title Company, Inc. ("Title Insurer") to deliver to Buyer a preliminary title report for the Property ("Title Report") within fifteen (15) days following the date of full execution of this Agreement, together with copies of any exceptions referred to in Schedule B of the Title Report. The Title Report shall be deemed delivered to Buyer within fifteen (15) days following the date of full execution of this Agreement even if Buyer actually receives it prior to such date.

(i) Buyer's Notice of Objection. If the Title Report contains exceptions which are not acceptable to Buyer ("Unpermitted Exceptions"), Buyer shall, within the Due Diligence Period, deliver to Seller written notice of Buyer's objections (a "Notice of Objection"), if any, to such exceptions. If Buyer fails to deliver a Notice of Objection in accordance with the foregoing sentence, Buyer shall be deemed to have waived its right to object to any exceptions which would otherwise be Unpermitted Exceptions, and such exceptions shall thereafter be deemed Permitted Exceptions (as defined below).

(ii) Seller's Response Notice. Within five (5) days following the date of receipt of a timely Notice of Objection (the "Seller Notice Period") from Buyer, Seller shall give notice (a "Response Notice") advising Buyer whether Seller will cause any of the Unpermitted Exceptions to be

## EXHIBIT 1 TO SUMMARY REPORT

removed from the Title Report at or prior to Closing. If Seller fails to give the Response Notice during the Seller Notice Period, Seller shall be deemed to have determined that it will not cause any Unpermitted Exceptions to be removed from the Title Report or otherwise addressed to the satisfaction of Buyer prior to Closing.

(iii) Title Termination Notice. Unless Seller agrees to cause all of the Unpermitted Exceptions to be removed from the Title Report or otherwise addressed to the satisfaction of Buyer, Buyer may terminate this Agreement by giving notice in writing to Seller (the "Title Termination Notice") within five (5) business days following Buyer's receipt of the Response Notice or the date the Response Notice is deemed given. If Buyer gives a Title Termination Notice: (a) the Deposit shall be disbursed to Buyer, except for the Independent Contract Consideration which shall be disbursed to Seller; (b) Buyer shall be entitled to receive a refund of any other funds placed in Escrow by Buyer (except for the Independent Contract Consideration); (c) Buyer and Seller shall each pay one-half of Escrow expenses incurred to date of termination; (d) neither party shall have any right against the other arising out of such termination; and (e) this Agreement shall become null and void and of no further force or effect, except for those provisions that expressly survive the early termination of this Agreement.

(iv) Specific Exclusions. Buyer, at its own cost and expense, may deliver to Seller a survey of the Property prior to the end of the Due Diligence Period (defined below). Notwithstanding anything to the contrary set forth in this Article III, any title matter arising after the date of the Title Report and added to the Title Report after its original issuance may be a Permitted Exception but first shall be subject to the same procedures set forth in this Section 3.1.A, (provided, however, that Buyer agrees to deliver a Notice of Objection no later than three (3) business days following receipt of an update to the Title Report; and Seller shall have three (3) business days to deliver a Response Notice). To the extent necessary the Closing shall be extended to accommodate such matters.

B. Delivery of Title and Title Insurance. Seller shall convey title to the Property to Buyer at the Closing (defined in Section 4.1), subject only to the Permitted Exceptions. The term "Permitted Exceptions" shall mean: (i) liens for real property taxes shown as exceptions in the Title Report provided that the taxes are not delinquent; (ii) the standard exclusions to coverage under Title Insurer's ALTA Owner's Policy of Title Insurance ("Title Policy"); and (iii) any other lien, encumbrance, title exception or defect that appears in the Title Report which Buyer has approved, deemed to have approved, or which is caused by Buyer prior to the Closing. Notwithstanding the foregoing, in no event shall the following be considered Permitted Exceptions: deeds of trust or mortgages; judgments; mechanics' and materialmen's liens; tax liens; or liens, encumbrances or other title matters created by Seller after the date of this Agreement, other than those created with the prior written consent of Buyer. Buyer agrees that Seller's obligation to convey title to Buyer shall be deemed satisfied upon Title Insurer's irrevocable commitment to issue the Title Policy to Buyer subject only to the Permitted Exceptions.

C. Inspection. Buyer shall conduct or review such surveys, investigations, studies and inspections and make or review such geologic, environmental and soils tests and other studies of the Property as Buyer, in Buyer's discretion, deems necessary to determine the physical and land use characteristics of the Property (including its subsurface) and the Property's suitability for Buyer's Anticipated Use; provided, however, that Buyer shall not conduct any Phase II environmental activity on the Property without Seller's prior written permission, which shall not be unreasonably withheld, conditioned or delayed.

D. Review of Documents. Buyer has possession of copies of the documents and other items listed on Exhibit B, and shall review the same. Seller represents that the documents listed on Exhibit B represent all documents of which the employees in Seller's Economic and Property Development Department have actual knowledge and which are material to Buyer's acquisition of the Property. Seller



## EXHIBIT 1 TO SUMMARY REPORT

shall deliver to Buyer during the Due Diligence Period any other documents relating to the Property to the extent they are requested by Buyer and reasonably available to Seller.

E. Representations and Warranties. Each of the representations and warranties by Seller contained in Section 8.1 was true and correct in all material respects as of the date made and continues to be true and correct in all material respects as of the Closing.

F. Delivery of Closing Documents. Execution, delivery and acknowledgement as appropriate by Seller of the closing documents set forth in Section 4.1B(i) and other necessary closing documents as may be reasonably requested by Buyer or Escrow Agent.

G. Due Diligence Period. Buyer shall have ninety (90) days after the Opening of Escrow (the "Due Diligence Period") to (i) review the exceptions, legal descriptions and other matters contained in the Title Report, (ii) conduct or review such surveys, investigations, studies and inspections and make or review such geologic and environmental tests and other studies of the Property, (iii) review the documents listed on Exhibit B, and (iv) review all other applicable due diligence materials respecting the Property (collectively, the "Due Diligence Items"). If Buyer, in its sole and absolute discretion, determines that the results of any information, inspection, test, examination or any investigation provided under this Agreement or performed or obtained during the Due Diligence Period fails to meet Buyer's criteria (established in Buyer's sole and absolute discretion) for the purchase and operation of the Property in the manner contemplated by Buyer, or Buyer (in Buyer's sole and absolute discretion) deems the Property to be unsuitable for Buyer's Anticipated Use for any reason, then Buyer shall have the option to terminate this Agreement and shall so advise Seller by written notice (the "Disapproval Notice"), with a copy to Escrow Agent, given no later than 5:00 p.m. (Pacific Standard Time) on or before the last day of the Due Diligence Period. In the event Buyer provides the Disapproval Notice to Seller on or before the expiration of the Due Diligence Period, then this Agreement shall be deemed terminated, in which event: (i) the Deposit shall be disbursed to Buyer, except for the Independent Contract Consideration which shall be disbursed to Seller; (ii) Buyer shall be entitled to receive a refund of any other funds placed in Escrow by Buyer (except for the Independent Contract Consideration); (iii) Buyer and Seller shall each pay one-half of Escrow expenses incurred to date of termination; (iv) neither party shall have any right against the other arising out of such termination; and (v) this Agreement shall become null and void and of no further force or effect, except for those provisions that expressly survive the early termination of this Agreement. If Buyer fails to timely deliver the Disapproval Notice on or before the expiration of the Due Diligence Period this Agreement shall remain in full force and effect and Buyer shall have been deemed to have approved the Property for Buyer's Anticipated Use.

H. Access to Property. At reasonable times during the term of the Escrow, upon reasonable prior notice to Seller, and subject to Section 3.1C, Buyer, its agents, contractors and subcontractors, shall have the right to enter upon the Property thereon to make any and all inspections and tests as Buyer deems desirable in its sole discretion. Upon Seller's written request, Buyer shall provide Seller with a copy of the results, reports or findings ("Results") from such testing within three (3) business days of Buyer's receipt of the same, but without any representation or warranty by Buyer respecting such reports. Buyer further agrees to use the Results solely in connection with its review of the Property, and not to disclose, communicate or publish the nature or content of the Results to any person or entity, except to its personnel, representatives, consultants, equity partners or lenders directly involved in its review of the Property, or as otherwise required by law, regulation, legal process or regulatory authority.

I. No Material Change. No material change in the status of the use, title, occupancy, legal compliance or physical or environmental condition of the Property or the suitability of the Property for Buyer's Anticipated Use, unless caused by Buyer or its agents, shall have occurred with respect to the Property prior to Close of Escrow that has not been approved in writing by Buyer, which approval can be

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withheld in Buyer's sole discretion. Additionally, Seller shall (i) maintain its existing insurance policies in full force and effect (Buyer acknowledges that Seller is a self-insured public agency and may not have specific policies in place applicable to the Property); (ii) provide prompt written notice to Buyer of any casualty or condemnation affecting any portion of the Property after the date of this Agreement, or any matter relating to zoning changes, rent control or increase in tax assessments; (iii) deliver to Buyer, promptly after receipt by Seller, copies of all notices of violation issued by any governmental authority with respect to the Property received by Seller after the date of this Agreement; (iv) advise Buyer promptly of any litigation, arbitration or other judicial or administrative proceeding which concerns or affects the Property; and (v) comply in material respects with the requirements of all contracts, licenses, permits, approvals, guaranties and warranties concerning the Property.

