

Escrow Company: Stewart Title
Escrow No. _____
Title Order No. _____

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“Agreement”) is entered into by and between the CITY OF CHULA VISTA, a chartered municipal corporation (“Seller”), and TECTURE RED, LLC. (“Buyer”). Seller and Buyer may be referred to in this Agreement individually as a “Party” and collectively as the “Parties” to be effective as of the date of execution by Seller (“Effective Date”), with reference to the following facts:

WHEREAS, Buyer desires to purchase fee title in and to Seller’s real property located at 224 Third Avenue, City of Chula Vista, County of San Diego, State of California; and

WHEREAS, Buyer has offered Seller the sum of \$210,000 for the purchase of the Property; and

WHEREAS, Seller has agreed to accept the offered purchase price subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. AGREEMENT TO SELL AND PURCHASE PROPERTY

In strict accordance with the terms and conditions set forth in this Agreement, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer all of the real property, including all right, title, and interest therein, located at 224 Third Avenue, Chula Vista, California 91910, San Diego County Assessor’s Parcel No. 568-044-19, and more particularly described in the legal description on Exhibit “A” (“Property”), which is attached hereto and incorporated herein by this reference.

2. PURCHASE PRICE

Buyer agrees to pay Seller the sum of Two Hundred Thousand dollars and zero cents (\$210,000.00) (the “Purchase Price”) which will be paid by Buyer and to Seller as provided in this Agreement.

3. DEVELOPMENT OF PROJECT

Buyer and Seller acknowledge that this sale is intended to allow the Property to be used in a larger development with Buyer’s adjacent property in order to revitalize The Vogue Theater as a theater

and indoor-outdoor entertainment venue to provide economic stimulation to the region and its residents (“Project”). Buyer acknowledges that City has identified the Property as a suitable parcel for economic development purposes and Buyer agrees to, in addition to the other requirements of this Agreement, exercise good faith efforts to complete the Project to achieve these purposes.

4. DUE DILLIGENCE

- a. Due Diligence Deliveries. Promptly after execution of this Agreement, Seller will make reasonable efforts to provide Buyer with the following, to the extent they are within Seller's possession or control; copies of all materials relating to or affecting the Property permits, approvals, certificates, notices, contracts, studies, reports, appraisals, utility bills, insurance bills and policies, applications of or to governmental or quasi-governmental entities, surveys, maps, plans, specifications, drawings, service or other contracts, and any leases, agreements or instruments. Buyer understands that Seller makes no guaranties or warranties as to any of the materials it provides Buyer.
- b. Approval of Title. Per section 5 below, Escrow Holder shall order a Preliminary Title Report for the Property to be delivered for review by Buyer. Buyer shall have five (5) calendar days from delivery of a Preliminary Title Report for the subject Property (the “Due Diligence Period”), to review and approve said Preliminary Title Report and all other documents supplied by Seller pursuant to the preceding Section 4(a). Seller will make reasonable efforts to facilitate Buyer’s access to the Property at reasonable times, for physical inspections as required by Buyer.
- c. Environmental. Buyer will have a reasonable time to perform a Phase 1 Environmental Assessment, and close of escrow will be contingent upon a satisfactory report. If in the rare occurrence the Phase 1 Environmental Assessment suggests a greater land survey is needed such as a Phase 2 Survey Assessment or the like, then Seller will allow reasonably ample time for Buyer to either have one performed or cancel the transaction.

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. 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 eighteen (18) months after the Effective Date. 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.

6. TITLE INSURANCE

Stewart Title of San Diego, as title insurer, must be prepared to issue Buyer on the Closing Date a policy of title insurance in the form and substance requested by Buyer during the Due Diligence Period.

If Buyer requests a policy of title insurance when Escrow Holder holds for Seller the Grant Deed in favor of Buyer, executed and acknowledged by Seller covering the Property, Escrow Holder shall cause said policy to be issued and delivered to Buyer, at Buyer's sole cost ("Title Policy"), with liability in the amount of the Purchase Price, covering the Property and showing title vesting in Buyer, free of all recorded and unrecorded, liens, encumbrances, and taxes except those previously accepted by Buyer, and:

- (1) All non-delinquent general and special real property taxes for the current fiscal year;
- (2) The standard printed exceptions and exclusions contained in the CLTA or ALTA form policy;
- (3) Public and Quasi-public utility, public alley, public street easements and rights of way of record;
- (4) All present and future zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any;

(5) Variations between tax lot lines and lines of record title; and

(6) Any lien or encumbrance arising out of the acts or omissions of Buyer.

