

**GRANT AGREEMENT
FOR THE ACQUISITION OF LAND AND DEVELOPMENT OF PARK AND RECREATIONAL FACILITIES**

This Agreement, dated for convenience as of _____, 2020, is made by and between the JULIAN COMMUNITY HERITAGE FOUNDATION, California non-profit corporation number C4126079 (“Grantee”), and the County of San Diego (“County”), a political subdivision of the State of California.

RECITALS

- A. Grantee and County wish to cooperate to acquire certain real property to be dedicated to public park use with recreational facilities to serve the recreational needs of residents within the Julian Community Planning Area.
- B. County is willing to provide funding to enable Grantee to acquire the property for use as a local park facility pursuant to this Agreement and the requirements of the County Park Land Dedication Fees Ordinance (“PLDO”). The PLDO is codified at Sections 810.101 through 810.119 of the County of San Diego Code of Regulatory Ordinances.
- C. Grantee has agreed, as a condition of County providing acquisition funding, to make the real property available for use by the public, restrict use of the real property solely for public park and recreational purposes, construct facilities on the real property consistent with public park and recreational use, and operate and maintain those facilities, among other conditions, all in accordance with the requirements of this Agreement, the PLDO, and San Diego County Board of Supervisors Policy F-26 – “Utilization of Park Lands Dedication Ordinance Fees and Interest”.
- D. The parties believe this arrangement will be mutually beneficial and in the best interest of the public.

In consideration of the promises and covenants of County and Grantee set forth in this Agreement, County and Grantee agree as follows:

1. PURPOSE.

The purpose of this Agreement is to provide \$330,000 in County funding (“County Grant”) to be used exclusively for Grantee’s acquisition of the real property described in Section 2 for public park and recreation purposes, subject to the terms and conditions of this Agreement. The Recitals set forth above are hereby incorporated in this Agreement.

2. ACQUISITION OF REAL PROPERTY.

Grantee shall purchase the real property known as Julian Town Square located at 2712 Washington St, Julian, CA 92036, and further described in Attachment "A", attached to and incorporate in this Agreement ("Property").

3. CONSTRUCTION OF RECREATIONAL FACILITIES

Grantee shall construct or cause to be constructed improvements on the Property consistent with public park and recreational purposes consistent with PLDO Eligible Recreational Uses as defined in the PLDO ("Improvements").

4. ADMINISTRATION.

This Agreement shall be administered on behalf of County by the Director of the County Parks and Recreation Department ("Director") or his or her designated representative, and on behalf of Grantee by the President of the Grantee or his or her designated representative.

5. TERM

The term of this Agreement commences upon the date of execution of this Agreement by both parties and shall continue until this Agreement is terminated by mutual written agreement of the County and Grantee, or until title to the Property is transferred to the County as described in Section 27, whichever occurs first; provided, however, that County may terminate this Agreement by providing written notice of termination to Grantee if Grantee has not completed acquisition of the Property as required under this Agreement within two (2) years of the date of execution of this Agreement.

6. TITLE TO PROPERTY.

Upon completion of the purchase of the Property, funded wholly or in part by County funds, fee simple title to the Property shall vest in Grantee, subject to the conditions of this Agreement.

7. COUNTY FUNDING.

County's total funding commitment under this Agreement shall not exceed \$330,000, and shall be used solely for the acquisition of the Property and for no other purpose. County's funding commitment under this Agreement is contingent on continued availability of sufficient eligible funding. All costs, fees, and expenses for acquisition and development of the Property as required under this Agreement beyond \$330,000 are Grantee's responsibility. Nothing shall make County liable for payment of any costs, fees, or monies in excess of the County Grant.

The County Grant shall be made in a lump sum, and shall be deposited into the escrow for Grantee's acquisition of the Property, contingent on satisfaction of the conditions of this Agreement. The County Grant will only be provided concurrent with Grantee's acquisition of the Property and recordation of the Agreement Affecting Real Property (as required under Section 13 below) through escrow in accordance with the terms of this Agreement. The acquisition of the Property shall occur through an escrow established with an escrow agent mutually acceptable to County and Grantee, and County shall provide written escrow instructions to the approved escrow agent with respect to the County Grant and this Agreement.