J. Entitlements Period. Buyer shall have sixty (60) days after the expiration of the Due Diligence Period (the "Entitlements Period") within which to prepare and submit an entitlement package to the City of Long Beach ("City") consisting of all documents necessary for the City to review Buyer's Anticipated Use and the construction of the Buildings, including without limitation any requests for site plan review, zone changes, general plan amendments, negative declarations or mitigated negative declarations, and requests for conditional use permits or standards variances (collectively, the "Completed Entitlements Application"). Buyer acknowledges and agrees that Seller executes this Agreement solely in its capacity as property owner, and not in its capacity as municipal regulatory body. Nothing contained herein is intended to grant Buyer any entitlements, development approvals, or permits on behalf of Seller or City. If Buyer has not received what Buyer, in its sole and absolute discretion, deems to be acceptable approval of the Completed Entitlements Application from City within one hundred eighty (180) days after the submission of the Completed Entitlements Application to City, then upon the expiration of such 180-day period and until Buyer has received what Buyer, in its sole and absolute discretion, deems to be acceptable approval of the Completed Entitlements Application from City, Buyer shall have the option to terminate this Agreement and Buyer may exercise such termination option at any point thereafter by delivering a written notice of termination to Seller, with a copy to Escrow Agent. In the event that either (x) Buyer provides the notice described immediately above to Seller or (y) City rejects the Completed Entitlements Application, then this Agreement shall be deemed terminated, in which event: (i) the Deposit shall be disbursed to Buyer, except for the Independent Contract Consideration which shall be disbursed to Seller; (ii) Buyer shall be entitled to receive a refund of any other funds placed in Escrow (except for the Independent Contract Consideration); (iii) Buyer and Seller shall each pay one-half of Escrow expenses incurred to date of termination; (iv) neither party shall have any right against the other arising out of such termination; and (v) this Agreement shall become null and void and of no further force or effect, except for those provisions that expressly survive the early termination of this Agreement.

K. Seller Performance. Seller shall have delivered all documents listed on Exhibit B and duly performed each and every undertaking, covenant and agreement required to be performed by Seller under this Agreement prior to or at the Close of Escrow.

L. Litigation. There are no suits or claims or challenges that are threatened or pending against Seller or Buyer with respect to the Property or this Agreement, including without limitation challenges brought by the State of California pursuant to the Dissolution Statute.

M. Lot Line Adjustment or Parcel Map. Buyer shall have received all necessary approvals from the City and all other governing agencies of a lot line adjustment or parcel map as required by Buyer, in its sole and absolute discretion, to develop the Property for Buyer's Anticipated Use and construct the Buildings (collectively, the "Parcel Map Approvals").

N. Building Permits. Buyer shall have received all building permits for the Buildings required by Buyer, in its sole and absolute discretion, to develop the Property for Buyer's Anticipated Use

## EXHIBIT 1 TO SUMMARY REPORT

(the "Permits"). If Buyer determines that Buyer is unable to obtain the Permits on terms acceptable to Buyer in Buyer's sole and absolute discretion, then Buyer shall have the option to terminate this Agreement and Buyer may exercise such termination option at any point thereafter by delivering a written notice of termination to Seller, with a copy to Escrow Agent. In the event that Buyer provides the notice described immediately above to Seller, then this Agreement shall be deemed terminated, in which event: (i) the Deposit shall be disbursed to Buyer, except for the Independent Contract Consideration which shall be disbursed to Seller; (ii) Buyer shall be entitled to receive a refund of any other funds placed in Escrow (except for the Independent Contract Consideration); (iii) Buyer and Seller shall each pay one-half of Escrow expenses incurred to date of termination; (iv) neither party shall have any right against the other arising out of such termination; and (v) this Agreement shall become null and void and of no further force or effect, except for those provisions that expressly survive the early termination of this Agreement.

**3.2 Conditions to Seller's Obligations.** Seller's obligation to close Escrow under this Agreement is expressly contingent upon satisfaction of the following conditions, and Seller shall not be required to close Escrow under this Agreement unless all of the following conditions have been satisfied or waived in writing by Seller.

A. Delivery of Purchase Price. The Purchase Funds shall be delivered by or on behalf of Buyer to Escrow Agent as described in Section 2.4, in sufficient time such that the Escrow Agent will be able to disburse the cash proceeds accruing to Seller on the Close of Escrow.

B. Representations and Warranties. Each of the representations and warranties by Buyer contained in Section 7.4A and Section 8.2 below shall be determined to have been true and correct in all material respects as of the date made and shall continue to be true and correct in all material respects as of the Closing.

C. Delivery of Closing Documents. Execution, delivery and acknowledgement as appropriate by Buyer of the closing documents set forth in Section 4.1B(ii) and other necessary closing documents as may be reasonably requested by Buyer or Escrow Agent.

D. Construction Loan. Delivery by Buyer to Seller of a copy of a submitted construction loan application, commitment or other reasonably acceptable evidence that Buyer is likely to obtain a construction loan for development of the Property promptly after Closing.

E. Litigation. There are no suits or claims or challenges that are threatened or pending against Seller or Buyer with respect to the Property or this Agreement, including without limitation challenges brought by the State of California pursuant to the Dissolution Statute.

F. Compensation Agreement. Seller shall have received a Compensation Agreement, as required by the Dissolution Statute, executed by all taxing entities affected by the proposed sale of the Property. Seller covenants and agrees to diligently and in good faith pursue the execution of such Compensation Agreement by all necessary parties. In no event shall the Compensation Agreement increase the amount of Purchase Funds or closing costs payable by Buyer.

**3.3 Failure of Conditions.** If any of the conditions precedent contained in this Article III are not satisfied within the time periods specified in this Agreement (or waived or the time for satisfaction extended by the party to whose benefit the condition runs), the party to whose benefit the condition runs shall have the right to terminate this Agreement by delivering written notice to the other party and Escrow Agent within the time period specified by this Agreement. If Seller terminates this Agreement due to a failure of any condition set forth in Section 3.2A, B, C or D, Seller shall have the right to retain the Deposit, and exercise its rights under Article V. If Seller terminates this Agreement due to a failure of the condition

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set forth in Section 3.2E or F, then Buyer shall have the right to receive a refund of the Deposit and Buyer and Seller shall each pay one-half of all Escrow Agent's and title Insurer's normal escrow and title insurance cancellation fees. If Buyer terminates this Agreement due to a failure of the conditions set forth in Section 3.1, then Buyer shall have the right to receive a refund of the Deposit less the Independent Contract Consideration and one-half (½) of Escrow Agent's and Title Insurer's normal escrow and title insurance cancellation fees (unless Buyer terminates this Agreement due to a failure of the condition set forth in Section 3.1E, F or K, in which event Buyer shall have the right to receive a refund of the entire Deposit and Seller shall be solely responsible for all of Escrow Agent's and Title Insurer's normal escrow and title insurance cancellation fees) and exercise its rights under Article V. Nothing contained in this Agreement is intended nor shall permit any party in default to terminate this Agreement or the Escrow provided for in this Agreement as a result of such default.

### ARTICLE IV CLOSING

**4.1 Closing.** The purchase and sale of the Property shall be consummated at a closing ("Closing") in accordance with the following:

A. Closing Date. The closing date (the "Closing Date") shall occur at the office of the Escrow Agent or such other location as is acceptable to the parties to this Agreement on or before 8:00 a.m. on the date which is thirty (30) days after Buyer's receipt from the City of: (i) what Buyer, in its sole and absolute discretion, deems to be acceptable approval of the Completed Entitlements Application; (ii) all Permits required by Buyer, in its sole and absolute discretion; and (iii) all Parcel Map Approvals required by Buyer, in its sole and absolute discretion. Except as provided otherwise in Article V, if the Escrow for the Property has not closed on or before the date that is twenty-four (24) months after the Opening of Escrow, either party shall thereafter have the right to terminate the Escrow unless such party is in default of its obligations under this Agreement. Except as otherwise provided in Section 3.3, if the Escrow is so terminated as a result of a failure of a condition other than as a result of Buyer's default under this Agreement, the Deposit, less the Independent Contract Consideration and Buyer's share, if any, of the Escrow Agent's and Title Insurer's escrow and title cancellation fees and expenses, will be refunded to Buyer.

B. Closing Documents.

(i) Seller. No later than the day prior to the Closing Date, Seller shall duly execute and acknowledge as appropriate and deliver to Escrow Agent the following:

(a) A grant deed ("Deed") conveying the Property to Buyer in the form attached to this Agreement as Exhibit C;

(b) A Non-foreign Entity Affidavit ("Affidavit"), in the form attached to this Agreement as Exhibit D, pursuant to Section 10.2; and

(c) Such documents and instruments as Escrow Agent or Title Insurer may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Seller under this Agreement and to issue the Title Policy.

The obligations of Seller to deliver documents and instruments into Escrow in accordance with this Section 4.1B(i) are separate, independent covenants of Seller and shall not be conditioned upon Buyer's deliveries in accordance with Section 4.1B(ii).

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(ii) Buyer. No later than the day prior to the Closing Date, Buyer shall duly execute and acknowledge as appropriate and deliver to the Escrow Agent the following:

(a) The amount of the Purchase Funds, along with Buyer's share of any costs and expenses to be paid to or through Escrow Agent;

(b) A Change of Ownership Statement, as required by Title Insurer or Escrow Agent;

(c) A restrictive covenant suitable for recording, executed by Buyer in favor of Seller (the "Covenant"), generally in the form attached as Exhibit E; and

(d) Such documents and instruments as Escrow Agent or Title Insurer may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Buyer under this Agreement and to issue the Title Policy.

The obligations of Buyer to deliver funds, documents and instruments into Escrow under this Section 4.1B(ii) shall be separate, independent covenants of Buyer and shall not be conditioned upon Seller's deliveries in accordance with Section 4.1B(i).

C. Closing Procedure. At such time as the Escrow Agent has received all of the items specified in Section 4.1B, and at such time as Title Insurer is irrevocably committed to issue the Title Policy in accordance with Section 3.1B, Buyer and Seller hereby authorize and instruct Escrow Agent to: (i) cause Title Insurer to record the Deed, and issue the Title Policy to Buyer; (ii) cause Title Insurer to record the Covenant immediately after the Deed and prior to any lien on the Property; (iii) pay to the authorities lawfully entitled thereto any recordation fees, fees to be paid pursuant to the Compensation Agreement, and transfer taxes in connection with this Agreement; (iv) compute pro-rations relating to the Property for the accounts of Seller and Buyer; (v) pay to Seller an amount equal to the Purchase Price (including the Deposit), less any pro-rations chargeable to Seller and any amounts payable by Seller to Escrow Agent for its services and expenditures in connection with this Agreement; (vi) pay to Buyer the balance of the funds then held by Escrow Agent, less any pro-rations chargeable to Buyer and any amounts payable by Buyer to Escrow Agent for its services and expenditures in connection with this Agreement; (vii) deliver to Buyer and Seller a conformed copy of the Deed showing the recording information; and (viii) deliver to Buyer an executed original of the Affidavit.

