

**DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between the

CITY OF FAIRFIELD (“City”)

and

VALLEY STRONG CREDIT UNION

(“Developer”)

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## **DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is dated as of August 27, 2021 and is entered into by and between the CITY OF FAIRFIELD, a municipal corporation (the "City"), and VALLEY STRONG CREDIT UNION, a California corporation, (the "Developer").

### **RECITALS**

A. The City believes it owns the land described on Exhibit "A" and the improvements, thereon located at 3660 Nelson Road, more commonly known as APNs 0167-110-070 and a portion of 0167-110-110 thereon (collectively "the Property").

B. The Developer desires to acquire the Property from the City for the purpose of developing an office development on the Property (the "Project").

### **AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants contained in this Agreement, the parties hereto agree as follows:

#### **1. DEFINITIONS.**

1.1 Definitions. The following capitalized terms used in this Agreement shall have the meanings set forth below:

1.1.1 "Agreement" means this Disposition and Development Agreement.

1.1.2 "Approved Title Exceptions" is defined in Section 2.3.1.

1.1.3 "Building Permit" means, collectively, any and all permits necessary to grade the Property and construct the Project that would be issued by the City.

1.1.4 "Certificate of Completion" means the certificate described in Section 3.9.

1.1.5 "Close of Escrow" is defined in Section 2.2.

1.1.6 "Covenant" means that certain Covenants and Restrictions for Real Property, dated May 4, 2021 and recorded May 12, 2021 as Instrument No. 202100052862 in the Official Records of the County of Solano, California.

1.1.7 "Default" is defined in Section 5.1.

1.1.8 "Deposit" is defined in Section 2.1.3.

1.1.9 "Disapproved Title Exceptions" is defined in Section 2.3.1.

1.1.10 "Escrow" is defined in Section 2.2.

1.1.11 "Escrow Holder" means Placer Title Company at 1300 Oliver Road, Suite 180, Fairfield, CA 94534, Attn: Kelly Guglielmo.

1.1.12 "FIRPTA Affidavit" is defined in Section 2.8.1.3.

1.1.13 "Force Majeure Delay" is defined in Section 5.7.

1.1.14 "Grant Deed" is defined in Section 2.3.2.

1.1.15 "Hazardous Materials" means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Property, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. ("RCRA") The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection City as hazardous substances (40 CFR. Part 302) and in any and all amendments thereto in effect as of the Close of Escrow Date; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Property, to adjacent properties, or to persons on or about the Property, (ii) which causes the Property to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Property requires investigation, reporting or remediation under any such laws or regulations.

1.1.16 "Improvements" means all buildings, landscaping, infrastructure, utilities, and other improvements to be built on the Property.

1.1.17 "Property" means the land described on Exhibit "A" attached hereto.

1.1.18 "Party" means any party to this Agreement, and "Parties" means all parties to this Agreement.

1.1.19 "Permitted Exceptions" is defined in Section 2.3.2.

1.1.20 "Plans and Specifications" means all drawings, landscaping and grading plans, engineering drawings, final construction drawings, and any other plans or specifications for construction of the Project.

1.1.21 "Project" means the Property and Improvements.

1.1.22 "Purchase Price" is defined in Section 2.1.2.

1.1.23 "Released Parties" is defined in Section 2.7.3.

1.1.24 "Schedule of Performance" means the schedule attached hereto as Exhibit "C".

1.1.25 "Scope of Development" means the description attached hereto as Exhibit "D".

1.1.26 "Title Company" shall mean the Escrow Holder (i.e., the Title Company and the Escrow Holder are the same).

1.1.27 Reserved.

1.1.28 "Transfer" is defined in Section 4.1.

1.1.29 "Withholding Affidavit" is defined in Section 2.8.1.2.

## 2. PURCHASE AND SALE OF THE PROPERTY; PURCHASE PRICE; DEPOSIT.

### 2.1 Purchase and Sale; Purchase Price; Deposit.

2.1.1 Purchase and Sale. In accordance with and subject to the terms and conditions hereinafter set forth, the City agrees to sell the Property and the Developer agrees to cause the Property to be purchased from the City.

2.1.2 Purchase Price. The purchase price for the Property to be paid in cash or its equivalent by the Developer (the "Purchase Price") shall be ONE MILLION THREE THOUSAND DOLLARS (\$1,003,000.00). Notwithstanding anything to the contrary contained herein, the Close of Escrow shall not occur until such time as the Closing Conditions, described in Sections 2.4 and 2.5 hereof, have been satisfied (or waived in writing by the applicable party benefitted thereby). At the Close of Escrow, the City shall convey title to the Property to the Developer by grant deed in the form attached hereto as Exhibit "B" (the "Grant Deed").

2.1.3 Deposit. Within five (5) business days after the date this Agreement is executed by the City and delivered to the Developer, the Developer shall deposit the sum of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) with Escrow Holder (the "Deposit"). The Deposit shall be held by Escrow Holder in a non-interest bearing account. Upon the Close of Escrow, the Deposit shall be credited against and applied to the Purchase Price. If Close of Escrow does not occur due to a default by the Developer, the Deposit shall be retained by the City as liquidated damages for such default. If this Agreement is terminated by the Developer pursuant to its terms prior to the Close of Escrow, then the Deposit shall be returned to the



Developer. THE DEVELOPER AND THE CITY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH THE CITY'S DAMAGES BY REASON OF A DEFAULT BY THE DEVELOPER PRIOR TO THE CLOSE OF ESCROW. ACCORDINGLY, THE DEVELOPER AND THE CITY AGREE THAT IN THE EVENT OF A DEFAULT BY THE DEVELOPER PRIOR TO THE CLOSE OF ESCROW, THE CITY SHALL BE ENTITLED TO THE DEPOSIT AS LIQUIDATED DAMAGES.

Developer Initials: NSV

City Initials:

2.2 Opening and Closing of Escrow. Within five (5) business days after the Date this Agreement is executed by the City and delivered to the Developer, the City and the Developer shall cause an escrow (the "Escrow") to be opened with Escrow Holder for the sale of the Property by the City to the Developer and for the closing of Senior Project Loan. The Parties shall deposit with Escrow Holder a fully executed duplicate original of this Agreement as the escrow instructions for the Escrow. The City and the Developer shall provide such additional instructions as shall be necessary and consistent with this Agreement. Provided that each of the conditions to closing described in Sections 2.4 and 2.5 have been satisfied, Escrow shall close (the "Close of Escrow") within thirty (30) days after the expiration of the Due Diligence Period and completion of entitlements. Provided, however, in no event shall the Close of Escrow occur later than six (6) months after the date of the execution of this Agreement. If the Close of Escrow does not occur by such date, any party not then in default may terminate this Agreement by written notice to the other and all the funds and documents deposited with Escrow Holder shall be promptly refunded or returned, as the case may be, by Escrow Holder to the depositing party, except that all escrow and title cancellation fees shall be split between the Developer and the City. Should the City agree to extend the Close of Escrow per Section 8.12, the Parties agree that an updated appraisal report may be required and the cost of such will be shared equally between the Parties.

