

ATTACHMENT 3

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is made this ____ day of _____, 2020 by and between ZAB LLC, a California limited liability company, or its designee ("**Buyer**"), and HESPERIA HOUSING AUTHORITY, a public body, corporate and politic ("**Seller**"). LAWYERS TITLE & ESCROW, a California corporation shall act as escrow ("**Escrow Holder**").

RECITALS:

A. Seller is the owner of that certain unimproved real property in the City of Hesperia, County of San Bernardino, State of California (Assessor Parcel No. 0407-261-20) ("**Property**") more particularly described in **Exhibit A** attached hereto ("**Property**").

B. Hesperia Community Development Commission ("Hesperia CDC") is the owner of the adjacent unimproved real property in the City of Hesperia, County of San Bernardino, State of California consisting of Assessor Parcel Nos. 0407-261-03 and 04 ("Hesperia CDC Property")

C. Concurrently with the acquisition of the Property, Buyer intends to acquire the Hesperia CDC Property pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions ("**Hesperia CDC PSA**") in which **Escrow Holder** shall also act as the escrow ("**Hesperia CDC Escrow**"). The closing of the Property under this Agreement is contingent upon the concurrent closing of the Hesperia CDC Escrow and vice versa.

D. The Property and the Hesperia CDC Property are depicted on **Exhibit A-1** and are collectively referred to herein as the "**Development Property**."

E. Buyer intends to develop the Development Property as a mixed-use multi-residential project ("**Proposed Development**").

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and incorporating the Recitals, the parties hereto agree as follows:

TERMS AND CONDITIONS:

1. PURCHASE AND SALE OF PROPERTY. Upon the terms and conditions in this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer the Property AS-IS condition without representations or warranties, except that Seller hereby represents and warrants that Seller owns the Property in fee simple title, free and clear of any encumbrances other than those shown of public record, and that Seller has the requisite power to sell the Property to Buyer.

2. EFFECTIVE DATE; OPENING OF ESCROW.

2.1 Effective Date. This Agreement shall be deemed effective upon execution of the Agreement by Seller after the approval by the Seller's Board as required by law ("**Effective Date**"), which approval shall not take longer than **thirty (30) days** after execution by Seller, subject to Seller's normal public meeting requirements and procedures.

2.2 Opening of Escrow. Within **five (5) days** after the execution of this Agreement by Seller and Seller's Board approval, the parties shall open an escrow ("**Escrow**") with **Escrow Holder** by causing an executed copy of this Agreement to be deposited with Carolyn Lamascus

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located at 10801 Foothill Blvd., Rancho Cucamonga, CA 91730, (909) 660-8888 Carolyn.Lamascus@ltic.com which Escrow Holder shall sign and accept. Escrow shall be deemed opened upon Escrow Holder's receipt of all of the following ("**Opening of Escrow**"): (i) the executed copies of this Agreement (which shall include a copy of Seller's Board approval); and (ii) Buyer delivers the Initial Deposit (defined in Section 3.2a). If Escrow is not opened (as defined above) within **ten (10) days** after the Effective Date, either party shall have the right to terminate this Agreement upon written notice to the other party and Escrow Holder prior to the actual Opening of Escrow, in which event, Escrow Holder shall return the initial Deposit, if received by Escrow Holder, to Buyer.

2.3 Hesperia CDC Escrow. If the Hesperia CDC does not approve the Hesperia CDC PSA within **ten (10) days** of the Opening of Escrow, this Agreement and Escrow shall be terminated and the Deposit (less any cancellation charges) returned to Buyer. Once the Hesperia CDC Escrow has opened, if the Hesperia CDC PSA is terminated by Buyer pursuant to a condition precedent, this Agreement and Escrow shall be concurrently terminated and the Deposit (less any cancellation charges) returned to Buyer. If the Hesperia CDC PSA is terminated due to a breach by Buyer, then Buyer shall be deemed in default under this Agreement and this Agreement and Escrow shall be deemed terminated and the Deposit delivered to Seller pursuant to Section 9.

3. **CONSIDERATION; PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.**

3.1 Consideration. All of the following is material consideration to Seller for the sale of the Property to Buyer: (i) payment of the Purchase Price (defined in Section 3.2); (ii) the Covenants (defined in Section 3.4); and (iii) Buyer's obligation to provide copies of the Documents (defined in Section 3.5).

3.2 Purchase Price. The purchase price for the Property is One Hundred Thirty-Six Thousand One Hundred Forty-Seven Dollars and Twelve Cents (\$136,147.12) ("**Purchase Price**").

3.3 Payment of Purchase Price.

- a. Deposit.** Upon Opening of Escrow, Seller shall deliver the Deposit to Escrow Holder in the amount of Six Thousand Eight-Hundred dollars (\$6,800) ("**Deposit**"). The Deposit shall be applicable to the Purchase Price.
- b. Release of Deposit.** If Buyer delivers the Disapproval and Termination Notice in accordance with Section 7.2, the Deposit shall be promptly returned to Buyer by Escrow Holder. If Buyer does not deliver the Disapproval and Termination Notice in accordance with Section 7.2, the Deposit shall be promptly released to Seller by Escrow Holder, provided Seller shall promptly return the Deposit to Buyer if Buyer is entitled to the Deposit as provided in Section 12.5 below. Each party agrees to promptly execute and deliver any documents requested by Escrow Holder to effect the release of the Deposit as specified above.
- c. Balance of Purchase Price.** Buyer shall deposit the balance of the Purchase Price with Escrow Holder in Good Funds (as defined below) at least **one (1) business day** prior to the Closing Date.