D. New York Style Closing. If all funds required for the Closing are not delivered into Escrow on or before 1:00 p.m. (PST) on the date one (1) business day prior to the Closing Date, then Buyer shall deliver into Escrow all closing funds required pursuant to the terms of this Agreement and the Closing shall be conducted as a "New York style" closing with (i) the balance of the Purchase Funds, and all other applicable funds released to Seller on the Closing Date, (ii) all closing documents and other instruments delivered into Escrow by Buyer and Seller and released for recordation by Escrow Agent on the Closing Date; (iii) Seller's execution and delivery of a "GAP" indemnity agreement in favor of Title Insurer in Title Insurer's customary form, (iv) Title Insurer issuing the Title Policy to Buyer as of the Closing Date; and (v) recordation of the Deed and any other recordable closing documents on the next business day. In no event shall this Section 4.1D be construed to permit either party to extend the Closing Date.

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### 4.2 Fees; Expenses; Prorations.

#### A. Fees, Expenses, Transfer Taxes.

(i) Seller. Seller shall pay or satisfy, as applicable: (a) all documentary transfer taxes imposed in connection with the recording of the Deed; (b) one-half (½) of the Escrow fees; (c) the cost of a CLTA Title Policy for Buyer in the amount of the Purchase Price; and (d) any other customary fees and charges and expenditures authorized by Seller.

(ii) Buyer. Buyer shall pay: (a) one-half (½) of the Escrow fees; (b) the cost of recording the Deed and all other documents recorded at the Closing; and (c) any other customary fees and charges and expenditures authorized by Buyer. Buyer shall have the right to procure an ALTA Extended Coverage Owner's Policy of Title Insurance ("Extended Coverage") and Buyer shall pay for the increased cost of such Extended Coverage above the cost of a CLTA Title Policy, the cost of any survey that the Title Insurer requires for issuance of Extended Coverage and for the cost of any other increase in the amount or scope of title insurance if Buyer elects to increase the amount or scope of title insurance coverage or to obtain endorsements to the Title Policy. All other costs, if any, shall be apportioned between Buyer and Seller in the customary manner for real estate transactions in the County of Los Angeles, State of California.

B. Real Property Taxes, Assessments and Rents. All real property taxes and assessments for the fiscal years of the taxing and assessing authorities in which the Closing occurs shall be prorated on the basis of a three hundred sixty-five (365) day year at the Closing with appropriate debits and credits to the accounts of Buyer and Seller so that Seller shall be responsible for paying all of the same, to the extent duly allocable to the period ending on the day immediately prior to the Closing Date and Buyer shall be responsible for paying all of the same (if any shall be due), to the extent duly allocable to the period commencing upon the Closing Date. At the Closing, Buyer shall reimburse Seller for any taxes and assessments which are allocable to the period commencing upon the Closing Date and which Seller has already paid. In addition, all rents, incomes and profits, if any, derived from the Property or attributable to the Property shall be prorated at the Closing with appropriate debits and credits to the accounts of Buyer and Seller so that Seller shall pay and receive, as appropriate, all of the same to the extent duly allocable to the period ending on the day prior to the Closing Date and Buyer shall pay and receive, as appropriate, all of the same to the extent duly allocable to the period commencing upon the Closing Date.

C. Commissions. Buyer and Seller represent and warrant to each other that no person or entity may claim or is entitled to a real estate commission, finder's fees or any similar payments with respect to this Agreement or the sale of the Property. Buyer and Seller shall each protect, defend, indemnify and hold the other harmless from and against all such claims for real estate commissions, finder's fees or any similar payments with respect to the sale of the Property in accordance with this Agreement.

## ARTICLE V BREACH

5.1 **General.** If either party breaches its obligations under this Agreement prior to the Closing, then the other party may, without terminating this Agreement, suspend performance by giving written notice to the other party until such breach is cured by the other party. Except for Seller's and Buyer's respective delivery obligations under Article IV, including, without limitation, Buyer's delivery to the Escrow Agent of any portion of the Deposit or the Purchase Funds, neither party shall be in default under this Agreement unless it fails to cure a breach of such party's obligations under this Agreement within twenty-four (24) hours after receipt of written notice of such breach from the non-breaching party or such other time before Closing if the cure cannot reasonably be obtained within such twenty-four hour period

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(but in no event shall such cure period exceed thirty (30) days). Nothing contained in this Agreement is intended nor shall permit any party in default to terminate this Agreement or the Escrow provided for in this Agreement as a result of such default. For the avoidance of doubt, expiration of time periods within which Buyer may terminate this Agreement but fails to provide a timely termination notice, including without limitation Section 3.1A and 3.1G, do not constitute “breaches” and will not be subject to notice and cure hereunder.

### 5.2 Buyer’s Breach.

A. Buyer’s Pre-Closing Breach. Except as expressly provided otherwise in Section 5.1, if Buyer breaches any of its obligations under this Agreement prior to the Closing and Buyer fails to cure such breach within twenty-four (24) hours after Buyer’s receipt of written notice from Seller or such other time before Closing if the cure cannot reasonably be obtained within such twenty-four hour period (but in no event shall such cure period exceed thirty (30) days), then Seller may terminate this Agreement and retain the Deposit as liquidated damages in accordance with Section 2.3 as Seller’s sole remedy. Notwithstanding the foregoing, Seller’s right to recover attorneys’ fees pursuant to Section 10.3 shall survive any termination of this Agreement pursuant to this Section. Buyer hereby acknowledges and agrees that in no event shall the notice and cure rights set forth in Section 5.1 apply to Buyer’s failure to deliver any of the items into Escrow in accordance with Section 2.2 and Article IV, including, without limitation, any portion of the Deposit or the Purchase Funds.

B. Buyer’s Post-Closing Breach. If after the Closing, Buyer breaches any of its obligations under Section 8.2C or Section 8.2D or any other obligations under this Agreement that expressly survive the Closing and Buyer fails to cure such breach within twenty-four (24) hours after Buyer’s receipt of written notice from Seller or such other reasonable time if the cure cannot reasonably be obtained within such twenty-four hour period (but in no event shall such cure period exceed thirty (30) days), then Seller shall have the right to pursue any and all remedies available to Seller at law or in equity, including the specific performance of this Agreement. Buyer hereby acknowledges that Seller’s right to recover attorneys’ fees pursuant to Section 10.3 shall survive the Close of Escrow and the recordation of the Deed. For clarity, Seller acknowledges and agrees that this Section 5.2B shall not apply to any of Buyer’s obligations set forth in the Covenant, and any breach of such obligations, any cure of any such breach, and any remedy available for any such breach shall be governed exclusively by the terms of the Covenant.

### 5.3 Seller’s Breach.

A. Seller’s Pre-Closing Breach. Except as expressly provided otherwise in Section 5.1, if Seller breaches its obligations under this Agreement and Seller fails to cure such breach within twenty-four (24) hours after Seller’s receipt of written notice from Buyer or such other time before Closing if the cure cannot reasonably be obtained within such twenty-four hour period (but in no event shall such cure period exceed thirty (30) days), then Buyer shall have the right to elect one, but not both, of the remedies set forth in this Section 5.3.

(i) Termination. Buyer shall have the right to terminate this Agreement and receive a refund of the Deposit.

(ii) Specific Performance. Buyer shall have the right to obtain specific performance by Seller provided Buyer is not in breach of its obligations under this Agreement.

Notwithstanding the foregoing, Buyer’s right to recover attorneys’ fees pursuant to Section 10.3 shall survive any termination of this Agreement pursuant to this Section. Seller hereby acknowledges and agrees

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that in no event shall the notice and cure rights set forth in Section 5.1 apply to Seller's failure to deliver any of the items into Escrow in accordance with Article IV.

B. Seller's Post-Closing Breach; Buyer's Post-Closing Claims. Except as provided in Section 7.4A or as otherwise provided in this Agreement, Buyer waives, releases and agrees not to sue Seller after the Closing, on any claim under or in connection with this Agreement, for damages or otherwise. Seller hereby acknowledges that Buyer's right to recover attorneys' fees pursuant to Section 10.3 shall survive the Close of Escrow and the recordation of the Deed.

### ARTICLE VI DEMOLITION, REHABILITATION, SITE CLEARANCE AND OTHER COVENANTS

**6.1 Buyer's Obligations.** After the Closing Date, Buyer, at Buyer's sole cost and expense, shall be responsible for and Seller shall have no liability for or obligation related to any of the following: (i) any grading and removal or re-compaction of soil on the Property; (ii) obtaining utilities to serve the Property; (iii) any rehabilitation or reconfiguration of the improvements currently located on the Property; (iv) paying any and all fees with respect to the Property incurred after the Closing Date and the construction of any improvements on the Property; (v) any lot line or boundary adjustment with respect to the Property; and (vi) satisfying any and all on-site and off-site (i.e. inside and outside of the perimeter boundary of the Property) conditions of approval, construction and other obligations with respect to Buyer's Anticipated Use of the Property.

**6.2 Seller's Obligations.** Prior to the Closing Date, Seller, at Seller's sole cost and expense, shall be responsible for and Buyer shall have no liability for or obligation related to the removal of any and all personal property located on the Property. Seller shall deliver the Property to Buyer free and clear of all debris and personal property and hereby releases Buyer from any liability as a result of Seller's disposition thereof.

### ARTICLE VII CONDITION OF PROPERTY

#### **7.1 Condition of Property.**

A. General. Buyer, as specified in Section 3.1C, has or shall have inspected and conducted tests, inspections, investigations and studies of the Property as Buyer, in Buyer's discretion, deems necessary. Buyer understands and acknowledges that the Property may be subject to earthquake, fire, floods, erosion, high water table, dangerous underground soil conditions, unavailability or shortages of water and other utilities and similar occurrences that may alter its condition or affect its suitability for any proposed use, including Buyer's Anticipated Use. Except to the extent provided otherwise in this Agreement, Seller shall have no responsibility or liability with respect to any such condition or occurrence. Buyer represents that it is acting and will act only upon information obtained by it from its own inspection and investigation of the Property and upon the express representations, warranties and covenants of Seller contained in this Agreement. Except as provided otherwise in this Agreement, the suitability or lack of suitability of the Property for any proposed use, including Buyer's Anticipated Use, or availability or lack of availability of permits or approvals of governmental or regulatory authorities with respect to any such proposed or intended use of the Property, shall not affect the rights or obligations of the Buyer under this Agreement.