### 2.3 Condition of Title; Title Insurance.

2.3.1 Title Exceptions; Survey. Upon the City's delivery to the Developer of a copy of this Agreement executed by the City, the City shall obtain a preliminary title report for the Property (the "PTR") from the Title Company and shall deliver it (or cause it to be delivered to) the Developer at Richard.Sazama@Valleystrong.com which shall include hyperlinks to copies of the title exception documents. The Developer shall have thirty (30) days after delivery of the PTR to the Developer to review and approve or disapprove any title exceptions in the PTR, and notify the City in writing of any such title exceptions to which the Developer objects. Upon the execution of this Agreement, the Developer may cause an ALTA survey ("Survey") to be performed within thirty (30) days and shall promptly deliver a copy of the Survey to the City together with any objections (if any) to any title exceptions shown on the Survey. The City shall have ten (10) business days after delivery by the Developer to the City of a written objection to a title exception to notify the Developer in writing that the City will: (a) remove one or more of the applicable exception(s) or cause them to be removed by the end of the Due Diligence Period (as defined in Section 2.7.2 below) or reasonably insured over by the Title Company; (b) decline to remove exceptions (or to cause them to be reasonably insured). Failure by the City to so notify the Developer shall be deemed to be the City's election not to remove or otherwise address the applicable title exception(s). If the City notifies the Developer that the City will remove (or cause

to be removed) one or more of such title exceptions, then the City shall do so on or before the Close of Escrow (unless this Agreement is terminated by the Developer under this Section or Section 2.7.2 below). If the City fails to so notify the Developer as to any exception, or declines to remove or insure over title exceptions, then the Developer may terminate this Agreement by written notice to the City. If Developer fails to so terminate this Agreement, the Developer shall be deemed to have approved and accepted the applicable title exceptions (which, together with any title exceptions approved or created by the Developer, are hereinafter referred to as the "Approved Title Exceptions"). As used herein, the term "Disapproved Title Exceptions" shall mean any title exceptions that the City has agreed to remove, cause to be removed or cause to be "insured over".

2.3.2 At the Close of Escrow, the City shall convey title to the Property by grant deed in the form attached hereto as Exhibit "B" (the "Grant Deed"). Title to the Property shall be conveyed subject to: (i) non-delinquent current real property taxes and assessments not yet due for the tax year during which the conveyance occurs, (ii) all Approved Title Exceptions, (iii) the Covenant, and (iv) the terms of this Disposition and Development Agreement and any other covenants included in the Grant Deed (collectively, the "Permitted Exceptions").

2.4 City Conditions to Close of Escrow. The obligation of the City to close Escrow shall be subject to the satisfaction (or express written waiver by the City Manager) of each of the following conditions (collectively, the "City Conditions"):

2.4.1 The representations of the Developer contained in Section 7.1 of this Agreement, being true and correct.

2.4.2 The delivery by the Developer of all documents and funds required to be delivered pursuant to Section 2.9 of this Agreement.

2.4.3 The City shall have received evidence acceptable to the City Manager that the construction-related insurance required by Section 6.1 of this Agreement shall be in effect.

2.4.4 All conditions to the issuance of the building permit(s) for the Project, and any and all other governmental permits, consents or authorizations required for the development, construction, operation or use of the Project (excluding certificates of occupancy and the like that cannot be issued until completion) shall have been approved/issued.

2.5 Developer Conditions to Close of Escrow. The obligations of the Developer to close escrow shall be subject to the satisfaction (or waiver by the Developer) of the following conditions (the "Developer Conditions"):

2.5.1 There shall have been no change to the physical condition of the Property and no new title exceptions after the date of the PTR that, in either case, would materially and adversely affect the development, use or operation of the Project.

2.5.2 The City's removal (or Title Company's reasonably insuring over) all Disapproved Title Exceptions.

2.5.3 The representation of the City contained in Section 7.2 of this Agreement being true and correct.

2.5.4 The delivery by the City of all documents and funds required to be delivered pursuant to Section 2.8 of this Agreement.

2.5.5 The Title Company shall have committed to issue at the Close of Escrow an owner's title insurance policy, with any extended coverage and endorsements requested by the Developer, showing fee simple title to the Property vested in the Developer, subject only to the Permitted Exceptions.

2.5.6 The City shall have performed, observed and complied with all covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of the Close of Escrow.

2.6 Costs; Escrow Holder Settlement Statement.

2.6.1 The Developer shall be solely responsible for all costs and expenses related to the Survey, the costs of extended title insurance coverage and any title insurance endorsements (other than those obtained by the City to "insure-over" a title exception), and fifty percent (50%) of the escrow fees and the cost of the appraisal as described in Section 2.1.2. The City shall be solely responsible for the costs of the standard Owner's policy of title insurance, documentary transfer taxes, and any endorsements obtained by the City to "insure-over" title exceptions, and fifty percent (50%) of the escrow fees and the cost of the appraisal.

2.6.2 Escrow Holder is authorized on the Close of Escrow to pay and charge the Developer for any fees, charges and costs payable under Section 2.6.1 as set forth on the settlement statements approved by the Parties. Before such payments are made, Escrow Holder shall notify the City and the Developer of the fees, charges, and costs necessary to close under the Escrow, by delivering draft settlement statements to the Parties for their mutual approval.

2.6.3 The parties agree to cooperate with each other if the Developer elects to consummate the transaction contemplated by this Agreement as a like-kind exchange of property pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Exchange"), which cooperation shall include executing documents for that Exchange, and provided that the Developer is not in default of its obligations under this Agreement and the following terms and conditions are satisfied: (a) the Developer provides prior written notice to the City not less than ten (10) business days prior to the Close of Escrow, (b) the Developer provides the City with copies of all exchange documents that must be executed by the City not less than five (5) business day prior to the Close of Escrow; (c) the City shall in no way be obligated to pay any facilitator charges, escrow costs, brokerage commissions, title charges, survey costs, recording costs or other charges incurred with respect to the Exchange; (d) in no way shall the Closing be contingent or otherwise subject to the consummation of the Exchange, and the Escrow shall timely close in accordance with the terms of this Agreement despite any failure, for any reason, to consummate the Exchange; (e) the City shall have no responsibility or liability to any third party involved in the Exchange; (f) the City shall not be required to make any representations or warranties nor assume any obligations, including but not limited to, incurring any debt, taking title to any other property, expending any sum, or incurring any liability whatsoever in connection with



the Exchange; (g) the parties' rights against each other under this Agreement, and the parties' obligations under this Agreement, shall not be released, reduced or excused in any manner as the result of the Exchange; and (h) the Developer shall indemnify and hold the City harmless from and against any and all causes, claims, demands, liabilities, costs and expenses, including reasonable attorneys' fees, as a result of or in connection with the Exchange. The indemnification obligations of the Developer contained in this Section 2.6.3 shall survive the Close of Escrow or the termination of this Agreement.

