

## **PURCHASE AND SALE AGREEMENT**

### **(Columbia Avenue Grade Separation)**

#### **EMPIRE PHARMACY HEALTH CARE SYSTEMS, INC.**

This Purchase and Sale Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, (“Effective Date”), by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, (“Seller”) and EMPIRE PHARMACY HEALTH CARE SYSTEMS, INC., a California corporation (“Buyer”). In consideration of the mutual covenants and agreements, the parties agree to the following terms and conditions:

### **ARTICLE I AGREEMENT OF SALE**

1.1 **Property.** Seller owns certain real property located on the south side of Columbia Avenue between La Cadena Drive and Chicago Avenue, Riverside, California, bearing Assessor Parcel Nos. 210-043-002, 210-043-005, 210-043-006, 210-043-007, 210-043-008, 210-043-009, 210-043-040, 210-043-041, and 210-043-042 (“Property”), more particularly described in the legal description and plat attached hereto and marked as Exhibit “A” and incorporated herein by reference.

1.2 **Intention.** Buyer desires to purchase in fee the Property for the purpose of developing approximately 13,000 square feet of retail space. Seller desires to sell and convey the Property to the Buyer (“Project”).

1.3 **Incomplete Legal Description.** If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of the title company to issue a title policy hereinafter described.

1.4 **Right of Entry.** After Seller’s execution of this Agreement and during Escrow, Seller grants to Buyer and its agents, employees, contractors or subcontractors, the right to enter into and upon the Property for the purpose of conducting a Phase I Environmental Site Assessment, soil testing, environmental and engineering studies, and such further engineering, grading, archeological, geological or survey work as may be required for the preparation by Buyer of its development plans for the Property. Buyer to obtain Seller’s prior approval for any intrusive soil testing. Buyer shall provide Seller with twenty four (24) hours’ notice prior to such entry. Prior to entry Buyer shall provide Seller with all certificates of insurance and additional insured endorsements in the amounts required by Seller, such as, but not limited to commercial general, workers’ compensation and automobile. Buyer agrees to keep the Property free and clear of any liens or encumbrances that may arise out of Buyers inspection of and activities on the Property. All costs, expenses, liabilities or charges incurred in or related to the performance of any and all of such studies and work on the Property including the preparation by Buyer of any plans or maps for the development or use of the Property, and the cost of filing, recording reports, plans, maps or other documents related thereto shall be at the sole cost and expense of and shall be paid by

Buyer. Buyer hereby agrees to repair any damage done to the Property by Buyer, its agents, employees, servants or nominees, and Buyer shall restore the Property to the same or similar condition as existed on the Effective Date. Buyer shall not have any such obligation if Escrow closes and title to the Property vests in Buyer. The right to enter the Property shall be co-extensive with the period during which Escrow is open, or any extension thereof.

1.5 **Due Diligence.** Buyer shall have One Hundred Eighty (180) days from the Effective Date (“Contingency Date”) to perform, in its sole discretion, its due diligence review of the condition of Property and all other matters concerning the Property, including without limitation, condition of title, economic, financial, and accounting matters relating to or affecting the Property or its value, and the physical and environmental condition of the Property. Prior to the Contingency Date, Buyer shall have made such inquiries, communicated with local, state and federal government agencies as it sees fit, retained such consultants, and taken such actions as Buyer deems necessary or appropriate to enter into this Agreement. Should Buyer, its contractors, consultants and agents require entry upon the Property for the purpose of surveying the same, making engineering and environmental tests and conducting such other investigations as approved by Seller, Buyer shall first obtain a Right of Entry from Seller and provide such insurance as Seller may require and hold Seller harmless from any liability which may arise due solely to such entry. Seller authorizes Buyer to make all inquiries of appropriate governmental authorities with respect to the Property, as Buyer, in its good faith and reasonable judgment deems necessary to satisfy itself as to the condition of title to the Property and the feasibility of any proposed development on the Property. On or before the Contingency Date, Buyer shall deliver written notice to Seller accepting the Property, or terminating this Agreement. If Buyer fails to give such notice on or before the Contingency Date, Buyer shall be deemed to have accepted the Property and proceed with this Agreement.