B. Environmental Condition. In connection with or on account of permitted or unpermitted access to the Property or the construction, operation, maintenance and demolition of the buildings, fixtures, machinery and equipment located on the Property, certain substances classified as



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hazardous (collectively, "Hazardous Substances") may have been released or may be present on the Property. For these purposes, "Hazardous Substances" includes "hazardous substances" as defined in CERCLA (defined below); "pollutants", "contaminants" and "Toxic Substances" as defined in the Toxic Substances Control Act; "Hazardous Materials" as defined in the Hazardous Materials Transportation Act; and other substances deemed or determined to be harmful, injurious, noxious, hazardous, nuisance causing or toxic under any Environmental Law (defined below), and including "Petroleum" as defined in RCRA (defined below). The documents listed on Exhibit B set forth in more detail the environmental condition of the Property. Buyer acknowledges receipt of the documents listed on Exhibit B relating to the environmental condition of the Property.

**7.2 No Warranties.** Except as represented and warranted by Seller in this Agreement, the Property is purchased and sold in "AS IS" condition. The Purchase Price and the terms and conditions set forth in this Agreement are the result of arm's-length bargaining between entities familiar with transactions of this kind and the price, terms and conditions reflect the fact that Buyer shall not have the benefit of, and, except for the express representations, warranties and covenants of Seller contained in this Agreement, is not relying upon, any statements, representations or warranties whatsoever made by or enforceable against Seller relating to the condition, operations, dimensions, descriptions, soil condition, other environmental condition, suitability, availability of utilities, compliance or lack of compliance with any Environmental Law (defined in Section 7.4) or other state, federal, county or local law, ordinance, order, permit or regulation or any other attribute or matter of or relating to the Property. Buyer represents, warrants and covenants to Seller that, except for the express representations, warranties and covenants of Seller contained in this Agreement, Buyer is relying solely upon its own inspection and investigation of the Property. If Seller obtains or has obtained in connection with this Agreement the services, opinions or work product of surveyors, architects, engineers, attorneys, Escrow Agent, Title Insurer, governmental authorities or any other person or entity with respect to the Property, Buyer and Seller agree that Seller shall do so only for the convenience of both parties and the reliance by Buyer upon any such services, opinions or work product shall not create or give rise to any liability of or against Seller.

**7.3 Governmental Approvals.** Buyer shall have the right to initiate the process to obtain approval of any redevelopment plan, if necessary, with respect to the Property prior to the Close of Escrow and Seller, solely in its capacity as Seller hereunder and not as in its municipal regulation capacity, agrees to cooperate with Buyer in such process.


### **7.4 Environmental Matters.**

A. Buyer's Representations and Release of Seller. Except for the express representations, warranties and covenants of Seller set forth in this Agreement, Buyer shall rely solely upon its own inspection of the Property in determining the Property's physical and environmental condition and shall have the right to review all reports, documents and studies described in Sections 3.1C and 3.1D. Except for claims and damages arising from or relating to any express covenants, obligations, representations and warranties of Seller set forth in this Agreement and/or any matter constituting fraud, intentional misrepresentation or intentional concealment, Buyer (on behalf of itself and its successors and assigns) waives its right to recover, and hereby releases, Seller, its general and limited partners and the shareholders, officers, employees, agents and affiliates of any of them (collectively, "Seller's Related Parties") from any and all damages, losses, liabilities, costs or expenses whatsoever (including reasonable attorneys' fees and costs) and claims therefor, whether direct or indirect, known or unknown or foreseen or unforeseen, which may arise from or be related to (i) the physical condition of the Property and (ii) the Property's compliance or lack of compliance with and remediation or "clean-up" liabilities arising under any law including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), ("CERCLA") the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901 et seq.), ("RCRA") the Clean Water Act

## EXHIBIT 1 TO SUMMARY REPORT

(33 U.S.C. Sections 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Substances Act (Health & Safety Code Sections 25100-25600), the California Porter-Cologne Water Quality Control Act (Water Code Sections 13000 et seq.) and all regulations, rulings and orders promulgated or adopted pursuant thereto (collectively, "Environmental Laws"). In connection with such release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

  
BUYER'S INITIALS

B. Drainage, Erosion Control and Storm Water Pollution Prevention Plans. Buyer shall be responsible for compliance with all state, local and federal governmental and regulatory requirements with respect to drainage, erosion control, the National Pollution Discharge Elimination System ("NPDES") or Storm Water Pollution Prevention Plans ("SWPPP's") on or relating to the Property to the extent such compliance requirements arise after the Close of Escrow.

### ARTICLE VIII REPRESENTATIONS AND WARRANTIES

8.1 **Seller's Representations and Warranties.** In consideration of Buyer's entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following covenants, representations and warranties, each of which is material and is being relied upon by Buyer (and the continued truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder):

A. Authority. Seller has the full power and authority to sell the Property, and this Agreement has been duly and validly authorized, executed and delivered by Seller and no other authorization or third party consent is requisite to the valid and binding execution, delivery and performance of this Agreement by Seller.

B. Encumbrances. Seller is the owner of the fee interest in the Property free and clear of all liens, encumbrances and other matters other than those set forth in the Title Policy, and the Property is not subject to any outstanding contract of sale, right of first refusal or purchase option, in favor of any person or entity, except Buyer. Seller will not sell, lease, sublease, assign, mortgage or otherwise encumber the Property without Buyer's prior written approval, which may be withheld in Buyer's sole discretion. The Property is not subject to any lease or other agreement entitling any person or entity to use or occupy all or any portion of the Property.

C. Representations. All representations and warranties of Seller set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

D. Legal Power. The individuals executing this Agreement and the instruments referenced herein on behalf of Seller, have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

## EXHIBIT 1 TO SUMMARY REPORT

E. No Breach. There are no contracts or agreements relating to the operation and maintenance of the Property that will be in effect following the Closing. There are no contracts or agreements under which any third person or party has any right or option to purchase the Property. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to the applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles effecting or limiting the rights of contracting parties generally. Neither the execution and delivery of this Agreement and the documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents reference herein, result in the breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Seller is a party or affecting the Property.

F. Litigation. There are no suits, claims, foreclosure proceedings, property tax protests, zoning or other administrative proceedings that are pending or, to the best of Seller's knowledge, threatened with respect to or in any manner affecting the Property.

G. Condemnation; Eminent Domain. Seller has neither received any written notice from a governmental authority, nor has any knowledge of any action regarding eminent domain proceedings for the condemnation of all or any portion of the Property. Seller has not received any written notices of violations, including, without limitation, any environmental law violations, that still exist from any municipal or governmental bodies regarding the Property.

H. Due Diligence. Seller has delivered to Buyer complete legible copies of the items listed on Exhibit B attached hereto. The documents delivered by Seller to Buyer are all the material documents concerning the Property in the City of Long Beach's Economic Development Department's possession or under its control.

I. Environmental Laws. Except as disclosed in the documents set forth on Exhibit B, Seller has not received written notice from any governmental authority that the Property or the use or operation thereof are in violation of any Environmental Laws, and to Seller's actual knowledge, no such written notice has been issued and, to Seller's actual knowledge, no violation of any Environmental Laws has occurred. Except as disclosed on Exhibit B, to Seller's actual knowledge, no part of the Property has ever been used by any person or entity to refine, produce, use, store, handle, transfer, process, transport or dispose of any Hazardous Substances.

**8.2 Buyer's Representations, Warranties and Covenants.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties and covenants, each of which is material and is being relied upon by Seller (and the continued truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder and ongoing obligations of Buyer which shall survive the Close of Escrow):

A. Authority. Buyer has the full power and authority to buy the Property, and this Agreement has been duly and validly authorized, executed and delivered by Buyer and no other authorization or third party consent is requisite to the valid and binding execution, delivery and performance of this Agreement by Buyer.

B. Representations. All representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

## EXHIBIT 1 TO SUMMARY REPORT

C. Development Requirements. Buyer acknowledges and agrees that Seller executes this Agreement solely in its capacity as property owner, and not in its capacity as municipal regulatory body. Nothing contained herein is intended to grant Buyer any entitlements, development approvals, or permits. Buyer shall comply with all applicable building, rehabilitation, development and environmental processes and conditions, including without limitation the requirements of CEQA, in connection with Buyer's development of the Property.

D. Compliance with Laws. Buyer shall carry out the construction of the improvements on the Property in conformity with all applicable laws, including without limitation all applicable federal and state labor standards. Seller makes no representation that subsequent development on the Property is or is not a "public work" as defined in California Labor Code Section 1720. Buyer hereby indemnifies and holds Seller harmless from any injury or damages arising out of Buyer's failure to comply with any applicable federal and state labor laws.

### ARTICLE IX CONDEMNATION, DAMAGE AND DESTRUCTION

**9.1 Condemnation.** If, between the date of this Agreement and the Closing Date, condemnation or eminent domain proceedings affecting any portions of the Property are initiated or are threatened to be initiated by any entity to such extent that it would prevent or have a material adverse effect on Buyer's Anticipated Use of the Property, then, Buyer shall have the right to either: (A) affirm this Agreement, in which event (i) the Agreement shall remain in full force and effect without any diminution of the Purchase Price, (ii) Seller shall deliver to Buyer upon the Closing Date all condemnation awards previously received by Seller by depositing the amount said awards with the Escrow Agent, and (iii) Seller shall assign to Buyer upon the Closing Date all of Seller's rights to any future condemnation awards by depositing an assignment of said awards with the Escrow Agent; or (B) terminate this Agreement, in which event (i) the Deposit less the Independent Contract Consideration shall be disbursed to Buyer; (ii) Buyer shall be entitled to receive a refund of any other funds placed in Escrow (except for the Independent Contract Consideration); (iii) Buyer and Seller shall each pay one-half of Escrow expenses incurred to date of termination; (iv) neither party shall have any right against the other arising out of such termination; and (v) this Agreement shall become null and void and of no further force or effect, except for those provisions that expressly survive the early termination of this Agreement.