## 2.7 Condition of the Property.

2.7.1 "As-Is" Sale. The Developer acknowledges and agrees that, except as expressly set forth herein, the Developer is acquiring the Property in its "AS IS" condition, WITH ALL FAULTS, IF ANY, AND, EXCEPT AS EXPRESSLY SET FORTH HEREIN, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED and neither the City nor any agents, representatives, officers, or employees of the City have made any representations or warranties, direct or indirect, oral or written, express or implied, to the Developer or any agents, representatives, or employees of the Developer with respect to the condition of the Property, its fitness for any particular purpose, or its compliance with any laws, and the Developer is not aware of and does not rely upon any such representation to any other party. Except as expressly set forth herein, neither the City nor any of its representatives is making or shall be deemed to have made any express or implied representation or warranty, of any kind or nature, as to (a) the physical, legal or financial status of the Property, (b) the Property's compliance with applicable laws, (c) the accuracy or completeness of any information or data provided or to be provided by the City, or (d) any other matter relating to the Property.

2.7.2 Delivery of Document by the City; Inspections by the Developer; Due Diligence Period; Tenants. Within ten (10) business days after the date of this Agreement, the City shall deliver to the Developer copies of all material, non-privileged documents in the possession of the City that pertain to the Property (the "Documents"). Upon the execution of this Agreement until the date that is sixty (60) days thereafter (the "Due Diligence Period"), the Developer and its contractors and consultants who are designated in writing to the City (the "Developer Designee's") shall have the right to enter onto the Property (without disturbing any occupants thereof) for the purpose of performing the Survey, hazardous materials inspections, soils inspections and other physical inspections and investigations; provided, however, that: (a) the Developer shall deliver copies of all inspection reports to the City; (b) no inspections or investigations shall damage the Property or any improvements thereon or shall be "invasive" unless the City has received a plan describing the scope of the inspection or investigation and has approved such plan in writing, which approval shall not be unreasonably withheld; (c) the Developer shall immediately repair all damage caused by or related to its inspections; and (d) neither the Developer nor any of the Developer's Designees shall enter the Property unless the Developer has provided the City reasonable written evidence (such as insurance certificates and/or copies of policies) that the activities of the Developer and the Developer Designees are covered by reasonable liability insurance naming the City as an additional insured. The Developer shall defend, indemnify and hold the City harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys' fees and cost) resulting from the entry onto the Property for such purposes or for purposes of performing the Survey. If the Developer disapproves to any condition of the Property or any Document, then the

Developer may terminate this Agreement by written notice to the City given on or prior to the end of the Due Diligence Period that describes the basis for the disapproval.

2.7.3 Releases and Waivers. The Developer acknowledges and agrees that in the event the Developer does not approve of the condition of the Property under Section 2.7.2, the Developer's sole right and remedy shall be to terminate this Agreement under and in accordance with Section 2.7.2. Consequently, the Developer hereby waives any and all objections to or complaints regarding the Property and its condition, including, but not limited to, federal, state or common law based actions and any private right of action under state and federal law to which the Property is or may be subject, including, but not limited to, CERCLA (as defined in Section 1.1.15), RCRA (as defined in Section 1.1.15), physical characteristics and existing conditions, including, without limitation, structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property. The Developer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigations.

The Developer and anyone claiming by, through or under the Developer also hereby waives its right to recover from and fully and irrevocably releases the City and its council members, board members, employees, officers, directors, representatives, agents, servants, attorneys, successors and assigns (the "Released Parties") from any and all claims, responsibility and/or liability that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any defects, errors, omissions or other conditions, latent or otherwise, and the presence in the soil, air, structures and surface and subsurface waters of materials or substances that have been or may in the future be determined to be Hazardous Materials or otherwise toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, and (ii) any information furnished by the Released Parties under or in connection with this Agreement. This release includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release to the City. The Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

In this connection and to the extent permitted by law, the Developer hereby agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now



unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to the City by the Developer in exchange for the City's performance hereunder.

The Developer hereby agrees that, if at any time after the Close of Escrow any third party or any governmental agency seeks to hold the Developer responsible for the presence of, or any loss, cost or damage associated with, Hazardous Materials in, on, above or beneath the Property or emanating therefrom, then the Developer waives any rights it may have against the City in connection therewith, including, without limitation, under CERCLA, and the Developer agrees that it shall not (i) implead the City, (ii) bring a contribution action or similar action against the City, or (iii) attempt in any way to hold the City responsible with respect to any such matter. The provisions of this Section 2.7.3 shall survive the Close of Escrow.

The City has given the Developer material concessions regarding this transaction in exchange for the Developer agreeing to the provisions of this Section 2.7.3. The City and the Developer have each initialed this Section 2.7.3 to further indicate their awareness and acceptance of each and every provision hereof.

\_\_\_\_\_  
AGENCY'S INITIALS

  
\_\_\_\_\_  
DEVELOPER'S INITIALS

2.7.4 Environmental Indemnity. From or after the Close of Escrow, the Developer shall indemnify, protect, defend and hold harmless the City, and the City's officials, officers, attorneys, employees, consultants, agents and representatives, from and against any and all claims, liabilities, suits, losses, costs, expenses and damages, including but not limited to attorneys' fees and costs, arising directly or indirectly out of any claim for loss or damage to any property, including the Property, injuries to or death of persons, or for the cost of cleaning up the Property and removing Hazardous Materials or toxic substances, materials and waste therefrom, by reason of contamination or adverse effects on the environment, or by reason of any statutes, ordinances, orders, rules or regulations of any governmental entity or agency requiring the clean-up of any Hazardous Materials caused by or resulting from any Hazardous Material, or toxic substances or waste existing on or under, any portion of the Property acquired by the Developer.

2.8 Deposits into Escrow by the City.

2.8.1 The City hereby covenants and agrees to deliver to Escrow Holder prior to the Close of Escrow the following items, the delivery of each of which shall be a condition of the Close of Escrow:

2.8.1.1 A Grant Deed duly executed and acknowledged by the City, in the form attached hereto as Exhibit "B".

2.8.1.2 If required by Escrow Holder, the affidavit as contemplated by California Revenue and Taxation Code 590 ("Withholding Affidavit");

2.8.1.3 If required by Escrow Holder, a Certification of Non Foreign Status in accordance with I.R.C. Section 1445 (the "FIRPTA Certificate"); and

2.8.1.4 Such proof of the City's authority and authorization to enter into this transaction as the Title Company may reasonably require in order to issue the Developer's policy of title insurance.

