18-510 **Agenda Date: 5/8/2018**

REPORT TO COUNCIL

SUBJECT

Action on a Purchase and Sale Agreement with Jamestown Realty Co., LLC and Other Documents as Necessary Related to the Sale of North-South Parking Parcel located at 4911 Great America Parkway (APN: 104-43-051)

BACKGROUND

The State of California dissolved all redevelopment agencies in California effective February 1, 2012. At the time of dissolution, the Santa Clara Redevelopment Agency and following, the Successor Agency to the Former Redevelopment Agency of the City of Santa Clara (Successor Agency) owned a number of parcels of land in north Santa Clara. In accordance with Dissolution Statutes (AB1x 26, AB 1484 and SB 107) and the Settlement Agreement entered into by the City, the Successor Agency and the County of Santa Clara et al, the Successor Agency is required to sell all its properties. The proceeds from the initial sale of properties, after deduction of costs of sale, were used to pay the Successor Agency's enforceable obligations.

The Successor Agency has sold two properties: Santa Clara Gateway Parcel 2 located at 5451-5455 Great America Parkway and Santa Clara Hilton parcel located at 4949 Great America Parkway. The proceeds from these sales were used to fully repay all of the Successor Agency's obligations. Proceeds from the sale of any of the remaining Successor Agency properties will be distributed to the taxing entities. As a taxing entity, the City of Santa Clara will receive approximately 10 percent of the any proceeds received from the sale of Successor Agency property.

In February 2018, the Oversight Board authorized the Successor Agency to engage the services of Eastdil Secured to provide brokerage and real estate advisory services related to the sale of the North South Parcel and the Great America Theme Park Parcel.

The North South Parcel (Property) is a 9.4-acre parcel currently used as a portion of the surface parking for Great America Theme Park and Levi's Stadium. In March 2018, Eastdil prepared an Offering Memorandum and solicited interest from more than 30 capital sources to seek offers from qualified investors. Five offers to purchase were tendered. At the conclusion of a three round bidding process, Jamestown Realty Co., LLC ("Jamestown" or "Buyer") made the best offer with a combination of the highest purchase price and with competitive terms.

Jamestown is a privately held company established in 2001. Their real estate portfolio spans across multiple states. In California, Jamestown owns more than 250,000 square feet of property, focused on storage and parking uses.

DISCUSSION

The Property is encumbered by a Lease, Parking Agreement and Parking Easement (Existing Agreements) with Cedar Fair, Forty Niners SC Stadium Company (StadCo), Santa Clara Stadium Authority, and the City of Santa Clara (Parties). The Existing Agreements provide that the Property be available for use by the Parties for Stadium and Great America parking through the terms of the Stadium Lease and the Great America Theme Park Lease or 2074. Per the Existing Agreements, a nominal annual income (i.e., less than $30,000 per year escalated over time) is derived from the Existing Agreements for the benefit of the Property owner. As such the Property was marketed as a future investment opportunity.

A summary of key terms are below:

Purchase Price:	$5,150,000.49. Cash at the close of escrow.
Deposit:	A non-refundable deposit of $500,000 to be deposited into escrow, three days following the execution of Purchase and Sale Agreement.
Contingency Period:	None.
Closing:	Closing to occur fifteen (15) days following the execution of the Purchase and Sale Agreement.

The form of Purchase and Sale Agreement is attached. Approval of the recommended action would authorize the City Manager execute the agreement and to make minor changes to the form of agreement subject to the approval of the City Attorney.

Sale of the Property is subject to the approval of the Oversight Board. The Oversight Board is scheduled to consider approval of the sale of the Property and the approval of a Purchase and Sale Agreement on May 18, 2018. Following the sale of the North South Property, the remaining Successor Agency properties to be sold include: Great America Theme Park, Hyatt Hotel and Techmart.

FISCAL IMPACT

The Successor Agency retired all debt of the former Redevelopment Agency with the proceeds from the Gateway 2 sale in Fiscal Year 2016-17. Sales proceeds not needed to pay closing costs will be distributed to the taxing entities including the City. The City receives approximately 10% of revenue distributed from the Successor Agency. It is anticipated that the City will receive a one-time distribution in the range of $500,000 as General Fund revenue.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to the CEQA Guidelines section 15378(a) as it has no potential for resulting in either direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board

outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Council acting as the governing body of the Successor Agency to the Former Redevelopment Agency of the City of Santa Clara adopt a Resolution:
1. Approving the sale and transfer of the North South Parcel property located at 4911 Great America Parkway (APN: 104-43-051) and authorizing the City Manager/Executive Officer to execute a Purchase and Sale Agreement with Jamestown Realty Co., LLC for a purchase of $5,150,000.49.
2. Approving and authorizing the City Manager/Executive Officer to execute minor amendments to the Agreement as necessary in coordination with the City Attorney and all documents necessary to accomplish the transfer.

Reviewed by: Ruth Shikada, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Resolution Authorizing the Purchase and Sale Agreement
2. Purchase and Sale Agreement with Jamestown Realty

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA ACTING AS THE GOVERNING BODY OF THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA APPROVING THE SALE OF 4911 GREAT AMERICA PARKWAY ("NORTH SOUTH PROPERTY"), AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT WITH JAMESTOWN REALTY CO., LLC MINOR AMENDMENTS AND DOCUMENTS NECESSARY TO ACCOMPLISH THE TRANSFER

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the former Redevelopment Agency of the City of Santa Clara ("Former RDA"), prior to its dissolution effective February 1, 2012, acquired certain properties including the property located at 4911 Great America Parkway ("North South Property") for redevelopment purposes;

WHEREAS, the Former RDA, along with all redevelopment agencies in the State of California, was dissolved effective February 1, 2012 in accordance with AB 1X 26 (the "Dissolution Act");

WHEREAS, the City in accordance with the Dissolution Act elected to act as the successor agency to the Former RDA;

WHEREAS, the Dissolution Act, as amended by AB 1484, clarified that the successor agency is a separate legal entity from the City;

WHEREAS, in accordance with the Dissolution Act, the assets of the Former RDA were transferred to the Successor Agency to the Former RDA;

WHEREAS, the Successor Agency prepared a Long Range Property Management Plan ("LRPMP") in accordance with the Dissolution Act, which LRPMP was approved by the Oversight Board to the Successor Agency and the California Department of Finance ("DOF");

WHEREAS, the LRPMP calls for the Successor Agency to dispose of the North South Property and the proceeds of sale to be used first to pay enforceable obligations of the Successor Agency and if there are remaining proceeds after payment of enforceable obligations, for the distribution of the remaining proceeds to the affected taxing entities;

WHEREAS, the Oversight Board to the Successor Agency authorized a disposition process for the

disposition of the Former RDA's properties, including the North South Property, including hiring a real estate broker to solicit offers for the North South Property;

WHEREAS, the Successor Agency received four offers to purchase the North South Property;

WHEREAS, Jamestown Realty Co., LLC ("Jamestown") submitted the highest offer for the purchase of the North South Property;

WHEREAS, Jamestown has offered to purchase the North South Property for $5,150,000.49 in accordance with the terms and conditions of a Purchase and Sale Agreement in substantially the form attached;

WHEREAS, the City Council acting as the governing board of the Successor Agency has determined that sale of the North South Property to Jamestown is in the best interest of the Successor Agency, meets the requirements of the LRPMP and is consistent with the Dissolution Act; and,

WHEREAS, the sale of the North South Property to Jamestown is subject to the approval of the Oversight Board.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council acting as the Governing Body of the Successor Agency finds the above recitals are accurate.

2. The City Council acting as the Governing Body of the Successor Agency hereby approves the sale of the North South Property to Jamestown in accordance with the terms and conditions of the Purchase and Sale Agreement substantially in the form on file with the City Clerk, subject only to such changes as are approved by the City Attorney and the City Manager and authorizes the City Manager acting as the Executive Officer of the Successor Agency to execute the Purchase and Sale Agreement and any and all documents necessary to accomplish the transfer of the North South Property, including, but not limited to, bills of sales, assignment and assumptions agreements, grant deeds, estoppel certificates and any other ancillary

documents.

3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

4. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA ACTING AS THE GOVERNING BODY OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2018, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST: _____
JENNIFER YAMAGUMA
ACTING CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
Purchase and Sale Agreement with Jamestown Realty Co

AGREEMENT FOR PURCHASE AND SALE OF PROPERTY

SELLER:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA

and

BUYER:

JAMESTOWN REALTY CO., LLC, an Ohio limited liability company

PROPERTY:

ADDRESS: 4911 Great America Parkway, Santa Clara, California

EXECUTION DATE: _____, **2018**

AGREEMENT FOR PURCHASE AND SALE OF PROPERTY

This Agreement for Purchase and Sale of Property (this "**Agreement**") is executed by and between Seller, as identified in the Key Terms (as set forth below), and Buyer, as identified in the Key Terms as of the Execution Date (as defined in the Defined Terms Below). Buyer and Seller hereby agree that Seller shall sell to Buyer and Buyer shall purchase from Seller, upon the following terms and conditions and for the Purchase Price set forth in the Key Terms, the Property, as defined in the Defined Terms.

LIMITATION OF SELLER'S LIABILITY AND BUYER'S WAIVER OF IMPORTANT RIGHTS:

BUYER AGREES THAT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND THE DOCUMENTS TO BE DELIVERED BY SELLER PURSUANT TO SECTION 7.3 BUYER IS BUYING THE PROPERTY "AS IS, **WHERE IS WITH ALL FAULTS AND LIMITATIONS" (AS MORE FULLY SET FORTH IN THIS AGREEMENT).**

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, SELLER'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY IN ALL CIRCUMSTANCES AND FOR ALL CLAIMS (AS THAT TERM IS DEFINED IN THE DEFINED TERMS, AND ALL REFERENCES IN THIS AGREEMENT TO "CLAIMS," "CLAIM," "Claims," or "Claim" SHALL HAVE SUCH MEANING) ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR THE SALE OF THE PROPERTY TO BUYER INCLUDING, BUT NOT LIMITED TO, SELLER'S BREACH OR TERMINATION OF THIS AGREEMENT, THE CONDITION OR QUALITY OF THE PROPERTY, SELLER'S TITLE TO THE PROPERTY, THE OCCUPANCY STATUS OF THE PROPERTY, THE SIZE, SQUARE FOOTAGE, BOUNDARIES, OR LOCATION OF THE PROPERTY, ANY COST OR EXPENSE INCURRED BY BUYER IN CONDUCTING ITS INVESTIGATION AND/OR DUE DILIGENCE IN PREPARATION FOR THE PURCHASE OF THE PROPERTY, OBTAINING OTHER ACCOMMODATIONS, MOVING, STORAGE OR RELOCATION EXPENSES, OR ANY OTHER COSTS OR EXPENSES INCURRED BY BUYER IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED AS PROVIDED IN SECTION 11.2 OF THIS AGREEMENT.