3.4 Covenants. The development covenants by Buyer with respect to the Development Property as set forth in the Covenant Agreement with Option to Repurchase attached as **Exhibit C** attached hereto ("**Covenant Agreement**") is material consideration to Seller (and Hesperia CDC) for the sale of the Development Property to Buyer. The Covenant Agreement shall

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run with the Development Property until the Covenant Agreement is terminated pursuant to the terms and provisions therein.

3.5 Documents. Buyer covenants and agrees to provide to Seller copies of all contracts, agreements, plans, specifications, reports, investigations and any other documents related to the development of the Property ("**Documents**") at no cost to Seller and the issuer or creator of the respective Documents consenting in writing to allow Seller to use same in the event that (i) Buyer does not acquire the Property due to a breach of Buyer's obligations pursuant to this Agreement; or (ii) if Buyer does acquire the Property but fails, following the applicable notice and cure period, to comply with the requirements of the Covenant Agreement and thereafter, Seller reacquires the Property pursuant to the Covenant Agreement. The term "**Documents**" shall not include any financial information or any documents which are attorney-client privileged. This obligation shall survive termination of this Agreement for any reason until the Covenant Agreement is terminated pursuant to the terms and provisions therein.

3.6 Good Funds. All funds deposited in Escrow shall be in "**Good Funds**" which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

4. FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

4.1 Seller. Seller agrees that on or before 12:00 noon at least **one (1) business day** prior to the Closing Date (defined in Section 5.1 below), Seller shall deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including without limitation:

- i. Executed and acknowledged Grant Deed substantially in the form attached hereto as **Exhibit B ("Grant Deed")** and such other documents as reasonably required by Title Company.
- ii. Three (3) executed and acknowledged copies of the Covenant Agreement executed by both Seller and Hesperia CDC.
- iii. A Non-Foreign Affidavit as required by federal law.
- iv. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Buyer. Buyer agrees that on or before 12:00 noon at least **one (1) business day** prior to the Closing Date, Buyer shall deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including without limitation:

- a. Three (3) executed copies of the Covenant Agreement.
- b. A Preliminary Change of Ownership Statement completed in the manner required in San Bernardino County ("**PCOR**").
- c. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Lot Tie Agreement. If a new parcel map is not being recorded for the Development Property at the Closing pursuant to the request of Buyer, Buyer shall execute a lot tie agreement, or other method which will merge the three parcels providing that the Buyer may

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construct structures across the three parcels and that such parcels may not be sold separately, in a form acceptable to Seller which shall be recorded against the Development Property at Closing ("**Lot Tie Agreement**").

4.4 Recordation, Filing, Completion and Distribution of Documents. Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof so as to create fully executed documents. Escrow Holder shall cause the (i) Grant Deed (with the Acceptance by Buyer attached), (ii) the Grant Deed for the Hesperia CDC Property; (iii) the Lot Tie Agreement (or parcel map) pursuant to Section 4.3; and (iv) the Covenant Agreement (collectively "**Recording Documents**"), to be recorded in **that** order so it can issue the Title Policy in accordance with Section 6.2. Promptly following Close of Escrow, Escrow Holder shall distribute Escrow Holder's final closing statement and conformed copies of all recorded documents to the parties. One (1) executed copy of the Covenant Agreement will be delivered to Hesperia CDC.

5. CLOSING DATE; TIME IS OF ESSENCE; EXTENSION AUTHORITY.

5.1 Closing Date. Escrow shall promptly close upon satisfaction of the Conditions Precedent in Section 8, within **twelve (12) months** from the Effective Date, subject to extension pursuant to the terms of this Agreement, ("**Closing Date**"). The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the time the Recording Documents are filed for recording by the Escrow Holder in the Office of the County Recorder of San Bernardino County, California.

5.2 Possession. Upon the Close of Escrow, Seller shall deliver exclusive possession of the Property to Buyer.

5.3 Time is of Essence. Buyer and Seller specifically agree that time is of the essence under this Agreement.

5.4 Executive Director Authority. Seller by its execution of this Agreement agrees that the Executive Director of Seller or his designee (who has been designated by Executive Director's written notice delivered to Buyer and Escrow Holder) shall have the authority to execute documents on behalf of Seller including, but not limited to, issuing approvals, disapprovals and extensions. Any such approval, disapproval or extension executed by the Executive Director or his designee shall be binding on Seller. Notwithstanding the foregoing, Executive Director or his designee may only grant extensions for (i) the Due Diligence Period (defined in Section 7.1) that cumulatively do not exceed ninety (90) days; (ii) the Entitlement Period (defined in Section 8) that cumulatively do not exceed ninety (90) days; or (ii) the Closing Date that cumulatively do not exceed ninety (90) days.

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6. TITLE POLICY.

6.1 Approval of Title. Promptly following execution of this Agreement but, in no event later than **ten (10) days** following Opening of Escrow, a preliminary title report shall be issued by Commonwealth Land Title Insurance Company, 4100 Newport Place, Suite 120, Newport Beach, CA 92660 Attn: Chris Maziar (949) 724-3170 ("**Title Company**"), describing the state of title of the Property, together with copies of all exceptions listed therein and a map plotting all easements specified therein ("**Preliminary Title Report**"). Within **thirty (30) days** after Buyer's receipt of both the Preliminary Title Report and the ALTA survey, Buyer shall notify Seller in writing ("**Buyer's Title Notice**") of Buyer's disapproval of any matters contained in the Preliminary Title Report except that Buyer may not disapprove any title exceptions caused by Buyer's entry onto the Property pursuant to Section 7.3 ("**Disapproved Exceptions**").