1.6 **Assumption of the Risk.** Subject to the other provisions of this Agreement, Buyer agrees, that by its acceptance of the Property under Section 1.3, it assumes the risk that an adverse condition of the Property may not have been revealed by its own Due Diligence. On Buyer’s acceptance, Seller shall have no obligation to repair, correct, or compensate Buyer for any condition of the Property, including defects in improvements, noncompliance with applicable laws and regulations, including without limitation zoning laws, building codes, and the Americans with Disabilities Act, whether or not such condition of the Property would have been disclosed by Buyer’s Due Diligence.

## **ARTICLE II PURCHASE PRICE, ESCROW AND DEPOSIT**

2.1 **Purchase Price.** The total purchase price to be paid by Buyer to Seller for the Property shall be the sum of Three Hundred Sixty-Five Thousand Dollars (\$365,000) (“Purchase Price”). The Purchase Price shall be payable by Buyer to Seller in immediately available funds in accordance with the provisions and requirements of this Agreement. The Purchase Price shall be the full fair market consideration for the Property.

2.2 **Deposit.** Within Fifteen (15) calendar days following the Effective Date, Buyer shall deliver a deposit in the amount of Eighteen Thousand Five Hundred Dollars (\$18,500.00)

("Deposit") to the Escrow Holder which will be applied towards the Purchase Price at the Close of Escrow, subject however to the Sellers right to liquidated damages as set forth in Section 6.5 in the event of Buyer's default. After One Hundred Eighty (180) days following the Effective Date (expiration of the Contingency Date), Buyer's Deposit shall become non-refundable but may still be applied towards the Purchase Price at the Close of Escrow. If this Agreement is terminated for any reason prior to One Hundred Eighty (180) days following the Effective Date, the Deposit shall be returned to Buyer.

2.3 **Escrow.** Within Ten (10) days after execution of this Agreement by both parties, Seller shall open an escrow ("Escrow") with an escrow company of Seller's choosing ("Escrow Holder"). The parties hereto shall execute and deliver to Escrow Holder such escrow instructions prepared by Escrow Holder as may be required to complete this transaction. Any such instructions shall not conflict with, amend, or supersede any provision of this Agreement. If there is any inconsistency between such instructions and this Agreement, this Agreement shall control.

2.4 **Developer Approval Period.** Within One Hundred Twenty (120) days following the Effective Date, Buyer shall submit an application to the City of Riverside ("City") Community & Economic Development Department, Planning Division ("Planning Division") for:

- (a) A Project Design Review of Buyer's proposed development of the Property including site plan and preliminary elevations ("Project Design");
- (b) Entitlements and environmental clearance, as needed, for the Project including any conditional use permits or variances ("Entitlements"); and
- (c) Any other documents or applications required for the development of the Project.

### **ARTICLE III CLOSING**

3.1 **Closing Date.** Escrow shall close within Twenty-Four (24) months from the Contingency Date ("Close of Escrow") with one option to extend up to Three (3) months. If the Escrow is not in a condition to close by the Close of Escrow, any party who is not then in default, upon notice in writing to the Escrow Holder and the other party, may demand the return of their documents and/or money and cancellation of the Escrow. Unless objected to in writing within ten (10) days from the receipt of the notice of cancellation, the Escrow will automatically be canceled. If no demand for cancellation is made, then Escrow will close as soon as possible. Notwithstanding the foregoing, the Close of Escrow may be extended by mutual agreement if the parties are diligently attempting to resolve the issue(s) that may be preventing or delaying the Close of Escrow.

