

## **SECOND AMENDMENT TO PURCHASE, ASSIGNMENT AND REPURCHASE AGREEMENT**

THIS SECOND AMENDMENT TO PURCHASE, ASSIGNMENT AND REPURCHASE AGREEMENT ("Second Amendment") is made as of this \_\_\_ day of December, 2014 ("Effective Date"), by and between Urban Villages San Marcos, LLC, a California limited liability company ("UVSM"), and the City of San Marcos ("City"), collectively "Parties," with reference to the following facts:

### **RECITALS**

WHEREAS, City and University Place San Marcos, LLC ("UPSM") entered into a Purchase Assignment and Repurchase Agreement on March 28, 2007 as amended by that certain First Amendment to Assignment and Repurchase Agreement dated March 27, 2012 (collectively, the "Original Agreement").

WHEREAS, the assignment and transfer of UPSM's interest in and to the Original Agreement to UVSM has previously been accepted by City, and all references in the Original Agreement to UPSM are hereafter deemed to include UVSM as the successor in interest to UPSM;

WHEREAS, under the terms of the Original Agreement, certain properties were conveyed or assigned by UVSM to the City;

WHEREAS, subject to the terms of the Original Agreement. UVSM retained an option to be exercised during the Option Period defined therein to (i) repurchase the conveyed properties; and (ii) purchase properties owned by the City within an area covered by the Heart of the City Specific Plan, and transactions have occurred under each option to date, as reflected in Exhibit A, attached hereto and incorporated herein by reference;

WHEREAS, the Heart of the City Specific Plan has subsequently been superseded and replaced by the University District Specific Plan for the area affected by the Original Agreement;

WHEREAS, the Original Agreement was extended and modified by and through that certain First Amendment to Purchase, Assignment and Repurchase Agreement ("First Amendment"); and

WHEREAS, the Parties desire to amend the Original Agreement and the First Amendment as set forth herein.

## AGREEMENT

1. The above recitals are true and correct and are incorporated by this reference.
2. All initially capitalized terms not otherwise defined in this Second Amendment shall have the same meanings as set forth in the Original Agreement
3. Extension of Option Period. The Option Period as defined in Section 14 of the original Agreement and Section 1 of the First Amendment is hereby extended up to and including December 31, 2019.
4. Specific Plan. All references in the Original Agreement to either the “Heart of the City” Specific Plan or “Specific Plan” shall be deemed to refer to the University District Specific Plan (initially adopted under Ordinance 2009-1325, effective December 8, 2009, and as amended from time to time).
5. Definition of “City Property” and “City Properties”. References in the Original Agreement to “City Property” or to “City Properties” as defined in Section 15 in the Original Agreement, shall hereafter be deemed to be those City owned properties within the University District Specific Plan Area that are either vacant or were acquired by the City for the redevelopment under the applicable Specific Plan.
6. Definition of Repurchase Price. The parties did not contemplate potential rental of City Properties by UVSM at the time the Original Agreement or the First Amendment were adopted. UVSM acknowledges and agrees that the Repurchase Price paid by UVSM to the City under Sections 14.2 (a) and 14.2 (b) of the Original Agreement shall not be adjusted downward by the amount of leasehold income received by the City from UVSM or its contractors, subcontractors, agents or other affiliated and related entities, and that any downward adjustment of the Repurchase Price shall only be triggered in the event of rent or leasehold payments made by third party tenant(s) of such City Properties.
7. Memorandum of Option to Purchase Subject to Second Amendment. City and UVSM acknowledge and agree that the Memorandum of Option recorded in the Official Records of the San Diego County Recorder’s Office as Document No. 2007-0251796 shall be deemed amended in accordance with this Second Amendment to the extent any provision may conflict with the terms hereof.
8. Counterparts and Facsimile Signatures. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. The Parties shall;

exchange original signatures but, should that not occur, the Parties are entitled to rely on facsimile copies of the Second Amendment.

9. Effect of Second Amendment. Except as expressly supplemented and/or modified by this Second Amendment, the terms and provisions of the Original Agreement and the First Amendment remain in full force and effect.

10. Authority. The individuals signing on behalf of each Party warrant and represent that they have the authority to sign this Second Amendment and to bind their respective Party to the same.