**9.2 Damage and Destruction.** If, between the date of this Agreement and the Closing Date, any portion of the Property is materially damaged or destroyed to such an extent that it would prevent or have a material adverse effect on Buyer's Anticipated Use of the Property, then Buyer shall have the option by written notice to Seller to: (A) terminate this Agreement, in which event (i) the Deposit less the Independent Contract Consideration shall be disbursed to Buyer; (ii) Buyer shall be entitled to receive a refund of any other funds placed in Escrow (except for the Independent Contract Consideration); (iii) Buyer and Seller shall each pay one-half of Escrow expenses incurred to date of termination; (iv) neither party shall have any right against the other arising out of such termination; and (v) this Agreement shall become null and void and of no further force or effect, except for those provisions that expressly survive the early termination of this Agreement; or (B) affirm this Agreement, in which event (i) the Agreement shall remain in full force and effect without delaying the Closing and without diminution of the Purchase Price, (ii) Seller shall deliver to Buyer upon the Closing Date all insurance proceeds previously received by Seller in respect of such damage or destruction by depositing the amount of said proceeds with the Escrow Agent, and (iii) Seller shall assign to Buyer upon the Closing Date all of Seller's rights to any future insurance proceeds payable to Seller in respect of such damage or destruction by depositing an assignment of said proceeds with the Escrow Agent.

## EXHIBIT 1 TO SUMMARY REPORT

### ARTICLE X MISCELLANEOUS

**10.1 Assignment.** Buyer shall neither assign its rights nor delegate its obligations under this Agreement without obtaining Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion. Upon the receipt of Seller's written consent, Buyer, Seller and Buyer's proposed assignee shall execute a written assignment and assumption agreement in a form reasonably acceptable to Seller, in which such assignee assumes all of Buyer's obligations under this Agreement. In no event shall any such assignment release Buyer from any obligations or liability under this Agreement or delay the Close of Escrow. Prior to the delivery of any such assignment executed by Seller, Buyer shall reimburse Seller for Seller's reasonable attorneys' fees and costs incurred by Seller in connection with facilitating any such assignment. Notwithstanding the foregoing, Buyer shall have the right to assign its rights or obligations under this Agreement to any affiliate, parent or subsidiary entity without Seller's prior consent.

**10.2 No Foreign Investors.** Seller warrants and represents to Buyer that Seller is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations). Seller shall execute and deliver to Buyer at the Closing the Affidavit substantially in the form of Exhibit D, certifying the representations and warranties made pursuant to this Section.

**10.3 Attorneys' Fees.** If any action, proceeding or arbitration is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to all other damages, all costs and expenses of such action, proceeding or arbitration, including but not limited to actual attorneys' fees (including the allocated costs of in-house counsel), witness fees and court costs. The phrase "prevailing party" as used in this Section shall mean the party who receives substantially the relief desired whether by dismissal, summary judgment or otherwise. The terms of this Section shall survive the Close of Escrow and shall not be merged with the Deed.

**10.4 Notices.** All notices and requests under this Agreement shall be in writing and shall be sent by personal delivery or e-mail (with hard copy to follow the next business day by overnight mail), by nationally recognized overnight mail carrier such as FedEx or delivered in person to the following street addresses:

SELLER: City of Long Beach  
333 W. Ocean Blvd., 13<sup>th</sup> Floor  
Long Beach, CA 90802  
Attention: City Manager  
Telephone: (562) 570-6916  
E-Mail: Patrick.west@longbeach.gov

BUYER: ATLANTIC AND ARTESIA LLC  
C/O Frontier Real Estate Investments LLC  
610 Newport Center Drive, Suite 400  
Newport Beach, CA 92660  
Attention: Tom Carpenter  
Telephone: (949) 354-5600  
E-Mail: tom@frontierrei.com

## EXHIBIT 1 TO SUMMARY REPORT

Title Insurer: North American Title Company  
3090 Bristol Street, Suite 190  
Costa Mesa, CA 92626  
Attention: Randy Dean  
Telephone: (949) 419-9400  
E-Mail: rdean@nat.com

Escrow Agent: International City Escrow  
5000 E. Spring Street, Suite 120  
Long Beach, CA 90815  
Attention: Patreece Coburn  
Telephone: (562) 497-9777 x 209  
E-Mail: patreece@icescrow.com

All notices shall be effective upon the earlier of personal delivery or receipt of confirmation of delivery, if delivered by e-mail or a nationally recognized overnight mail carrier; provided, however, receipt of the Purchase Price shall only be effective upon actual receipt in the form required under Section 2.3. Either party may change its address or designate a new street address for notices under this Agreement by notice complying with the terms of this Section.

**10.5 Cooperation.** Buyer and Seller (acting solely in its capacity as property owner and not in its capacity as municipal regulatory body) acknowledge that it may be necessary to execute documents other than those specifically referred to in this Agreement to complete the purchase and sale of the Property. Each party shall reasonably cooperate with the other in connection with the requirements imposed by this Agreement upon the other, to the end that neither party shall act in any manner to impede the other in performing its obligations under this Agreement. Buyer and Seller hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary in accordance with the intent of the parties as evidenced by this Agreement, provided such documents do not create any additional liability or expense for such party not contemplated by this Agreement.

**10.6 Survival.** Buyer's and Seller's representations, warranties and obligations under this Agreement shall survive the Close of Escrow and shall not be merged into or defeated by the execution, delivery or recordation of the Deed given in connection with this Agreement. If prior to the Closing, Buyer obtains actual knowledge that any of Seller's representations and warranties are untrue, Buyer shall promptly notify Seller in writing of such information. If Buyer fails to notify Seller prior to the Closing, Buyer shall be deemed to have waived its rights with respect to any such representation and warranty. If Buyer waives any representation or warranty, then Seller shall have no liability under this Agreement for such representation or warranty to the extent waived. If this Agreement is terminated because of a failure of conditions in Article III or pursuant to Article IX, then neither Buyer nor Seller shall have any liability if any of Buyer's or Seller's representations or warranties are inaccurate, except as set forth in Article V. Notwithstanding anything to the contrary in this Agreement, each party's obligations under Section 10.3 (Attorneys' Fees) and Section 10.10 (Confidentiality) of this Agreement shall survive any early termination of this Agreement or the recordation of the Deed.

**10.7 Interpretation.** This Agreement shall be construed and enforced in accordance with the laws of the State of California as applicable to contracts entered into in California among parties doing business therein. This Agreement contains the entire agreement between the parties respecting the purchase and sale of the Property and supersedes all prior negotiations, discussions, understandings and agreements, both oral and written, between the parties with respect to such matters. This Agreement shall not be effective between the parties until the date this Agreement is executed and delivered into Escrow by both Seller and Buyer. This Agreement may not be modified or amended in any way except by a writing

## EXHIBIT 1 TO SUMMARY REPORT

executed by both Buyer and Seller. Exhibits A through E, as attached to this Agreement, are incorporated by this reference in this Agreement. The section headings of this Agreement are for convenience only and are not to be construed as part of this Agreement and do not in any way amplify or define the terms, conditions, and covenants of this Agreement and shall not be used in construction or interpretation of this Agreement. There are no third-party beneficiaries to this Agreement. Unless the context otherwise indicates, whenever used in this Agreement, the word "party" or "parties" means Buyer or Seller or both, as the context may require. Time is of the essence in the performance of each term of this Agreement.

**10.8 Successors and Assigns.** Subject to the restrictions set forth in Section 10.1, this Agreement shall be binding upon and inure to the benefits of the successors and assigns of the parties to this Agreement. In no event shall Buyer have any right to delay or postpone the Closing to create a partnership, corporation or other form of business association or to obtain financing to acquire title to the Property or to coordinate with any other sale, transfer, exchange or conveyance.

**10.9 Severability.** If any term or provision of this Agreement is determined to be invalid or unenforceable, the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.

**10.10 Duty of Confidentiality.** Buyer and Seller each represents and warrants to the other that they shall keep all information related to or connected with this Agreement and this transaction, confidential and, to the extent not already within the public domain, will not disclose any such information to any person or entity without obtaining the prior written consent of the other party, except that each shall have the right to disclose to any party if required by applicable law (including without limitation the California Public Records Act) or court order or to its attorneys, accountants, architects, engineers, consultants, brokers, potential tenants or lenders.

**10.11 Buyer's Post-Closing Claims; Nonrecourse to Partners.** Except as otherwise provided herein, prior to the Closing, if Seller breaches this Agreement, Buyer's sole recourse shall be limited to Seller's interest in the Property and the profits and proceeds therefrom. After the Closing Date, the recourse of Buyer for any obligation of the Seller under this Agreement shall be an action for specific performance of Seller's obligations unless such action shall not be available to cure the default, in which case Buyer may seek damages from Seller by action at law. Except for any such action for specific performance, and except as otherwise provided herein, after the Closing, Buyer hereby waives, releases and agrees not to sue Seller on any claim for damages or otherwise.

**10.12 Dates.** Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on Saturday, Sunday or legal holiday under the laws of the State of California, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

**10.13 Counterparts; E-mail Execution.** This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same or original counterpart. Delivery of an executed counterpart of this Agreement by e-mail shall be equally as effective as delivery of an original executed counterpart. Any party delivering an executed counterpart of this Agreement by e-mail also shall deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) document.

## EXHIBIT 1 TO SUMMARY REPORT

**10.14 Limitation of Liability.** No advisor, trustee, director, officer, partner, member, employee, beneficiary, shareholder, participant or agent of or in Seller or Buyer shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. The terms of this Section survive the Closing or termination of this Agreement.