### 3.2 Closing Documents.

3.2.1 Seller, prior to the Close of Escrow, shall deliver to Escrow Holder each of the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

- (a) A grant deed sufficient for recording, conveying the Property; and
- (b) All additional documents and instruments which may be reasonably necessary for the Close of Escrow and to consummate the sale of the Property in accordance with the terms of this Agreement.

3.2.2 Buyer, prior to the Close of Escrow, shall deliver to Escrow Holder each of the following items, the delivery of each of which shall be a condition to the performance by Seller of its obligations under this Agreement:

- (a) Funding for the Purchase Price of the Property and any additional funds necessary to satisfy Buyer's obligation relating to acquisition of the Property;
- (b) Copies of Buyer's authority documents and/or such other documents evidencing Buyer's due existence and authority to enter into and consummate the transaction contemplated by this Agreement as Seller or Escrow Holder may require;
- (c) All additional documents and instruments which may be reasonably necessary for the Close of Escrow and to consummate the sale of the Property in accordance with the terms of this Agreement.

3.3 **Taxes.** Buyer understands and acknowledges that Seller, as a municipal corporation, is not being assessed for any real property taxes or for any special assessments. However, upon the Close of Escrow, Buyer understands and acknowledges that real property taxes and special assessments will be assessed against the Property and Buyer will be responsible for the same. Buyer agrees to hold Seller harmless for any and all real property taxes and/or special assessments on the Property assessed on and after Close of Escrow.

3.4 **Condition of Title.** Seller shall convey fee simple merchantable and insurable title of the Property to Buyer free and clear of all liens, restrictions, delinquent taxes and assessments, and encumbrances as evidenced by a CLTA Title Insurance Policy ("Title Policy") issued by a title insurance company to be selected by Seller in an amount equal to the purchase price. The Title Policy shall show as exceptions with respect to the Property only matters approved in writing by Buyer. Any exceptions to title representing monetary liens or encumbrances may, at the discretion of Buyer, be disapproved by Buyer, and upon the direction of the Buyer, Escrow Holder is hereby authorized and instructed to cause the reconveyance or partial reconveyance, as the case may be, of any such monetary exceptions to Buyer's title to the Property at or prior to the Close of Escrow.

3.5 **Costs.** Seller shall be responsible for 50% of escrow fees and 100% of a CTLA title policy for Buyer. Buyer shall be responsible for (i) 50% of all escrow fees; (ii) the cost of any and all surveys (iii) all recording fees and any and all state, county, and local governmental transfer taxes, documentary or otherwise, and/or the cost of documentary stamps to be affixed to the instrument or instruments of conveyance; (iv) any taxes disclosed in Section 3.3; (v) any other expenses customarily charged to Buyer in connection with similar transactions including its own attorney's fees; and any costs for an extended coverage title policy.

3.6 **Brokerage Commissions.** Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or person, who can claim a commission or finder's fee as a procuring cause of the sale contemplated in this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based on any contract, dealings, or communication with a party (Indemnifying Party), then the Indemnifying Party shall indemnify, defend, and hold the other party (Nonindemnifying Party) harmless from all costs and expenses (including reasonable attorney fees and costs of defense) incurred by the Nonindemnifying Party in connection with such claim.

3.7 **Buyer Obligations Following Close of Escrow.**

3.7.1 Buyer shall comply with all zoning (including obtaining a conditional use permit, if applicable), planning and building laws, regulations, and procedures imposed by the City and any other public and/or quasi-public entity.

3.7.2 Buyer shall develop the Property and obtain a Certificate of Occupancy before such development may be deemed fully developed.

3.7.3 Buyer shall commence construction of the Project not later than Ninety (90) days after Close of Escrow, subject to force majeure delays (including, without limitation, acts of destruction by nature). Failure to commence construction required herein shall result in the payment of a Five Hundred (\$500) per diem penalty by Buyer to Seller for failure to commence construction within Ninety (90) days from the Close of Escrow. Notwithstanding the foregoing, upon mutual written agreement of the parties, the construction commencement deadline may be extended for up to one (1) Ninety (90) day extension.