UPON EXECUTION OF THIS AGREEMENT AND PAYMENT OF THE DEPOSIT, , THEN BUYER SHALL NOT BE ENTITLED TO A RETURN OF THE DEPOSIT (AS DEFINED IN THE KEY TERMS) IN THE EVENT THAT THIS AGREEMENT IS TERMINATED BY SELLER AS RESULT OF BUYER'S BREACH OF THE TERMS OF THIS AGREEMENT; PROVIDED THAT (A) ANY CONDITIONS PRECEDENT BENEFITING BUYER HEREUNDER HAVE BEEN SATISFIED OR WAIVED, (B) SELLER HAS PERFORMED FULLY OR TENDERED PERFORMANCE OF ITS MATERIAL CLOSING OBLIGATIONS HEREUNDER AND (C) SELLER IS OTHERWISE WILLING TO CONVEY THE PROPERTY PURSUANT TO THIS AGREEMENT.

EACH PARTY AGREES THAT THE PARTIES SHALL NOT BE LIABLE TO EACH OTHER UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLE, THEORY, OR CAUSE OF ACTION ARISING OUT OF OR RELATED IN ANY WAY TO ANY CLAIM, INCLUDING, BUT NOT LIMITED TO, THE AFOREMENTIONED CLAIMS.

ANY REFERENCE TO A RETURN OF THE DEPOSIT CONTAINED IN THIS AGREEMENT SHALL MEAN A RETURN OF THE DEPOSIT, LESS ANY ESCROW CANCELLATION FEES APPLICABLE TO BUYER UNDER THIS AGREEMENT AND LESS FEES AND COSTS PAYABLE FOR SERVICES AND PRODUCTS PROVIDED DURING ESCROW AT BUYER'S REQUEST. TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER WAIVES ANY CLAIMS THAT THE PROPERTY IS UNIQUE AND BUYER ACKNOWLEDGES THAT A RETURN OF ITS DEPOSIT CAN ADEQUATELY AND FAIRLY COMPENSATE BUYER FOR ALL CLAIMS. UPON RETURN OF THE DEPOSIT TO BUYER, THIS AGREEMENT SHALL BE TERMINATED, AND BUYER AND SELLER SHALL HAVE NO FURTHER LIABILITY, OBLIGATION, OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THIS AGREEMENT, EXCEPT FOR THE TERMS, COVENANTS, AND CONDITIONS OF THIS AGREEMENT THAT SURVIVE THE CLOSING OR ANY TERMINATION OF THIS AGREEMENT (AS APPLICABLE) AND EXCEPT FOR THE INDEMNITY OBLIGATIONS, WHICH SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT (AS APPLICABLE). IF THE SALE TO BUYER CLOSES, THEN BUYER AND SELLER SHALL HAVE NO FURTHER LIABILITY, OBLIGATION, OR RESPONSIBILITY TO EACH OTHER IN CONNECTION WITH THIS AGREEMENT EXCEPT AS TO ANY PROVISIONS OF THIS AGREEMENT WHICH EXPRESSLY SURVIVE CLOSING.

SELLER'S LIMITATION OF LIABILITY AND BUYER'S WAIVERS PROVIDED IN THIS AGREEMENT ARE A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY SELLER UNDER THIS AGREEMENT AS AGREED TO BY BUYER AND SELLER.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER FURTHER WAIVES THE FOLLOWING, TO THE FULLEST EXTENT PERMITTED BY LAW:

(A) **ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE;**

(B) **RIGHT TO RECORD A LIS PENDENS AGAINST THE PROPERTY OR TO RECORD THIS AGREEMENT OR A MEMORANDUM THEREOF IN THE REAL PROPERTY RECORDS;**

(C) **ANY RIGHT TO INVOKE ANY EQUITABLE REMEDY THAT WOULD PREVENT SELLER FROM CONVEYING THE PROPERTY TO A THIRD-PARTY BUYER;**

(D) **ANY CLAIMS ARISING FROM THE ADJUSTMENTS OR PRORATIONS OR ERRORS IN CALCULATING THE ADJUSTMENTS OR PRORATIONS THAT ARE OR MAY BE DISCOVERED AFTER CLOSING, WHICH CLAIMS SHALL BE RESOLVED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5.2(e) OF THIS AGREEMENT;**

(E) **ANY REMEDY OF ANY KIND THAT BUYER MIGHT OTHERWISE BE ENTITLED TO AT LAW OR EQUITY (INCLUDING, BUT NOT LIMITED TO, RESCISSION OF THIS AGREEMENT), EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT;**

(F) **ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT;**

(G) **ANY RIGHT TO AVOID THE SALE OF THE PROPERTY OR REDUCE THE PRICE OR HOLD SELLER LIABLE FOR ANY CLAIMS ARISING OUT OF OR RELATED IN ANY WAY TO THE CONDITION, CONSTRUCTION, REPAIR, OR TREATMENT OF THE PROPERTY, OR ANY DEFECTS, APPARENT OR LATENT, THAT MAY NOW OR HEREAFTER EXIST WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY CLAIMS RELATING TO ANY ORDINANCES AND ANY REPAIR COSTS REQUIRED THEREUNDER;**

(H) **ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO ENCROACHMENTS, EASEMENTS, BOUNDARIES, SHORTAGES IN AREA OR ANY OTHER MATTER THAT WOULD BE DISCLOSED OR REVEALED BY A SURVEY OR INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC RECORDS;**

(I) **ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO THE SQUARE FOOTAGE, SIZE, OR LOCATION OF THE PROPERTY, OR ANY INFORMATION PROVIDED ON THE MULTIPLE LISTING SERVICE, OR BROCHURES OR WEB SITES OF SELLER OR SELLER'S AGENT OR LISTING BROKER OR ANY STATEMENTS, ACTIONS OR CONDUCT OF SELLER'S AGENT OR LISTING BROKER; AND**

(J) **ANY CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO TENANTS OR OCCUPANTS OF THE PROPERTY OR INCOME, IF ANY, TO BE DERIVED FROM THE PROPERTY OR HAZARDOUS MATERIALS (AS DEFINED IN THE DEFINED TERMS OF THIS AGREEMENT).**

THE ABOVE PROVISIONS SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED HEREBY, OR THE EARLIER TERMINATION OF THE AGREEMENT, IF PERMITTED. IF THERE IS A

CONFLICT BETWEEN THE ABOVE PROVISIONS AND THE REMAINDER OF THIS AGREEMENT, THE PROVISIONS OF THE REMAINDER OF THIS AGREEMENT SHALL PREVAIL.

SELLER'S INITIALS _____/__ **BUYER'S INITIALS** _____/__

ARTICLE I.

KEY TERMS

The following "**Key Terms**" shall apply to this Agreement:

1.1 "**Seller**": Successor Agency to the Redevelopment Agency of the City of Santa Clara

"**Seller's Contact Person**": Ruth Shikada

"**Seller's Notice Address**":

City Manager's Office
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Manager

With copies to:

City Attorney's Office
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Brian Doyle

And to:

Goldfarb & Lipman, LLP
1300 Clay Street 11th Floor
Oakland, CA 94612
Attn: Karen Tiedemann

1.2 "**Buyer**": Jamestown Realty Co., LLC

"**Specify Buyer Entity Type**": an Ohio limited liability company

"**Buyer's Contact Person**": Timon M. Kaple

"**Buyer's Notice Address**":

Jamestown Realty Co., LLC
c/o DeBartolo Corporation
7620 Market Street
Youngstown, Ohio 44512
Attn; Timon M. Kaple

"**Purchase Price**": Five Million One Hundred Fifty Thousand and 49/100 Dollars ($5,150,000.49)

1.3 "**Deposit**": Buyer has provided a deposit in an amount equal to Five Hundred Thousand Dollars ($500,000) which deposit has been delivered to Escrow Agent. The Deposit will be non-refundable (except upon a default by Seller or as specifically provided in this Agreement). In addition to, and not in lieu of the delivery to the Escrow Agent of the Deposit, concurrently with the execution of this Agreement, Buyer shall also wire transfer to the Escrow Agent, for delivery to Seller, the amount of $1000.00 (the "Independent Consideration"), which Independent Consideration Seller and Buyer hereby mutually acknowledge and agree represents adequate bargained for consideration for Seller's execution and delivery of this Agreement and Buyer's right to elect to purchase the Property as provided herein. Said Independent Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement, is nonrefundable to Buyer in all events and shall not be applied to the Purchase Price at Closing. The Independent Consideration shall immediately be released by the Escrow Agent and delivered by wire transfer to Seller. The Escrow Agent is hereby authorized and directed by Buyer and Seller to release the Independent Consideration to Seller immediately upon the Escrow Agent's receipt thereof, without further direction.

1.4 "**Closing Date**": fifteen (15) days after execution of this Agreement.

1.5 "**County**": Santa Clara County located in the State.

1.6 "**State**": California.

ARTICLE II.

DEFINED TERMS

2.1 Definitions. The following "**Defined Terms**" shall have the following meanings when used in this Agreement:

(a) "**Agreement**": This Agreement for Purchase and Sale of Property executed by both Seller and Buyer.

(b) "**Assignment of Lease**": As defined in Section 7.3.

(c) "**Bid Package**": All documentation and information provided to or otherwise made available to Buyer at least two (2) Business Days prior to execution of this Agreement, by Seller, by Seller's agent or on the Seller's website related to the Property.

(d) "**Bill of Sale**": As defined in Section 7.3.

(e) "**Business Day**": Any day, other than a Saturday, Sunday or legal holiday, on which business is conducted by national banking institutions in San Francisco, California.

(f) "**Cedar Fair Lease**" means that certain lease entered into by and between Kings Entertainment Company, a North Carolina corporation and the Redevelopment Agency of the City of Santa Clara dated as of June 1, 1989 as amended by that certain First Amendment to Ground Lease dated as of October 4, 1994, as further amended by that certain Second Amendment to Ground Lease dated as of March 18, 1997, as further amended by that certain Third Amendment to Ground Lease dated as of May 25, 1999 and as further amended by that certain Fourth Amendment to Ground Lease dated as of January 1, 2012. Cedar Fair Tenant is Kings Entertainment Company's successor in interest under the Cedar Fair Lease. The Cedar Fair Lease gives the Cedar Fair Tenant certain rights to the Property.

(g) "**Cedar Fair Tenant**" means Cedar Fair Southwest, Inc., the tenant pursuant to the Cedar Fair Lease.

(h) "**Claims**": Any and all claims, demands, causes of action, whether administrative or judicial, losses, costs (including any and all reasonable attorneys', experts', and consultants' fees, court costs, and reasonable costs of investigation, litigation, and settlement), expenses, sanctions, orders, curtailments, interest, liabilities, penalties, fines, expenses, liens, judgments, compensation, fees, loss of profits, injuries, death, response costs and/or damages, of any kind whatsoever, whether direct or indirect, known or unknown, fixed or contingent, joint or several, criminal or civil, or in law or in equity.

(i) "**Closing**": The closing of the transaction contemplated by this Agreement.

(j) "**Deed**": The grant deed conveying fee title to the Real Property to Buyer, duly executed by Seller and acknowledged and in proper form for recordation in the County.

(k) "**Escrow Agent**": First American Title Insurance Company, National Commercial Services, 1737 North First Street, Suite 500, San Jose, California (Escrow Officer: Linda Tugade; email: ltugade@firstam.com; telephone; (408) 579-8340.

(l) "**Event**": Any fire or other casualty affecting the Property or any actual or threatened (to the extent that Seller has current actual knowledge thereof) taking or condemnation of all or any portion of the Property.