(Signature Page Follows Immediately)



EXHIBIT 1 TO SUMMARY REPORT

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

**"BUYER":**

ATLANTIC AND ARTESIA LLC, a California  
limited liability company

By: 

Name: DAN ALMQUIST

Its: MANAGER

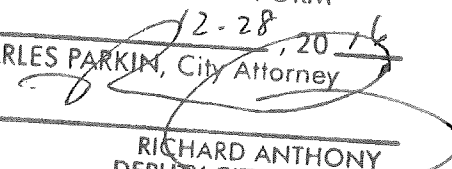
Dated: 12-20-16

**"SELLER":**

CITY OF LONG BEACH, a municipal corporation

By: 

Dated: 1/4/17

APPROVED AS TO FORM  
12-28, 2016  
CHARLES PARKIN, City Attorney  
By   
RICHARD ANTHONY  
DEPUTY CITY ATTORNEY

## EXHIBIT 1 TO SUMMARY REPORT

### EXHIBIT A

(Legal Description of the Property)

The real property is located in the State of California, County of Los Angeles and is described as follows:

#### PARCEL 1

THAT PORTION OF LOTS 1 AND 2 OF TRACT 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

WESTERLY BY THE WESTERLY BOUNDARY LINE OF SAID LOT 1; NORTHERLY BY A LINE BEARING SOUTH 88°17'43" EAST AT RIGHT ANGLES FROM A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT THEREON NORTH 1°42'17" EAST 125.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 1 WITH THE WESTERLY PROLONGATION OF THE CERTAIN COURSE IN THE SOUTHERLY BOUNDARY LINE OF SAID LOT 1, SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH 89°53'33" WEST 64.25 FEET EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2 AND SOUTHERLY BY THE SOUTHERLY LINES OF SAID LOTS 1 AND 2.

APN: 7115-003-906 AND 907 (6600 ATLANTIC AVE.)

#### PARCEL 2A

LOT 1 OF TRACT 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION OF SAID LOT 1, BOUNDED AS FOLLOWS:

WESTERLY BY THE WESTERLY BOUNDARY LINE OF SAID LOT 1; NORTHERLY BY A LINE BEARING SOUTH 88°17'43" EAST AT RIGHT ANGLES FROM A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT THEREON NORTH 1°42'17" EAST 125.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 1 WITH THE WESTERLY PROLONGATION OF THAT CERTAIN COURSE IN THE SOUTHERLY BOUNDARY LINE OF SAID LOT 1, SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH 89°53'33" WEST 64.25 FEET EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2 AND SOUTHERLY BY THE SOUTHERLY LINES OF SAID LOT 1.

#### PARCEL 2B

AN EASEMENT FOR INGRESS AND EGRESS FOR VEHICULAR PURPOSES OVER THAT PORTION OF LOT 2 OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

BOUNDED NORTHERLY BY THE NORTHERLY LINE OF SAID LOT 2; BOUNDED WESTERLY BY THE WESTERLY LINE OF SAID LOT; BOUNDED SOUTHERLY BY A LINE BEARING AT RIGHT ANGLES, FROM A POINT IN THE WESTERLY LINE OF LOT 1 OF SAID TRACT, DISTANT NORTHERLY THEREON 125 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF SAID WESTERLY LINE, WITH THE WESTERLY PROLONGATION OF THE

## EXHIBIT 1 TO SUMMARY REPORT

MOST SOUTHERLY LINE OF SAID LOT 1; AND BOUNDED EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT.

APN: 7115-003-904 (6620 ATLANTIC AVE.)

### PARCEL 3

LOTS 2 TO 7 INCLUSIVE OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395 PAGE 25 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LOT 2, BOUNDED AS FOLLOWS:

SOUTHERLY AND WESTERLY BY THE SOUTHERLY AND WESTERLY LINES OF SAID LOT 2, EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2; AND NORTHERLY BY A LINE BEARING AT RIGHT ANGLES, FROM A POINT IN THE WESTERLY LINE OF LOT 1 OF SAID TRACT, DISTANT NORTHERLY THEREON 125 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF SAID WESTERLY LINE, WITH THE WESTERLY PROLONGATION OF THE MORE SOUTHERLY LINE OF SAID LOT 1.

APN: 7115-003-901, 902 AND 903 (609-669 E. ARTESIA BLVD.)

### PARCEL 4

LOTS 8, 9, 10 AND 11 OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 7115-003-905 (685 E. ARTESIA BLVD.)

END OF LEGAL DESCRIPTION

## EXHIBIT 1 TO SUMMARY REPORT

### EXHIBIT B

(List of Due Diligence Items)

1. PHASE I ENVIRONMENTAL ASSESSMENT, ATLANTIC/ARTESIA PROJECT, DATED  
FEBRUARY 28, 2006
2. PHASE II SITE INVESTIGATION REPORT, 669 EAST ARTESIA BOULEVARD,  
DATED JULY 5, 2006
3. PHASE II SITE INVESTIGATION REPORT, 6600 ATLANTIC AVENUE, DATED  
DECEMBER 22, 2008
4. PHASE I ENVIRONMENTAL ASSESSMENT, 685 EAST ARTESIA BOULEVARD,  
DATED AUGUST 18, 2008

EXHIBIT 1 TO SUMMARY REPORT

EXHIBIT C

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

ATLANTIC AND ARTESIA LLC  
C/O Frontier Real Estate Investments LLC  
2700 Pacific Coast Highway, 2<sup>nd</sup> Fl  
Torrance, CA 90505  
Attention: Robert M. Jonas

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The Undersigned Grantor(s) Declare(s):

DOCUMENTARY TRANSFER TAX \$2,310.00; CITY TRANSFER TAX \$0;

☒ computed on the consideration or full value of property conveyed, OR

☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

☐ unincorporated area; ☒ City of Long Beach

**GRANT DEED**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the CITY OF LONG BEACH, a municipal corporation ("Grantor"), hereby grants to ATLANTIC AND ARTESIA LLC, a California limited liability company ("Grantee"), all that certain real property located in the County of Los Angeles, State of California, more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property").

This grant and conveyance is made and accepted subject to:

1. All general and special real property taxes and assessments that are not delinquent, including supplemental taxes assessed as a result of this conveyance.

2. Grantee covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, national origin, gender, sexual orientation, AIDS, HIV status, age, marital status, disability or handicap, or Vietnam Era veteran status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall Grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenants shall run with the land.

(Signature of Grantor Follows Immediately)

EXHIBIT 1 TO SUMMARY REPORT

IN WITNESS WHEREOF, this Grant Deed has been executed this [•] day of [•], 20[•].

**GRANTOR:**

CITY OF LONG BEACH, a municipal corporation

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

Name \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT 1 TO SUMMARY REPORT

### EXHIBIT A TO EXHIBIT C

(Legal Description of the Property)

The real property is located in the State of California, County of Los Angeles and is described as follows:

#### PARCEL 1

THAT PORTION OF LOTS 1 AND 2 OF TRACT 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

WESTERLY BY THE WESTERLY BOUNDARY LINE OF SAID LOT 1; NORTHERLY BY A LINE BEARING SOUTH 88°17'43" EAST AT RIGHT ANGLES FROM A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT THEREON NORTH 1°42'17" EAST 125.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 1 WITH THE WESTERLY PROLONGATION OF THE CERTAIN COURSE IN THE SOUTHERLY BOUNDARY LINE OF SAID LOT 1, SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH 89°53'33" WEST 64.25 FEET EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2 AND SOUTHERLY BY THE SOUTHERLY LINES OF SAID LOTS 1 AND 2.

APN: 7115-003-906 AND 907 (6600 ATLANTIC AVE.)

#### PARCEL 2A

LOT 1 OF TRACT 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION OF SAID LOT 1, BOUNDED AS FOLLOWS:

WESTERLY BY THE WESTERLY BOUNDARY LINE OF SAID LOT 1; NORTHERLY BY A LINE BEARING SOUTH 88°17'43" EAST AT RIGHT ANGLES FROM A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT THEREON NORTH 1°42'17" EAST 125.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 1 WITH THE WESTERLY PROLONGATION OF THAT CERTAIN COURSE IN THE SOUTHERLY BOUNDARY LINE OF SAID LOT 1, SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH 89°53'33" WEST 64.25 FEET EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2 AND SOUTHERLY BY THE SOUTHERLY LINES OF SAID LOT 1.

#### PARCEL 2B

AN EASEMENT FOR INGRESS AND EGRESS FOR VEHICULAR PURPOSES OVER THAT PORTION OF LOT 2 OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

BOUNDED NORTHERLY BY THE NORTHERLY LINE OF SAID LOT 2; BOUNDED WESTERLY BY THE WESTERLY LINE OF SAID LOT; BOUNDED SOUTHERLY BY A LINE BEARING AT RIGHT ANGLES, FROM A POINT IN THE WESTERLY LINE OF LOT 1 OF SAID TRACT, DISTANT NORTHERLY THEREON 125 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF SAID WESTERLY LINE, WITH THE WESTERLY PROLONGATION OF THE

## EXHIBIT 1 TO SUMMARY REPORT

MOST SOUTHERLY LINE OF SAID LOT 1; AND BOUNDED EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT.

APN: 7115-003-904 (6620 ATLANTIC AVE.)

### PARCEL 3

LOTS 2 TO 7 INCLUSIVE OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395 PAGE 25 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LOT 2, BOUNDED AS FOLLOWS:

SOUTHERLY AND WESTERLY BY THE SOUTHERLY AND WESTERLY LINES OF SAID LOT 2, EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2; AND NORTHERLY BY A LINE BEARING AT RIGHT ANGLES, FROM A POINT IN THE WESTERLY LINE OF LOT 1 OF SAID TRACT, DISTANT NORTHERLY THEREON 125 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF SAID WESTERLY LINE, WITH THE WESTERLY PROLONGATION OF THE MORE SOUTHERLY LINE OF SAID LOT 1.

APN: 7115-003-901, 902 AND 903 (609-669 E. ARTESIA BLVD.)

### PARCEL 4

LOTS 8, 9, 10 AND 11 OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 7115-003-905 (685 E. ARTESIA BLVD.)