3.7.4 Buyer shall complete construction of the Project within Twenty Four (24) months from Close of Escrow subject to force majeure delays (including, without limitation, acts of destruction by nature). Failure to complete construction shall result in the payment of a Five Hundred Dollars (\$500) per diem penalty by Buyer to Seller for failure to complete construction within Twenty Four (24) months from Close of Escrow. Notwithstanding the foregoing, upon mutual written agreement of the parties, Buyer shall have two (2) extension periods of up to Ninety (90) days in the event Buyer's contractor incurs a labor strike, lock out, or any material shortages that are beyond the Buyer's control.

3.7.5 Sale to a Tax-Exempt Entity Prohibited. Buyer is prohibited from selling or transferring the Property to any entity that is exempt from paying real property taxes.

3.7.6 Buyer shall prohibit off-sale alcoholic beverage sales without obtaining all necessary approvals and permits from the City and the State of California Department of Alcoholic Beverage Control, tattoo and body piercing parlors, and adult-oriented businesses on the Property.

#### **ARTICLE IV "AS-IS" PURCHASE**

4.1 **As-Is Information.** Buyer acknowledges, agrees, represents, and warrants that: (a) any information supplied or made available by Seller, whether written or oral, or in the form of maps, surveys, plats, soils reports, engineering studies, environmental studies, inspection reports, plans, specifications, or any other information whatsoever, without exception, pertaining to the Property, any and all records and other documents pertaining to the use of the Property, income thereof, the cost and expenses of maintenance thereof, and any and all other matters concerning the condition, suitability, integrity, marketability, compliance with law, or other attributes or aspects of the Property, or a part thereof, if furnished to Buyer, is furnished solely as a courtesy; (b) THE INFORMATION IS PROVIDED ON AN "AS-IS, WHERE-IS" BASIS AND SELLER MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE INFORMATION; and (c) no representations have been made by Seller, or its agents or employees, in order to induce Buyer to enter into this Agreement. Without limiting the generality of the foregoing, Buyer acknowledges, agrees, warrants and represents to Seller that neither the Seller nor its agents or employees have made any representations or statements to Buyer concerning the Property's investment potential or resale at any future date, at a profit or otherwise, nor has Seller or its agents or employees rendered any advice or expressed any opinion to Buyer regarding any tax consequences of ownership of the Property.

4.2 **As-Is Property.** On the Close of Escrow, Buyer will be familiar with the Property and will have made such independent investigations as Buyer deems necessary or appropriate concerning the Property. Seller makes no representations or warranties and specifically disclaims any representation, warranty or guaranty, oral or written, past, present or future with respect to the use, physical condition or any other aspect of the Property, the conformity of the Property to past, current or future applicable zoning or building code requirements or the compliance with any other laws, rules, ordinances, or regulations of any government or other body, the financial earning capacity or expenses history of the operation of the Property, the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, susceptibility to landslides, sufficiency of undershoring, sufficiency of drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, the existence or nonexistence of hazardous waste or other toxic materials of any kind, whether known or unknown and whether or not regulated or governed by applicable laws (including, without limitation, hydrocarbons or asbestos), or any other matter affecting the condition, stability, suitability or integrity of the Property or portion thereof.

**4.3 Negligence or Failure to Investigate.** Seller shall not be responsible for any negligent misrepresentation or failure to investigate the Property on the part of Seller, any real estate broker or agent, or any other agent, contractor or employee of Seller or any third party.