2.9 Deposits into Escrow by the Developer.

2.9.1 The Developer hereby covenants and agrees to deliver to Escrow Holder prior to the Close of Escrow the following items, the delivery of each of which shall be a condition of the Close of Escrow:

2.9.1.1 The Purchase Price less the Deposit; and

2.9.1.2 All fees and costs payable by the Developer as described in Section 2.6.

2.10 Authorization to Record Documents and Disburse Funds. Escrow Holder is hereby authorized to record the documents and disburse the funds and documents called for hereunder upon the Close of Escrow, provided each of the following conditions has then been fulfilled:

(i) The Title Company can issue in favor of the Developer an owner's Policy of Title Insurance, with liability equal to the Purchase Price (or such lesser amount as shall have been requested by the Developer), showing the Property vested in the Developer subject only to the Permitted Title Exceptions.

(ii) The City and the Developer shall have each deposited in Escrow the documents and funds required pursuant to Sections 2.8 and 2.9.

(iii) The City and the Developer have confirmed to Escrow Holder that all City Conditions and Developer Conditions have been satisfied or expressly waived in writing by the Party benefited thereby.

Unless otherwise instructed in writing, Escrow Holder is authorized to record at the Close of Escrow any instrument delivered through this Escrow if necessary or proper for issuance of the Developer's title insurance policy.

2.11 Escrow's Closing Actions. On the Close of Escrow, Escrow Holder shall:

2.11.1 Record the Grant Deed in the Official Records of Solano County;

2.11.2 Issue the Title Policy (or cause the Title Company to issue the Title Policy);

2.11.3 Prorate assessments, property taxes (if any), and other charges as of the Close of Escrow in accordance with the settlement statements approved by the Parties and pay the costs shown thereon;

2.11.4 From funds deposited by the Developer, pay costs payable by the Developer as shown on the approved preliminary settlement statement approved by the City and the Developer settlement statement, and return any excess to the Developer;

2.11.5 Prepare and deliver to both the Developer and the City one signed copy of Escrow Holder's final settlement statement showing all receipts and disbursements of the Escrow; and

2.11.6 If applicable, deliver the FIRPTA Certificate and the Withholding Affidavit to the Developer.

### 3. DEVELOPMENT COVENANTS.

3.1 Development of the Project. The Developer shall develop the Project in accordance with the Scope of Development, the Schedule of Performance, all requirements of any and all applicable federal, state and local laws, rules and regulations (including any conditions of approval required by the City in its governmental capacity), and including but not limited to the provisions and requirements of the North Texas I-80 Interchange Special Sign District as established pursuant to Resolution No. 2010-25 of the City and with respect to the pylon sign located on the Property as of the date of this Agreement, the Plans and Specifications, and all other terms, conditions and requirements of this Agreement. The Developer shall comply with the Schedule of Performance in a timely manner, provided that the obligations of the Developer set forth therein which are to be performed after the Close of Escrow shall be delayed by Force Majeure Delays, if applicable.

3.2 Costs of Entitlement, Development and Construction. The Developer agrees that all costs, expenses and fees associated with the development and construction of the Project including the costs for developing and constructing the Improvements thereon (including, but not limited to, the land acquisition costs and governmental permits and approvals) shall be borne by the Developer.

3.3 Rights of Access and Inspection. The City shall have a reasonable right of access to the Property, without charge or fee, at any reasonable time, upon reasonable notice to the Developer, which may be telephonic notice, to (661) 412-1070 to inspect the work being performed at the Property in connection with the initial development of the Project but shall not be obligated to do so and the City shall not be liable for any failure to disclose any information discovered by the City (or that could or should have been discovered by any City inspection).

3.4 Local, State and Federal Laws. The Developer shall carry out the construction of the Improvements on the Property in conformity with all applicable federal, state and local laws, including all applicable federal and state occupation, safety and health standards, and all applicable permits.



3.5 City and Other Governmental City Permits and Approvals. Before commencement of construction or development of any work of improvement on the Property, the Developer shall (at the Developer's expense) secure, or cause to be secured, any and all permits which may be required by the City or any other governmental agency having jurisdiction over such construction or development.

3.6 No Discrimination During Construction. The Developer, for itself and its successors and assigns, agrees that it shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, creed, ancestry, or national origin in the construction of the Improvements.

3.7 Taxes, Assessments, Encumbrances and Liens. The Developer shall pay when due all real property taxes and assessments assessed or levied on portions of the Property from time to time owned by the Developer, commencing immediately after closing of the land acquisition.

3.8 No Agency Created. In performing this Agreement, the Developer is an independent contractor and not the agent of the City. The City is not an agent of the Developer. The City shall not have any responsibility whatsoever for payment to any contractor or supplier of the Developer or its contractors. The Developer shall not have any responsibility whatsoever for payment to any contractor or supplier of the City.

3.9 Certificate of Completion. Upon the Developer's completion of the construction of the Project, the Developer will apply to the City for a Certificate of Completion (which shall be substantially in the form attached hereto as Exhibit "E"). The City's issuance of the Certificate of Completion shall constitute the acknowledgement of the City that the Developer has complied in all respects with its development obligations (and only the development obligations) set forth in this Article 3. Promptly following the City's issuance of a certificate of occupancy for the entire project, and provided that the Developer is then in full compliance with all of its obligations under Article 3 of this Agreement, the City Manager shall execute, acknowledge and deliver the Certificate of Completion, which shall be recorded in the Official Records of Solano County and shall include, in form reasonably acceptable to the Developer, an express termination or reconveyance of the City's rights under Section 5.2.2(ii) of this Agreement and the Grant Deed. If the City Manager believes that the Developer is not in compliance with its obligations under this Article 3, the City Manager shall promptly specify the nature of such non-compliance by written notice to the Developer.