In the event Buyer delivers Buyer's Title Notice within said period, Seller shall have a period of **ten (10) days** after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election to either (i) agree to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions ("**Seller's Notice**"). If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, or if Seller is unable to remove the Disapproved Exceptions, Buyer may elect either to terminate this Agreement and the Escrow, in which event Escrow Holder shall promptly return the Deposit to Buyer, or to accept title to the Property subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within **five (5) days** following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller declines to remove such Disapproved Exception(s).

Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement, provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to **ten (10) days** following receipt of notice of such additional exceptions.

6.2 Title Policy. At the Close of Escrow, Escrow Holder shall furnish Buyer with an ALTA owner's non-extended Policy of Title Insurance insuring title to the Property vested in Buyer with coverage in the amount of the Purchase Price, containing only the exceptions to title (i) which has not been approved or waived by Buyer in accordance with Section 6.1; (ii) the Covenant Agreement; (iii) the Lot Tie Agreement (if applicable); and (iv) the continuing covenants in the Grant Deed ("**Title Policy**"). The cost of the Title Policy to Buyer, including any endorsements required to insure against any Disapproved Exceptions, shall be paid by Seller but Buyer shall, if Buyer so elects to obtain an extended coverage policy, be obligated to pay for the additional costs of such extended coverage policy. If Buyer elects to obtain an ALTA extended owner's title policy, Buyer shall (i) be responsible for the additional costs of that form of title policy; and (ii) must deliver an ALTA survey (obtained at Buyer's cost) to the Title Company not less than **thirty (30) days** prior to the scheduled Closing Date.

7. DUE DILIGENCE; ENTITLEMENTS.

7.1 Due Diligence. Within **ten (10) days** after the Effective Date, Seller shall provide Buyer with any and all documents and information in Seller's possession and control concerning the Property including contracts, leases, and reports. Commencing with the Effective Date, Buyer shall have the right to obtain at its cost to conduct such engineering, feasibility studies, soils tests, environmental studies and other investigations as Buyer in its sole discretion may desire, to permit Buyer to determine the suitability of the Property for Buyer's contemplated uses and to conduct such other review and investigation which Buyer deems appropriate to satisfy itself to acquire the Property

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for Buyer's Proposed Development. Buyer shall be solely responsible to obtain any documents pertaining to the Property from the County of San Bernardino or the City of Hesperia ("**City**").

Within ten (10) days of Opening of Escrow, Escrow shall order and deliver to Buyer a commercial natural hazards disclosure report issued on the Property ("**NHD Report**"). Buyer must review and approve the NHD Report as part of its due diligence under this Section 7.

7.2 Disapproval of Due Diligence Matters. No later than **one hundred twenty (120) days** from the Opening of Escrow ("**Due Diligence Expiration Date**"), Buyer may, in its sole discretion, notify Seller in writing (with a copy to Escrow Holder) of (i) its disapproval of the due diligence matters (excluding title matters which are to be approved or disapproved pursuant to Section 6, and excluding entitlements which are to be approved or disapproved pursuant to Section 7.4), and (ii) its election to terminate this Agreement and Escrow ("**Disapproval and Termination Notice**").

If Buyer sends the Disapproval and Termination Notice in the time and manner specified above, the parties shall execute any documents required by Escrow Holder and upon receipt of said documents executed by the parties, Escrow Holder shall return the Deposit (less any cancellation charges) to Buyer. If Buyer does not deliver the Disapproval and Termination Notice in the time and manner specified above, Buyer shall conclusively be deemed to have approved due diligence matters.

7.3 Right to Enter the Property. Commencing with the Effective Date, Seller grants Buyer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be done at Buyer's sole cost and expense.

Prior to entry onto the Property, Buyer shall (i) notify Seller the date and purpose of each intended entry together with the names and affiliations of the persons entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations; (iv) notify Seller of the date for such entry and allow an employee of Seller to be present at Seller's election; (v) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this provision; (vi) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of f; (vii) provide to Seller prior to initial entry a certificate of insurance evidencing that Buyer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000) for Development Property which insurance names Seller as additional insured. Buyer shall return the Property to substantially its original condition following Buyer's entry. Following Buyer's entry, Buyer will, upon written request by Seller, provide Seller copies of all studies, surveys, reports, investigations and other tests derived from any inspection ("**Reports**"); and to take the Property at closing subject to any title exceptions caused by Buyer exercising this right to enter.

Buyer agrees to indemnify, and hold Seller free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which Seller may suffer or incur as a consequence of Buyer's exercise of the license granted pursuant to this Section or any act or omission by Buyer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Buyer (except Seller and its agents) with respect to the entry upon the Property during the

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term of this Agreement, excepting any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) arising from the mere discovery by Buyer of any hazardous materials or conditions and excepting to the extent such claims arise out of the negligence or misconduct of Seller. Buyer's obligations under this Section shall survive termination of this Agreement for any reason for a period of **one (1) year**.

The parties agree that breach of any Property entry or restoration conditions in this Section shall constitute a material breach of this Agreement, unless the Agreement is consummated at Closing; provided, however, that the Closing shall not release Buyer from any of the foregoing obligations.