END OF LEGAL DESCRIPTION



## EXHIBIT 1 TO SUMMARY REPORT

### EXHIBIT D

#### AFFIDAVIT

The CITY OF LONG BEACH ("Seller") hereby certifies to ATLANTIC AND ARTESIA LLC, a California limited liability company ("Buyer"), as follows:

1. Seller understands and acknowledges that this Affidavit may be disclosed to the Internal Revenue Service by Buyer in connection with that certain Purchase and Sale Agreement and Escrow Instructions dated as of [●] (collectively, with any and all amendments thereto, the "Purchase Agreement"), between Buyer and Seller, as evidence of Buyer's compliance with Section 1445 of the Internal Revenue Code;

2. Seller is not a foreign individual, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

3. Seller's U.S. Employer Identification Number is 95-6000733;

4. Seller's office address is 333 W. Ocean Blvd., Long Beach, CA 90802;

5. Seller further understands and acknowledges that this Affidavit may be disclosed to the Franchise Tax Board of California by Buyer in connection with the Purchase Agreement;

6. Section 18662 of the California Revenue and Taxation Code provides that a buyer may be required to withhold 3 1/3% of the sales price of the California property sold by a non-resident seller, unless the sales price of the property is less than \$100,000.00; and

7. Seller is not subject to any withholding pursuant to Section 18662 of the California Revenue and Taxation Code.

The undersigned understands that any false statements contained in this Affidavit could be punished by fine or imprisonment or both. The undersigned certifies on behalf of Seller under penalty of perjury that the foregoing is true and correct, and that the undersigned is duly authorized to execute this Affidavit on behalf of Seller.

Dated as of this [●] day of [●], 20[●], at Long Beach, California.

CITY OF LONG BEACH, a municipal corporation

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT 1 TO SUMMARY REPORT

### EXHIBIT E

Recording requested by and	]
When recorded return to:	]
	]
City of Long Beach	]
333 W. Ocean Blvd., 3 <sup>rd</sup> Floor	]
Long Beach, California 90802	]
Attn: Mary Torres	]
	]
	]

---

### RESTRICTIVE COVENANT

(Property Address)

This Restrictive Covenant ("Covenant") is made on [●], by ATLANTIC AND ARTESIA LLC, a California limited liability company (including its assignees and transferees, "Owner"), for the benefit of the CITY OF LONG BEACH ("City"), or assignee, as beneficiary, whose business address is 333 W. Ocean Blvd., Long Beach, California 90802, restricting certain real property described in Exhibit "A" attached hereto (the "Property"). This Covenant is made in connection with that certain Purchase and Sale Agreement dated as of December \_\_, 2016 ("Agreement") by and between Owner and City. Capitalized terms used herein without definition shall have the meanings given them in the Agreement.

1. **Development Covenants.** Owner, in consideration of City's sale of the Property to Owner, hereby irrevocably covenants, on behalf of itself and all of its successors and assigns, that, other than as delayed or prevented by a Force Majeure Event (as hereinafter defined), it shall substantially complete construction of the Buildings and receive a certificate of occupancy (temporary or final) no later than the date which is 550 days after the date of recordation of the grant deed conveying title to the Property to Owner. City (acting solely in its capacity as former Property owner and not in its capacity as municipal regulatory authority) shall agree to reasonable extensions of the construction time period under this Section 1 in the event that City reasonably determines that construction progress is being made and that Owner continues to diligently pursue such construction to completion. For purposes of this Covenant, a "Force Majeure Event" shall include acts of God, war, civil commotion, terrorism, labor disputes, strikes, earthquakes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction, weather conditions, delays caused by City or any governmental or quasi-governmental entity and any other event or circumstance beyond Owner's reasonable control, including without limitation the failure of a ground lessee to timely substantially complete construction of the Building in question as required by the terms of the ground lease. The provisions of this Section 1 shall terminate as to each legal parcel encompassed by the Property upon timely substantial completion of construction of the Building on such legal parcel and issuance of a certificate of occupancy (temporary or final) with respect to such Building.

2. **Operating Covenants.** Owner, in consideration of City's sale of the Property to Owner, hereby irrevocably covenants, on behalf of itself and all of its successors and assigns, that the Property shall be operated primarily as a retail center. Without limiting the foregoing use restriction, at no time shall any portion of the Property be used as a:

- (a) bowling alley, billiards or pool hall, nightclub, dance hall, video game arcade, skating rink, or other place of amusement;
- (b) car wash;

## EXHIBIT 1 TO SUMMARY REPORT

- (c) liquor store (provided that restaurants and convenience stores that sell food which also sell alcohol are acceptable uses);
- (d) junk yard or pawn shop;
- (e) commercial laundry or dry cleaning plant;
- (f) automobile body or repair shop;
- (g) massage parlor or business which constitutes "adult entertainment" as defined by the Long Beach Municipal Code (provided that nationally recognized massage chains such as Massage Envy are acceptable uses);
- (h) "head shop" or other business devoted to the sale of merchandise normally associated with illegal activities; or
- (i) marijuana collective, grow-house or dispensary.

In the event Owner fails to comply with the operating covenants set forth above, City shall notify Owner in writing of such failure and shall specify the deficiencies and the actions required to be taken by Owner to cure the deficiencies. Upon notification of such failure, Owner shall have thirty (30) days within which to commence, and thereafter diligently correct, remedy or cure the failure; provided, however, that in no event shall such cure period exceed one hundred eighty (180) days.

3. **Maintenance Covenants.** Owner, in consideration of City's sale of the Property to Owner, hereby irrevocably covenants, on behalf of itself and all of its successors and assigns, that:

(a) **Maintenance of Property.** Owner, its successors, assigns, and any successor in interest to the Property, covenants and agrees to maintain the Improvements in accordance with the "Reasonable Standards," as hereinafter defined. The "Improvements" shall include, but not be limited to, the Buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, and any and all improvements on the Property. To accomplish the maintenance, Owner shall either staff or contract with qualified and if required by law, licensed personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Covenant.

(b) **Reasonable Standards.** The following standards ("Reasonable Standards") shall be complied with by Owner and its maintenance staff, contractors or subcontractors:

(i) The Property and Improvements shall be provided with the following landscape maintenance on a periodic basis as and when deemed reasonably necessary by Owner: watering/irrigation (subject to applicable water usage restrictions); fertilization; mowing; edging; weeding; removal and replacement of dead landscaping material; trimming of grass; tree and shrub pruning.

(ii) The Property and Improvements shall be provided with the following clean-up maintenance: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from Improvements and landscaping.

(c) **Failure to Maintain.** In the event Owner does not maintain the Property and Improvements in the manner set forth herein and in accordance with Reasonable Standards, City shall notify Owner in writing that the Improvements do not meet the Reasonable Standards and shall specify the deficiencies and the actions required to be taken by Owner to cure the deficiencies. Upon notification of any maintenance deficiency, Owner shall have thirty (30) days within which to commence, and thereafter diligently correct, remedy or cure the deficiency. If the written notification states the problem is urgent and relates to public health and safety, Owner shall have five (5) business days to commence the curing of the problem.

## EXHIBIT 1 TO SUMMARY REPORT

(d) Right to Enter and Maintain. In the event Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then City shall have the right to enter the Property and cure such maintenance deficiency. Owner agrees to pay City upon written demand such reasonable, documented, out-of-pocket charges and costs incurred by City in curing such maintenance deficiency. Until so paid, City shall have a lien on the specific legal parcel upon which the maintenance deficiency exists (the "Affected Parcel") and on no other portion of the Property as provided by this Covenant for the amount of such charges or costs.

(e) Lien for Owner's Obligations. If City exercises its right to cure a maintenance deficiency in accordance with Section 3(d) above, Owner agrees to pay City upon written demand such reasonable, documented, out-of-pocket charges and costs incurred by City in curing such maintenance deficiency. Until so paid, City shall have a lien on the Affected Parcel and on no other portion of the Property for the amount of such charges or costs, which lien may be perfected by the recordation of "Notice of Claim of Lien" against the Affected Parcel.

(i) Upon recordation of a Notice of a Claim of Lien against the Affected Parcel, such lien shall constitute a lien on the fee estate in and to the Affected Parcel prior and superior to all other monetary liens except; (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto and (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record, it being understood that the priority of any such lien shall date from the date of the recordation of the Notice of Claim of Lien.

(ii) Any such lien shall be subject and subordinate to any lease or sublease of the interest of Owner in the Property or any portion thereof and to any easement affecting the Property or any portion thereof entered into at any time (either before or after) the date of recordation of the Notice of Claim of Lien.

(iii) Any lien created pursuant to this Section 3(e) may be enforced in any manner permitted by law, including judicial foreclosure or non-judicial foreclosure. Any non-judicial foreclosure shall be conducted by the trustee named in the Notice of Claim of Lien or by a trustee substituted pursuant to Section 2934a of the California Civil Code, in accordance with the provisions of Sections 2924, 2924b and 2924c of the California Civil Code.

(iv) If the sums specified in the Notice of Claim of Lien are paid before the completion of any judicial or non-judicial foreclosure, City shall promptly record a notice of satisfaction and release of the lien. Upon receipt of a written request by Owner, City shall also promptly record a notice of rescission of the Notice of Claim of Lien.

(v) Upon foreclosure of any mortgage of deed of trust recorded prior to the recordation of any unsatisfied Notice of Claim of Lien, the foreclosure-purchaser shall take title to the Affected Parcel free of any lien imposed by City that has accrued up to the time of the foreclosure sale, and upon taking title to the Affected Parcel, such foreclosure-purchaser shall only be obligated to pay reasonable, documented, out-of-pocket charges and costs to cure any maintenance deficiency to the extent such charges and costs accrue after the foreclosure-purchaser acquires title to the Affected Parcel.

(vi) Owner shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

## EXHIBIT 1 TO SUMMARY REPORT

4. **Term.** This Covenant shall terminate by its own terms and be of no further force and effect on and after the earlier of the date which the Buildings no longer exist on the Property or fifteen (15) years after the date of recordation of the grant deed conveying title to the Property to Owner.

5. **Subordination.** Except as otherwise provided in Section 3(e) above, City shall be under no obligation to subordinate the encumbrance of this Covenant.

6. **Default.**

(a) IF OWNER DEFAULTS IN ITS OBLIGATIONS UNDER SECTION 1 OF THIS COVENANT, THEN CITY SHALL HAVE THE RIGHT TO DEMAND AND RECEIVE, A QUITCLAIM DEED FROM OWNER RETURNING TO CITY AS CITY'S SOLE AND EXCLUSIVE REMEDY THE SPECIFIC LEGAL PARCEL UPON WHICH THE BUILDING OR BUILDINGS WERE NOT TIMELY COMPLETED AND NO OTHER PORTION OF THE PROPERTY. FOR THE AVOIDANCE OF DOUBT, ANY PORTION OF THE PROPERTY UPON WHICH THE BUILDING OR BUILDINGS WERE TIMELY COMPLETED SHALL REMAIN VESTED IN OWNER. UPON RECEIPT OF SUCH QUITCLAIM DEED TO THE SPECIFIC LEGAL PARCEL UPON WHICH THE BUILDING OR BUILDINGS WERE NOT TIMELY COMPLETED, CITY SHALL RETURN THE ALLOCABLE SHARE OF THE PURCHASE PRICE FOR SUCH SPECIFIC LEGAL PARCELS (BASED ON A UNIFORM SQUARE FOOT VALUATION IN ACCORDANCE WITH THE AGREEMENT) TO OWNER IN IMMEDIATELY AVAILABLE FUNDS.