(m) "**Execution Date**": The date set forth on the cover page of this Agreement, which date shall be the later of the date Buyer and Seller have each executed this Agreement.

(n) "**Hazardous Materials**": Any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics. The term "**Hazardous Materials**" includes, without limitation, any substance regulated under any and all federal, state and local statutes, laws (including case law), regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions, whether now or hereafter in effect, relating to human health, the environment or to emissions, discharges or releases of pollutants, contaminants, toxic substances, hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous materials or wastes or the clean-up or other remediation thereof.

(o) "**Hazardous Materials Laws**": all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, and all federal and state court decisions, consent decrees and orders interpreting or enforcing any of the foregoing, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 United States Code section 9601, et seq., the Resource Conservation and Recovery Act, 42 United States Code section 6901, et seq., and the Clean Water Act, 33 United States Code section 1251, et seq.; the California Hazardous Waste Control Act, California Health & Safety Code ("**H.&S.C.**") §§25100 et seq.; California Hazardous Substance Account Act, H.&S.C. §§25300 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. §§25249 et seq.; the California Hazardous Waste Management Act, H.&S.C. §§25170.1 et seq.; H.&S.C. §§25501 et seq. (Hazardous Materials Response Plans and Inventory); the Porter Cologne Water Control Act, Ca. Water Code §§13000 et seq.; H&S.C. §§25280, et seq. (Underground Storage of Hazardous Substances); H&S.C. §25915 et seq.; H.&S.C. § 25359.7; H.&S.C. §§2595 et seq.; Cal Labor Code §§ 6501.5 et seq.; and Title 22 of the California Code of Regulations, all as amended to the date hereof.

(p) "**Hazardous Materials Reports**": Any and all studies, reports, analyses, information, or other written records regarding the presence or absence of Hazardous Materials at, on, in, under or relating to the Land.

(q) "**Intangible Property**": The Permits and any other personal property of worth that is not physical in nature that is owned by Seller and that relates

to or involves the Real Property, including, without limitation intellectual property or goodwill.

(r) "**Land**": Fee title to the parcel of real property, as more particularly described on the attached **Exhibit A**. If the legal description is not complete or is inaccurate, this Agreement shall not be invalid provided the identity of the Property can otherwise be determined from this Agreement, in which event the legal description shall be completed or corrected after the Execution Date to meet legal requirements as mutually agreed by the parties, such agreement not to be unreasonably withheld.

(s) "**Leases**": The South Lease, the Cedar Fair Lease and any and all other leases, tenancies, licenses and other rights of occupancy or use of or for any portion of the Real Property or the Personal Property (including all amendments and renewals thereof).

(t) "**Net Proceeds**": The Proceeds less any sums reasonably incurred by Seller prior to and/or after Closing to process and resolve a claim with Seller's insurance company or any condemning authority, including but not limited to reasonable attorneys' fees and costs, up to and equal to the Purchase Price.

(u) "**Parking Agreement**" means that certain Parking Agreement by and among the Santa Clara Stadium Authority, Cedar Fair Tenant, Cedar Fair, L.P., the City of Santa Clara and Forty Niners Stadium, LLC dated as of January 1, 2012 which gives the Parking Agreement Parties certain rights over the Property as set forth in the Parking Agreement.

(v) "**Parking Agreement Parties**" means the parties to the Parking Agreement.

(w) "**Permits**": Any and all licenses, permits, authorizations, certificates of occupancy and other approvals that are in effect for the current use and operation of the Property.

(x) "**Personal Property**": All tangible personal property and fixtures owned by Seller and located on or attached to the Real Property. "**Personal Property**" does not include property owned by others such as Tenants or the Parking Agreement Parties under Leases or the Parking Agreement. The term "**Personal Property**" shall not include insurance policies, utility deposits or bank accounts.

(y) "**Pre-Existing Insurance Claims**": Any insurance claims made or to be made by Seller for any Event occurring prior to the Execution Date relating to the Property.

(z) "**Proceeds**": Any insurance proceeds or condemnation awards payable to Seller on account of any Event.

(aa) "**Proceeds from Pre-Existing Insurance Claims**": Any proceeds resulting from any Pre-Existing Insurance Claims, regardless of whether such proceeds are received prior to or after Closing.

(bb) "**Property**": Collectively, the Real Property, the Personal Property and the Intangible Property.

(cc) "**Prorations Date**": The calendar day prior to the Closing Date.

(dd) "**Real Property**": The Land, together with Seller's interest in the buildings and other improvements and fixtures located thereon or attached thereto, together with Seller's interest in all rights of ways, streets, alleys, air rights, developments, water rights, riparian rights and to water stock, ingress and egress, easements, rights, privileges, hereditaments and appurtenances thereto or in any way appertaining thereto.

(ee) "**Service Contracts**": Any and all management, service, maintenance, supply or operating contracts, or other agreements, however termed, written or oral, affecting the use, ownership, maintenance or operation of all or any part of the Property (but specifically excluding any Leases and any management agreements).

(ff) "**South Lease**": That certain lease by and between the former Redevelopment Agency of the City of Santa Clara, predecessor in interest to the Seller and Cazimer Szlendak and Gerald I Waissman, d/b/a Caz Development Company, predecessor in interest to the Seller dated as of June 5, 1988, as amended by the First Amendment dated as of June 17, 1999 and as assigned by the Assignment of Leases dated October 12, 1988.

(gg) "**Tenants**": The tenant under the South Lease and the Cedar Fair Tenant and those other persons or entities holding rights of tenants under leases, if any.

(hh) "**Title Commitment**": The commitment for issuance of an owner's title insurance policy issued by the Title Company in favor of Buyer in the full amount of the Purchase Price.

(ii) "**Title Company**": First American Title Insurance Company at the office selected by the Escrow Agent.

(jj) "**Title Policy**": A 2006 ALTA extended Owner's Title Insurance Policy insuring Buyer in the amount of the Purchase Price, subject only to the Acceptable Encumbrances.

(kk) "**Title Report**": The First American Title Insurance Company Title Report dated as of January 11, 2018, Order Number:NCS-886958-SC.

2.2 **Other Defined Terms**. Other capitalized terms contained in this Agreement shall have the meanings assigned to them herein.

ARTICLE III.

CONDITION

3.1 Information Regarding Property. Seller has provided and may in the future provide to Buyer documents and information pertaining to the Property, including without limitation, the Bid Package. All of such information is provided simply as an accommodation to Buyer, and except as otherwise provided in this Agreement or in any documents delivered by Seller pursuant to Section 7.3, Seller makes no representations as to their accuracy or completeness. Buyer understands that some of the foregoing documents and information were provided by others to Seller and were not prepared by or verified by Seller. In no event shall Seller be obligated to deliver or make available to Buyer any of Seller's internal memoranda, attorney-client privileged materials or appraisals of the Property, if any.

3.2 No Due Diligence Period. Buyer is familiar with the Property, the South Lease, the Parking Agreement, the Cedar Fair Lease and all matters pertaining to the physical, structural, soil, drainage, environmental, economic, zoning, land use and other governmental compliance matters and condition respecting the Property, including without limitation the items included in the Bid Package; accordingly, Buyer does not require any due diligence period or contingency.

3.3 Access. Until the Closing Date, provided this Agreement is not earlier terminated as permitted herein, Buyer and Buyer's agents and contractors shall be entitled to enter upon the Property at all reasonable times, but only for the purpose of conducting tests and making site inspections and investigations. In doing so, however, Buyer agrees (a) that no invasive testing may be conducted without Seller's prior consent, which may be withheld by Seller in its sole discretion, (b) not to cause any damage or make any physical changes to the Property and (c) not to interfere with the rights of Parking Agreement Parties or others who may have a legal right to use or occupy the Property. Seller or its representative shall have the right to be present to observe any testing or other inspection performed on the Property. Under no circumstances shall the right of entry granted herein be interpreted as delivery of possession of the Property prior to Closing. Buyer and Buyer's agents and contractors shall maintain (or cause to be maintained) at all times during their entry upon the Property, commercial general liability insurance with limits of not less than Two Million Dollars ($2,000,000) combined single limit, bodily injury, death and property damage insurance per occurrence with proper endorsements naming Seller as an additional insured. At Seller's request, Buyer, Buyer's agents and contractors shall each deliver a certificate issued by the insurance carrier of each such policy to Seller evidencing the endorsements naming Seller as an additional insured prior to entry upon the Property.

3.4 Indemnification. Buyer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Seller) Seller, its board members, its officers, its employees and its Oversight Board members from and against any and all Claims to the extent resulting from, arising from, or occasioned in whole or in part by any act or omission by Buyer, its agents, contractors, employees, representatives or invitees resulting from Buyer's inspection, examination and inquiry of or on the Property (but not including any claims resulting from the discovery or disclosure of pre-existing physical or environmental conditions or the non-negligent aggravation of pre-existing physical or environmental conditions on, in, under or about the Property), except to the extent resulting from, arising from, or occasioned in whole or in part by any negligence or willful misconduct of Seller, its board members, officers and/or employees. The provisions of this Section shall survive Closing or termination of this Agreement.

3.5 Buyer's Obligations with Respect to Inspections. If following Seller's prior written approval, Buyer or its agents, employees or contractors take any sample from the Property in connection with any testing, Buyer shall, upon the request of Seller, provide to Seller a portion of such sample being tested to allow Seller, if it so chooses, to perform its own testing. Promptly after Buyer's physical examinations of the Property, but in no event later than ten (10) Business Days after the damage occurs, Buyer shall repair the damage, if any, caused by such physical examinations. Buyer shall promptly pay for all inspections and shall not suffer or permit the filing of any liens arising from such inspections against the Property. If any such liens are filed, Buyer shall promptly cause them to be released or otherwise eliminated from being a lien upon the Property. In the event the transaction contemplated by this Agreement is not closed for any reason whatsoever, Buyer shall remain obligated with respect to the indemnities contained in Section 3.4 and the repair obligations set forth in this Section 3.5. The provisions of this Section shall survive termination of this Agreement.