7.4 Entitlement Process.

a. Commencement. Within **one hundred and eighty (180) days** from the Opening of Escrow, Buyer shall promptly apply for all discretionary governmental permits and approvals for its Proposed Development and diligently prosecute same including, but not limited to, promptly responding to requests and modifications, payment of all necessary fees, etc. ("**Entitlements**"). The Entitlements shall include, without limitation, and if applicable specific site plan approval, a new parcel map, Lot Tie Agreement, or other method acceptable to Seller which will merge the three parcels, and a zone change. Buyer shall diligently prosecute and pursue all applications and permits including providing prompt responses to the City for any additional requests and Seller shall cooperate with Buyer's process. Buyer shall pay all applicable fees to secure all entitlements for the Proposed Development.

b. Buyer Approvals. Upon issuance of final conditions for any Entitlement, Buyer shall have the right to disapprove same by issuing a written notice to Seller within **ten (10) days** which shall also include Buyer's election to terminate this Agreement and the Escrow ("**Termination Notice**"). For example, conditions of approval for the project required by the Planning Commission may be appealed to the City Council. Upon the City Council's final determination, Buyer shall have **ten (10) days** to issue the Termination Notice to Seller for any Entitlement. If Buyer delivers a Termination Notice in the time and manner specified for an Entitlement, this Agreement shall be terminated, Escrow shall be cancelled and the Deposit (less cancellation charges) shall be returned to Buyer. If Buyer fails to deliver the Termination Notice for an Entitlement in the time and manner specified, Buyer shall be deemed to have approved all conditions to such Entitlement.

c. Entitlement Period. Buyer shall use commercially reasonable efforts to obtain all Entitlements within **ten (10) months** from the Effective Date ("**Entitlement Period**"). Provided Buyer has been diligently pursuing the Entitlements, Buyer shall have the right to extend the Entitlement Period for three (3) additional periods of **thirty (30) days** each by providing written notice to Seller at least **ten (10) days** prior to the expiration of the Entitlement Period, and extension period, as the case may be, which notice summarizes in reasonable detail the reason for the extension. It is a material consideration to Buyer for the purchase of the Property that Buyer obtain the necessary Entitlements, including without exception, the rezoning of the Property from "Neighborhood Commercial" to an appropriate zoning classification necessary for such high-density residential and mixed-use commercial application prior to the expiration of the Entitlement Period. In the event, through no fault of Buyer, that the City takes longer to approve the rezoning of the Property and to issue such governmental permits for the Proposed Development, then the Entitlement Period shall be extended day for day, without Buyer having to request an extension.

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8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

8.1 Conditions to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent ("**Buyer's Conditions Precedent**"):

- i. Title Company will issue the Title Policy as specified in Section 6.2.
- ii. Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement, and is in position to record the Grant Deed as approved by Buyer.
- iii. The Hesperia CDC Escrow closes concurrently.
- iv. Seller is not in default of its obligations under this Agreement.

8.2 Conditions to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent:

- i. Buyer has delivered the balance of the Purchase Price to Escrow Holder.
- ii. Title Company will issue the Title Policy as specified in Section 6.2.
- iii. The Hesperia CDC Escrow closes concurrently.
- iv. The Lot Tie Agreement is executed by Buyer (unless a new parcel map is to be recorded at Closing) pursuant to Section 4.3.
- v. Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- vi. Buyer is not in default of its obligations under this Agreement.

9. LIQUIDATED DAMAGES.

IF BUYER SHOULD MATERIALLY DEFAULT UNDER THIS AGREEMENT, BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH DEFAULT WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. THEREFORE, BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF SUCH DEFAULT BY BUYER HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT THE DEPOSIT SHALL CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTIONS 1671 AND 1677 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE FOR A BREACH PRIOR TO THE CLOSING. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE CHARGES SHALL BE PAID BY SELLER FROM SUCH SUM. THIS PROVISION DOES NOT APPLY TO OR LIMIT IN ANY WAY THE INDEMNITY OBLIGATIONS OF BUYER UNDER THIS AGREEMENT.

Seller's Initials

Buyer's Initials

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10. CONDITION OF THE PROPERTY.

10.1 Disclaimer of Warranties. Upon the Close of Escrow, Buyer shall, subject to Seller's representation and warranty of (i) free and clear fee simple title to the Property, and (ii) no actual knowledge by the Seller, its employees or agents, of the presence of any Hazardous Materials (defined below) or underground storage tanks in, on, under or about the Property, acquire the Property in its "AS-IS" condition and Buyer shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, or other structures located on, under or about the Property, and, Seller makes no other representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property, and Seller specifically disclaims all representations or warranties of any nature concerning the Property made by it. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, soil, subsoil, existence of known Hazardous Materials or similar substances, the purpose for which the Property is suited, or drainage. Seller hereby represents and warrants to Buyer that Rod Yahnke, Economic Development Manager (as the representative of the Seller), without any obligation to investigate, has no actual knowledge of the presence of any Hazardous Materials or storage tanks in, on, under or about the Property. Seller acknowledges and agrees that Rod Yahnke's representations are made in his official capacity and that he shall have no personal liability whatsoever for any claims arising out of this Agreement.

10.2 Hazardous Materials. Buyer understands and agrees that, in the event Buyer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or underground storage tanks whether attributable to events occurring prior to or following the Closing, then Buyer may look to current or prior owners of the Property, but in no event shall Buyer look to Seller for any liability or indemnification regarding Hazardous Materials and/or underground storage tanks. Buyer, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Seller, and each of the entities constituting Seller, if any, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials there from, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Seller, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Buyer, its successors, assigns or any affiliated entity of Buyer, against the Seller, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material there from, whether existing prior to, at or after the Closing, are by this release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release.

In connection therewith and subject to the representation and warranty of Seller's representative as noted in Section 10.1 above, Buyer and each of the entities constituting Buyer, expressly agree to waive any and all rights which said party may have with respect to such released claims under Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Buyer Initials _____

Seller Initials _____

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For purposes of this Agreement, the following terms shall have the following meanings:

“Environmental Claim” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

“Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water hereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

“Environmental Compliance Cost” means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the Property is capable of such compliance.