(b) IF OWNER DEFAULTS IN ITS OBLIGATIONS UNDER SECTION 2 OF THIS COVENANT (SUBJECT TO THE NOTICE AND CURE PERIODS PROVIDED THEREIN), THEN CITY SHALL BE ENTITLED TO THE SUM OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) AS LIQUIDATED DAMAGES AS CITY'S SOLE AND EXCLUSIVE REMEDY. THE LIQUIDATED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF THE CALIFORNIA CIVIL CODE, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY PURSUANT TO THE CALIFORNIA CIVIL CODE. OWNER AND CITY AGREE THAT (I) THE AMOUNT OF LIQUIDATED DAMAGES IS REASONABLE CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS COVENANT, INCLUDING THAT ASCERTAINING THE AMOUNT OF CITY'S ACTUAL DAMAGES WOULD BE COSTLY AND INCONVENIENT; AND (II) THE AMOUNT OF THE LIQUIDATED DAMAGES CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES TO CITY. OWNER HAS REVIEWED THE EFFECT OF THIS PROVISION WITH LEGAL COUNSEL AND HAS AGREED THAT SUCH DAMAGES ARE A REASONABLE AND FAIR ESTIMATE OF THE DAMAGES CITY WILL SUSTAIN IF OWNER DEFAULTS IN ITS OBLIGATIONS UNDER SECTION 2 OF THIS COVENANT. RECEIPT BY CITY OF THE LIQUIDATED DAMAGES SHALL BE IMMEDIATE CAUSE FOR TERMINATION OF THIS COVENANT. ANY DAMAGES PAID TO CITY HEREUNDER SHALL BE PAID TO CITY IN ITS CAPACITY AS BENEFICIARY UNDER THIS COVENANT AND SHALL NOT AFFECT CITY'S ABILITY TO SEEK APPROPRIATE REMEDIES AGAINST OWNER AND/OR THE PROPERTY IN CITY'S CAPACITY AS MUNICIPAL REGULATORY AUTHORITY.

(c) IF OWNER DEFAULTS IN ITS OBLIGATIONS UNDER SECTION 3 OF THIS COVENANT, CITY SHALL, AS CITY'S SOLE AND EXCLUSIVE REMEDY, HAVE THE RIGHTS PROVIDED IN SUCH SECTION 3.

"Owner"

EXHIBIT 1 TO SUMMARY REPORT

ATLANTIC AND ARTESIA LLC, a California limited  
liability company

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

## EXHIBIT 1 TO SUMMARY REPORT

### EXHIBIT A TO EXHIBIT E

#### PROPERTY DESCRIPTION

The real property is located in the State of California, County of Los Angeles and is described as follows:

##### PARCEL 1

THAT PORTION OF LOTS 1 AND 2 OF TRACT 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

WESTERLY BY THE WESTERLY BOUNDARY LINE OF SAID LOT 1; NORTHERLY BY A LINE BEARING SOUTH 88°17'43" EAST AT RIGHT ANGLES FROM A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT THEREON NORTH 1°42'17" EAST 125.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 1 WITH THE WESTERLY PROLONGATION OF THE CERTAIN COURSE IN THE SOUTHERLY BOUNDARY LINE OF SAID LOT 1, SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH 89°53'33" WEST 64.25 FEET EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2 AND SOUTHERLY BY THE SOUTHERLY LINES OF SAID LOTS 1 AND 2.

APN: 7115-003-906 AND 907 (6600 ATLANTIC AVE.)

##### PARCEL 2A

LOT 1 OF TRACT 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION OF SAID LOT 1, BOUNDED AS FOLLOWS:

WESTERLY BY THE WESTERLY BOUNDARY LINE OF SAID LOT 1; NORTHERLY BY A LINE BEARING SOUTH 88°17'43" EAST AT RIGHT ANGLES FROM A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT THEREON NORTH 1°42'17" EAST 125.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 1 WITH THE WESTERLY PROLONGATION OF THAT CERTAIN COURSE IN THE SOUTHERLY BOUNDARY LINE OF SAID LOT 1, SHOWN AS HAVING A BEARING AND LENGTH OF SOUTH 89°53'33" WEST 64.25 FEET EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2 AND SOUTHERLY BY THE SOUTHERLY LINES OF SAID LOT 1.

##### PARCEL 2B

AN EASEMENT FOR INGRESS AND EGRESS FOR VEHICULAR PURPOSES OVER THAT PORTION OF LOT 2 OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

BOUNDED NORTHERLY BY THE NORTHERLY LINE OF SAID LOT 2; BOUNDED WESTERLY BY THE WESTERLY LINE OF SAID LOT; BOUNDED SOUTHERLY BY A LINE BEARING AT RIGHT ANGLES, FROM A POINT IN THE WESTERLY LINE OF LOT 1 OF SAID TRACT, DISTANT NORTHERLY THEREON 125 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF SAID WESTERLY LINE, WITH THE WESTERLY PROLONGATION OF THE

## EXHIBIT 1 TO SUMMARY REPORT

MOST SOUTHERLY LINE OF SAID LOT 1; AND BOUNDED EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT.

APN: 7115-003-904 (6620 ATLANTIC AVE.)

### PARCEL 3

LOTS 2 TO 7 INCLUSIVE OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395 PAGE 25 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LOT 2, BOUNDED AS FOLLOWS:

SOUTHERLY AND WESTERLY BY THE SOUTHERLY AND WESTERLY LINES OF SAID LOT 2, EASTERLY BY THE EASTERLY LINE OF THE WEST HALF OF SAID LOT 2; AND NORTHERLY BY A LINE BEARING AT RIGHT ANGLES, FROM A POINT IN THE WESTERLY LINE OF LOT 1 OF SAID TRACT, DISTANT NORTHERLY THEREON 125 FEET FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF SAID WESTERLY LINE, WITH THE WESTERLY PROLONGATION OF THE MORE SOUTHERLY LINE OF SAID LOT 1.

APN: 7115-003-901, 902 AND 903 (609-669 E. ARTESIA BLVD.)

### PARCEL 4

LOTS 8, 9, 10 AND 11 OF TRACT NO. 14930, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 395, PAGE 25 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 7115-003-905 (685 E. ARTESIA BLVD.)

END OF LEGAL DESCRIPTION



EXHIBIT 2 TO SUMMARY REPORT

**FIFTH AMENDMENT TO  
PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS  
(6600 Atlantic)**

THIS FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (6600 Atlantic) (this “**Amendment**”), is dated as of December \_\_, 2018 and is entered into by and between the CITY OF LONG BEACH, a municipal corporation (“**Seller**”), and ATLANTIC AND ARTESIA LLC, a California limited liability company (“**Buyer**”). Seller and Buyer are sometimes referred to in this Amendment individually as a “**Party**” and collectively as the “**Parties**.” This Amendment is entered into by the Parties with reference to the following recited facts (each, a “**Recital**”):

**RECITALS**

A. Seller and Buyer previously executed a Purchase and Sale Agreement and Escrow Instructions (6600 Atlantic), dated January 4, 2017, as amended by that certain (i) First Amendment to Purchase and Sale Agreement and Escrow Instructions (6600 Atlantic) dated March 31, 2017, (ii) that certain Second Amendment to Purchase and Sale Agreement and Escrow Instructions (6600 Atlantic) dated April 26, 2017, (iii) that certain Third Amendment to Purchase and Sale Agreement and Escrow Instructions (6600 Atlantic) dated January 16, 2018, and (iv) that certain Fourth Amendment to Purchase and Sale Agreement and Escrow Instructions (6600 Atlantic) dated May 17, 2018 (collectively, the “**Agreement**”), pursuant to which Buyer intends to purchase from Seller certain real property and improvements located in the City of Long Beach, County of Los Angeles, State of California, more particularly described in Exhibit A of the Agreement and commonly referred to as 6600 Atlantic Avenue, Long Beach, CA.

B. Seller and Buyer desire to amend the Agreement on the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants, restrictions and conditions contained in this Amendment, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**TERMS**

1. **INCORPORATION OF RECITALS.** The Recitals set forth above are true and correct and are incorporated into this Amendment.
2. **INCORPORATION OF DEFINED TERMS.** All terms, phrases and words indicated to be defined terms by initial capitalization in this Amendment that are not specifically defined in this Amendment shall have the meanings ascribed to them in the Agreement.
3. **PURCHASE PRICE.** Section 2.2 of the Agreement shall be amended so that the total purchase price (“Purchase Price”) for the Property shall be One Million One Hundred Thousand Dollars (\$1,100,000).

EXHIBIT 2 TO SUMMARY REPORT

4. **EFFECT OF AMENDMENT.** Except as expressly provided in this Amendment, all of the terms, conditions, and provisions set forth in the Agreement shall remain in full force and effect. From and after the date of this Amendment, wherever the term "Agreement" appears in the Agreement, it shall be read and understood to mean the Agreement, as amended by this Amendment.

5. **AMENDMENT DATE.** This Amendment shall be effective after all Parties hereto have signed this Amendment.

6. **EXECUTION IN COUNTERPARTS.** This Amendment may be executed in counterparts, each of which, when all Parties hereto have signed this Amendment, shall be deemed an original.

IN WITNESS WHEREOF, Seller and Buyer have signed and entered into this Fifth Amendment to Purchase and Sale Agreement and Escrow Instructions (6600 Atlantic) by and through the signatures of their authorized representatives set forth below:

**SELLER:**

CITY OF LONG BEACH,  
a municipal corporation

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

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

**BUYER:**

ATLANTIC AND ARTESIA LLC,  
a California limited liability company

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

Dan Almquist  
Manager

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