8. APPROVALS, PERMITS, AND CLEARANCES.

Grantee shall be responsible for obtaining any and all Federal, State, and local approvals, permits, entitlements, and clearances necessary and appropriate to acquire, develop, use, and maintain the Property in accordance with this Agreement.

9. PREVAILING WAGE

Work performed by Grantee or its contractor(s) may be a “public work” for prevailing wage purposes. It is not the intent of this Agreement to impose an obligation to pay prevailing wages on work otherwise exempt from State of California prevailing wage laws. Grantee shall be solely responsible for ensuring prevailing wages are paid when owed. Projects subject to the payment of prevailing wages are subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. Grantee shall be responsible for ensuring all required job site postings and all certified payroll and other reporting applicable to it as an awarding body are completed in accordance with State of California prevailing wage regulations. Information regarding prevailing wage requirements can be obtained from the Director, Department of Industrial Relations at www.dir.ca.gov, State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq.

To the fullest extent permitted by law, and in addition to and without limiting Grantee’s other indemnification obligations under this Agreement, Grantee shall defend (with counsel reasonably acceptable to County), indemnify, protect and hold County, its elected officials, officers, employees and agents harmless from any claims arising in part or in whole from Lessor’s or its agents’, contractors’, or employees’ noncompliance with the duties prescribed by this section or the requirements imposed by Labor Code Section 1720, et seq. or Title 8 of the State of California Code of Regulations, Section 16000, et seq. These obligations of Grantee shall survive the expiration or termination of this Agreement.

10. RECORDS AND REPORTS.

Grantee shall provide and maintain records in conformance with this Agreement. Director shall make all requests for records and reports in writing to the Grantee. Timely submission of requested records and reports is a necessary condition of this Agreement. Failure to submit requested records and reports to County in a timely manner is a breach of this Agreement.

11. FISCAL AND PERFORMANCE AUDITS AND INSPECTION.

Authorized County representatives shall have the right to monitor, assess, and evaluate Grantee's performance, pursuant to this Agreement, at all times. Monitoring, assessments, and evaluations shall include but not be limited to audits, inspection of premises and records, reports, and interviews of project staff and participants. At any time during normal business hours, and as often as County may deem necessary, Grantee shall make available to County officials for examination, all of its records with respect to all matters covered by this Agreement, and will permit County officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding persons receiving contracts and other data relating to all matters covered by this Agreement.

Grantee shall ensure that all persons receiving contracts under this Agreement shall comply with this Section by including equivalent language in all such contracts. Grantee shall maintain and keep available all project documents and records related to the acquisition, design, bid, construction in connection

with this Agreement and its subject matter, within the County of San Diego for the term of this Agreement. All other documents and records related to this Agreement shall be retained for a minimum of five (5) years, unless County agrees in writing to an earlier disposition.

12. COUNTY'S ENTRY ON FACILITIES.

County reserves and shall always have the right during the term of this Agreement to access and enter the Property to inspect and determine the condition of the Property and Improvements as deemed necessary in County's discretion to protect County's interests.

13. USE OF THE PROPERTY.

As a condition of the Grant, concurrent with the disbursement of the County Grant at the close of escrow for acquisition of the Property, the Agreement Affecting Real Property ("AARP"), attached to and incorporate in this Agreement as Attachment "B", shall be recorded against Grantee's fee simple title to the Property in a senior position to any and all interests and encumbrances. The AARP shall not at any time be subordinated to any other interest or encumbrance affecting title the Property, whether created preexistent to, concurrent with, or subsequent to the close of escrow for Grantee's acquisition of the Property, without County's prior written consent. County and Grantee agree the covenants in the AARP benefit the public and benefit real property owned by the County such that all covenants in the AARP are covenants running with the land binding any and all successors-in-interest to Grantee, and that County would not provide the Grant if these covenants running with the land were not imposed on the Property and binding on any and all successors-in-interest.

The Property shall be used solely and exclusively as a park open to the general public, with public recreational facilities appropriate for a public park, as required under the PLDO, County Board of Supervisor's Policy F-26 – "Utilization of Park Lands Dedication Ordinance Fees and Interest", and applicable State law.

Grantee may enter into a contract with a private firm to operate recreational activities, subject to County's written approval. Grantee may allow other individuals or organizations to utilize the Property, and may enter into contracts with such other individuals or organizations, and to establish fees for the use of the Property by such other individuals or organizations, subject to County's written approval.

14. PROHIBITION AGAINST TRANSFER; ALLOCATION OF TRANSFER PROCEEDS

Grantee shall not transfer or encumber (with a mortgage, lien, security instrument, or otherwise) the Property or Improvements, or any interest in the Property or Improvements, whether voluntarily or involuntarily, without County's prior written consent, which shall be granted, conditioned, or denied in County's sole discretion. Any transfer or encumbrance or attempted transfer or encumbrance of all or any interest in the Property or Improvements, whether voluntary or involuntary, without County's prior written consent, is a breach of this Agreement and, in addition to all other remedies, shall be voidable at County's sole discretion. In addition to and without limiting the forgoing, County shall have a right of first refusal with respect to any proposed transfer such that any proposed transfer to any third party shall be offered first to County on identical terms. In the event a transfer is approved by County, or County exercises its right of first refusal, County shall receive from the proceeds of the transfer no less than the sum of the following: (1) \$330,000 as repayment of the County Grant, plus (2) a percentage of the transfer proceeds in excess of the purchase price paid by Grantee for the Property commensurate

with the percentage of the original purchase price paid with County funds (whether the County Grant or other), to allow County to capture its fair share of appreciation in the Property value commensurate with its contribution to the original purchase price.

15. FEES.

Grantee may charge fees for public recreational programs sufficient to recover the full cost to Grantee of operation and maintenance of such programs. Cost of maintenance and operation shall include but shall not be limited to, labor, advertising, taxes, utilities, insurance and supplies. Such fees shall be subject to prior written approval by the Director. Fees charged by Grantee for non-public recreational programs shall not be subject to approval by County. All user fees collected by Grantee from the operation of Facilities for public recreational programs shall be used only for maintenance and operation of the Improvements and kept in a separate account for such purposes.

16. OPERATION.

Grantee shall be responsible for the operation and maintenance of the Property and the Improvements. Grantee shall promulgate reasonable rules and regulations governing the use of the Property and the Improvements, including limitations upon hours of operation, which rules and regulations are subject to the written approval of the Director. Such rules and regulations may reasonably limit public access to and use when they are in use for approved programs, subject to the Director's written approval, but shall be open to the public at all other times. Grantee shall provide a sign posted at the Property's main entry, explaining said rules and regulations, and the hours of the Property's operation.

17. MAINTENANCE AND REPAIR.

Grantee shall, at all times, operate and maintain the Property and Improvements as a local park in good, safe, and sanitary order and condition to the County's reasonable satisfaction. All maintenance and repairs of the Property and Improvements shall be made by Grantee in a timely manner at its sole expense.

18. UTILITIES.

Grantee shall be responsible for payment of all utility costs associated with the use, operation, and maintenance of the Property and the Improvements.

19. DAMAGE OR DESTRUCTION.

If the Property or any Improvements are damaged by fire or any other cause, Grantee shall cause all repairs necessary for restoration to a good, safe, and sanitary condition to the County's reasonable satisfaction, to be made in a timely manner at Grantee's expense.

20. DEFEND, INDEMNIFY AND HOLD HARMLESS

Grantee agrees that its performance under this Agreement is at its own sole risk and that it shall, in addition to and without limiting other indemnification obligations under this Agreement, to the fullest extent permitted by law, indemnify the County of San Diego, its employees, officers and agents, against and hold them harmless, and defend them (with counsel reasonably acceptable to County) from any and all claims and liabilities, both real and alleged, for injury, death, damages, costs, losses, fees, and expenses (including legal and investigative fees and expenses) resulting from, arising out of, or in any

way connected with this Agreement or its subject matter, the Property, or the Improvements. These obligations of Grantee shall survive the expiration or termination of this Agreement.

21. INSURANCE.

Grantee shall obtain and keep in force a "special form" property policy in the amount of the full replacement cost of any improvements to the Property in connection with this Agreement. Grantee hereby waives all rights of recovery against County and its representatives, and employees on account of loss and damage covered by the property insurance required of Grantee under this Agreement or any other policy of property insurance actually carried by Grantee. Grantee shall give notice to the applicable insurance carrier(s) of this waiver of subrogation rights.

Grantee must obtain and/or cause any agent, contractor or other representative of Grantee, at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, policies of insurance or programs of self-insurance with policy limits in sufficient amounts to cover any and all potential liability of Grantee hereunder, but not less than Two Million dollars (\$2,000,000 occ) occurrence based commercial general liability ("CGL") insurance for bodily injury and property damage, including contractual liability. Also, naming County and its representatives, and employees as additional insureds. Minimum policy limits maintained by Grantee shall in no way limit the Grantee's indemnification obligations.

If the Grantee maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Grantee. As a requirement of this Agreement, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

Ten (10) days before commencement of any construction or improvement work, Grantee shall, at their expense, procure or cause to be procured, and furnish County, the required policy or policies of insurance from a generally recognized responsible insurance company(ies) and shall comply with the following:

The Contractor shall indemnify and save harmless the Grantee and County named in the Notice to Contractors inviting bids and all officers, agents and employees thereof connected with the work, including but not limited to the Board and the Engineer, from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from the performance of a contract, excepting only such injury or harm as may be caused solely and exclusively by the fault or negligence of said Grantee and the County, and except as otherwise provided by statute. The duty of the Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code.

The Contractor shall obtain and maintain in full force and effect during the life of the contract, Commercial General Liability Insurance written on an 'Occurrence' basis and Automotive Liability Insurance covering owned, non-owned and hired automotive equipment for all claims and lawsuits against the Contractor and his subcontractors arising out of or in connection with the work to be performed. The policy shall contain an Additional Insured Endorsement, naming as additional insureds

the Grantee and County, and their officers, agents and employees, while on the project and acting within the scope of their duties. The minimum limits shall be as follows:

Commercial General Liability Insurance - \$1,000,000 per occurrence

Automotive Liability Insurance - \$1,000,000 combined single limit

Evidence of insurance in compliance with the above requirements shall be furnished to Grantee by Certificates of Insurance. Such Certificates of Insurance shall be furnished prior to the commencement of work under the contract.

Each policy of insurance shall contain the following clause:

"It is agreed that this policy shall not be canceled, nor the coverage reduced until thirty (30) days after the Engineer receives written notice of such cancellation or reduction. The notice shall be deemed effective the date delivered to the Engineer as evidenced by properly validated return receipt."

Any self-insured retention above \$25,000 must be declared to and approved by County Risk Management. At the option of the County, either: the insurer shall reduce or eliminate such self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Such insurance shall be issued by a company or companies authorized to transact business in the State of California.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it preclude Grantee from taking such other actions as is available to it under any provision of their contract with the contractor, of this agreement or as otherwise allowed by law.

The Contractor shall arrange for the policies to be so conditioned as to cover the performance of any necessary extra work during the contract.

The cost of this insurance shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property and shall indemnify and save harmless any district, its officers and employees connected with the work, within the limits of which district the work is being performed hereunder, all in the same manner and to the same extent as provided above for the protection of the Grantee or County and all officers and employees thereof connected with the work.

County Review: County shall retain the right at any time to review coverage, form and amount of insurance required herein and may require Grantee to obtain insurance sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exist at the time a change in insurance is required. County requirements shall be reasonable.

The County shall notify Grantee in writing, of changes In the Insurance requirements, and if Grantee does not deposit with the County within thirty (30) days of receipt of such notice for new certificates of insurance incorporating the requested changes, Grantee shall be deemed in default without further notice to Grantee, notwithstanding the provisions of Section 26 below.

Grantee Liability: Procuring County-required policy or policies of Insurance shall not be construed to limit Grantee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, Grantee shall be obligated for the full and total amount of any damage, injury or loss caused by It or its officers, employees or agents, the public's or contractor's negligence or neglect connected with this Agreement or with use or occupancy of the Facility.

Maintenance of Protection: Failure on the part of Grantee to obtain or continually maintain insurance required shall result in this Agreement being in default without further notice to Grantee and this Agreement may be terminated by the County. Said Agreement may be reinstated upon verification of insurance coverage pursuant to this Agreement.

20. COMPLIANCE WITH COUNTY REQUIREMENTS.

Grantee shall comply with and shall assure that all persons receiving contracts or benefits paid for, in whole or in part, with County funds shall comply with all applicable County ordinances, codes, rules, regulations and policies currently in affect and hereinafter adopted by the County Board of Supervisors, and by reference incorporated herein, including but not limited to the following:

- A. Equal Opportunity. Grantee and all persons receiving contracts under this Agreement will not discriminate against any employee or against any applicant for employment paid for, in whole or in part, by County funds because of age, race, color, religion, sex, handicap, ancestry or national origin. This includes but is not limited to employment, upgrading, demotion, or transfer, advertising, layoff or termination, rates of pay, and training opportunities.
- B. Non-Discrimination in Use of the Facility. Grantee shall assure that access to and the use of the Facility shall be provided without regard to age, race, color, religion, sex or handicap. This assurance shall apply to all activities and programs conducted on Facility.
- C. Article IIIJ, Affirmative Action Program, and Article IIIK, Affirmative Action Program for Vendors.
- D. Board Policy B-39 entitled 'Minority and Women Business Enterprise (MWBE) Programs'.
- E. Board Policy C-25, Drug and Alcohol Use.
- F. The PLDO and Board Policy F-26 – “Utilization of Park Lands Dedication Ordinance Fees and Interest”.

22. COMPLIANCE WITH LAWS.

Grantee shall comply with all applicable Federal, State of California, County, and local laws, codes, rules, and regulations.

23. RESERVED.

24. NOTICE.

Any notice or notices provided by this Agreement or required by law to be given or served upon Grantee or County may be given or served by depositing same in the United States Mail, postage prepaid, addressed to:

Julian Community Heritage Foundation
Attention: Jean Duffy
P.O. Box 236
Julian, CA 92036

or:

County of San Diego
Director, Parks and Recreation Department
5500 Overland Ave, Suite 110 (MS 0-70)
San Diego, CA 92123

or to such other address as Grantee or County may subsequently specify in writing, or such notices may be personally served.

25. FORCE MAJEURE.

If County or Grantee delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, strikes, civil disorders or other cause without the fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be waived for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

26. DEFAULT.

In the event that Grantee or County fails to perform according to this Agreement, the complaining party may provide notice of default at the address provided in Section 24. If the default is reasonably capable of being cured within thirty (30) days, the party shall have such period to accomplish a cure prior to exercise of remedies. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the defaulting party (a) initiates corrective action within such 30-day period, and (b) diligently, continually, and in good faith works to accomplish a cure as soon as possible, then the defaulting party shall have such additional time as is reasonably necessary to cure the default prior to exercise of remedies; provided, however that in no event shall County be precluded from exercising remedies (i) if the Property or the Improvements become or are about to become materially jeopardized by any failure to cure a default or (ii) if the default is not cured within ninety (90) days after the first notice of default is given.

27. Remedies

A. Grantee Remedies for County Default.

In the event of a default by County under this Agreement that is not cured within the applicable cure period, Grantee's remedies shall be limited to termination of this Agreement prior to disbursement of the County Grant and close of escrow for the acquisition of the Property. Grantee shall not terminate

this Agreement following disbursement of the County Grant and close of escrow for the acquisition of the Property under any circumstances without County's written consent.

B. County Remedies for Grantee Default.

In the event of a default by Grantee under this Agreement that is not cured within the applicable cure period, County shall have all remedies available at law and in equity for enforcement of contracts, covenants, and equitable servitudes. In addition, in the event of any of the following uncured defaults, County shall have a right of entry and possession through a power of termination under California Civil Code sections 885.010 through 885.070, such that County may terminate Grantee's fee interest in the Property and Improvements and assume for itself ownership of the fee interest in the Property and Improvements, and Grantee shall forfeit to County all of its right, title, and interest in and to the Property and Improvements:

1. Grantee dissolves or becomes the subject of any bankruptcy or similar proceeding;
2. Grantee transfers or attempts to transfer or encumber the Property or Improvements, or any interest in the Property or Improvements, without County's prior written consent;
3. Grantee fails to use, operate, repair, or maintain the Property and Improvements in accordance with this Agreement.

County and Grantee agree these remedies are fair and appropriate in consideration of the County Grant and the terms and conditions of this Agreement.

28. FUNDING AVAILABILITY.

The County Grant is contingent on availability of sufficient eligible funding. If such funding becomes unavailable for the County Grant prior to close of escrow for the Property, County may terminate this Agreement by providing written notice of such termination to Grantee.

29. CONFLICT OF INTEREST.

No person performing services for Grantee or County in connection with the Property or Improvements shall have a financial interest with this Project other than his/her employment through this Agreement or its subcontracts.

30. BINDING ON SUCCESSIONS; GOVERNING LAW.

This Agreement shall in every respect be binding upon the parties hereto and their respective successors and assigns. This Agreement shall be governed by the laws of the State of California.

31. PROVISIONS REQUIRED BY LAW.

Each and every provision of law and clause required by law to be included in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if for any reason any such provision is not Inserted, or is not correctly stated, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

32. PARTIAL INVALIDITY.

If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

33. EXECUTION.

This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by Grantee and County, all with the same full force and effect as though the same counterpart had been executed simultaneously by Grantee and County. Each of the persons signing below on behalf of either party hereto represents and warrants that he or she is signing with full and complete authority to bind the party on whose behalf he or she is signing to each and every provision of this Agreement. This Agreement shall bind the County only following authorization by County's Board of Supervisors and the execution of this Agreement by County's authorized representative.

34. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto and no term or provision hereof may be changed, waived, discharged or terminated unless the same be in writing executed by all of the parties hereto. The Parties hereby represent and acknowledge they have had the opportunity to discuss and review the terms of this Agreement with their respective legal counsel before executing it, and that they are freely, voluntarily, and intentionally signing this document to be bound and benefitted as set forth herein.

35. AMENDMENT

This Agreement may be amended only in a written amendment executed by both parties.

36. ATTACHMENTS

Attachment A: Description of Property

Attachment B: Agreement Affecting Real Property

(Signatures on following page)

SIGNATURES:

County and Grantee have duly executed this Agreement as of the day and year first above written.

JULIAN COMMUNITY HERITAGE FOUNDATION:

By: _____

Name: _____

Its: _____

COUNTY OF SAN DIEGO:

By: _____

Director, Department of Parks and Recreation

**APPROVED AS TO FORM AND LEGALITY FOR
COUNTY OF SAN DIEGO:**

By: _____

Senior Deputy County Counsel

ATTACHMENT "B"

AGREEMENT AFFECTING REAL PROPERTY

OFFICIAL BUSINESS

Document entitled to free
recording per Government
Code Section 6103

Recording Requested by and When
Recorded Return to:

COUNTY OF SAN DIEGO
Department of Parks and Recreation
5500 Overland Ave., Suite 410
San Diego, CA 92123
Mail Stop: O-29

Attn: Brian Albright

APN: 291-072-18-00

Space above this line for Recorder's use only

AGREEMENT AFFECTING REAL PROPERTY
(INCLUDING COVENANTS, CONDITIONS, AND RESTRICTIONS ON USE)

THIS AGREEMENT AFFECTING REAL PROPERTY ("Agreement") is entered into as of _____, 202_, by and between the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County") and the JULIAN COMMUNITY HERITAGE FOUNDATION, California non-profit corporation number C4126079 ("Owner").

A. Pursuant to that certain Park Lands Dedication Ordinance Grant Agreement for Acquisition of Land and Development of Recreational Facilities, dated _____, 2020, entered into between County and Owner ("Grant Agreement"), County provided a grant in the amount of \$330,000 ("County Grant") used toward Owner's acquisition of that certain real property ("Property") located in the County of San Diego, State of California, legally described in the "Legal Description" attached to and incorporated in this Agreement as Exhibit "A."

B. County and Owner entered into the Grant Agreement for the purpose of providing part of the funding for Owner's acquisition of the Property, and to require, as a condition of the County Grant, that Owner develop the Property with improvements consistent with public park and recreational purposes, and that the Property be used solely for public park and recreational purposes, among other conditions, all as set forth in the Grant Agreement.

C. The County Grant was provided to be used in accordance with the Grant Agreement, this Agreement, County's Park Land Dedication and Fees Ordinance ("PLDO"), codified in Sections 810.101 through 810.119 of the County of San Diego Code of Regulatory Ordinances, and in accordance with San Diego Board of Supervisors Policy F-26 – "Utilization of Park Lands

Dedication Ordinance Fees and Interest”.

D. This Agreement is entered into and recorded as a condition of the County Grant in accordance with the Grant Agreement.

County and Owner covenant and agree for themselves, and their successors and assigns, and every successor in interest to all or any part of the Property, as follows:

1. Development of the Property. Owner covenants and agrees it shall develop and construct, or cause the development and construction, of improvements on the Property consistent with public park and recreational purposes consistent with PLDO Eligible Recreational Uses as defined in the PLDO (“Improvements”) in accordance with the provisions of the Grant Agreement.

2. Use of the Property. Owner covenants and agrees as follows:

a. The Property and Improvements shall be used solely and exclusively as a park open to the general public, with public recreational facilities appropriate for a public park, as required under the PLDO, County Board of Supervisor’s Policy F-26 – “Utilization of Park Lands Dedication Ordinance Fees and Interest”, applicable State law, and the Grant Agreement.

b. No change in the use of the Property or Improvements shall be permitted without the prior written approval of County.

3. Prohibition of Transfer. In consideration of the public purpose for which the County Grant was provided, Owner shall not transfer or encumber (with a mortgage, lien, security instrument, or otherwise) the Property or Improvements, or any interest in the Property or Improvements, whether voluntarily or involuntarily, without County’s prior written consent, which shall be granted, conditioned, or denied in County’s sole discretion. Any transfer or encumbrance or attempted transfer or encumbrance of all or any interest in the Property or Improvements, whether voluntary or involuntary, without County’s prior written consent, is a breach of this Agreement and, in addition to all other remedies, shall be voidable in County’s sole discretion. In addition to and without limiting the forgoing, County shall have a right of first refusal with respect to any proposed transfer such that any proposed transfer to any third party shall be offered first to County on identical terms. In the event a transfer is approved by County, or County exercises its right of first refusal, County shall receive from the proceeds of the transfer no less than the sum of the following: (1) \$330,000 as repayment of the County Grant, plus (2) a percentage of the transfer proceeds in excess of the purchase price paid by Owner for the Property commensurate with the percentage of the original purchase price paid with County funds (whether the County Grant or other), to allow County to capture its fair share of appreciation in the Property value commensurate with its contribution to the original purchase price.

4. Maintenance and Repair of the Property.

a. Owner shall at all times maintain the Property and Improvements in good, safe, and sanitary order and condition to the County’s reasonable satisfaction. All

maintenance and repairs of the Property and Improvements shall be made by Owner in a timely manner at Owner's expense.

b. If the Property or any Improvements are damaged by fire or any other cause, Owner shall cause all repairs necessary for restoration to a good, safe, and sanitary condition to the County's reasonable satisfaction, to be made in a timely manner at Owner's expense.

5. Covenants Running with the Land.

In accordance with California Civil Code Section 1461 *et seq.*, all conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land. The parties acknowledge and agree that the conditions, covenants and restrictions directly benefit the public, the Property, and the Improvements, and benefit property that County owns or will own (including, without limitation, underlying interests in streets) and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by County and its successors and assigns and any property that County owns or will own (including, without limitation, underlying interests in streets), against Owner, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of the Property or any portion thereof. The covenants, conditions, and restrictions shall run in favor of County without regard to whether County has been, remains, or is an owner of any land near the Property, and shall be enforceable as covenants and equitable servitudes.

6. Term. Every covenant, condition, and restriction contained in this Agreement shall remain in effect until this Agreement is terminated in writing by the County, or until title to the Property is transferred to the County as described in Section 10, whichever occurs first.

7. Notice and Opportunity to Cure.

Prior to exercising any remedies for a violation of any of the covenants or provisions of this Agreement, County shall give Owner notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Owner shall have such period to accomplish a cure prior to exercise of remedies by County. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Owner (a) initiates corrective action within such 30-day period, and (b) diligently, continually, and in good faith works to accomplish a cure as soon as possible, then Owner shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by County; provided, however that in no event shall County be precluded from exercising remedies (i) if the Property or the Improvements become or are about to become materially jeopardized by any failure to cure a default or (ii) if the default is not cured within ninety (90) days after the first notice of default is given.

8. Remedies; Reversion; Power of Termination.

For enforcement purposes, the requirements of this Agreement are covenants and equitable servitudes that may be enforced with any and all remedies available at law and in equity, including

damages, specific performance, injunction, and any and all other available remedies. In addition, if a violation of any of the requirements of this Agreement remains uncured after the respective time period set forth in Section 7 above, County shall have a right of entry and possession through a power of termination under California Civil Code sections 885.010 through 885.070, such that County may terminate Owner's fee interest in the Property and Improvements and assume for itself ownership of the fee interest in the Property and Improvements. County and Owner agree these remedies are fair and appropriate in consideration of the public purpose of the County Grant and the terms and conditions of this Agreement and the Grant Agreement. All remedies under this Section 8 shall apply without regard to whether County or its successors and assigns is an owner of any land or interest therein to which the covenants of this Agreement relate. No delay in enforcing the provisions of this Agreement as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions of this Agreement or to obtain relief against or recover for the continuation or repetition of such of this Agreement or violations or any similar breach or violation of this Agreement at any later time.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

SIGNATURES ON NEXT PAGE

County and Owner have duly executed this Agreement as of the day and year first above written.

COUNTY OF SAN DIEGO

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY

By: _____
Name: _____
Its: _____

SIGNATURES CONTINUED ON NEXT PAGE

JULIAN COMMUNITY HERITAGE
FOUNDATION, California non-profit
corporation number C4126079

By: _____

Name: _____

Its: _____

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 SAN DIEGO }

SS

On _____ before me, _____ personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed this 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.

(seal)

—

BY: _____

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 SAN DIEGO

SS

On _____ before me, Hugh Rowles, Deputy County Clerk of the County of San Diego, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed this 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.
Ernest J. Dronenburg, Jr.
Recorder/County Clerk

(seal)

BY: _____