**4.4 As-Is.** BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING SOLD AND ACCEPTED ON AN “AS-IS, WHERE-IS” BASIS, AND IS BEING ACCEPTED WITHOUT ANY REPRESENTATION OR WARRANTY. IF BUYER ELECTS TO PROCEED WITH THE PURCHASE OF THE PROPERTY, ANY OBJECTIONS WHICH BUYER MAY HAVE WITH RESPECT TO THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL MATTERS, HAZARDOUS SUBSTANCES, WASTES OR TOXIC MATERIALS THAT MAY BE LOCATED ON, UNDER OR ABOUT THE PROPERTY, WHETHER KNOWN OR UNKNOWN) SHALL BE WAIVED BY BUYER

**4.5 Past Uses.** BUYER EXPRESSLY ACKNOWLEDGES AND AGREES AS PART OF ITS ACCEPTANCE OF THE PROPERTY ON AN “AS-IS, WHERE-IS” BASIS THAT BUYER IS AWARE OF ALL PRIOR USES OF THE PROPERTY THAT MAY LEAD TO CONTAMINATION OF THE PROPERTY. BUYER HAS OBTAINED AND READ ALL ENVIRONMENTAL ASSESSMENTS REGARDING THE PROPERTY WHICH A REASONABLY DILIGENT BUYER WOULD HAVE OBTAINED PRIOR TO THE PURCHASE THEREOF. BUYER ASSUMES ALL RESPONSIBILITY FOR ANY CONTAMINATION THAT IS PRESENT ON THE PROPERTY DUE TO PRIOR AND/OR EXISTING USES OF THE PROPERTY.

**4.6 Waivers.** AS PART OF BUYER'S AGREEMENT TO PURCHASE AND ACCEPT THE PROPERTY “AS-IS, WHERE-IS”, AND NOT AS A LIMITATION ON SUCH AGREEMENT, BUYER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS BUYER MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, RELATING TO THE PROPERTY AND IT IMPROVEMENTS. SUCH WAIVER IS ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY. SUCH WAIVER INCLUDES, BUT IS NOT LIMITED TO, A WAIVER OF EXPRESS WARRANTIES, IMPLIED WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF HABITABILITY, STRICT LIABILITY RIGHTS AND CLAIMS OF EVERY KIND AND TYPE, INCLUDING, BUT NOT LIMITED TO, CLAIMS REGARDING DEFECTS WHICH WERE NOT OR ARE NOT DISCOVERABLE, ANY RIGHTS AND CLAIMS RELATING OR ATTRIBUTABLE TO ENVIRONMENTAL CONDITIONS, ALL OTHER ACTUAL OR LATER CREATED OR CONCEIVED OR STRICT LIABILITY OR STRICT LIABILITY TYPE CLAIMS AND RIGHTS.

**BUYER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH IS SET FORTH BELOW:**

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

**BY INITIALING BELOW, BUYER HEREBY WAIVES THE PROVISIONS OF SAID SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING ACKNOWLEDGMENTS, WAIVERS AND RELEASES SET FORTH IN THIS ARTICLE 4.**

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**Buyer's Initials**

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES**

**5.1 Seller's Representations, Warranties and Covenants.** Seller hereby represents, warrants and covenants to Buyer as of the date of this Agreement, and upon the Close of Escrow, as follows, all of which shall survive the Close of Escrow:

5.1.1 Seller is a public body and has the full power and authority to enter into and carry out the agreements contained in, and transactions contemplated by, this Agreement. The person(s) signing this Agreement and any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Seller.

5.1.2 There are no attachments, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to the best of Seller's knowledge, pending in any current judicial or administrative proceeding against Seller.

5.1.3 Seller has not entered into any other written contracts or agreements for the sale or transfer of any portion of the Property.

5.1.4 To Seller's knowledge, Seller has received no written notice of any hazardous materials located on, under, or about the Property, except as disclosed to Buyer.

The material truth and accuracy of the foregoing representations and warranties shall be a condition of Buyer's obligations hereunder. Prior to the Close of Escrow, Seller shall notify Buyer of any facts or circumstances which are contrary to the foregoing representations and warranties.

5.2 **Buyer's Representations and Warranties.** Buyer hereby represents, warrants and covenants to Seller as of the date of this Agreement, and upon the Close of Escrow, as follows, all of which shall survive the Close of Escrow:

5.2.1 Buyer has the full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by this Agreement. The person(s) signing this Agreement and any documents and instruments in connection herewith on behalf of Buyer have full power and authority to do so. This Agreement has been duly authorized and executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

5.2.2 There are no attachments, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or to the best of Buyer's knowledge, pending in any current judicial or administrative proceeding against Buyer.

