

**SECOND AMENDMENT
TO REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
BETWEEN THE
CITY OF CHULA VISTA
AND
[TECTURE RED, LLC]**

This SECOND AMENDMENT (“Second Amendment”) is entered into effective as of December 1, 2020 (“Effective Date”) by and between the City of Chula Vista (“City”) and TECTURE RED, LLC (“Buyer”) with reference to the following facts:

RECITALS

WHEREAS, City and Buyer previously entered into [a Real Property Purchase and Sale Agreement and Joint Escrow Instructions (“Original Agreement”) on May 29, 2019; and

[WHEREAS, the Original Agreement provided for the close escrow by November 29, 2020; and

WHEREAS, prior to the close of escrow, Buyer was required to have submitted complete construction documents and pulled permits for the revitalization project; and

WHEREAS, Buyer was unable to meet the requirements of the Original Agreement due to unforeseen circumstances caused by the COVID-19 pandemic; and

WHEREAS, the parties agreed to a First Amendment to the Original Agreement, effective as of November 23, 2020, to extend the close of escrow to December 31, 2020 to allow City Council consideration of this Second Amendment; and

WHEREAS, City and Buyer desire to enter into a Second Amendment to the Original Agreement to, among other things, [extend the time periods for Buyer to satisfy performance measures required by Original Agreement and to add additional performance measures for the protection of the City,] all as more specifically set forth below; and]

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations of the parties set forth herein, City and Buyer agree as follows:

1. Section 5 (Buyer’s Conditions to Close) of the Original Agreement shall be amended and restated in its entirety as follows:

“5. ESCROW

Buyer agrees to open an escrow (“Escrow”) in accordance with this Agreement at Stewart Title (“Escrow Holder”), located at 7676 Hazard Center Drive, San Diego, California 92108 and

deposit a fully executed copy of this Agreement by no later than seven (7) days after City Council approval of this Agreement. Buyer shall, concurrent with the delivery of this Agreement deposit Five Thousand Dollars and Zero cents (\$5,000.00) into Escrow. Buyer shall deliver an additional deposit Five Thousand Dollars and Zero cents (\$5,000.00) into Escrow within three (3) days after Buyer waives due diligence conditions as set forth in Section 4 (b) above. These deposits may be referred to herein as the “Earnest Money Deposits”. The Earnest Money Deposits will be applied against the Purchase Price at closing. All usual and reasonable fees, charges, and costs (including transfer taxes, if any) which arise in the Escrow, shall be paid by Buyer upon demand of Escrow Holder.

This Agreement constitutes the joint escrow instructions of the Parties, and Escrow Holder to whom these instructions are delivered is empowered to act under this Agreement. The Parties agree to do all acts reasonably necessary to close Escrow as soon as possible, but in all events by no later than forty-two (42) months after the Effective Date (November 30, 2022). The terms “closing” and/or “close of Escrow” as used herein shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through Escrow are authorized if necessary or proper in the issuance of title insurance pursuant to this Agreement.

Concurrent with the opening of Escrow, Escrow Holder shall order a Preliminary Title Report for the subject Property to be delivered for review by both Buyer and Seller. Buyer shall review and respond to said Preliminary Report as set forth in Section 4 (b).

Buyer shall, upon receipt of a statement of estimated closing cost from Escrow Holder, deposit the balance of the Purchase Price together with additional funds as set forth in the statement. The deposit shall be made in accordance with the wire transfer instructions of the Escrow Holder and shall be made in sufficient time to allow for the timely close of Escrow. Buyer shall execute and deposit into Escrow a Certificate of Acceptance accepting fee title to the Property in sufficient time to allow for the timely close of Escrow.

Seller shall execute and deliver into Escrow an executed Grant Deed conveying fee title to the Property to Buyer in sufficient time to allow for the timely close of Escrow. Seller and Buyer agree to deposit with Escrow Holder any additional instruments as may be reasonable and necessary to complete this transaction in a timely manner.

All funds received in Escrow shall be deposited with other Escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by wire transfer from such account, unless Seller requests another form of payment.”

2. Section 16 (Buyer’s Conditions to Close) of the Original Agreement shall be amended and restated in its entirety as follows:

“17. BUYER’S CONDITIONS TO CLOSE

Notwithstanding anything to the contrary contained herein, the obligation of Seller to close title in accordance with this Agreement is expressly conditioned upon the fulfillment by and as of the time of the close of Escrow of each of the conditions listed below, provided that Seller, at its election, evidenced by written notice delivered to Buyer at or prior to the close of Escrow, may waive any of such conditions:

- a. Construction Documents. Buyer shall complete and submit a complete set of 100% construction documents to City by no later than November 29, 2021.
- b. Financing. Buyer shall have provided evidence that it has secured all necessary financing for the development and construction of the Project by no later than November 29, 2022, in a form acceptable to City in City's reasonable discretion, such that the Project is feasible for completion within eighteen (18) months of the close of Escrow. Seller may require Buyer to provide additional documentation in support of such financing including but not limited to loan documents, financials, ledgers, and other documentation reasonably necessary to review and approve the evidence provided.
- c. Permits. Buyer shall obtain all discretionary and non-discretionary permits necessary to construct the Project by no later than November 29, 2022.
- d. Maintenance. Buyer shall maintain the adjacent property, The Vogue Theater, located at 226 Third Avenue, in order to protect the health, safety, and welfare of the community and passersby. Buyer shall complete the following immediate maintenance needs by no later than March 1, 2021: (1) the addition of lighting to the front of the building, (2) maintaining construction fencing and screening in good condition, and (3) the maintenance of a clean, freshly painted building façade to discourage vandalism.
- e. Compliance with Agreement. Buyer shall have: (i) executed and delivered to Seller all of the documents required by this Agreement; (ii) paid the full balance of the Purchase Price in accordance with Section 2 above; (iii) paid all other sums of money required under this Agreement, and (iv) taken or caused to be taken all of the other action required of Buyer pursuant to this Agreement.
- f. No Default. Buyer shall not be in default of any covenant or agreement to be performed by Buyer under this Agreement, and shall have performed all other obligations required to be performed by it under this Agreement on or prior to close of Escrow.
- g. Representations and Warranties. On the Close of Escrow, all representations and warranties made by Buyer in this Agreement shall be true and correct as if made on the date of the close of Escrow."

3. Except as expressly provided herein, all other terms and conditions of the Original Agreement and First Amendment shall remain in full force and effect.
4. Each party represents that it has full right, power and authority to execute this [Second] Amendment and to perform its obligations hereunder, without the need for any further

action under its governing instruments, and the parties executing this Second Amendment on the behalf of such party are duly authorized agents with authority to do so.

**SIGNATURE PAGE TO SECOND
AMENDMENT
TO
A REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS**

TECTURE RED, LLC

CITY OF CHULA VISTA

BY: _____
[SLADE FISHER]
[PRINCIPAL]

BY: _____
[MARIA V. KACHADOORIAN]
[MAYOR]

APPROVED AS TO FORM

BY: _____
GLEN R. GOOGINS
CITY ATTORNEY

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