#### 4. LIMITATIONS ON TRANSFERS AND SECURITY INTERESTS.

4.1 Restriction on Transfer of the Developer's Rights and Obligations. Prior to issuance of a Certificate of Completion for the Project, the Developer shall not, and shall not permit the Developer to, sell, assign, transfer, mortgage, lease (except for leases/rental agreements that are conditioned upon Project completion), hypothecate, or convey (collectively, a "Transfer") the Project or any part thereof or any of the Developer's rights or obligations hereunder, in a single transaction or series of transactions, without the City's prior written consent, which consent may be granted or withheld in the City's sole and absolute discretion, except for the execution of one or more deeds of trust and related instruments securing the Developer's construction loan, a conveyance of the Project resulting from the foreclosure thereof (or a deed in lieu of such a

foreclosure). The Developer acknowledges that the identity of the Developer is of particular concern to the City, and it is because of the Developer's identity that the City has entered into this Agreement with Developer. Except for the Developer approved by the City, and except for any Holder (defined in Section 4.2), no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement or the Project prior to the issuance of a Certificate of Completion. No transfer or assignment of the Developer's interest hereunder without the City's prior written approval shall be deemed to release the Developer from the obligations of the Developer hereunder.

4.2 Right of City to Satisfy Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Project or any portion thereof, and has failed to do so, in whole or in part, the City shall, upon prior written notice to the Developer, have the right to satisfy any such lien or encumbrances; however, nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

## 5. DEFAULT, REMEDIES AND TERMINATION.

5.1 Defaults. The occurrence of any or all of the following shall constitute a default ("Default") under this Agreement:

5.1.1 The Developer's failure to perform its obligations on a timely basis as contained in the Schedule of Performance (as extended pursuant to Section 5.7), or any breach of this Agreement by any Party involving the payment of money, and the continuance of such breach for a period of ten (10) days after the non defaulting Party has given written notice to the defaulting Party;

5.1.2 Except as otherwise provided in Section 5.1.1 hereof, a breach of any other term of this Agreement by any Party not involving the payment of money and failure of such Party to cure such breach within thirty (30) days after the non defaulting Party has given written notice to the defaulting Party; provided, however, if such breach is not reasonably curable within such thirty (30) day period, then such Party shall be deemed in Default only if such Party does not commence to cure such breach within such thirty (30) day period and thereafter fails to diligently prosecute such breach to completion;

5.1.3 The Developer's violation of Section 4.1;

5.1.4 The Developer's failure or refusal to keep in force and effect any permit with respect to construction of the Project, and the Developer's failure to cure such breach within thirty (30) calendar days after notice from the City of the Developer's breach; provided, however, if such breach is not reasonably curable within such thirty (30) day period, then the Developer shall be deemed in Default only if the Developer does not commence to cure such breach within such thirty (30) day period and thereafter fails to diligently prosecute such breach to completion; or

5.1.5 Filing of a petition in bankruptcy by or against any Party or appointment of a receiver or trustee of any property of any Party, or an assignment by any Party for the benefit of creditors, or adjudication that such Party is insolvent by a court, and the failure of such Party to cause such petition, appointment, or assignment to be removed or discharged within ninety (90) days.

5.1.6 The failure to comply with any of the requirements of Section 6 below.

## 5.2 Remedies.

5.2.1 Remedies Prior to the Close of Escrow. In the event of a Default by any Party prior to the Close of Escrow, the non defaulting Party shall have the right to terminate this Agreement (provided it is not in Default of its obligation under this Agreement), by delivering written notice thereof to the defaulting Party. Such Party may seek against the defaulting Party any available remedies at law or equity, including but not limited to, the right to receive damages (excluding damages for lost profits) or to pursue an action for specific performance.

5.2.2 Remedies for Default After the Close of Escrow. In the event of a Default by any Party after the Close of Escrow, a non defaulting party shall be entitled to the following remedies, as applicable:

(i) A defaulting Party shall be liable to the non defaulting Party for all damages, costs and losses incurred by the non defaulting Party, and the non defaulting Party may seek against the defaulting Party any available remedies at law or equity, including but not limited to the right to receive damages or to pursue an action for specific performance; and

(ii) Prior to the issuance of the Certificate of Completion, the City shall have the following right of reversion in the event that that the Developer fails to timely complete grading, timely commence vertical construction, or timely complete the Improvements as required by the Schedule of Performance (as extended by Force Majeure Delays).

If the Developer fails to timely complete the Improvements by the deadline in the Schedule of Performance (as extended by Force Majeure Delays), the City may terminate this Agreement and reenter and take possession of the Property and all Improvements thereon, and revert in the City title to the Property theretofore conveyed to the Developer (or its successors in interest) and the Improvements, take any and all actions necessary to commence and complete the enforcement of its reversionary interest, and in such event the Developer agrees to promptly take all actions and to execute all documents necessary to revert title to the Property and Improvements to the City free and clear of all liens and encumbrances created by or with the consent of the Developer.

Upon re-vesting in the City of title to the Property and Improvements as provided in this Section, the City shall, use good faith efforts to resell the same pursuant to a disposition and development agreement, and upon such resale, the proceeds thereof shall be applied as follows:

1. First, to reimburse the City for any payment made by the City to any holder of a lien on the Project or any parties thereof or interest therein to cause such lien to be released or reconveyed;

2. Second, to reimburse the City for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Property and Improvements and (but less any income derived by the City from any part of the Property in connection with such management); all taxes, installments of assessments payable prior to resale, and applicable water and sewer charges with respect to the Property and Improvements or any portion thereof; and expenditures made or obligations incurred with respect to the making or completion of the Project; and any amounts otherwise owed to the City by the Developer.

3. Third, to reimburse the City for other damages by reason of the Developer's default.

4. Fourth, to reimburse the Developer for:

- (a) The lesser of the reasonable cost or the fair market value of the improvements the Developer has placed on the Property or applicable portion thereof at the Developer's cost (i.e., using equity and not loan funds); **less**
- (b) The gains or income withdrawn or made by the Developer from the Property and Improvements.

5. Fifth, any balance remaining after such reimbursements shall be retained by the City as its property.

5.3 No Speculation. The rights established in this Article are to be interpreted in light of the fact that the City will convey the Property to the Developer for development and operation of the Project thereon and not for speculation in undeveloped land or for construction of different improvements.

5.4 No Personal Liability. No representative, agent, attorney, consultant, or employee of the City shall personally be liable to the Developer or any successor in interest of the Developer, in the event of any Default or breach by the City, or for any amount which may become due to the Developer or any successor in interest, on any obligation under the terms of this Agreement.

5.5 Rights and Remedies are Cumulative. The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the non defaulting Party; provided, however, that

liquidated damages specified herein shall constitute the sole damages recoverable for the default giving rise to such liquidated damages.

5.6 Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such Party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. The acceptance by a Party of less than the full amount due from the other party shall not constitute a waiver of such Party's right to demand and receive the full amount due, unless such Party executes a specific accord and satisfaction.