The material truth and accuracy of the foregoing representations and warranties shall be a condition of Seller's obligations hereunder. Prior to the Close of Escrow, Buyer shall notify Seller of any facts or circumstances which are contrary to the foregoing representations and warranties.

5.3 **No Warranties.** Except for those representations and warranties expressly set forth in this Agreement, the parties understand and acknowledge that no person acting on behalf of Seller is authorized to make, and by execution hereof Buyer acknowledges that no person has made any representations, agreement, statement, warranty, guaranty or promise regarding the Property or the transaction contemplated herein, or regarding the zoning, construction, development, physical condition or other status of the Property. Without limiting the generality of the foregoing, Seller makes no representation or warranties with respect to the amount or types of fees required to obtain building permits or otherwise to rezone and develop the Property.

## ARTICLE VI DEFAULTS

6.1 **Default.** A party shall be deemed in default hereunder if any of the warranties or representations set forth herein are or become untrue or if it fails to meet, comply with, or perform any covenant, agreement, or obligation on its part required within the time limits and in the manner required in this Agreement for any reason other than a default by the other party hereunder or termination of this Agreement prior to Closing.

6.2 **Opportunity to Cure.** No act, failure to act, event or circumstance which might be deemed to be a default by either party shall be deemed to be a default under any of the provisions of this Agreement, unless and until, notice thereof is first given by the non-defaulting party to the party alleged to be in default and said party fails to cure the alleged default within fifteen (15) days in the case of a non-monetary default, or five (5) days in the case of a monetary default.

6.3 **Remedies.** If Buyer is deemed to be in default hereunder, Seller shall be entitled to termination of this Agreement, at its discretion.

6.4 **Waiver of Right to Specific Performance.** If Seller fails to convey the Property to Buyer in accordance with the provisions of this Agreement, and such failure constitutes a default under this Agreement, Buyer hereby waives its right to receive any equitable relief, including without limitation the right to record a lis pendens against the Property under applicable law or to pursue the specific performance of this Agreement.

6.5 **Liquidated Damages.** BUYER AND SELLER AGREE THAT AT THE TIME THIS AGREEMENT IS MADE AND ENTERED INTO, SELLER'S DAMAGES UPON DEFAULT BY BUYER UNDER THIS AGREEMENT ARE EXTREMELY DIFFICULT OR IMPOSSIBLE TO CALCULATE AND BUYER AND SELLER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES SET FORTH HEREIN IS A REASONABLE ESTIMATE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THIS AGREEMENT IS MADE OF THE DAMAGES SELLER WOULD SUSTAIN BECAUSE OF SUCH DEFAULT BY BUYER UNDER THIS AGREEMENT. FURTHER, BUYER DESIRES TO HAVE A LIMIT PLACED ON THE AMOUNT OF DAMAGE TO BE PAID TO SELLER UPON BUYER'S DEFAULT. BUYER HEREBY AGREES THAT SHOULD BUYER DEFAULT IN THE PERFORMANCE OF BUYER'S OBLIGATION TO CLOSE THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, SELLER SHALL BE ENTITLED TO COLLECT THE SUM REPRESENTING THE AMOUNT OF THE DEPOSIT AND REASONABLE ATTORNEY'S FEES INCURRED BY SELLER AS LIQUIDATED DAMAGES FROM BUYER. THE FOREGOING PROVISIONS OF THIS SECTION 6.5 CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER AS A RESULT OF A DEFAULT BY BUYER OF ITS OBLIGATIONS TO CLOSE ESCROW UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 6.5 DO NOT LIMIT ANY DAMAGES DUE SELLER BY REASON OF BUYER'S ENTRY ONTO THE PROPERTY PURSUANT TO SECTION 1.4 OR BUYERS DEFAULT FOLLOWING CLOSE OF ESCROW. IF SELLER IS ENTITLED TO THE DEPOSIT IN ACCORDANCE WITH THIS SECTION 6.5, BUYER AGREES TO DELIVER, ON WRITTEN REQUEST OF SELLER, SUCH INSTRUCTIONS AS MAY BE REASONABLY NECESSARY TO CAUSE THE ESCROW HOLDER TO DELIVER THE DEPOSIT TO SELLER.