“Environmental Law” means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

“Hazardous Material” is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (iii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code; (iv) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(o) and (p) and 25501.1 of the California Health and Safety Code (Hazardous Materials Release Response Plans and Inventory); (v) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code (Underground Storage of Hazardous Substances); (vi) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 1 of Title 22 of the California Code of Regulations, Division 4, Chapter 30; (ix) defined as “waste” or a “hazardous substance” pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1317; (xi) defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (xii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. (42 U.S.C. §9601); (xiii) defined as “Hazardous Material” or a “Hazardous Substance” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; or (xiv) defined as such or

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regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials, oil wells, underground storage tanks, and/or pipelines, as now, or at any time hereafter, in effect.

Notwithstanding any other provision of this Agreement, Buyer's release as set forth in the provisions of this Section, as well as all other provisions of this Section, shall, in the event Buyer acquires the Property through the Close of Escrow, survive the termination of this Agreement and shall continue in perpetuity.

11. **ESCROW PROVISIONS.**

11.1 Escrow Instructions. Sections 1 through 6, inclusive, 8, 11, 13 and 14 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close Escrow.

11.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the San Bernardino County Recorder to mail after recordation: (i) the Grant Deed to Buyer at the address set forth in Section 13; and (ii) the Covenant Agreement and Lot Tie Agreement to Seller at the address set forth in Section 13. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in San Bernardino County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

11.3 Proration of Real Property Taxes. As a public agency, Seller is not subject to real property taxes and, accordingly, real property taxes shall not be prorated, however, Seller shall pay any previous real property taxes that may be in arrears prior to the Close of Escrow.

11.4 Payment of Costs.

- a. Cost Allocation.** Seller shall pay the costs for the Title Policy (non-extended ALTA owner's policy), any documentary transfer taxes, recording charges for the Grant Deed, and one-half (1/2) of the escrow costs ("**Seller's Charges**"). Buyer shall pay the cost of any additional endorsements that are not required to clear a Seller imposed encumbrance, in which event Seller shall pay for such endorsement, to the Title Policy requested by Buyer (including an extended coverage ALTA owner's policy), one-half (1/2) of the escrow fees, and any charges incurred by Buyer's acts ("**Buyer's Charges**"). All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder.
- b. Closing Statement.** At least **five (5) business days** prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary escrow closing statement which shall include each party's respective shares of costs. The preliminary

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closing statement shall be approved in writing by the parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the parties.

11.5 Termination and Cancellation of Escrow. If Escrow fails to close due to a failure of a condition precedent, then the party in whose favor the condition precedent runs may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Upon cancellation, Escrow Holder is instructed to return (i) the Deposit to Buyer (less any cancellation fees) unless Seller is entitled to same pursuant to Section 9, and (ii) all documents then in Escrow to the respective depositor of the same with Escrow Holder. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

11.6 Information Report. Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045I regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Buyer and Seller also agree that Buyer and Seller, their respective employees and attorneys, and escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045I, and further agree that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

11.7 No Withholding as Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

11.8 Brokerage Commissions. If, and only if, Close of Escrow occurs, Escrow Holder shall pay from Seller's funds a broker's commission of five percent (5%) of the Purchase Price ("**Commission**") as follows: (i) fifty percent (50%) of the Commission shall be paid to Coldwell Banker Commercial RES (Ron Barbieri and Steven Thompson) ("**Seller's Broker**"); and (ii) fifty percent (50%) of the Commission shall be paid to Bluestone Realty (Celina Noriega) ("**Buyer's Broker**"). Except for the commission referred to in the foregoing sentence, Buyer and Seller each represent and warrant to the other parties that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other parties harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

12. NON-COLLUSION. Buyer represents and warrants to Seller that no officer, official or employee of Seller has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the Seller participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any

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corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or "non-interest" pursuant to California Government Code Sections 1091 and 1091.5. Seller warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Buyer further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Seller, as a result or consequence of obtaining or being awarded any agreement. Buyer is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Buyer's Initials: _____

Seller's Initials: _____

13. NOTICES. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and may be given (i) by personal delivery which will be deemed received on the day of delivery; (ii) by national overnight delivery service which shall be deemed received the following day; or (ii) by mailing the same by registered or certified US mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the notice is directed as set forth below, or such other address and to such other persons as the parties may hereafter designate:

To Seller: Hesperia Housing Authority
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

With a Copy to: Aleshire & Wynder, LLP
3880 Lemon Street Suite 520
Riverside, CA 92501
Attention: Eric Dunn

To Buyer: ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

With a Copy to: Gregory A. York, Esq.
gyorklaw@frontier.com

14. GENERAL PROVISIONS.

14.1 Assignment. Buyer has no right to assign this Agreement without the prior written consent of Seller in its sole discretion. Notwithstanding the foregoing, Buyer may assign this Agreement to any entity owned and controlled by Luis Benites provided that (i) evidence of such ownership and control is provided to Seller; (ii) the transferee or its underlying owners are financially viable and capable to consummating the transaction; (iii) the assignment and assumption agreement executed by the original Buyer under this Agreement and the transferee is a form reasonably acceptable to Seller; and (iv) Buyer must be concurrently assigning the Hesperia CDC PSA to the

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same transferee. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

14.2 Attorney's Fees. In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

14.3 Interpretation; Governing Law; Venue. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. The venue for any dispute shall be San Bernardino County.

14.4 No Waiver. No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

14.5 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

14.6 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.7 Merger. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements, oral or written are merged herein and shall be of no further force or effect.