5.7 Force Majeure. Following the Close of Escrow, and notwithstanding anything to the contrary in this Agreement, nonperformance shall be excused when performance is prevented or delayed by reason of any of the following forces reasonably beyond the control of such party (a "Force Majeure Delay"): (i) failure to perform by the Developer attributable to any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party hereto), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; and (ii) delay attributable to severe weather, lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar cause beyond the reasonable control of the party from whom performance is required. Any prevention, delay or stoppage due to any Force Majeure Delay shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money to the other party or to close escrow) provided that the Party claiming the Force Majeure Delay notifies the other Party of the Force Majeure Delay within a reasonable time (not to exceed ten (10) business days) after the commencement of the Force Majeure Delay.

## 6. INSURANCE; INDEMNITY.

### 6.1 Insurance.

6.1.1 From and after the Close of Escrow and for so long as title to the Property has not reverted to by the City, the Developer shall obtain and maintain at no cost or expense to the City, with a reputable and financially responsible insurance company reasonably acceptable to the City, (i) after the opening of the Project for business, commercially reasonable casualty insurance for the Improvements in an amount not less than the replacement cost of the Improvements (subject to commercially reasonable deductibles) with a reasonable inflation rider; (ii) commercial broad form general liability insurance, insuring against claims and liability for bodily injury, death, or property damage arising from the construction, use, occupancy, condition, or operation of the Property, which liability insurance shall provide combined single limit protection of at least \$5,000,000 and shall include a reasonable inflation rider, contractual liability coverage and products and completed operations coverage, and (iii) commercial automobile liability insurance of at least \$1,000,000 combined single limit. Such liability insurance policies shall name the City and their council members, board members, officers, agents and employees as additional insureds.



6.1.2 Before commencement of any demolition or construction work by the Developer on any portion of the Property owned by the Developer, the Developer shall obtain and maintain in force until completion of such work (i) "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company reasonably acceptable to the City, and (ii) workers' compensation insurance covering all persons employed by the Developer in connection with work on the Project, or any portion thereof. During the construction of Improvements on any portion of the Property by the Developer, such builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

6.1.3 Each architect and each engineer engaged by the Developer shall provide professional liability insurance with a limit of liability of at least One Million Dollars (\$1,000,000.00).

6.1.4 The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

6.1.5 With respect to each policy of insurance required above, the Developer and each of the Developer's general contractors, engineers and architects shall furnish to the City a certificate on the insurance carrier's form setting forth the general provisions of the insurance coverage promptly after written request by the City showing the additional insureds. The certificate shall also be furnished by the Developer prior to commencement of construction of any Improvements.

6.1.6 All such policies required by this Section shall contain (i) language to the effect that the policies cannot be cancelled or materially changed except after thirty (30) days' written notice by the insurer to the City, and (ii) a waiver of the insurer of all rights of subrogation against the City and the other additional insureds. All such insurance shall have deductibility limits which shall be commercially reasonable.

6.2 Indemnity. From and after the execution of this Agreement, the Developer hereby agrees to indemnify, defend, protect, and hold harmless the City (as a third party beneficiary) and any and all agents, employees, representatives, council members, board members, consultants, and officers of the City, from and against all losses, liabilities, claims, damages (including foreseeable or unforeseeable consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out of pocket litigation costs and reasonable attorneys' fees) and demands of any nature whatsoever, related directly or indirectly to, or arising out of or in connection with:

- (i) the validity of this Agreement;
- (ii) the development and construction by the Developer of the Improvements on the Property or the use, ownership, management, occupancy, or possession of the Property during the Developer's period of ownership of the Property.

including, without limitation, any and all claims for prevailing wages under or noncompliance with California Labor Code Section 1720 et seq. if applicable;

(iii) any breach or Default by the Developer hereunder (subject to any liquidated damages provisions otherwise contained in this Agreement);

(iv) any of the Developer's activities on the Property (or the activities of the Developer's agents, employees, lessees, representatives, licensees, guests, invitees, contractors, subcontractors, or independent contractors on the Property), regardless of whether such losses and liabilities shall accrue or are discovered before or after termination or expiration of this Agreement, except to the extent such losses or liabilities are caused by the gross negligence or willful misconduct of the City. The City may in its discretion, and at their own cost, participate in the defense of any legal action naming the City; or

(v) any claims for commissions or other compensation by the Developer's Broker (described in Section 7.1(iv) below).

The provisions of this Section shall survive the Close of Escrow or the termination of this Agreement.

## 7. REPRESENTATIONS AND WARRANTIES.

7.1 Developer Representations. The Developer represents and warrants to the City as of the date of this Agreement and as of the Close of Escrow that:

(i) the Developer is a corporation validly existing and in good standing under the laws of the State of California.

(ii) the Developer has duly authorized the execution and performance of this Agreement and the execution and performance of all of the closing documents set forth herein.

(iii) the Developer's execution and performance of this Agreement and the closing documents will not violate any deed of trust, lease, contract, agreement, instrument, order, judgment or decree by which the Developer is bound.

(iv) the Developer has engaged Premier Commercial Real Estate Services, Inc. (the "Broker") with respect to the purchase of the Property and the Developer shall be solely responsible for the payment of all fees, expenses and commissions due the Broker.

7.2 City Representation. The City hereby represents and warrants to the Developer that the City has not engaged a broker with respect to the purchase of the Property as contemplated herein.

## 8. GENERAL PROVISIONS.

8.1 Notices. All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by reputable overnight messenger. Notices shall

be considered given upon the earlier of (a) one business day following deposit or delivery with a nationally recognized overnight courier delivery charges prepaid, or (b) upon delivery or attempted delivery as shown on the return receipt if sent by certified mail. Notices shall be addressed as provided below for the respective Party; provided that if any Party gives notice in writing of a change of name or address, notices to such Party shall thereafter be given as demanded in that notice:

City: City of Fairfield  
1000 Webster Street, 2nd Floor  
Fairfield, CA 94533  
Attn: City Manager

Developer: Valley Strong Credit Union  
Attn: Steve Matejka  
P.O. Box 9506  
Bakersfield, CA 93389

8.2 Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties.

8.3 Interpretation. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association where ever the context so requires. Unless otherwise required by a specific provision of this Agreement, time hereunder is to be computed by excluding the first day and including the last day. If the date for performance falls on a Saturday, Sunday, or legal holiday, the date for performance shall be extended to the next business day. All references in this Agreement to a number of days in which either party shall have to consent approve or perform shall mean calendar days unless specifically stated to be business days.

8.4 Time of the Essence. Time is of the essence of this Agreement.

8.5 Warranty Against Payment of Consideration for Agreement. The Developer warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

8.6 Attorneys' Fees. If any Party brings an action to enforce the terms hereof or declare its rights hereunder, the prevailing Party in any such action shall be entitled to its reasonable attorneys' fees to be paid by the losing Party as fixed by the court. If the City is made a party to any litigation instituted by or against the Developer or to any litigation attacking the validity of this Agreement, then the Developer shall indemnify and defend the City against, and save them harmless from, all costs, expenses (including reasonable attorneys' fees), claims, liabilities, damages and losses incurred by the City in connection with such litigation provided,

however, that in no event shall the Developer be obligated to pay any damages awarded to any person or entity that result from the gross negligence or willful misconduct of the City.

8.7 Entire Agreement. This Agreement, together with all attachments and exhibits hereto, and all agreements executed pursuant hereto, constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter hereof.

8.8 Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

8.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties, and there are no third party beneficiaries of this Agreement. No other person shall have any right of action based upon any provision of this Agreement.

8.10 Governing Law; Jurisdiction; Service of Process. This Agreement and the rights of the Parties shall be governed by California law. The Parties consent to the exclusive jurisdiction of the California Superior Court for the County of Solano. If any legal action is commenced by Developer against the City, or by the City against the Developer, service of process on the City shall be made by personal service upon the executive director or secretary of the City, or in such other manner as may be provided by law. If any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the EVP, COO Steve Matejka, or in such other manner as may be provided by law.

8.11 Survival. The provisions hereof shall not merge into, but rather shall survive, any conveyance hereunder (including, without limitation, the delivery and recordation of the Grant Deed) and the delivery of all consideration.

8.12 City Actions. In addition to any provisions of this Agreement that gives the City Manager the authority to make decisions and grant approvals, the City hereby authorizes the City Manager to deliver such approvals, consents as are contemplated by this Agreement, waive requirements under this Agreement, and modify this Agreement, on behalf of the City provided that the applicable approval, consent, waiver or modification is not substantial (i.e., does not change the fundamental business transaction between the Developer and the City, as determined by the City Manager in his reasonable discretion).


8.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

8.14 Electronic Delivery. This executed Agreement may be delivered electronically by email/PDF to jrice@fairfield.ca.gov for the City and to steve.matejka@valleystrong.com for the Developer.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

**DEVELOPER:**

VALLEY STRONG CREDIT UNION,  
a California corporation

By:   
Print Name: Nick Ambrosini  
Title: President / CEO

**CITY:**

CITY OF FAIRFIELD,  
a municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk



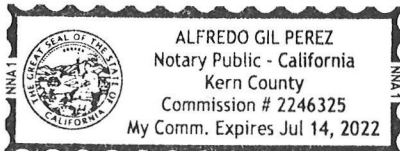
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California }

County of KERN

On August 27, 2021 before me, Alfredo Gil Perez, Notary Public,  
Date Name and Title of the Officer

personally appeared Nicholas Ambrosini, President / CEO  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: [Signature], Notary Public  
Signature of Notary Public

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Disposition and Development Agreement - Bides Nelson Road Document Date: 08/27/21

Number of Pages: 21 Signer(s) Other Than Named Above: N/A

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Nicholas Ambrosini  
☒ Corporate Officer — Title(s): President / CEO  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: Valley Strong Credit Union

Signer Is Representing: \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

TO BE INSERTED LATER

**EXHIBIT "B"**

**FORM OF GRANT DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO,

AND MAIL TAX STATEMENTS TO:

Valley Strong Credit Union  
P.O. Box 9506  
Bakersfield, CA 93389

APN: 0167-110-070 & a portion of 0167-110-110

(Space above for Recorder's Use)

**Exempt From Recording Fee Per Government Code Section 27383**

Documentary transfer tax is \$ \_\_\_\_\_, based on the full value of the property conveyed. Property is in the City of Fairfield, County of Solano.

**GRANT DEED**

The undersigned grantor(s) declare(s):

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF FAIRFIELD (the "Grantor") hereby GRANTS to VALLEY STRONG CREDIT UNION, a California Corporation (the "Grantee") the land (the "Property") located in the City of Fairfield, County of Solano, State of California described on Exhibit "A".

SUBJECT TO, all matters of record and all matters visible upon inspection.

1. This grant of the Property is subject to the terms of a Disposition and Development Agreement entered into by and between the Grantor and the Grantee dated as of \_\_\_\_\_, 2021 (the "DDA") the terms of which are incorporated herein by reference (and which include the matters described in Section 2 and 3 below). A copy of the Agreement is available for public inspection at the offices of the Grantor at 1000 Webster Street, 2nd Floor, Fairfield, CA 94533.

2. As provided in, and subject to the provisions contained in Section 5.2.2 of the DDA, the Grantor shall have the right, at its option, to reenter and take possession of the Property hereby conveyed, with all improvements thereon and to terminate and revest in the Grantor the Property hereby conveyed to the Grantee (or its successors in interest).

3. The Grantee covenants, for itself and its successors in interest, that there shall be no sale, transfer, assignment, conveyance, lease, pledge or encumbrance of the DDA, or the Property and the Improvements thereon or any part thereof, or of ownership interests in the Grantee in violation of the DDA, which contains restrictions on the assignment of the DDA and the transfer of interests in the Property.



4. All covenants contained in this Grant Deed shall be covenants running with the land.

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of the date set forth below.

Dated: \_\_\_\_\_, 2021

CITY OF FAIRFIELD

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

)  
)

, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT A TO GRANT DEED  
TO BE INSERTED LATER

## EXHIBIT "C"

### SCHEDULE OF PERFORMANCE

This Schedule of Performance requires the submission of plans or other documents at specific times. Some of the submissions are not described in the text of the Agreement. Such plans or other documents, as submitted, must be complete and adequate for review by the City or other applicable governmental entity when submitted. Prior to the time set forth for each particular submission, the Developer shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

Action	Date / Deadline
<b>Items 1 – 10 Relate to Developer Actions and Requirements Prior to or through/at the Close of Escrow</b>	
1. Opening of Escrow. The Parties shall deliver a copy of this executed Agreement to, and open escrow with, the Escrow Holder.	Within five (5) business days after the execution of this Agreement
2. Preliminary Plans. Developer shall submit preliminary Plans and Specifications to the City.	Within 30 days after the expiration of the Due Diligence Period.
3. Design Development Plans. Developer shall submit interim "design development" Plans and Specifications to the City.	Within 90 days after the expiration of the Due Diligence Period..
4. Final Plans and Specifications. The Developer shall submit the Final Plans and Specifications for City approval.	Within 120 days after the expiration of the Due Diligence Period.
-	
5. Close of Escrow. The Developer shall purchase the Property from the City.	No later than six (6) months after the date of the Agreement unless extended per Section 8.12.
<b>Items 6-9 Relate to the Conveyance of the Property and Developer Actions and Requirements After the Close of Escrow</b>	
6. Lot Merger/Legal Description	Developer shall have completed Lot Merger and updated legal descriptions and maps.
7. Building Permits. The Developer Shall submit completed application for Building Permit.	Within ninety (90) after the Close of Escrow.



Action	Date / Deadline
8. Commencement of Construction. Developer shall substantially commence the Improvements.	No later than 30 days after the issuance of the Building Permits.
9. Qualification for Certificate of Completion. The Project shall qualify for a Certificate of Completion.	No later than 24 calendar months after the issuance of the Building Permits as extended by Force Majeure Delays.

**EXHIBIT "D"**  
**SCOPE OF DEVELOPMENT**



**Exhibit "D"**

New Admin and Branch Location  
Valley Strong Credit Union  
3660 Nelson Road  
Fairfield, CA 94533

**SCOPE OF WORK**

**Construction**

All Scopes subject to change based off Architectural, Structural, Civil and City requirements and timelines.

**Site Work**

- Surveying and staking
- Clear, demo and grub site
- Site landscaping, lighting, and development on and offsite
- Over excavate building pad to specified soils reports recommendations below finish grade, backfill and compact to 95% relative density within the upper 12"
- Over excavate parking and drive areas to specified soils reports recommendations backfill and compact to 95% relative density
- Grade site for surface drainage away from building per approved Civil design
- Fine grading/Planter fill
- Earthwork assume a balanced site (no import or export of soils)
- 3" AC paving over 6" AG base at parking and drive areas or to specified soils reports recommendations and Civil design
- 6" PCC paving at drive thru canopy area
- Fog seal, striping and signage
- Sewer, fire water and domestic water lines from building to indicated P.O.C.'s
- Site storm drainage system
- Street patching at (2) new drive approach entries and for our own utilities work
- 4" thick concrete sidewalks at parking lot perimeter
- On-site concrete A-curb and curb & gutter
- CMU trash enclosure with painted metal gates and exterior paint finish or approved City standard
- Fabricated steel handrails with paint finish at ramps
- Parking lot pole mounted lighting and controls
- Electrical service and lighting for remote drive-through canopy area

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- Underground conduit and pull-boxes for future EV stations, remote drive-through canopy area (and solar system?) low voltage wiring by others Branch Office and Training Building
- 6" reinforced slab on grade with Vaporlock 20/20 over 2" sand and 15 mil "Stego" vapor barrier, perimeter, and column foundations or to specified soils reports recommendations
- 4" reinforced slab on metal deck at 2nd Floor
- Stone veneer masonry at portions of exterior wall finish
- Structural steel primary framed structure and fabricated steel stairs and handrails, roof access ladder, elevator guide rail and support beam, guardrail (Or glass rail?) at 2nd floor reception area deck edge
- R-19 insulation at exterior walls, R-11 sound insulation at select interior walls and ceilings or Engineer specified
- 60 mil TPO roofing over 6" (R-30) polyiso foam insulation
- Fiber cement panels at portions of exterior walls and soffits
- Aluminum curtain wall and storefront systems at exterior entrances and windows
- Interior aluminum frames with glazing and glass panel interior office front walls
- Hollow metal doors/frames or aluminum frame/plastic laminate doors at all other personnel door openings
- 16 ga. metal framed exterior wall framing
- 20 ga. metal framed interior walls and hard ceilings with drywall finish
- Suspended acoustic ceilings
- Carpet tile, resilient flooring and RTSB
- Ceramic tile floors and full height walls at restrooms
- FRP to +48" at Janitor rooms
- Paint finish at drywall walls and ceilings, hollow metal doors and frames, exposed structural steel
- Plastic laminate cabinets and solid surface counter tops
- Overhead braced toilet partitions and screens, toilet accessories and ADA compliance signage at all restrooms
- Fire extinguishers to meet local fire department requirements
- Fire alarm and wet pipe fire sprinkler system per NFPA #13 and local AHJ Requirements
- Plumbing systems including sanitary sewer waste and vent piping, roof and condensate drain piping, water piping, and all depicted or required fixtures and services to mechanical equipment
- HVAC systems, including all scheduled equipment, hard pipe ducting and flex tails, volume dampers, wye's and 90's, return and supply grilles, smoke detectors & low voltage wiring, thermostats, sensors and wiring, start-up and air balance
- Electrical systems for building and remote drive-thru canopy, including main power services from Utility Service provided transformers, main switchgear, distribution panels to accommodate complete electrical system, conduits and breaker space for future car charging stations, conduits for future solar systems, conduit stubs to drive-thru canopy for low voltage

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communication, telephone, and cable conduits from street to building, circuits for projector screens and TV's, interior and exterior lighting, service to all HVAC equipment, floor boxes, receptacles and switches, conduit stub to attic for low voltage systems,

- Data communications system, including equipment racks and CAT6 cables distributed throughout building, terminated on Leviton hardware and tested upon completion. Cabling assumed to be run open (no conduit) and suspended on J-hooks in attic spaces
- Security or card access entry systems

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**EXHIBIT "E"**

**FORM OF CERTIFICATE OF COMPLETION**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Valley Strong Credit Union  
P.O. Box 9506  
Bakersfield, CA 93389

APN: 0167-110-070 & a portion of 0167-110-  
110

(Space Above for Recorder's Use Only)

**This document is exempt from the payment of a recording fee pursuant to  
Government Code Section 27383.**

**CERTIFICATE OF COMPLETION**

THIS CERTIFICATE OF COMPLETION (the "Certificate") is made by the CITY  
OF FAIRFIELD (the "City"), in favor of VALLEY STRONG CREDIT UNION.

***RECITALS***

A. The City and Valley Strong Credit Union have entered into that certain unrecorded Disposition and Development Agreement (the "DDA") dated as of \_\_\_\_\_, 2021 concerning the development of certain real property situated in the City of Fairfield, California, described in Exhibit "A" attached hereto (the "Site").

B. As described in Section 3.11 of the DDA, the City is required to furnish a Certificate of Completion upon completion of construction of the "Project" (as defined in the DDA), which Certificate is required to be in such form as to permit it to be recorded in the Recorder's Office of Solano County. This Certificate is conclusive determination of satisfactory completion of the construction and development required by the DDA.

C. The City has conclusively determined that the construction and development of the Project has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. The City does hereby certify that the Project to be constructed under the DDA has been fully and satisfactorily completed in full conformance with the DDA.

2. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Site, or any part thereof.

3. This Certificate shall not constitute evidence of compliance with those covenants in the DDA that survive the issuance of this Certificate.

4. This Certificate is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Nothing contained in this instrument shall modify in any other way any other provisions of the DDA (including without limitation the attachments thereto).

IN WITNESS WHEREOF, the City has executed this Certificate of Completion this \_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF FAIRFIELD

By:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me,

Notary Public, (insert name and title of the officer)  
personally appeared

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature\_\_\_\_\_

(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

TO BE INSERTED LATER