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

CITY OF SAN MARCOS

URBAN VILLAGES SAN MARCOS, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Jack Griffin, City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Phillip Scollick, City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Helen Holmes Peak  
City Attorney

[UVSM SIGNATURES MUST BE ACCOMPANIED BY A NOTARIAL ACKNOWLEDGMENT]

Exhibit A

Property affected by Original Agreement and Transfers Between the Parties

UVSM Repurchase Agreement  
Amended Agreement dated 1.1.15

Principal:			\$11,977,595	
Interest Rate:	(See option note)		3.50%	3.50%
Date	Interest	Payments	Balance	
1/1/2015	\$34,934.65		\$11,977,594.62	
2/1/2015	\$34,934.65		11,977,594.62	
3/1/2015	\$34,934.65		11,977,594.62	
4/1/2015	\$34,934.65		11,977,594.62	
5/1/2015	\$34,934.65		11,977,594.62	
6/1/2015	\$34,934.65		11,977,594.62	
7/1/2015	\$34,934.65		11,977,594.62	
8/1/2015	\$34,934.65		11,977,594.62	
9/1/2015	\$34,934.65		11,977,594.62	
10/1/2015	\$34,934.65		11,977,594.62	
11/1/2015	\$34,934.65		11,977,594.62	
12/1/2015	\$34,934.65		11,977,594.62	
1/1/2016	\$34,934.65		11,977,594.62	
2/1/2016	\$34,934.65		11,977,594.62	
3/1/2016	\$34,934.65		11,977,594.62	
4/1/2016	\$34,934.65		11,977,594.62	
5/1/2016	\$34,934.65		11,977,594.62	
6/1/2016	\$34,934.65		11,977,594.62	
7/1/2016	\$34,934.65		11,977,594.62	
8/1/2016	\$34,934.65		11,977,594.62	
9/1/2016	\$34,934.65		11,977,594.62	
10/1/2016	\$34,934.65		11,977,594.62	
11/1/2016	\$34,934.65		11,977,594.62	
12/1/2016	\$34,934.65		11,977,594.62	
1/1/2017	\$34,934.65		11,977,594.62	
2/1/2017	\$34,934.65		11,977,594.62	
3/1/2017	\$34,934.65		11,977,594.62	
4/1/2017	\$34,934.65		11,977,594.62	
5/1/2017	\$34,934.65		11,977,594.62	
6/1/2017	\$34,934.65		11,977,594.62	
7/1/2017	\$34,934.65		11,977,594.62	
8/1/2017	\$34,934.65		11,977,594.62	
9/1/2017	\$34,934.65		11,977,594.62	
10/1/2017	\$34,934.65		11,977,594.62	
11/1/2017	\$34,934.65		11,977,594.62	
12/1/2017	\$34,934.65		11,977,594.62	
1/1/2018	\$34,934.65		11,977,594.62	
2/1/2018	\$34,934.65		11,977,594.62	
3/1/2018	\$34,934.65		11,977,594.62	
4/1/2018	\$34,934.65		11,977,594.62	
5/1/2018	\$34,934.65		11,977,594.62	
6/1/2018	\$34,934.65		11,977,594.62	
7/1/2018	\$34,934.65		11,977,594.62	
8/1/2018	\$34,934.65		11,977,594.62	
9/1/2018	\$34,934.65		11,977,594.62	
10/1/2018	\$34,934.65		11,977,594.62	
11/1/2018	\$34,934.65		11,977,594.62	
12/1/2018	\$34,934.65		11,977,594.62	
1/1/2019	\$34,934.65		11,977,594.62	
2/1/2019	\$34,934.65		11,977,594.62	
3/1/2019	\$34,934.65		11,977,594.62	
4/1/2019	\$34,934.65		11,977,594.62	
5/1/2019	\$34,934.65		11,977,594.62	
6/1/2019	\$34,934.65		11,977,594.62	
7/1/2019	\$34,934.65		11,977,594.62	
8/1/2019	\$34,934.65		11,977,594.62	
9/1/2019	\$34,934.65		11,977,594.62	
10/1/2019	\$34,934.65		11,977,594.62	
11/1/2019	\$34,934.65		11,977,594.62	
12/1/2019	\$34,934.65		11,977,594.62	
Totals	\$2,096,079.06	\$11,977,594.62	\$14,073,673.68	

Note: UVSM will pay interest only for 5 years at 3.5%.