14.8 Construction. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against a party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

14.9 Qualification and Authority. Each individual executing this Agreement on behalf of Buyer represents, warrants and covenants to the Authority that (a) such person is duly authorized to execute and deliver this Agreement on behalf of Buyer in accordance with authority granted under the organizational documents of such entity, and (b) Buyer is bound under the terms of this Agreement. Each individual executing this Agreement on behalf of Seller represents, warrants and

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covenants to the Buyer that (a) such person is duly authorized to execute and deliver this Agreement on behalf of Seller in accordance with authority granted under the organizational documents of such entity, and (b) Seller is bound under the terms of this Agreement.

14.10 No Third-Party Beneficiaries. This Agreement is only between the parties and is not intended to be nor shall it be construed as being for the benefit of any third party.

14.11 No Liability. No official, officer, employee or agent of Seller shall have personal liability under this Agreement.

14.12 Execution in Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

14.13 Exhibits. Exhibits A, A-1, B and C attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

NOTE: Each of Sections 9, 10.2 & 12 must also be initialed by Buyer & Seller as applicable.

BUYER:

ZAB LLC, a California limited liability company

By: _____
Luis Benites, Managing Member

SELLER:

HESPERIA HOUSING AUTHORITY, a public body, corporate and politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Authority Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Authority Counsel

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The real property located in the City of Hesperia, County of San Bernardino, State of California described as follows:

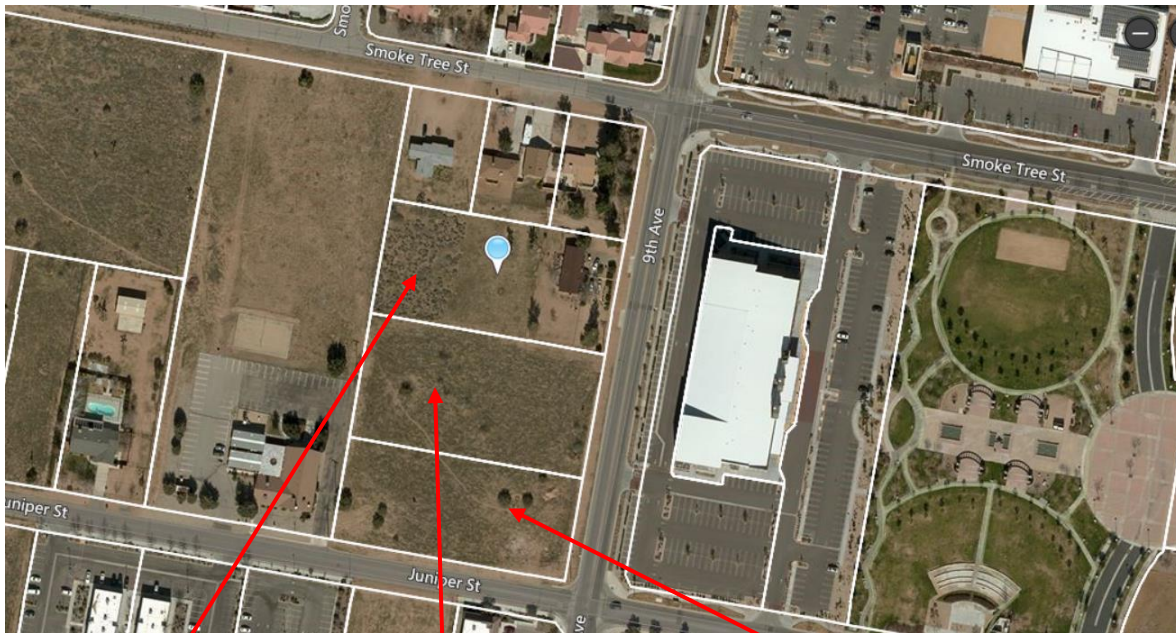
0407-261-20

TOWN OF HESPERIA S 1/2 E 1/2 LOT B BLK 254 1.29 AC M/L

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EXHIBIT A-1

DEPICTION OF THE DEVELOPMENT PROPERTY



APN 0407-261-20
Hesperia Housing
Authority

APN 0407-261-03
Hesperia Community
Development Commission

APN 0407-261-04
Hesperia Community
Development Commission

EXHIBIT B

GRANT DEED

**Recording requested by and
When Recorded Return to:**

ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

APN. 0407-261-20
THE UNDERSIGNED DECLARES that the documentary
transfer tax (computer on full value) is \$_____

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged and subject to the covenants set forth below HESPERIA HOUSING AUTHORITY, a public body, corporate and politic ("**Grantor**") grants to ZAB LLC, a California limited liability company ("**Grantee**"), all of its rights, title, and interest in that certain real property in the City of Hesperia, County of San Bernardino, State of California, as more particularly described in **Exhibit A** attached hereto and incorporated by this reference ("**Property**").

Grantor has determined that the Property is not required for its foreseeable needs and it is being disposed of pursuant to the Health & Safety Code.

Developer agrees to refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(a) **Deeds:** In deeds the following language shall appear: "The Developer herein 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, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the Developer itself, or any persons 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 land herein conveyed. The foregoing covenants shall run with the land."

(b) **Leases:** In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or

national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, 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, sublessees, subtenants, or vendees in the land herein leased.”

(c) Contracts: In contracts pertaining to conveyance of the realty the following language shall appear: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, 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 of the land.”

The forgoing covenants shall remain in effect in perpetuity.

IN WITNESS WHEREOF, Hesperia Housing Authority has caused this Grant Deed to be executed on its behalf as of the date written below.