Escrow Holder is authorized to and shall pay and charge Buyer for any title insurance premium and the costs of any endorsements. Escrow Holder is authorized to and shall disburse funds and deliver the Grant Deed when Buyer and Seller have fulfilled all conditions of the Escrow and the Agreement.

7. RESPONSIBILITY OF ESCROW HOLDER

Responsibility of Escrow Holder under this Agreement is expressly limited to Section 6 herein and to its liability under any policy of title insurance issued in regard to this transaction.

8. TITLE AND CONVEYANCE OF INTEREST

Seller shall convey fee simple title to the Property to Buyer by Grant Deed, in substantially the same form as Exhibit B hereto, subject to zoning and building laws and ordinances, and acts done or suffered by Buyer or claims made by, through, or under Buyer. To the actual knowledge of Seller, without further inquiry, as of the effective date there are no unrecorded liens, leases, or encumbrances against the Property. Fee title shall pass to Buyer upon recordation of said Grant Deed (“Delivery”).

9. CONDITION OF PROPERTY/AS IS.

a. BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES AND SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY OBLIGATIONS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE PROPERTY, OR (H) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY FEDERAL, STATE, OR LOCAL LAWS, INCLUDING WITHOUT LIMITATION ANY HAZARDOUS MATERIALS, ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE, ZONING, OR DEVELOPMENT OR REGIONAL IMPACT LAWS,

RULES, REGULATIONS, ORDERS, OR REQUIREMENTS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS", "WHERE IS" AND, "WITH ALL FAULTS" CONDITION AND BASIS.

Buyer's Initials: _____

b. Effective as of the close of Escrow, Buyer shall, and by the execution of the Agreement, hereby does, forever release Seller of and from any and all losses, liabilities, damages, claims, demands, causes of action, costs, and expenses, whether known or unknown, to the extent arising out of or in any way connected with the Property after the close of Escrow, including, without limitation, the condition of title to the Property or the environmental or structural condition of the Property. Buyer agrees never to commence, aid in any way, or prosecute against Seller, any action or other proceeding based upon any losses, liabilities, damages, claims, demands, causes of action, costs, or expenses, arising out of or in any way connected with the Property after the close of Escrow, including, without limitation, the condition of title to the Property and the environmental and structural condition of the Property. Notwithstanding any provision to the contrary contained herein, nothing in this Section 8 shall be deemed to constitute a waiver of any rights or remedies arising from Seller's intentional fraud or intentional misrepresentation of any material fact with an intent to mislead.

c. Buyer hereby fully and forever releases and discharges Seller from any and all claims, rights, actions, damages, and/or liabilities, of any nature whatsoever, fixed or contingent, existing now or arising in the future, known or unknown, in any way relating to the Property, excluding only claims arising under this Agreement. Buyer acknowledges Buyer may later learn of circumstances bearing upon the rights released in this Agreement. Buyer specifically waives the rights afforded by Section 1542 of the California Civil Code which provides:

“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's Initials: _____

10. SELLER DEFAULT

IF THE SELLER DEFAULTS UNDER THE TERMS OF THE AGREEMENT, AND IF SELLER FAILS TO CURE SUCH DEFAULT ON OR BEFORE THE DATE WHICH IS THREE (3) BUSINESS DAYS AFTER NOTICE THEREOF FROM BUYER (OR, IF EARLIER, ON THE CLOSING DATE), BUYER MAY, AS ITS SOLE AND EXCLUSIVE REMEDY, EITHER (I) TERMINATE THIS AGREEMENT BY DELIVERY OF NOTICE OF TERMINATION TO SELLER AND ESCROW HOLDER, IN WHICH EVENT THE DEPOSIT SHALL BE RETURNED TO BUYER, AND THIS AGREEMENT, AND THE RIGHTS AND OBLIGATIONS OF BUYER AND SELLER HEREUNDER SHALL TERMINATE OR (II) SPECIFICALLY ENFORCE SELLER'S OBLIGATIONS.

Seller's Initials: _____

Buyer's Initials: _____

11. INDEMNITY

To the maximum extent provided by law, Buyer releases and agrees to indemnify, protect, defend, and hold harmless Seller and its elected officials, officers, employees, contractors and agents ("Indemnified Parties") from and against any and all demands, claims, causes of action, injuries, liabilities, losses, damages, costs, or expenses, however the same may be caused, including all costs and reasonable attorney's fees in providing the defense to any claim arising therefrom, for any loss of, or damage to property (real and/or personal), for personal injury to or death of any person or persons arising out of or occurring by reason of, or any way connected with this Agreement or the purchase, condition, existence, use, or improvement of the Property from and after the date of Delivery. This Indemnity shall survive termination and expiration of this Agreement and shall be binding upon Buyer, and its successors and assigns.

12. INDEMNITY FOR DRAINAGE

To the maximum extent provided by law, Buyer releases and agrees to indemnify, protect, defend, and hold harmless all Indemnified Parties from and against any and all demands, claims, causes of action, injuries, liabilities, losses, damages, costs, or expenses, however the same may be caused, including all costs and reasonable attorney's fees in providing the defense to any claims arising therefrom, for any losses of, or damages to property (real and/or personal), for personal injuries to or death of any person or persons arising out of or occurring by reason of, or any way connected with Buyer's use or improvement of the Property which in any way affects or impacts the drainage on, from, or across the Property from and after the date of Delivery. This Indemnity shall survive termination and expiration of this Agreement and shall be binding upon Buyer, and its successors and assigns.

13. ENVIRONMENTAL INDEMNITY

To the maximum extent provided by law, Buyer shall indemnify, protect, defend and hold harmless all Indemnified Parties from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or

of any nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Seller, from and after the date of Delivery, as to the Property or any portions of the Property, arising from or out of: the existence, release, presence, or disposal on, in, under, about, or adjacent of any hazardous materials, hazardous substances, hazardous waste, or toxic substances, as defined in all applicable local, state, and federal laws and regulations (collectively, "Hazardous Materials"). This Indemnity shall be binding upon Buyer, and its successors and assigns, and inure to the benefit, together with all rights and remedies of Seller pursuant to this Agreement and any successor to Seller's powers or interests in the Property. This Indemnity shall survive termination and expiration of this Agreement and shall be binding upon Buyer, and its successors and assigns.

14. LIMITED LIABILITY

Any obligations or liabilities of Seller arising by virtue of this Agreement shall be limited to the Property and resort shall not be had to any other assets of Seller.

15. COMPLIANCE WITH LAWS

Buyer shall be solely responsible for compliance with all laws, governmental regulations, and the direction of competent legal authority related directly or indirectly to Buyer's purchase and intended use of the Property, all at Buyer's sole cost and expense. Buyer shall protect, defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Buyer's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with Buyer's efforts to comply with such legal requirements.

16. REAL ESTATE COMMISSIONS

Seller has not contracted with a Broker in this transaction and Seller will not be responsible for any commission arising from this transaction. If any other broker, finder, or other person makes a claim for commissions or finder's fee based upon any contract, dealing, or communication with a party, then such party shall indemnify, defend, and hold the other party harmless from and against any and all damages, claims, losses, and expenses, including attorneys' fees, arising out of the broker's, finder's, or other person's claim.

16. 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. Permits. Buyer shall have been issued all discretionary and non-discretionary permits necessary construct the Project.

- b. Financing. Buyer shall have provided evidence that it has secured all necessary financing for the development and construction of the Project, in a form acceptable to City in City's reasonable discretion, such that the Project is feasible for completion within _____ months of the Close of Escrow. Seller may require Buyer to provide 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. 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 Purchaser pursuant to this Agreement.
- d. 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 closing.
- e. 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.

17. CITY COUNCIL APPROVAL REQUIRED

Buyer understands and agrees that this Agreement must be reviewed and considered at a hearing before the City Council. Buyer also understands that prior to the execution of this Agreement by Seller,. The City Council has the sole and absolute discretion to approve or disapprove this Agreement or any sections thereof.

18. MISCELLANEOUS

- a. Legal Fees. In the event of the bringing of any action or suit by either party against the other party by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to have and recover of and from the other party all costs and expenses of suit, including reasonable attorneys' fees (or, in the event of any action to enforce this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses of the action, including reasonable attorney's fees), as determined by a court of competent jurisdiction.
- b. Time is of the Essence. Time is of the essence of each and every term, condition, obligation and provision of this Agreement.
- c. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Facsimile signatures are acceptable provided they are followed by hard copy originals within five days.

d. Severability. If any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts of this Agreement shall remain in full force and effect, as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

e. Governing Law. This Agreement is executed and delivered in the State of California and shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

IN WITNESS WHEREOF, the duly authorized representative of each party has executed this Agreement effective upon the date first written above.

SELLER: CITY OF CHULA VISTA

BUYER: TECTURE RED, LLC.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Approved as to Form:

Glen Googins, City Attorney

Exhibit A: Legal Description
Exhibit B: Form of Grant Deed