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Buyer's Initials

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Seller's Initials

## ARTICLE VII MISCELLANEOUS

7.1 **CEQA Compliance.** Buyer and Seller understand, acknowledge and agree that the close of this escrow is contingent upon Seller's compliance with the California Environmental Quality Act ("CEQA"). Buyer must comply with CEQA prior to development of the Property.

7.2 **Exhibits.** All Exhibits annexed hereto are a part of this Agreement for all purposes.

7.3 **Assignability.** Buyer may, at any time prior to the Close of Escrow, assign all of its rights, title, and interest in and to this Agreement to any affiliate or any subsidiary with the consent of Seller, otherwise, this Agreement is not assignable. Seller's consent shall not be

unreasonably withheld. As used herein, an “affiliate” or “subsidiary” shall mean any entity which is controlled by or is under common control with Buyer.

7.4 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective successors and permitted assigns.

7.6 **Captions.** The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

7.7 **Number and Gender of Words.** Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

7.8 **Notices.** All notices, terminations, waivers and other communications hereunder shall be in writing and shall be delivered personally or shall be sent by registered or certified United States mail or a nationally recognized, overnight courier service, postage prepaid, and addressed as follows:

If to Seller:                   City of Riverside  
Community Development Dept.-Real Property Services Division  
3900 Main Street  
Riverside, CA 92522  
Attn: David Welch, Real Property Services Manager  
Phone: (951) 826-5665  
Facsimile: (951) 826-5744

If to Buyer:                   Empire Pharmacy Health Care Systems, Inc.  
1340 Massachusetts Avenue  
Riverside, CA 92507  
Attn: Kahlid Ali, Secretary  
Phone: (714) 553-0959

Any notice in accordance herewith shall be deemed received when delivery is received or refused, as the case may be. Additionally, notices may be given by telephone facsimile transmission, provided that an original of said transmission shall be delivered to the addressee by a nationally recognized overnight delivery service on the business day following such transmission. Telephone facsimiles shall be deemed delivered on the date of such transmission.

7.9 **Governing Law and Venue.** The laws of the State of California shall govern the validity, construction, enforcement, and interpretation of this Agreement. All claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, shall be decided by proceedings instituted and litigated in the state court in the County of Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

7.10 **Entirety.** This Agreement embodies the entire agreement between the parties and supersedes all prior written or oral agreements and understandings, if any, between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

7.11 **Amendments.** This Agreement may be amended or supplemented only by written documents signed by the parties or their designated representatives as designated at the time of execution of this document.

7.12 **Severability.** If any of the provisions of this Agreement, or its application to any party or circumstance, is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. In lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible to make such provision legal, valid, and enforceable.

7.13 **Further Acts.** In addition to the acts and deeds recited herein and contemplated and performed, executed and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Close of Escrow or after the Close of Escrow any and all such further acts, deeds, and assurances as may be necessary to consummate the transactions contemplated herein.

7.14 **Construction.** No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Agreement; both parties, being represented by counsel, having fully participated in the negotiation of this instrument.

7.15 **Time of the Essence.** It is expressly agreed by the parties hereto that time is of the essence with respect to each and every provision of this Agreement.