HESPERIA HOUSING AUTHORITY:

HESPERIA HOUSING AUTHORITY, a public body,
corporate and politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Authority Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Authority Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That certain real property located in the City of Hesperia, County of San Bernardino, State of California, and is described as follows:

0407-261-20

TOWN OF HESPERIA S 1/2 E 1/2 LOT B BLK 254 1.29 AC M/L

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

[illegible]

On _____, 2020 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL:

EXHIBIT C

COVENANT AGREEMENT

**Recording requested by and
When Recorded Return to:**

Hesperia Community Development Commission
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

APN. 0407-261-03, 04 & 20

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

COVENANT AGREEMENT WITH OPTION TO REPURCHASE

THIS COVENANT AGREEMENT WITH OPTION TO REPURCHASE ("**Agreement**") is entered into as of the _____, 2020 by and between (i) HESPERIA COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("**Hesperia CDC**") and HESPERIA HOUSING AUTHORITY, a public body, corporate and politic ("**Hesperia HA**") (jointly the "**Hesperia Agencies**") and (ii) ZAB LLC, a California limited liability company ("**Developer**").

RECITALS

A. Developer owns that certain real property in the City of Hesperia, County of San Bernardino, State of California, as more particularly described in **Exhibit 1** attached hereto and incorporated by this reference ("**Property**").

B. Developer acquired the Property as follows:

i. A portion of the Property was acquired from the Hesperia HA pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated _____, 2020 ("**Hesperia HA PSA**"); and

ii. A portion of the Property was acquired from the Hesperia CDC pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated _____, 2020 ("**Hesperia CDC PSA**").

The Hesperia HA PSA and the Hesperia CDC PSA are jointly hereinafter referred to as the "**Purchase Agreements**."

C. As material consideration to the Hesperia Agencies for the sale of the Property to Developer pursuant to the Purchase Agreements, Developer agreed to develop the Property as set forth below.

NOW, THEREFORE, the obligations of Developer under this Agreement shall run with a burden the Property as covenants, equitable servitudes, restrictions and easements in favor of the Hesperia Agencies in gross.

1. Effective Date. This Agreement shall be effective upon recordation in the Official Records of San Bernardino County ("**Effective Date**").

2. Development Covenant.

- 2.1. **Covenant.** Immediately following the Effective Date, Developer covenants to promptly commence and diligently process all applicable governmental approvals to construct the improvements as described on **Exhibit 2** attached hereto together with components and requirements imposed through the planning process ("**Project**").
- 2.2. **Compliance Date.** Developer shall commence and diligently prosecute to completion the construction of the Project in accordance with the schedule set forth on **Exhibit 3** attached hereto ("**Schedule of Performance.**") It is understood by the parties hereto that the time periods outlined in the Schedule of Performance may be extended automatically due to the City failing to perform its requirements within the time periods established in the Schedule.
- 2.3. **Compliance with Laws.** Developer shall construct the Project in compliance with all applicable laws. Developer understands that any public improvements to be constructed as part of the Project will be subject to prevailing wage laws (California Labor Code Section 1720 et seq.) and Developer shall indemnify and hold harmless the Hesperia Agencies with respect to same, however, it is recognized and agreed upon by Developer and the Hesperia Agencies that: (i) the Property is being purchased at "fair market value", (ii) the Hesperia Agencies are not granting, loaning or otherwise paying for any improvements to the Property, and (iii) Developer is not applying for any credits or reimbursements from the Hesperia Agencies in connection with the Proposed Development.
- 2.4. **Termination.** If Developer reasonably believes that the Covenants in this Agreement have been satisfied, Developer may send a written notice requesting the Hesperia Agencies to confirm such compliance by execution of an appropriate document terminating this Agreement which shall be concurrently submitted with the notice and which document, upon execution by Developer and the Hesperia Agencies, shall be recorded in the Official Records of San Bernardino County ("**Release**"). Upon receipt of the Release, The Hesperia Agencies shall review and promptly execute, acknowledge and return the document to Developer or otherwise specify in reasonable detail in writing what remains to be completed.
- 2.5. **City as Separate Legal Entity from the Hesperia Agencies.** The City of Hesperia ("**City**") is a separate legal entity from the Hesperia Agencies. The Hesperia Agencies have no authority to bind the City in any discretionary matter, including, but not limited to, any land use or planning entitlements or the approvals required for the Project. Developer acknowledges that the terms of this Agreement do not pre-approve any land use or planning entitlements or approvals Developer may be required to obtain from City for the Project or any other purpose.
- 2.6. **Obligations Run with the Land.** This Agreement shall constitute covenants, equitable servitudes, restrictions and easements in favor of the Hesperia Agencies in gross and City which, without regard to technical classification and designation, run with the land and shall be binding on the owner of the Property and all successors.
- 2.7. **Indemnification.** Developer agrees, at its sole cost and expense, to defend, indemnify and hold harmless the Hesperia Agencies and City (and their respective officers, employees, agents and consultants) from any claim, action or proceeding brought by a third party with respect to all aspects of the Project including, but not limited to, approvals or permits issued by the City and/or the Hesperia Agencies, but specifically excluding any claim, action or proceeding relating to Environmental Claims, Environmental Cleanup Liabilities or Environmental Compliance Costs (each as defined in the Purchase Agreements). The Hesperia Agencies and City agree to promptly notify Developer of any such claim filed against City or the Hesperia Agencies and to fully cooperate in the defense

of any such action at no cost or expense to City or the Hesperia Agencies. City and the Hesperia Agencies may elect to participate in the defense of any such claim.