3.6 Condition of the Property.

(a) Based upon the Buyer's familiarity with, and due diligence relating to the Property and pertinent knowledge as to the market in which the Property is situated and in direct consideration of Seller's decision to sell the Property to Buyer for the Purchase Price, Buyer does hereby acknowledge, represent, warrant and agree to and with Seller that, except as otherwise expressly provided in this Agreement and the Deed and the other Documents delivered pursuant to Section 7.3: (i) Buyer is expressly purchasing the Property in its existing condition "**AS IS, WHERE IS, AND WITH ALL FAULTS**" whether known or unknown with respect to all facts, circumstances, conditions and defects, both patent and latent; (ii) Seller has no obligation to inspect for, repair or correct any such facts, circumstances, conditions or defects or to compensate Buyer for same; (iii) Seller specifically bargained for the assumption by Buyer of all responsibility to inspect and investigate the Property and of all risk of adverse conditions and has structured the Purchase Price and other terms

of this Agreement in consideration thereof; (iv) Buyer undertook all such inspections and investigations of the Property as Buyer deems necessary or appropriate with respect to the Property and the suitability of the Property for Buyer's intended use, and based upon same, Buyer is relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; (v) Seller is not making and has not made any warranty or representation with respect to any materials, any marketing information, or offering memoranda, or pamphlets listing or describing the property, or other data provided by Seller or others on behalf of Seller to Buyer (whether prepared by or for the Seller or others) or the education, skills, competence or diligence of the preparers thereof or the physical condition or quality or any other aspect of all or any part of the Property as an inducement to Buyer to enter into this Agreement and thereafter to purchase the Property or for any other purpose; (vi) prior to the Execution Date, Buyer had full access to the Bid Package and thoroughly reviewed or had a reasonable opportunity to review this Agreement and the contents of the Bid Package and freely consulted with persons of Buyer's own choosing regarding the terms and conditions of this Agreement and the Bid Package, including but not limited to consultation with legal counsel of its own choosing; and (vii) by reason of all the foregoing, Buyer is assuming the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE DEED, AND THE OTHER DOCUMENTS TO BE DELIVERED PURSUANT TO SECTION 7.3, SELLER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WARRANTIES OF HABITABILITY AND FITNESS FOR PARTICULAR PURPOSES), WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES WITH RESPECT TO THE PROPERTY, TAX LIABILITIES, ZONING, LAND VALUE, AVAILABILITY OF ACCESS OR UTILITIES, INGRESS OR EGRESS, GOVERNMENTAL APPROVALS, OR THE SOIL CONDITIONS OF THE LAND. BUYER FURTHER ACKNOWLEDGES THAT BUYER IS BUYING THE PROPERTY "**AS IS**" AND IN ITS PRESENT CONDITION AND THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE DEED AND THE OTHER DOCUMENTS TO BE DELIVERED PURSUANT TO SECTION 7.3, BUYER IS NOT RELYING UPON ANY REPRESENTATION OF ANY KIND OR NATURE MADE BY SELLER, OR ANY OF ITS EMPLOYEES OR AGENTS WITH RESPECT TO THE LAND OR THE PROPERTY, AND THAT, IN FACT, NO SUCH REPRESENTATIONS WERE MADE EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE

DEED AND THE OTHER DOCUMENTS TO BE DELIVERED PURSUANT TO SECTION 7.3.

(c) WITHOUT IN ANY WAY LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRESENCE ON OR BENEATH THE LAND (OR ANY PARCEL IN PROXIMITY THERETO) OF HAZARDOUS MATERIALS. BY ACCEPTANCE OF THIS AGREEMENT AND THE DEED, BUYER ACKNOWLEDGES THAT BUYER'S OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF SUCH LAND HAS BEEN ADEQUATE TO ENABLE BUYER TO MAKE BUYER'S OWN DETERMINATION WITH RESPECT TO THE PRESENCE ON OR BENEATH THE LAND OF SUCH HAZARDOUS MATERIALS.

(d) BUYER ACKNOWLEDGES AND AGREES THAT THE SELLER SHALL NOT BE RESPONSIBLE FOR ANY CLAIMS ARISING OUT OF OR RELATING TO MOLD AND/OR OTHER MICROSCOPIC ORGANISMS AT THE PROPERTY INCLUDING BUT NOT LIMITED TO PROPERTY DAMAGES, PERSONAL INJURY, ADVERSE HEALTH EFFECTS, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE OR LOSS OF VALUE AND BUYER HEREBY IRREVOCABLY RELEASES SELLER, ITS BOARD MEMBERS, ITS OFFICERS, ITS EMPLOYEES AND ITS OVERSIGHT BOARD MEMBERS FROM THE SAME. BUYER HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS DISCLOSURE AND RELEASE AND AGREES TO THE PROVISIONS CONTAINED HEREIN.

(e) Other than as expressly set forth in this Agreement, in the Deed and in the other documents to be delivered by Seller pursuant to Section 7.3, neither Seller nor any agents, representatives, or employees of Seller have made any representations or warranties, direct or indirect, oral or written, express or implied, to Buyer or any agents, representatives, or employees of Buyer with respect to the Property, including, without limitation, (a) the physical condition of the Property (including the presence or absence of Hazardous Materials), zoning, set-back and other ordinances, codes, regulations, rules, requirements and orders affecting occupancy or operation of the Property, plans, specifications, any affordable housing restrictions or requirements, costs or other estimates, projections, including income and expense projections concerning the same, and (b) the Property's compliance with any environmental laws, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic

Substances Control Act (15 U.S.C. Section 2601 et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100-25600), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.). Buyer specifically waives and releases Seller and its respective successors, assigns, board members, Oversight Board members, representatives, employees, agents, adjustors, accountants, officers, officials, and attorneys from (1) all warranties, express, implied, statutory or otherwise (including warranties of merchantability and warranties of fitness for use or acceptability for the purpose intended by Buyer) with respect to the Property or its condition or the prospects, operations or results of operations of the Property except with respect to the express representations and warranties contained in the Agreement, the Deed and the other documents to be delivered pursuant to Section 7.3, and (2) except with respect to Claims arising out of Seller's breach of any representation, warranty, covenant or agreement in this Agreement, the Deed and any other documents delivered by Seller pursuant to Section 7.3, all Claims that Buyer would have against Seller.

In connection with this Section 3.6, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

Thus, notwithstanding the provisions of Section 1542 or of any similar statute, and for the purpose of implementing a full and complete release, Buyer expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all Claims which are known and all Claims which Buyer does not know or suspect to exist in Buyer's favor at the time of execution of this Agreement and that this Agreement contemplates the extinguishment of all such Claims.

Initials of Buyer: _____

ARTICLE IV.

CONDITIONS FOR CLOSING

4.1 Seller Conditions. Buyer acknowledges that this Agreement is subject to the approval of (i) Seller's Governing Board and (ii) Seller's Oversight Board not later than three (3) Business Days prior to the Closing Date. If this Agreement is disapproved by any of these entities, Seller shall immediately notify Buyer of the

disapproval and this Agreement shall automatically terminate as of the date of Seller's written notification to Buyer.

4.2 Buyer's Conditions. The obligation of Buyer to purchase the Property from Seller, and to perform the obligations required to be performed by Buyer at the Closing, are subject to each of the following conditions precedent ("**Buyer's Conditions**"):

(a) Closing Documents. Seller shall have tendered at Closing all closing documents to which Seller is a party, duly signed by Seller.

(b) Compliance with Agreement. Seller shall have performed and complied in all material respects with its obligations under this Agreement.

(c) Representations and Warranties. All of Seller's representations and warranties under Sections 9.2 are true and correct in all material respects as of Closing.

(d) Title Policy. The Title Company shall have irrevocably committed to issue, but for payment of premium (other than premium or other cost to be paid by the Seller pursuant to this Agreement), the Title Policy.

(e) Seller Approval. The condition set forth in Section 4.1 shall be satisfied not later than two (2) Business Days before the Closing Date.

4.3 Effect of Non-Satisfaction of a Condition. If any condition set forth in Section 4.2 is not satisfied or waived by Buyer on or before the Closing Date, Buyer may, in its sole and absolute discretion, terminate this Agreement by notice to the Seller. If this Agreement is terminated pursuant to this Article IV, notwithstanding any other provision of this Agreement, all Buyer documents shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder, except for the Seller's right to retain the Deposit, any obligations which expressly survive the termination of this Agreement and the payment of any escrow and title cancellation fees which shall be borne equally by Buyer and Seller.

ARTICLE V.

TERMS OF PAYMENT; CLOSING ADJUSTMENTS

5.1 Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Credit for Deposit. If Buyer fails to deliver the Deposit as and when required by this Agreement, Seller, at Seller's sole discretion, may terminate this Agreement by providing notice to Buyer of such termination and, thereafter, this Agreement shall be terminated and neither party shall

have any further rights or obligations hereunder. The Deposit is consideration for the rights granted to Buyer to purchase the Property and shall be non-refundable except as otherwise provided herein. If and only to the extent Buyer in its sole discretion and dealing entirely with the Escrow Agent (it being acknowledged by Buyer that Seller shall have no responsibility or liability in connection therewith) supplies Buyer's Taxpayer Identification Number to the Escrow Agent and executes all necessary forms required by the Escrow Agent, the Deposit shall be held in an interest bearing account with a financial institution selected by the Escrow Agent. Any accrued interest shall become a part of the Deposit to be applied or disposed of in the same manner as the Deposit. At Closing Buyer shall receive a credit against the Purchase Price in the amount of the Deposit (less any accrued interest thereon) and the Deposit (less any accrued interest thereon) shall be delivered to Seller. Any accrued interest on the Deposit shall be delivered upon Closing by the Escrow Agent to Buyer by wire transfer of good federal funds from the Escrow Agent. Upon execution of this Agreement and payment of the Deposit, the Deposit shall become immediately non-refundable to Buyer unless this Agreement is terminated (A) due to a default by Seller or (B) as a result of the failure of a condition to Closing benefiting Buyer.

(b) Payment at Closing. The balance of the Purchase Price, subject to the prorations and adjustments for which provision is herein made, shall be paid by Buyer to the Escrow Agent by wire transfer to Escrow Agent's account at the time of Closing, and the Escrow Agent shall immediately upon Closing disburse such funds pursuant to the Closing Statement. Buyer understands and acknowledges that the purchase of the Property and this Agreement IS NOT contingent on Buyer obtaining financing for the purchase of the Property. Wired funds must be received in the Escrow Agent's account prior to 12:00 p.m. Pacific Standard Time on the Closing Date for Seller to receive the benefit of such funds. Accordingly, if funds are received after 12:00 p.m. Pacific Standard Time on any day, they shall not be deemed received until the following Business Day. If the Escrow Agent does not receive the funds on the Closing Date and Seller elects not to exercise any of its default remedies, Buyer shall pay interest on the Purchase Price from the Closing Date until the funds are deemed to have been received by the Escrow Agent, at the rate of fifteen percent (15%) per annum. The interest amount represents a fair and reasonable estimate of the costs that Seller will incur by reason of any late payment of funds due on the Closing Date.

5.2 Prorations; Adjustments; Closing Costs. The following adjustments and prorations shall be computed as of the Prorations Date and the Purchase Price shall be adjusted to reflect such prorations; provided, however, the figures utilized by Seller for the proration of rents, security deposits and other expenses for the Property may be calculated using information from a date prior to the Prorations Date, but in no event more than four (4) Business Days prior to the Prorations

Date. All costs and expenses of the Property with respect to the period on and prior to the Prorations Date shall be charged to Seller. All costs and expenses of the Property with respect to the period after the Prorations Date shall be charged to Buyer.

(a) Revenues and Expenses. Seller shall be entitled to receive all revenues and shall be charged with all expenses relating to the ownership and operation of the Property through the Prorations Date. All revenues and expenses shall be prorated as of the Prorations Date. If, as of Closing, any rent is in arrears for the calendar month in which Closing occurs but not for prior periods, there shall be no proration of delinquent rent or revenues. All revenues from the Property collected by Seller after Closing shall be credited first to the obligations then owing to Seller for its period of ownership, remitting the balance due to Buyer for the period after the Closing, if any, but Seller will not institute litigation against any such tenant or party in possession until six months after the Closing and no such litigation shall seek termination of the Lease or other governing agreement in question, termination of the tenant's or party in possession's right to possession under such Lease or other agreement. All revenues from the Property received by Buyer after the Closing shall be applied to rent for the period on and after the Closing Date before payment by Buyer to Seller for application to revenues delinquent as of the Closing. Buyer will use reasonable efforts for a period of not more than one hundred eighty (180) days following the Closing to include in its rent invoices, the amount of any delinquent rents as of the Closing. In no event shall Buyer be obligated to bring any suit against any Tenant or other party in possession or exercise any of its rights or remedies under any Lease in order to collect any such Revenue. The provisions of this Section shall survive Closing.

(b) Rent Prepayments. Buyer shall receive credits against the Purchase Price at Closing for any prepaid rents paid to Seller.

(c) Taxes and Assessments; Pending and Certified Liens. To the extent applicable, taxes and assessments for the year of Closing shall be prorated as of the Prorations Date upon the amount of such taxes for the year of Closing (using any maximum discount available) if the amount of such taxes is known at the time of Closing; if such amount cannot be then ascertained, proration shall be based upon the amount of the taxes for the preceding year (using any maximum discount available). If any tax proration shall be based upon the amount of taxes for the year preceding the year of Closing, such taxes, at the request of either party, shall be reprorated and adjusted between the parties, on the basis of the tax bills for the year of Closing when received (using any maximum discount available). To the extent that Seller completes any tax appeal which results in savings for periods prior to but not after Closing, Seller shall subject to rights of the Tenants be entitled to retain all savings. To the extent that

Seller completes any tax appeal which results in savings for periods prior to and after Closing, the parties agree to reprorate any such taxes and to share in the costs of such appeal, including attorney's fees and costs, based on the parties' prorata ownership of the Property for such tax period. City/County, public liens and/or similar liens (collectively, "**Public Liens**"), if any, certified or for which the work has been substantially completed on the date of Closing and for which payment is due in full as of the Closing, shall be paid by Seller. Any Public Liens for which an installment payment is due and/or for which the owner of the Property has the right to make installment payments on an annual basis (as opposed to being paid in a lump sum), shall be prorated for the year of Closing. Buyer shall assume all obligations for any other Public Liens payable from and after Closing. Other assessments not included on the regular property tax bills, license fees for transferred licenses, and state or municipal fees and taxes for the Property for the applicable fiscal period during which Closing takes place shall be adjusted as of the Prorations Date on the basis of the most recent ascertainable assessments and rates, and shall be re-prorated as necessary pursuant to Section (f) below. The provisions of this Section shall survive Closing.

(d) Other Prorations. In addition to the previously stated adjustments and prorations at Closing the parties shall also make such adjustments and prorations to the Purchase Price as are customary and usual in transactions similar to the transaction contemplated by this Agreement.

(e) Re-proration and Post-Closing Adjustments. In the event that any adjustments or prorations cannot be apportioned or adjusted at Closing by reason of the fact that final or liquidated amounts have not been ascertained, or are not available as of such date, the parties hereto agree to apportion or adjust such items on the basis of their best estimates of the amounts at Closing and to re-prorate any and all of such amounts promptly when the final or liquidated amounts are ascertained. In the event of any omission or mathematical error on the Closing Statement, or if the prorations, apportionments and computations shall prove to be incorrect for any reason, the same shall be promptly adjusted when determined and the appropriate party paid any monies owed. This provision shall survive Closing for a period of twelve (12) months.

(f) Tenant Pay Items. Notwithstanding anything to the contrary in this Section 5.2, (A) to the extent the Tenants are paying any expenses (including, without limitation, real property taxes and assessments and/or utility charges) otherwise subject to proration hereunder directly to the applicable governmental entity, utility or services provider, or other third party, no proration of such expenses shall be made at Closing, and (B) to the extent that the Tenants are responsible for payment of 100% of any category of expenses otherwise subject to proration in the form of

operating expense reimbursements under the Leases, no proration of such expenses shall be made at Closing.

5.3 Costs and Expenses. Closing and Escrow costs shall be allocated between Buyer and Seller in accordance with the custom of Santa Clara County. Attorneys' fees, consulting fees, and other due diligence expenses shall be borne by the party incurring such expense. The provisions of this Section shall survive Closing.

ARTICLE VI.

TITLE

6.1 Title Report. The Title Report was included in the Bid Package. The Title Report was the basis upon which Buyer reviewed the status of title to the Real Property and in consideration thereof, Buyer agrees to accept from the Title Company the Title Policy. Buyer shall take title to the Real Property subject to the following, all of which shall be deemed "**Acceptable Encumbrances**":

(a) Exceptions Numbers: 1-3, 5-7, 9-21.

(b) Liens for real property taxes and assessments not yet due and payable, subject to any prorations provided for herein;

(c) The standard printed exceptions contained in owner's title insurance policies, including, without limitation, rights of tenants and/or other occupants of the Property, if any;

(d) Matters that would be disclosed by an accurate survey or personal inspection of the Property;

(e) Zoning and other regulatory laws and ordinances affecting the Property;

(f) Any matters that are approved in writing by Buyer.

6.2 Updated Title Report. Immediately upon execution of the Agreement, and at Buyer's election again on or before the Closing Date, Buyer and/or Seller may cause the Title Company to update the Title Report. If the updated Title Report contains exceptions that do not constitute Acceptable Encumbrances, Buyer may deliver to Seller written objection thereto prior to the completion of the Closing. If Buyer timely and properly delivers written objection(s) to any such item(s) other than an Acceptable Encumbrance, then Seller shall notify Buyer in writing within three (3) Business Days after receipt of Buyer's notice of Buyer's title objections (but, in any event, prior to the Closing Date) whether Seller elects to remove, discharge or correct the same (and Seller's failure to respond in writing within such period shall be deemed an election by Seller not to remove, discharge or correct Buyer's title objections), and Seller shall have the right but not the

obligation to use reasonable diligence to remove, discharge or correct such liens, encumbrances or objections and shall have a period of thirty (30) days after receipt of notice thereof in which to do so (and if necessary the Closing Date shall be extended on a day for day basis) provided, however, Buyer shall be deemed to object to any consensual liens or encumbrances disclosed in the updated Title Report without any need to object to such items in writing or otherwise. Seller shall not in any event be obligated to pay any sums of money or to litigate any matter in order to remove, discharge or correct any lien, encumbrance or objection; provided, however, Seller shall be obligated to remove, discharge or correct any consensual liens and encumbrances disclosed in the updated Title Report and, to the extent the cost therefor does not exceed two percent (2%) of the Purchase Price, nonconsensual liens. Any attempt by Seller to remove other title exceptions (i.e., exceptions that Seller is not obligated to remove pursuant to the preceding sentence or otherwise in this Article VI) shall not impose an obligation upon Seller to remove such exceptions. If Seller shall be unwilling or unable to remove or discharge such other liens, encumbrances or objections within such period, then Buyer may, at its option, no later than five (5) Business Days after Seller notifies Buyer of Seller's unwillingness or inability, either terminate this Agreement or accept title in its then existing condition without reduction of the Purchase Price. If Buyer shall elect to terminate this Agreement, the Deposit, shall be returned to Buyer, this Agreement shall terminate, and thereafter neither Seller nor Buyer shall have any further rights or obligations hereunder except such obligations of this Agreement which specifically survive termination. If the updated Title Report contains no exceptions other than those reflected on the Title Report and other Acceptable Encumbrances or if Buyer fails to give written notice of objection(s) to Seller prior to completion of Closing, all matters reflected on the updated Title Commitment shall, except with respect to matters that are deemed objections of Buyer, be deemed Acceptable Encumbrances, this Agreement shall remain in full force and effect and Buyer shall, subject to satisfaction of the conditions set forth in Section 4.2 and further subject to Section 13.1, be obligated to complete the transaction as required by this Agreement. For the avoidance of doubt, Seller shall cause all mortgages, security agreements and deeds of trust encumbering the Property to be released of record not later than Closing, except for the deeds of trust shown on the Title Report and recorded March 28, 2012 or June 19, 2013.

ARTICLE VII.

ESCROW AND CLOSING

7.1 Escrow Instructions. Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Escrow Agent, and this Agreement shall serve as the instructions to the Escrow Agent as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Escrow Agent to comply with the terms of this Agreement; provided, however, that in the event of any conflict

between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

7.2 Time and Place. Closing shall take place on the Closing Date or such earlier date as may be mutually acceptable to the parties with all deliveries to be made in escrow to the Escrow Agent prior to the Closing Date; provided, however, that pursuant to Section 6.2 Seller at Seller's option may extend the Closing Date for purposes of curing objections to the status of title that were timely and properly raised by Buyer.

7.3 Seller's Deposit of Documents. At or before Closing, Seller shall deposit or cause to be deposited into escrow with the Escrow Agent the following items:

(a) an executed and acknowledged Deed in recordable form with respect to the Real Property, in the form of **Exhibit B** hereto, together with any State, County and local transfer tax declarations and forms required to be executed by Seller;

(b) an executed Certificate of Non-Foreign Status;

(c) an executed combined Buyer - Seller Closing Statement prepared by the Escrow Agent reflecting all financial aspects of the transaction ("**Closing Statement**");

(d) a completed State of California Form 593-C;

(e) executed duplicate originals of an Assignment and Assumption of the South Lease (the "Assignment of Leases") in the form of Exhibit D;

(f) An executed Bill of Sale (the "Bill of Sale") in the form of Exhibit E;

(g) Appropriate evidence of existence, good standing, qualification in California (if applicable), and authorization reasonably satisfactory to Buyer and satisfactory to the Title Company regarding the consummation of the transaction contemplated by this Agreement;

(h) An executed and acknowledged Owners Affidavit, to the extent and in such form as the Title Company shall reasonably require in order for the Title Policy to be issued at Closing;

(i) A GAP indemnity to the extent and in such form as the Title Company shall reasonably require in order to close on the Closing Date; and

(j) An executed Seller Closing Certificate that all of Seller's warranties and representations remain true and correct in all material respects as of Closing in the form of **Exhibit C**.

7.4 Buyer's Deposit of Documents. At or before Closing, Buyer shall deposit or cause to be deposited into escrow with the Escrow Agent the following items:

(a) cash to close in the amount required by Section 5.1 hereof;

(b) any State, County and local transfer tax declarations and forms required to be executed by Buyer;

(c) an executed Closing Statement;

(d) an executed Certificate of Buyer that all of Buyer's warranties and representations remain true in all material respects as of Closing in the form of **Exhibit C** hereto;

(e) evidence reasonably satisfactory to Seller and the Escrow Agent reflecting that all documents executed by Buyer at Closing were duly authorized and executed;

(f) a Certificate of Good Standing from the Secretary of State in which Buyer is organized (if Buyer is a corporation, limited partnership or limited liability company);

(g) a completed Preliminary Change of Ownership form; and

(h) Two (2) duplicate originals executed by Buyer of the Assignment of Lease.

7.5 Other Documents. Buyer and Seller shall each deliver such other documents as are otherwise required by this Agreement to consummate the purchase and sale of the Property in accordance with the terms hereof. Unless the parties otherwise agree in writing, the Escrow Agent is hereby designated as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the United States Code and the regulations promulgated thereunder. If requested in writing by either party, the Escrow Agent shall confirm its status as the "**Reporting Person**" in writing, which such writing shall comply with the requirements of Section 6045(e) of the United States Code and the regulations promulgated thereunder.

7.6 Possession. Possession of the Property, subject to the Parking Agreement and the Leases, shall be surrendered to Buyer at Closing.

7.7 Tenant and Service Contractor Notices. Immediately after Closing, Buyer shall deliver to all Tenants and Parking Agreement Parties, if any, a copy of the Notice to Tenant, which obligation shall survive Closing. The provisions of this Section 7.7 shall survive the Closing.

ARTICLE VIII.

ENVIRONMENTAL MATTERS

8.1 Release. Without limiting Section 3.5, Buyer acknowledges that Seller is not in any manner responsible to Buyer for the presence of any Hazardous Materials at, on, in, under or relating to the Property, if any. Buyer hereby specifically and irrevocably releases the Seller, its board members, its officers, its employees and its Oversight Board members from any and all Claims relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials on the Property, if any, including without limitation, any residual contamination, in, on, under or about the Property or affecting natural resources, whether prior to or following Closing, and also including, without limitation, any liability due to asbestos-containing materials at the Property. BUYER'S CLOSING HEREUNDER SHALL BE DEEMED TO CONSTITUTE AN EXPRESS WAIVER OF BUYER'S AND ITS SUCCESSORS' AND ASSIGNS' RIGHTS TO SUE SELLER AND OF BUYER'S RIGHT TO CAUSE ANY OF SELLER'S BOARD MEMBERS, OFFICERS, EMPLOYEES OR OVERSIGHT BOARD MEMBERS TO BE JOINED IN AN ACTION BROUGHT UNDER ANY FEDERAL, STATE OR LOCAL LAW, RULE, ACT, OR REGULATION NOW EXISTING OR HEREAFTER ENACTED OR AMENDED WHICH PROHIBITS OR REGULATES THE USE, HANDLING, STORAGE, TRANSPORTATION OR DISPOSAL OF HAZARDOUS MATERIALS OR WHICH REQUIRES REMOVAL OR REMEDIAL ACTION WITH RESPECT TO SUCH HAZARDOUS MATERIALS, SPECIFICALLY INCLUDING BUT NOT LIMITED TO FEDERAL "**CERCLA**", "**RCRA**", AND "**SARA**" ACTS. The acknowledgments of Buyer and the release contained in this Section of this Agreement shall survive Closing or termination of this Agreement.

8.2 Indemnification. Without limiting the provisions of Section 3.3 and Section 3.5(c), effective as of the Closing and conditions on the Closing having occurred, Buyer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Seller) Seller, its board members, its officers, its employees and its Oversight Board members from and against any and all Claims (including remedial action requirements and enforcement actions of any kind), , arising directly or indirectly, in whole or in part, out of: (1) the failure of Buyer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Property; (2) the presence in, on or under the Property of any Hazardous Materials, to the extent introduced to the Property on or after the Closing Date, or any releases or discharges of any Hazardous Materials into, on, under or from the Property, to the extent such release or discharge is initiated on or after the Closing Date; or (3) any activity carried on or undertaken on or off the Property subsequent to the conveyance of the Property to Buyer, and whether by Buyer or any employees, agents,

contractors or subcontractors of Buyer at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Property. The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws.

8.3 Confidentiality of Hazardous Materials Reports. Unless and until the Closing actually occurs, Buyer, its agents, consultants and employees shall keep confidential all Hazardous Materials Reports and other information, received or completed by Buyer in Buyer's independent factual, physical and legal examinations and inquiries of the Property, except that: Buyer shall if requested by Seller in writing promptly after receipt provide copies thereof to Seller; and Buyer may disclose same to (a) its consultants if Buyer first obtains the agreement in writing of such consultants to keep such Hazardous Materials Reports and related documentation confidential, (b) as required by applicable law, (c) in connection with litigation or other judicial proceedings and (d) its attorneys, accountants and federal advisors. Unless and until the Closing actually occurs, neither the contents nor the results of any test, report, analysis, opinion or other information shall be disclosed by Buyer, its agents, consultants and employees without Seller's prior written approval not to be unreasonably withheld, delayed or conditioned unless and until Buyer is legally required to make such disclosure provided, however, Buyer may disclose as permitted under clause (b) of this Section 8.3 prior to Closing and to anyone after Closing. The provisions of this Section 8.3 shall survive the termination of this Agreement.

ARTICLE IX.

WARRANTIES AND REPRESENTATIONS AND COVENANTS

9.1 Buyer's Representations and Warranties. Buyer warrants and represents that: (a) Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Agreement and to carry out Buyer's obligations hereunder; (b) if Buyer is an entity, Buyer is duly formed and in good standing under the laws of the state in which it is organized and duly authorized to conduct business in the State and in the event that Buyer assigns this Agreement to an entity pursuant to the terms of Article IX of this Agreement, any such entity shall be duly formed and in good standing under the laws of the state of its formation and qualified to transact business in the State; (c) all requisite action necessary to authorize Buyer to enter into this Agreement and to carry out Buyer's obligations has been obtained; (d) this Agreement has been duly authorized, executed and delivered by Buyer; and (e) the execution of this Agreement and the Closing to occur

hereunder do not and will not violate any contract, covenant or other agreement to which Buyer may be a party or by which Buyer may be bound. The provisions of this Section shall survive Closing.

9.2 Seller's Representations and Warranties. Seller represents and warrants to Buyer:

(a) Authorization. Seller is an existing public entity under the laws of the State of California. Seller has the full right, power, and authority to execute and deliver this Agreement, the Deed and the other documents to be executed by Seller pursuant to Section 7.3 and sell, assign, transfer and convey fee simple title to the Property as provided in this Agreement, and to carry out Seller's obligations hereunder, and, subject to Section 4.1 all requisite action necessary to authorize Seller to enter into this Agreement and to carry out Seller's obligations hereunder has been, or at the Closing will have been, taken.

(b) No Conflict. Seller is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

(c) No Bankruptcy Proceedings. There are no assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Seller or pending against Seller or the Property.

(d) Litigation. To Seller's Knowledge, there are no suits or other proceedings or causes of action which are pending or threatened against or affecting Seller or the Property in any court of competent jurisdiction.

(e) Leases. The only leases currently in effect to which Seller is a party are the South Lease and the Cedar Fair Lease. The South Lease and the Cedar Fair Lease are in full force and effect on the terms set forth therein and Seller has delivered to Buyer true, correct and complete copies of the South Lease and the Cedar Fair Lease. Neither the South Lease nor the Cedar Fair Lease have been amended or modified except pursuant to written modifications or amendments, true, correct and complete copies of which have been delivered by Seller to Buyer. To the best of Seller's knowledge, there are no defaults under the South Lease or the Cedar Fair Lease. Seller has good title to the South Lease and the Cedar Fair Lease and has not assigned or pledged the South Lease or the Cedar Fair Lease.

(f) Service Contracts. The Seller is not party to, nor is the Seller's interest in the Property bound by, any property management agreement or other Service Contract.

(g) Compliance With Law. Seller has not received any written notice stating that the Property violates any federal, state, municipal and other

governmental statutes, ordinances, by-laws, rules, regulations or any other legal requirements and which have not been cured.

(h) No Violation. The execution of this Agreement and the Closing to occur hereunder do not and will not violate any contract, covenant or other agreement to which Seller may be a party or by which Seller may be bound.

(i) No Rights to Purchase. No other person or entity has a contract or option to purchase, letter of intent, right of first refusal or first offer, or similar rights with respect to the Property that is now outstanding.

(j) No Condemnation. Seller has not received any notice that any condemnation or eminent domain proceedings are pending or threatened against the Property.

(k) No Unrecorded Agreements. Seller has not entered into or executed any unrecorded agreement or lease that would be binding on the Property and/or Buyer as of the Closing, other than the Parking Agreement, the South Lease and the Cedar Fair Lease.

(l) Employees. Seller has no employees with respect to the Property

(m) Ownership. To Seller's knowledge, Seller is the owner of the Personalty and Intangibles.

(n) ERISA. Neither the Property nor any portion thereof is the asset of an employee benefit plan as defined in Section 3(3) of ERISA or covered under Title I, Part 4 of ERISA or Section 4975 of the Internal Revenue Code.

(o) OFAC. Seller (i) is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Department of the Treasury as a terrorist, "Specially Designated and Blocked Persons", or other banned or blocked person, group, entity, nation or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Asset Control ("**OFAC**") of the United States Department of the Treasury; and (ii) is not engaged, directly or indirectly, in any dealings or transactions and is not otherwise associated with such person, group, entity or nation.

9.3 Seller's Knowledge; Survival. For purposes of this Agreement, Seller's "knowledge" or words of similar import means the actual knowledge of Ruth Shikada, after reasonable and diligent inquiry and investigation including, without limitation, inquiry of the Tenants and the Parking Agreement Parties. The representations and warranties of Seller contained in this Agreement shall survive

the Closing and the recordation of the Deed for a period of six (6) months, at which time they will be deemed to be merged into and superseded by the Deed and other documents executed by Seller and delivered pursuant to Section 7.3, except with respect to claims made in accordance with Section 9.4.

9.4 Limitations. Notwithstanding anything in this Agreement to the contrary, Seller's liability for breaches of the representations and warranties set forth in Section 9.2 discovered by Buyer after Closing is subject to the following limitations:

(a) Filing of Claim. Any claim by Buyer against Seller for a breach of a covenant, representation or warranty must be asserted during the period of six months following the Closing and, any litigation related to such claim must be brought within twelve (12) months following the Closing.

(b) Actual Knowledge. If Buyer proceeds with Closing despite having the right to terminate this Agreement on account of any breach of a representation or warranty by Seller as to which Buyer has actual knowledge of before Closing, Buyer shall have no claim for any such breach of a representation or warranty, and, by proceeding with Closing as aforesaid, Buyer shall be deemed to have waived all claims based on or resulting from the breach of any such representations, warranties or covenants. For purposes of this Agreement, Buyer's "knowledge" or words of similar import means the actual knowledge of Larry MacNeil without any independent investigation and does not include any imputed or constructive knowledge that may be attributed to such individual(s).

(c) Threshold Amount. Buyer shall have no recourse against Seller until the aggregate claims for breach of any of Seller's covenants, representations or warranties under this Agreement exceed $25,000.00 (the "Threshold Amount"). Once the Threshold Amount has been reached as to any one or more matters in the aggregate, Buyer shall be entitled to recourse against the Seller for the dollar value of all aggregate claims, subject to Sections 9.5 and 9.6.

9.5 Aggregate Liability. Seller's aggregate liability to Buyer under this Agreement after Closing shall in no event exceed one hundred thousand dollars ($100,000).

9.6 Consequential or Punitive Damages. Neither Seller nor Buyer shall be liable to the other under this Agreement for special, incidental or consequential damages or for punitive or exemplary damages except where such Party's or omissions constitute fraud or willful misconduct, provided that in no event shall Seller's liability exceed the amount set forth in Section 9.5 above.

9.7 Seller's Covenants. Seller covenants and agrees as follows until the Closing:

(a) Insurance. Seller shall cause to be maintained in force Seller's existing Property coverage insurance and commercial general liability insurance

upon the Property in the amounts not less than such amounts as are, on the Execution Date, carried by Seller.

(b) Operation and Maintenance. Seller shall, subject to the terms and conditions of the Leases, operate, maintain, and repair the Property in substantially the same manner as prior to the date of this Agreement pursuant to its normal course of business. Except to the extent required to comply with applicable law or as the tenants under the Leases are permitted to do without Seller's consent, the Seller shall not materially alter the Property (or permit the material alteration of the Property) after execution of this Agreement without Buyer's consent.

(c) Personalty. Seller shall not remove any Personalty from the Property unless Seller replaces the same before the Closing with Personalty of equivalent or better utility and quality to the items removed.

(d) Title. Seller shall not further encumber the Property in any consensual manner without the written consent of Buyer. Seller will not apply for any variance, change or modification with respect to any zoning of the Property or use of the Property without Buyer's consent.

(e) Leases. Seller shall not enter into, terminate, modify or amend any Leases. Seller shall not grant any consent or approval under any Leases. Seller shall not waive any conditions or obligations under any Leases or guarantees of Lease. Seller shall not enter into any non-disturbance or analogous agreements with any subtenants. Seller will, promptly, and, in any event, not later than one Business Day following receipt, give Buyer a true and complete copy of any notices, reports, statements, demand or material correspondence received from Tenants. Seller will not give a notice of default to any Tenants without Buyer's consent.

(f) Notice of Material Changes. Upon learning of any event or changed condition or circumstance or receiving any notice or documentation or otherwise acquiring knowledge (any of the foregoing being referred to herein as a "**Changed Condition**") which makes any representation or warranty of Seller to Buyer under this Agreement untrue or misleading in any material way or any default under any Leases, Seller shall promptly notify Buyer in writing thereof.

Within five (5) Business Days after notification in writing by Seller to Buyer of any such Changed Condition, Seller, at Seller's own option and expense, may elect by written notice to Buyer to remedy the Changed Condition such that Seller's representations are accurate, and the Closing Date may be extended for up to ten (10) days after the scheduled Closing Date in order for Seller to effectuate such remedy. If Seller does not elect to effectuate such remedy so as to cause Seller's representations to be accurate, or if Seller so elects but then fails to complete such remedy

within such ten (10) day period, then Buyer may elect, by written notice to Seller given at any time thereafter, to terminate this Agreement, in which event (1) neither Buyer nor Seller shall have any further obligation under this Agreement, except for the obligations which expressly survive the termination of this Agreement, and (2) the Deposit together with accrued interest thereon shall be returned to Buyer.

(g) No Other Contract. Seller will not enter into any other agreement or option to sell the Property or any portion of, or interest in, the Property. Seller will not market the Property for sale.

ARTICLE X.

ASSIGNMENT

Except with regard to any assignment entered into pursuant to Section 13.17, Buyer may not, prior to the Closing, assign this Agreement, nor may any of Buyer's rights hereunder be transferred in any manner, nor may any of Buyer's rights hereunder be transferred in any manner to any person or entity, without Seller's specific prior written consent, which consent may be withheld by Seller for any reason whatsoever except, however, that Buyer shall have the right to assign this Agreement, without Seller's consent, to an entity controlled by, or under common control with, Buyer; provided, however, any such assignment shall be binding on Seller only to the extent Buyer provides Seller with written intent to so assign, specifically naming the assignee and providing the signature block for the assignee, no later than the Closing Date and evidence reasonably satisfactory to Seller that the assignee is controlled by, or under common control with, Buyer. If Buyer assigns this Agreement pursuant to the terms hereof: (a) the assignee shall be liable (jointly and severally with assignor) for all of Buyer's obligations hereunder; (b) the assignor (i.e., the original Buyer hereunder) shall remain obligated (but jointly and severally with assignee) with respect to all of Buyer's obligations hereunder; and (c) the assignor and any assignee shall execute such instruments of assignment and assumption in form reasonably acceptable to Seller in confirmation of the provisions hereof. "**Control**" means (a) the power to direct the management and policies, directly or indirectly, of an entity through the ownership of voting securities, contract or otherwise or (b) the ownership, directly or indirectly, of at least fifty percent (50%) of the ownership interests of an entity.

ARTICLE XI.

DEFAULT

11.1 Buyer's Default. If Buyer shall fail to close the transaction contemplated hereby as and when required, except as a result of any Seller default or failure of a condition, or if Seller fails to close the transaction contemplated hereby as a result of a Buyer default, the Deposit shall be paid over to Seller as agreed as liquidated damages and not as a penalty, it being acknowledged by Buyer and Seller that in such event Seller will suffer substantial damages but such damages are incapable

of exact ascertainment. After payment to Seller of the Deposit, neither Seller nor Buyer shall have any further rights or obligations hereunder except that Buyer shall remain obligated with respect to the obligations which specifically survive termination. If subsequent to Closing Buyer shall fail to comply with its obligations contained herein which survive Closing, Seller, in addition to any rights and remedies provided herein, shall be entitled to any and all remedies available at law or in equity.

SELLER AND BUYER ACKNOWLEDGE THAT SELLER'S DAMAGES WOULD BE DIFFICULT TO DETERMINE, AND THAT THE DEPOSIT IS A REASONABLE ESTIMATE OF SELLER'S DAMAGES RESULTING FROM A DEFAULT BY BUYER IN ITS OBLIGATION TO PURCHASE THE PROPERTY. SELLER AND BUYER FURTHER AGREE THAT THIS SECTION 11.1 IS INTENDED TO AND DOES LIQUIDATE THE AMOUNT OF DAMAGES DUE SELLER, AND SHALL BE SELLER'S EXCLUSIVE REMEDY AGAINST BUYER, BOTH AT LAW AND IN EQUITY, ARISING FROM OR RELATED TO A BREACH BY BUYER OF ITS OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OTHER THAN WITH RESPECT TO BUYER'S INDEMNITY AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, AND SELLER'S RIGHT TO RECOVER ITS REASONABLE ATTORNEYS' FEES AND EXPENSES PURSUAJNT TO SECTION 16.1 BELOW. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

Buyer Seller

11.2 Seller's Default. If Seller is in default of this Agreement before or at the Closing, Buyer may terminate this Agreement, in which case the Deposit (plus accrued interest) shall be returned to Buyer, and neither Buyer nor Seller shall have any further liability hereunder.

Buyer expressly waives all other remedies, including suit for damages, provided that nothing herein precludes a claim against Seller after Closing for a breach of any representations and warranties, subject to the limitations of Section 9.6 hereof. If Buyer does not bring suit within six (6) months of the scheduled Closing, Buyer shall be deemed to have elected option (a) above.

11.3 No Obligation of Seller after Closing. Buyer expressly acknowledges and agrees that Seller has no obligations with respect to the Property that survive Closing, except as specifically set forth in this Agreement. The provisions of this Section shall survive Closing.

ARTICLE XII.

NO JOINT VENTURE

Buyer acknowledges and agrees that Seller is not a venturer, co-venturer, insurer, guarantor or partner of Buyer in Buyer's development of, construction upon and resale of the Property, and that Seller shall bear no liability whatsoever resulting from or arising out of Buyer's ownership and development of, and construction upon, the Property. The provisions of this Article shall survive Closing.

ARTICLE XIII.

MISCELLANEOUS

13.1 Risk of Loss.

(a) Seller shall retain all rights with respect to any Pre-Existing Insurance Claims and any Proceeds from Pre-Existing Insurance Claims.

(b) Seller agrees to give Buyer prompt notice of any Event occurring after the Execution Date and before the Closing Date.

(c) If on or after the Execution Date and prior to Closing, any Event ("**Termination Event**") shall occur (i) which would cost an amount, greater than, or equal to $2,000,000 to repair and/or restore and (A) which would materially interfere with the present use of such Property or (B) with respect to which any mortgagee of the Tenants is not required to apply (or does not apply) proceeds of insurance or condemnation awards, as applicable sufficient to complete such restoration and/or repair, as applicable or (ii) which is not fully covered by Seller's insurance policies and that is not Cedar Fair Tenant's obligation to repair and restore pursuant to the Cedar Fair Lease, Buyer shall have the right to terminate this Agreement by giving notice to Seller within ten (10) Business Days after Buyer has received notice from Seller of the Event and the Closing Date shall be extended, if necessary, to provide sufficient time for Buyer to make such election and Buyer's failure to make such election shall be deemed Buyer's election not to terminate this Agreement. Upon such termination, the Deposit, shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except with respect to the provisions of this Agreement which specifically survive termination. If Buyer or Seller does not so timely elect to terminate this Agreement, Seller shall not be obligated to repair the Property, Closing shall take place as provided herein and at Closing Seller shall assign to Buyer all interest of Seller in and to the Net Proceeds (if any).

(d) If, on or after the Execution Date and prior to Closing, any Event that is not a Termination Event shall occur, Buyer may not terminate this Agreement, Seller shall not be obligated to repair the Property, and Closing shall take place as provided herein, and at Closing Seller shall assign to Buyer all interest of Seller in and to the Net Proceeds.

(e) At Closing, (i) Buyer shall, to the extent not the obligation of Tenants, reimburse Seller for any sums paid by Seller prior to Closing to repair damage caused by the Event and (ii) Buyer shall receive a credit for any Net Proceeds received by Seller prior to Closing. Seller shall, subject to the Leases, retain the exclusive right to process and handle the claim with Seller's insurance company. Seller makes no representation or warranty with respect to the amount of the Net Proceeds, including, without limitation, whether Buyer will be entitled to the actual cash value or the replacement cost of the Property. Seller and Buyer agree to use good faith efforts to cooperate with each other in negotiating and resolving the amount of the Net Proceeds, including, without limitation, promptly providing any and all materials requested by the insurance company and promptly responding to any and all inquiries from the insurance company. Seller shall not agree to the amount of the Net Proceeds with the insurance company without Buyer's consent.

(f) Seller and Buyer each expressly waive the provisions of California Civil Code Section 1662 and hereby agree that the provisions of this Agreement shall govern the parties' obligations in the event of any damage or destruction to the Real Property or the taking of all or any part of the Real Property, as applicable.

(g) The provisions of this Section shall survive Closing.

13.2 Construction. The terms "**Seller**" and "**Buyer**" whenever used in this Agreement shall include the heirs, personal representatives, successors and assigns of the respective parties hereto; provided, however, that Buyer's right of assignment is restricted by Article 10. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The term "**including**" as used herein shall in all instances mean "**including, but not limited to**". The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts may have been prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto.

13.3 Counterparts and Electronic Signatures. This Agreement may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties

are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original Agreement all of which shall constitute one agreement to be valid as of the date of this Agreement. Facsimile, documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. Seller and Buyer agree that this Agreement or any other document necessary for the consummation of the transaction contemplated by this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("**E-Sign Act**"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act ("**UETA**") and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on both Seller and Buyer the same as if it were physically executed and Buyer hereby consents to the use of any third party electronic signature capture service providers as may be chosen by Seller.

13.4 Severability and Waiver. Invalidation of any one Section or provision of this Agreement by judgment or court order shall in no way affect any other Section or provision. Failure of any party to this Agreement to insist on the full performance of any of its provisions by the other party (or parties) shall not constitute a waiver of such performance unless the party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Agreement by any party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Agreement. The provisions of this Section shall survive Closing.

