

FIRST OPERATING MEMORANDUM TO THE “DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF JURUPA VALLEY AND PROFICIENCY CAPITAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY” (RUBIDOUX COMMERCE CENTER PROJECT)

THIS FIRST OPERATING MEMORANDUM to the recorded “Development Agreement by and Between the City of Jurupa Valley and Proficiency Capital, LLC., a Delaware limited company ” (“Memorandum”) is made and entered into as of March 21, 2024 by and between City of Jurupa Valley, a municipal corporation (“City”), Proficiency Capital, LLC., a Delaware limited company and Proficiency Rubidoux, LLC, a Delaware limited liability company. In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, City and Developer agree as follows:

1. **RECITALS.** This Memorandum is made with respect to the following facts and for the following purposes, each of which are acknowledged as true and correct by the parties:

A. On January 18, 2024 the City Council of the City of Jurupa Valley adopted Ordinance No. 2024-02 approving that certain development agreement entitled “Development Agreement by and Between the City of Jurupa Valley and Proficiency Capital, LLC, a Delaware limited company ” dated as of January 18, 2024 (“Development Agreement”).

B. The property that is the subject of the Development Agreement and this Memorandum is located within the City of Jurupa Valley, the County of Riverside, State of California, as described in Exhibit “A” to the Development Agreement (“Property”).

C. The Development Agreement was recorded on April 5, 2024 as Document No. 2024-0099507 in the Official Records of the County of Riverside.

D. Section 3.4.4. of the Development Agreement authorizes the parties to the Development Agreement and the City Manager on behalf of the City to approve an Operating Memorandum which does not constitute an amendment to the Development Agreement in order to implement the Development Agreement or provide for “changes, adjustments, or clarifications [that] are appropriate to further the intended purposes” of the Development Agreement.

E. The changes, adjustments and clarifications of the Development Agreement set forth in this Memorandum are appropriate to further the intended purposes of the Development Agreement and the Development Approvals described in the Development Agreement.

2. **ASSIGNMENT OF DEVELOPMENT AGREEMENT TO RELATED ENTITY OF OWNER**

A. For the purposes of this Section Proficiency Capital, LLC, a Delaware limited company shall be designated as the “Assignor” and Proficiency Rubidoux, LLC, a Delaware limited liability company, shall be referred to as the “Assignee.”

B. Section 12.1.3 of the Development Agreement permits the transfer of the obligations and benefits of the Development Agreement from the Owner to another business entity that arises from the reorganization of Owner, provided that management control of Owner does not change as a result of such reorganization. The Assignee, Proficiency Rubidoux, LLC, is a related business entity to the Assignor, Proficiency Capital, LLC and fulfills this requirement.

C. Pursuant to Section 12.1.3 of the Development Agreement, Assignor hereby assigns, conveys and transfers to Assignee the rights and interests of Assignor, as the "Developer", under the Development Agreement arising from and after the date of this Memorandum, and Assignee hereby accepts such assignment.

D. Pursuant to Section 12.1.3 of the Development Agreement, Assignor hereby delegates to Assignee all of Assignor's duties and obligations, as the "Developer", under the Development Agreement arising from and after the date of this Memorandum, all of which obligations are hereby assumed by Assignee.

E. Upon the effective date of this Memorandum, Proficiency Rubidoux, LLC, a Delaware limited liability company, shall be the "OWNER" as provided in the Development Agreement.

3. **EFFECTIVE DATE OF DEVELOPMENT AGREEMENT.** Pursuant to Section 3.2. of the Development Agreement, the Effective Date of the Development Agreement is February 17, 2024.

4. **GENERAL PROVISIONS**

A. Pursuant to Section 3.4.4. of the Development Agreement, this Memorandum shall be attached to the Development Agreement as an addendum and thereafter become a part of the Development Agreement.

B. The parties hereto on behalf of themselves and their respective successors and assigns, acknowledge and agree that this Memorandum is valid, lawful, and binding upon the parties and their respective successors and assigns.

C. This Memorandum constitutes the entire agreement between the parties with respect to the subject matter of this Memorandum, and this Memorandum supersedes all previous negotiations, discussion, and agreement between the parties to this Memorandum with respect to its terms, and no prior evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof, except for the Development Agreement.

D. Except for the terms specifically set forth in this Memorandum, all other terms and conditions of the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, City of Jurupa Valley, Proficiency Capital, LLC., a Delaware limited company and Proficiency Rubidoux, LLC, a Delaware limited liability company, have executed this First Operating Memorandum as of the date first written above.

**PROFICIENCY CAPITAL, LLC., A
DELAWARE LIMITED COMPANY**

By: 
Matt Englhard, President

**PROFICIENCY RUBIDOUX, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY**

By: 
Matt Englhard, President



**CITY OF JURUPA VALLEY, a California
municipal corporation**



Rod Butler, City Manager

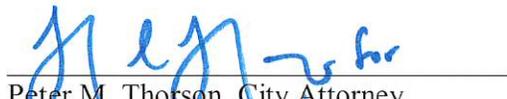
ATTEST:



Victoria Wasko, CMC, City Clerk

APPROVED AS TO FORM:

RICHARDS WATSON & GERSHON



Peter M. Thorson, City Attorney