3. **Option to Repurchase.** If Developer is in default of the Covenants in Section 2 of this Covenant Agreement beyond the applicable notice and cure period, and prior to the commencement of construction of the Project (defined in Section 2.2) or recordation of the Release (defined in Section 2.3), Hesperia Agencies shall have the option to buy back the Property ("**Option**") from Developer for the sum of ("**Option Purchase Price**"): (i) the original Purchase Price paid by Developer to the Hesperia Agencies ("**Original Purchase Price**"), plus (ii) actual costs paid by Buyer to third parties for entitling and designing, the Property to the date of the closing including, without limitation, architects, engineers, government fees and costs paid to the City but **not** including any hard costs, attorney fees or commissions ("**Additional Costs**"). Upon exercise of the Option, Developer shall promptly deliver to Hesperia Agencies a detailed summary of all claimed Additional Costs as part of the Option Purchase Price together with proof of payment, copies of the applicable agreements and the plans, specifications, reports and documents. Upon confirmation of the Option Purchase Price, the parties shall cooperate with opening escrow to facilitate the transfer of the Property to Hesperia Agencies for the Option Purchase Price which shall include the assignment of the various plans, specifications, reports, agreements, surveys and documents for which Developer is being reimbursed as part of the Option Purchase Price. At closing, Hesperia Agencies shall have the right to take possession of the Property free of any claims or rights of possession.

14. **Notice.** Any notice which either party may desire to give to the other party must be in writing and may be given (i) by personal delivery which will be deemed received on the day of delivery; (ii) by national overnight delivery service which shall be deemed received the following day; or (iii) by mailing the same by registered or certified US mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the notice is directed as set forth below, or such other address and to such other persons as the parties may hereafter designate:

To Hesperia Agencies:

Hesperia Housing Authority
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

Hesperia Community Development Commission
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

With Copy to:

Aleshire & Wynder, LLP
3880 Lemon Street Suite 520
Riverside, CA 92501
Attention: Eric Dunn

To Developer:

ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

With Copy to:

Gregory York, Esq.
gyorklaw@frontier.com

4. **California Law.** The Covenants contained in this Agreement shall be construed in accordance with the laws of the State of California.
5. **Interpretation.** If an ambiguity or question of intent or interpretation arises, then the terms of this Agreement, including but not limited to, the Covenants, shall be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party to this Agreement, including but not limited to, the Covenants, by virtue of the authorship of any of the provisions of this Agreement.
6. **Severability.** If any provision of this Agreement or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of the covenants contained in this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby.
7. **Attorney's fees.** In the event any action or suit is brought by a party hereto against another party hereunder by reason of any uncured breach beyond the applicable notice and cure period of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorneys' fees, expert witness fees, accounting and engineering fees, and any other professional fees resulting therefrom.
8. **Default.** If Developer is deemed to be in default of the provisions of this Covenant Agreement, Hesperia Agencies shall deliver written notice to Developer stating in sufficient detail the nature and extent of such default and allowing Developer thirty (30) days from receipt of such notice to cure same.

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

HESPERIA AGENCIES:

HESPERIA HOUSING AUTHORITY,
a public body, corporate and politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Authority Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

HESPERIA COMMUNITY DEVELOPMENT
COMMISSION, a public body, corporate and
politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Commission Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Authority Counsel

By: _____
Eric L. Dunn, Commission Counsel

DEVELOPER:

ZAB LLC, a California limited liability
company

By: _____
Luis Benites, Managing Member

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

That certain real property located in the City of Hesperia, County of San Bernardino, State of California, and is described as follows:

0407-261-03

TOWN HESPERIA E 1/2 LOT C BLK 254 EX S 150 FT THEREOF 1.3 AC

APN 0407-261-04

TOWN HESPERIA S 150 FT E 1/2 LOT C BLK 254 1.18 AC M/L

APN 0407-261-20

TOWN OF HESPERIA S 1/2 E 1/2 LOT B BLK 254 1.29 AC M/L

EXHIBIT 2
SUMMARY OF PROJECT

[TBD]

EXHIBIT 3

SCHEDULE OF PERFORMANCE

NOTE: The City may require more time than depicted in this Schedule of Performance to approve the entitlements and building plans/permits. A zone change will be required to permit multi-family mixed use zoning at this site. The City and the Planning Department will support this zone change, however the staff of the City may require more than two (2) months to obtain Planning Commission and City Council approval. Should the City require more time than shown in this Schedule to obtain the necessary approvals, the affected Events and the Close of Escrow shall be extended for the additional time required by the City. Therefore, in the event, through no fault of Buyer, the Time for Performance Event(s) is/are not met by the City, then the Time For Performance for such Event shall be extended day for day of such period of time as the City actually performs the Event, and all Events thereafter shall be extended accordingly.

Event	Event Description	Time For Performance
1	Opening of Escrow	Within 5 days after the Effective Date as specified in Section 2.1 of PSA
2	Developer makes deposit	Within 5 days of Event 1
3	Developer submits Site Plan Application including parcel map, CEQA and other documents as required by the City	Within 4 months of Event 1
4	City accepts application as complete or advises Developer of deficiencies	Within 30 days of Event 3
5	Developer revises and resubmits Site Plan and other documents if necessary	Within 30 days of Event 4
6	City accepts resubmittal or advises Developer of deficiencies	Within 30 days of Event 5
7	Developer revises and resubmits Site Plan and other documents if necessary	Within 30 days of Event 6
8	City accepts resubmittal or advises Developer of deficiencies	Within 30 days of Event 7
9	Expiration of Due Diligence period	Within 10 months of Event 1
10	Close Escrow	Within 12 months of Event 1
11	Developer submits construction drawings	Within 4 months of Event 10
12	Developer starts construction	Within 5 months of Event 11
13	Developer completes construction	Within 12 months of Event 12

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2020 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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SEAL: