

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS FOR AUCTION SALES

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS FOR AUCTION SALES, dated as of _____, 2019 (this "First Amendment") is entered into by and between the County of San Bernardino, a body corporate and politic of the State of California ("SELLER") and Scannell Development Company, an Indiana corporation or its assigns ("BUYER"). SELLER and BUYER are, at times, referred to herein as, the "Parties."

WITNESSETH:

WHEREAS, SELLER and BUYER entered into that certain Purchase and Sale Agreement and Escrow Instructions For Auction Sales, dated April 4, 2017 (the "Agreement"), relating to that certain property (APNs 1054-391-02, 03) located at 8315 Merrill Avenue in the City of Chino, California, and consisting of approximately 74.57 acres (gross) of land (the "Property");

WHEREAS, the Opening of Escrow Date for the Agreement was April 10, 2017; and

WHEREAS, the parties mutually desire to extend the BUYER's Entitlement Period for an additional four (4) months from April 11, 2019 to August 10, 2019, to allow BUYER additional time to process its entitlements.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. The recitals set forth above are true and correct and incorporated herein by this reference.

SECTION 2. Capitalized terms used herein that are not otherwise defined shall have the meanings assigned to such terms in the Agreement.

SECTION 3. Section 7 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 7. Close of Escrow.

(a) As used herein, "**Close of Escrow**" means and refers to the close of Escrow for the Property and the transfer of fee title to the Property by the SELLER to the BUYER pursuant to grant deed in the form of Exhibit "B" attached hereto (the "**Deed**"). The Close of Escrow shall take place on the Closing Date. The "**Closing Date**" shall mean the date on which the conditions set forth in this Agreement for the Close of Escrow and for the transfer of the Property have been satisfied, and the Deed is recorded by the Escrow Holder; provided

that in no event shall BUYER be obligated to close unless it has received at least ten (10) days' advance notice from the SELLER of the anticipated date for satisfaction of such conditions to Close of Escrow. The Property shall be transferred to BUYER at the Close of Escrow; provided that, within the periods of time set forth in this Agreement: (i) BUYER has not terminated this Agreement, (ii) BUYER has accepted the Deed; and (iii) all other conditions of the Close of Escrow set forth in this Agreement, including without limitation as set forth in Sections 7(b) and 7(c) below, have been met and BUYER has paid, or caused to be paid to the Escrow Holder all applicable Escrow costs relating to such closing. The Close of Escrow shall occur on a date that is no later than fifteen (15) days after the expiration of the Entitlement Period. The BUYER may elect to extend the Entitlement Period up to an additional six (6) months (to a date that is twenty-four months (24) months following the Opening of Escrow) in exchange for the BUYER's one-time payment of \$300,000.00 (Three Hundred Thousand Dollars) ("**Escrow Extension Deposit**") which amount will be paid directly to SELLER and added to the Deposit. The extension of the Entitlement Period shall only be effective for the additional six (6) month period, if BUYER delivers the Escrow Extension Deposit to SELLER prior to the last day of the initial eighteen (18) month Entitlement Period. Such Escrow Extension Deposit will be non-refundable, but shall be applied toward the Purchase Price.

The BUYER may elect to extend the Entitlement Period up to an additional four (4) months (to a date that is twenty-eight (28) months following the Opening of Escrow) if all entitlements have not yet been issued, and the BUYER delivers to the Escrow Holder, this First Amendment memorializing the extension of the Entitlement Period, prior to the last day of the twenty-four (24) month Entitlement Period.

In the event all of the conditions set forth in Section 7(b) are not satisfied or waived as of the date that is fifteen (15) days following expiration of the Entitlement Period, as the same may be extended upon payment of the Escrow Extension Deposit or as set forth in Section 18 (the "**Outside Closing Date**"), BUYER may terminate this Agreement and/or exercise such rights and remedies, if any, that it may have pursuant to the terms of this Agreement. Likewise, in the event all of the conditions set forth in Section 7(c) are not satisfied or waived as of the Outside Closing Date, SELLER may terminate this Agreement and/or exercise such rights and remedies, if any, that it may have pursuant to the terms of this Agreement.

(b) Conditions to BUYER's Obligations. BUYER's obligation to consummate the Close of Escrow is conditioned on all of the following:

(1) SELLER's Closing Deliveries. At Close of Escrow, SELLER shall deliver the following to the Escrow Holder:

- (i) The Deed, executed and acknowledged by SELLER.
- (ii) Documentation to establish to the Escrow Holder's reasonable satisfaction the due authorization of the person(s) executing the instruments contemplated under this Section 7(b)(1) on behalf of SELLER.

- (iii) an affidavit of non-foreign status of SELLER under the Foreign Investment in Real Property Tax Act.
- (iv) a settlement statement showing both the SELLER's and the BUYER's credits and debits consistent with this Agreement (the "**Settlement Statement**").
- (v) any transfer declarations required by applicable law;
- (vi) a bring down certificate remaking the representations and warranties of SELLER under the Section 13(a), below.
- (vii) a State of California Form 593 C.
- (viii) an owner's affidavit in form and substance reasonably acceptable to Escrow Holder to delete the non-survey related standard, pre-printed exceptions.
- (ix) any other customary closing documents in form and substance reasonably satisfactory to SELLER to consummate the Transaction.

(2) Pre-Existing Obligations. There shall exist no leases (including, without limitation, the Leases), contracts or rights of occupancy or other agreements or contracts with respect to the Property entered into by SELLER that shall survive the Close of Escrow.

(3) Title Conditions Satisfied. The Escrow Holder shall be in a position to issue the Title Policy to BUYER in the amount of the Purchase Price with respect to the Property subject only to the exceptions permitted by Section 10 of this Agreement.

(4) Subdivision. The Property shall have been legally subdivided or if conveyed by metes and bounds description pursuant to Government Code Section 66428(a)(2) SELLER shall provide such evidence as may be requested by Escrow Holder and BUYER to assure that the Property comprises one or more legally subdivided parcels under the Subdivision Map Act and to assure issuance of an endorsement to the Title Policy for the benefit of BUYER to such effect ("**Subdivision Map Act Endorsement**").

(5) Entitlements. All Entitlements required to be approved by the City of Chino for the development of the Property in accordance with the Proposed Development Plans shall have been approved, shall be Final and shall not have expired, and BUYER shall have also received a duly executed Notice of Determination as contemplated in Section 7(c)(3), below. The term "**Final**" as used in this Agreement means that all applicable appeal and statute of limitations periods relating thereto shall have expired without the filing of any appeal or legal challenge or any such appeal or legal challenge shall have been finally resolved, without possibility of further appeal, in favor of BUYER and in a manner permitting construction and operation on the Property consistent with BUYER's Proposed Development Plans.

(6) SELLER's Deliveries Complete. SELLER shall have delivered all of the documents and other items required pursuant to Section 7(b) and shall have performed all other material obligations under this Agreement to be performed by SELLER at or prior to the Close of Escrow provided that SELLER shall have a reasonable opportunity to cure any such default after receiving written notice thereof from BUYER.

(7) Representations True. All representations and warranties made by SELLER in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date.

(c) Conditions to SELLER's Obligations. SELLER's obligation to consummate the Close of Escrow is conditioned on all of the following:

(1) BUYER's Closing Deliveries. At the Close of Escrow, BUYER shall deliver the following:

- (i) The Purchase Price less the Deposit and the Escrow Extension Deposit, if paid, as adjusted for apportionments and other adjustments required under this Agreement, plus any other amounts required to be paid by BUYER at the Close of Escrow.
- (ii) Documentation to establish to the Escrow Holder's reasonable satisfaction the due authorization of the person(s) executing the instruments contemplated under this Section 7(c)(1) on behalf of BUYER.
- (iii) The Settlement Statement.
- (iv) any transfer declarations required by applicable law;
- (v) any other customary closing documents in form and substance reasonably satisfactory to BUYER to consummate the Transaction.

(2) BUYER's Deliveries Complete. BUYER shall have delivered all of the documents and other items required pursuant to Section 7(c) and shall have performed all other material obligations to be performed by BUYER at or prior to the Close of Escrow provided that BUYER shall have a reasonable opportunity to cure any such default after receiving written notice thereof from SELLER.

(3) Notice of Determination. SELLER, acting in its sole discretion, shall have executed and filed a Notice of Determination with the Clerk of the Board of Supervisors pursuant to its actions as a Responsible Agency pursuant to the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 et seq.) in connection with BUYER’s proposed development of the Property; and shall have delivered a copy of said Notice of Determination to the BUYER and Escrow Holder.

(4) Representations True. All representations and warranties made by BUYER in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date.

(d) Waiver or Failure of Conditions Precedent. At any time on or before the date specified for the satisfaction of any condition, SELLER or BUYER may elect in writing to waive the benefit of any such condition to its obligations hereunder. By closing the Transaction,

SELLER and BUYER shall be conclusively deemed to have waived the benefit of any remaining unfulfilled conditions set forth in this Section 7.

SECTION 4. Section 8 of the Agreement is hereby deleted in its entirety and replace with the following:

Section 8. Processing of Entitlements

(a) SELLER covenants and agrees that SELLER will reasonably cooperate with BUYER in connection with the processing, by the Buyer Parties, of the Entitlements deemed necessary by BUYER for the development of the Property during Escrow. SELLER acknowledges that such cooperation shall include whatever actions may be reasonably necessary or helpful to enable the Buyer Parties to file for and process its entitlements. Such entitlements to be processed by the Buyer Parties may include, without limitation, the processing of an amendment to the general plan covering the Property, a zone change, a tentative subdivision map, a final subdivision map, an environmental impact report, receipt of the Notice of Determination as contemplated in Section 7(c)(3), above, associated development permits and related permits, including, without limitation, site plan approval and a building permit, agreements and approvals requested from the City of Chino or any other governmental agency having jurisdiction over the Property, all of the above in such a manner as BUYER may determine to be necessary or helpful to facilitate development of the Property as an economically viable project in accordance with the Proposed Development Plans, including any and all required Seller approvals of the final plans and specifications for implementing the Proposed Development Plans (if required) under the Comprehensive Land Use Plan – Chino Airport dated November, 1991, as amended (all of which being collectively referred to as the "**Entitlements**"). Such cooperation of SELLER shall include facilitating efforts of the Buyer Parties to enter into development agreements, investigate public financing and formation of special improvement districts, execution, as may be requested by the City of Chino or any other governmental agency having jurisdiction over the Property, of applications, permits or approvals required for the submittal of the Entitlements and, if applicable, executing the final map, if requested by BUYER, and providing the Buyer Parties access to the Property to perform any investigations or tests necessary for the processing of such Entitlements as contemplated in Section 6, above. The parties acknowledge that the intent of this provision is that SELLER will cooperate with BUYER and participate in such meetings if the City of Chino or other governmental agencies require the owner of the Property to be in attendance at such meetings. To the extent such attendance is required, BUYER will use reasonable efforts to ensure that (i) SELLER receives reasonable advance notice of any such meetings; and (ii) any such meetings are scheduled at a time which is reasonably acceptable to SELLER. Upon submittal of any such applications, permits, deeds or maps to SELLER, SELLER shall, no later than seven (7) days after delivery of such documents, execute such documents as necessary and return the same BUYER.

(b) BUYER shall in good faith diligently make all reasonable efforts to obtain all Entitlements within the eighteen (18) month period following the Opening of Escrow, as such period may be extended twice, for an additional six (6) months and an additional four (4) months, by BUYER pursuant Section 7(a) (the "**Entitlement Period**"). Notwithstanding any other provision of this Agreement, if at the end of the 28th month following the Opening of

Escrow, the Entitlements have been issued but the statute of limitations for challenge of any of such Entitlements has not run, the “**Entitlement Period**” shall be automatically extended for an additional ninety (90) days.

(c) If BUYER is not otherwise in default or in breach of this Agreement, and if BUYER should fail to obtain such Entitlements within the Entitlement Period for any reason or if such Entitlements are issued but are not Final by the end of such Entitlement Period, BUYER, at its option, may: 1) terminate this Agreement, cancel Escrow and receive a full refund of its Deposit together with any accrued interest thereon, or 2) at the end of the 18th month following the Opening of Escrow only, continue Escrow for a further six (6) month period by payment of the Escrow Extension Deposit, and 3) at the end of the 24th month following the Opening of Escrow only, continue Escrow for a further four (4) month period for a total of 28 months, upon mutual execution of this FIRST Amendment to the Agreement.

(d) SELLER and BUYER understand that full environmental review under CEQA and/or other state, federal, and local environmental laws must be completed as part of the City of Chino’s evaluation of whether to approve the development of the Property. SELLER and BUYER understand and agree that nothing set forth herein commits or otherwise requires the City to approve, in whole or in part, the development of the Property and that this Agreement does not govern federal, state, or other local agency approvals required for the development of the Property.

(e) SELLER and BUYER acknowledge and agree that City of Chino retains full discretionary authority with respect to the development of the Property, and may condition, deny, or approve the development of the Property or any portion thereof.

(f) SELLER shall not enter into any agreement that will allow for the development of the Property until there has been appropriate compliance with CEQA. The City of Chino retains the absolute discretion to: (i) modify the proposed development of the Property to mitigate significant adverse impacts; (ii) select feasible alternatives that avoid significant adverse impacts of the proposed development; (iii) reject the development of the Property as proposed if the economic and social benefits of the development do not outweigh otherwise unavoidable significant adverse impacts of the proposed development; or (iv) approve the proposed development upon a finding that the economic, social, or other benefits of the proposed development outweigh unavoidable significant adverse impacts of the proposed development.

SECTION 5. All other provisions of the Agreement shall remain in full force and effect.

SECTION 6. This First Amendment may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute the same document.

[Signatures of parties on following page]

IN WITNESS WHEREOF, the parties hereto have duly executed this FIRST Amendment as of the date first above written.

SELLER

BUYER

COUNTY OF SAN BERNARDINO

SCANNELL DEVELOPMENTCOMPANY

By: _____
Curt Hagman, Chairman
Board of Supervisors

By: _____
James C. Carlino, General Counsel

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:
MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By: _____
Robert F, Messinger, Principal Assistant County Counsel

Date: _____