7.16 **Waiver of Covenants, Conditions or Remedies.** The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

7.17 **Nondiscrimination.** The parties shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical or mental disability, medical conditions, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or

any condition related thereto, marital status, genetic information, gender, gender identity, genetic expression, sex or sexual orientation, in connection with the performance of this Agreement. The parties further agree to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

7.18 **Ratification.** This Agreement may be subject to the approval and ratification by the City of Riverside. In the event the City fails to approve this Agreement, there shall be no liability on the part of the Seller and this Agreement shall become null and void and of no further force and effect.

7.19 **Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one original agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

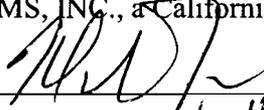
(Signatures on Following Page)

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

CITY OF RIVERSIDE, a California charter city and municipal corporation

EMPIRE PHARMACY HEALTH CARE SYSTEMS, INC., a California corporation

By: \_\_\_\_\_  
City Manager

By:   
Name: Kablid Hasan Ali  
Title: CEO

Attest:

By: \_\_\_\_\_  
City Clerk

By:   
Name: Manuel Montoya  
Title: VP / Secretary

Approved as to Form:

By:   
Chief Assistant City Attorney

**EXHIBIT "A"**

**LEGAL DESCRIPTION AND PLAT**

ATTACHMENT 1

**EXHIBIT A**  
**COLUMBIA AVENUE OVERPASS - EXCESS PROPERTY**

**SOUTHWEST CORNER COLUMBIA AND CHICAGO**

Por. APN'S: 210-043-002, -005, -006, -007, -008, -009, -040, -041, -042

**PARCEL 1**

That certain real property located in the City of Riverside, Riverside County, California, described as follows:

All those portions of Lots 9 through 18 in Block 2 of Lansdowne Division, as shown by map on file Book 8, Page 82 of Maps, records of Riverside County, California;

EXCEPTING THEREFROM those portions lying west, northwesterly, north and northeasterly of the following described line;

Beginning at a point on the South line of Said Lot 9, distant thereon 15.38 feet from the southeast Corner of said Lot 9;

Thence North  $0^{\circ}47'35''$  East, parallel with the East Line of said Lot 9, a distance of 71.62 feet;

Thence North  $45^{\circ}33'53''$  East, a distance of 50.38 feet to a point on a line 48.30 feet south and parallel, as measured at right angles to the centerline of Columbia Avenue;

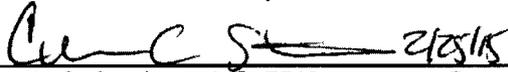
Thence South  $89^{\circ}09'17''$  East, along said parallel line, a distance of 342.30 feet to the beginning of a tangent curve concaving southwesterly and having a radius of 140 feet;

Thence easterly along said curve to the right through a central angle of  $59^{\circ}35'20''$  an arc length of 145.60 feet to the Northwest Line of Brandywine Avenue per said Map and the END of this Line description.

ALSO EXCEPTING THEREFROM the South 4.00 feet of said Lots 9 through 18.

Area – 49,984.0 S.F. ±

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

 2/25/15 Prep.   
Curtis C. Stephens, L.S. 7519 Date





**COLUMBIA AVENUE**

S89°09'17"E

**LA CADENA DRIVE**

N00°47'35"E

M65°33'23"E  
71.62'  
80.38'

48.3'

48.3'

342.30'

PARCEL 1

10

11

12

13

14

15

16

17

18

FOR 9

**LANDOWNE DIVISION**

①

15.38'

20'

P.O.B.

**BLOCK 2**

M.B. 8/82 RIV. VO.

30

31

32

33

34

35

**BRANDYWINE AVENUE**

**CHICAGO AVENUE**

**SPRING GARDEN STREET**

CURVE DATA

①

R=140'  
Δ=59°35'20"  
L=145.60'  
T=80.16'

**• CITY OF RIVERSIDE, CALIFORNIA •**

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

SCALE: 1"=80'

DRAWN BY: CURT DATE: 1/21/14

SUBJECT: COLUMBIA AVE OVERPASS EXCESS PROPERTY - COLUMBIA & CHICAGO