13.5 Governing Law. The laws of the State of California (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Agreement.

13.6 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered under this Agreement, Seller and Buyer agree to perform, execute and/or deliver or cause to be delivered, executed and/or delivered at Closing or after Closing all further acts, fees, and assurances reasonably necessary to consummate the transactions contemplated hereby.

13.7 Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. Any notice given by a party's attorney shall be deemed notice given by such party. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by email on (i) the Business Day sent so long as such email notice is sent within business hours (i.e., 8 A.M. Pacific Time – 5 P.M. Pacific Time) on that Business Day (unless a different time period is provided here) or

(ii) the next Business Day if sent after business hours (i.e., 8 A.M. Pacific Time – 5 P.M. Pacific Time) on the Business Day sent or sent on a day other than a Business Day, and in either case such email notice is followed by notice pursuant to provisions (a) or (b) of this Section or the party to whom such email notice is given acknowledges receipt; or (c) if sent by overnight courier, with request for next Business Day delivery, on the next Business Day after sending; addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

TO SELLER: To the attention of the Seller's Contact Person in the Key Terms to the Seller's Notice Address in the Key Terms

TO BUYER: To the Buyer's Notice Address set forth in the Key Terms

13.8 Entire Agreement and Amendment. This Agreement contains the entire understanding between Buyer and Seller with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be modified, amended, changed, waived, discharged or terminated orally. Any such action may occur only by an instrument in writing signed by the party against whom enforcement of the modification, change, waiver, discharge or termination is sought.

13.9 Recording. This Agreement shall not be recorded and Buyer agrees that recording shall constitutes a default by Buyer.

13.10 Exhibits. The Exhibits that are referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

13.11 Time of the Essence. Seller and Buyer expressly agree that time is of the essence with respect to this Agreement. If the final day of any period or any date of performance under this Agreement falls on a date which is not a Business Day, then the final day of the period or the date of performance, as applicable, shall be extended to the next day which is a Business Day.

13.12 No Third Party Beneficiary. This Agreement is solely between Seller and Buyer and no other party shall be entitled to rely upon any provision hereof for any purpose whatsoever.

13.13 Limitation on Liability. Buyer expressly agrees that the obligations and liabilities of Seller under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, shareholders, employees, agents, representatives, trustees, partners, members, certificate holders, or other principals of Seller. Notwithstanding anything to the contrary, Seller's liability, if any, arising in connection with this Agreement or with the Property shall be limited to the amount set forth in Section 9.5 above for the recovery of any judgment against Seller, and Seller shall not be personally liable for any such judgment or deficiency after execution thereon. The limitations of liability contained in this paragraph shall apply equally and inure to the benefit of all of

Seller's board members, officers, employees and Oversight Board members. The provisions of this Section shall survive termination and Closing.

13.14 Legal Counsel and Joint Authorship. Each of Buyer and Seller has received independent legal advice from attorneys of its choice with respect to the advisability of making and executing this Agreement and the documents which, under the terms of this Agreement, are to be executed and delivered by Seller or Buyer or both at Closing (the "**Closing Documents**") or waived its right to do so. Buyer hereby acknowledges that Seller's counsel is not representing the Buyer or any interests of Buyer in connection with this Agreement or any other matter and that, unless Buyer is represented by counsel, Buyer has made the informed decision to not consult with an attorney of Buyer's choice prior to the execution of this Agreement. In the event of any dispute or controversy regarding authorship of this Agreement or the Closing Documents, Buyer and Seller shall be conclusively deemed to be the joint authors of this Agreement and the Closing Documents and no provision of this Agreement or the Closing Documents shall be interpreted against Buyer or Seller by reason of authorship.

13.15 Prohibited Persons. Neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("**EO13224**"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("**OFAC**") most current list of "**Specifically Designated National and Blocked Persons**" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website) (iii) who commits, threatens to commit or supports "**terrorism**", as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) – (v) above are herein referred to as a "**Prohibited Person**"). Buyer covenants and agrees that neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) shall (aa) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (bb) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. The provisions of this Section shall survive Closing or termination of this Agreement.

13.16 **Broker.** Seller represents and warrants to Buyer that Seller has not incurred, and shall not have incurred as of the Closing, any liability for the payment of any brokerage fee or commission in connection with the transaction contemplated in this Agreement, other than to Eastdil Secured ("**Eastdil**"). Seller shall pay a commission to Eastdil at Closing pursuant to the terms of a separate written agreement between Seller and Eastdil. Buyer represents and warrants to Seller that Buyer has not incurred, and shall not have incurred as of the Closing, any liability for the payment of any brokerage fee or commission in connection with the transaction contemplated in this Agreement. Seller and Buyer hereby agree to defend, indemnify and hold harmless the other from and against any and all claims of any other person claiming a brokerage fee or commission through the indemnifying party. The provisions of this Section 13.16 shall survive Closing or termination of this Agreement.

13.17. **Tax deferred exchange.** Either party may consummate the purchase or sale of the Property as part of a like kind exchange ("**Exchange**") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended ("**Code**") provided: (i) Close of Escrow shall not be affected by the Exchange, nor shall the consummation or accomplishment of the Exchange be a condition to either party's obligations under this Agreement; (ii) the party consummating the Exchange ("**Electing Party**") shall effect the Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary; (iii) the other party (the "**Other Party**") shall not be required to take an assignment of the purchase agreement for the relinquished property or be required to acquire or hold title to any real property; (iv) the Electing Party shall indemnify, defend and hold the Other Party harmless from and against any Claim arising from or related to such Exchange that would not have been incurred by the Other Party if the transaction were not subject of an Exchange; and (v) the Exchange is not a Closing Condition of either party.

ARTICLE XIV.

ESCROW TERMS

The Escrow Agent shall hold the Deposit in escrow on the following terms and conditions:

(a) The Escrow Agent shall deliver the Deposit to Seller or Buyer, as the case may be, in accordance with and subject to the terms and conditions of this Agreement.

(b) Any notice to or demand upon the Escrow Agent shall be in writing and shall be sufficient only if received by the Escrow Agent within the applicable time periods set forth herein, if any. Notices to or demands upon the Escrow Agent shall be sent in accordance with Section 13.7

hereof, to the Contact Person and address set forth in the Defined Terms. Notices from the Escrow Agent to Seller or Buyer shall be delivered to them in accordance with Section 13.7 of this Agreement.

(c) If the Escrow Agent shall have received notice signed by either party advising that litigation between the parties over entitlement to the Deposit has been commenced, the Escrow Agent shall, on demand of either party, deposit the Deposit with the clerk of the court in which such litigation is pending. If at any time the Escrow Agent is uncertain of its duties hereunder or if Escrow Agent for any other reason is no longer willing to serve as escrow agent, the Escrow Agent may, on notice to the parties, take such affirmative steps as it may, at its option, elect in order to terminate its duties as the Escrow Agent, including, but not limited to, the deposit of the Deposit with a court of competent jurisdiction and the commencement of an action for interpleader, the reasonable costs of which shall be borne by whichever of the parties is the losing party. Upon the taking by the Escrow Agent of such action described, the Escrow Agent shall be released of and from all liability hereunder as escrow agent, except for the gross negligence or willful misconduct of Escrow Agent.

(d) The Escrow Agent shall not incur any liability in acting upon any signature, notice, demand, request, waiver, consent, receipt or other paper or document believed by the Escrow Agent to be genuine. The Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so, or is otherwise acting or failing to act under this Section except in the case of the Escrow Agent's gross negligence or willful misconduct.

(e) The terms and provisions of this Article shall create no right in any person or entity other than the parties and their respective successors and permitted assigns and no third party shall have the right to enforce or benefit from the terms hereof.

(f) The Escrow Agent has executed this Agreement for the sole purpose of agreeing to act as such in accordance with the terms of this Agreement.

ARTICLE XV.

OTHER DISCLOSURES

15.1 Radon. Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines may have been found in buildings in the state where the Property is located. Additional information regarding radon and radon testing may be obtained from

your county or state health unit. Buyer represents and warrants that he/she/it has not relied on the accuracy or completeness of any representations that have been made by the Seller and/or Listing Broker as to the presence of radon and that the Buyer has not relied on the Seller's or Listing Broker's failure to provide information regarding the presence or effects of any radon found on the Property. Real estate brokers and agents are not generally qualified to advise buyers on radon treatment or its health and safety risks.

ARTICLE XVI.

LITIGATION

16.1 Attorneys' Fees; Jurisdiction; Venue. In the event of any litigation arising out of or under this Agreement and/or out of Buyer's ownership, development or construction upon the Property, the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys' fees and costs. Buyer and Seller hereby submit to the jurisdiction of the Civil Courts of the State and the United States District Courts located in the State in respect of any suit or other proceeding brought in connection with or arising out of this Agreement and venue shall be in the County. The provisions of this Section shall survive Closing.

16.2 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT EXECUTED IN CONNECTION HEREWITH OR RELATED HERETO, OR ANY COURSE OR CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Buyer and Seller have executed this Agreement as of the Execution Date.

SELLER:

SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA,
A separate public entity

APPROVED AS TO FORM

BRIAN DOYLE
City Attorney

ATTEST:

JENNIFER YAMAGUMA
Acting City Clerk

DEANNA SANTANA
City Manager/Executive Officer
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

Date:_____

BUYER:

JAMESTOWN REALTY CO., LLC
an Ohio limited liability company

By: _____

Its: Authorized Signatory

EXECUTION BY ESCROW AGENT

The Escrow Agent executes this Agreement for the purposes of acknowledging its Agreement to serve as escrow agent in accordance with the terms of the Agreement and to acknowledge receipt of the Deposit of Five Hundred Thousand Dollars ($500,000) (if in the form of a check, subject to clearance) from Buyer as the Deposit due thereunder.

First American Title Insurance Company

By: _____

Date: _____, 2018

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PARCEL B AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 29, 1985 IN BOOK 543 OF MAPS, PAGES 50 AND 51, IN THE OFFICE OF THE SANTA CLARA COUNTY RECORDER.

TOGETHER WITH THAT PORTION OF PARCEL A, AS SAID PARCEL IS SHOWN ON SAID PARCEL MAP, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL A; THENCE SOUTH 89° 33' 00" EAST 600.99 FEET ALONG THE SOUTHERLY ONE OF SAID PARCEL A TO THE SOUTHEAST CORNER OF SAID PARCEL A; THENCE NORTH 00° 00' 34" WEST 475.57 FEET ALONG THE EASTERLY LINE OF SAID PARCEL A; THENCE NORTHWESTERLY AND WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL A THE FOLLOWING FIVE COURSES:

(1) NORTHWESTERLY ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 40.00 FEET, FROM WHICH A RADIAL LINE TO SAID CURVE BEARS NORTH 89° 58' 31" EAST, THROUGH A CENTRAL ANGLE OF 93° 06' 28" FOR AN ARC LENGTH 65.00 FEET;

(2) SOUTH 86° 52' 03" WEST 1.00 FEET

(3) NORTH 03° 05' 47" WEST 5.00 FEET;

(4) WESTERLY ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2643.00 FEET, FROM WHICH A RADIAL LINE TO SAID CURVE BEARS SOUTH 03° 05' 47" EAST, THROUGH A CENTRAL ANGLE OF 1° 14' 47" FOR AN ARC LENGTH OF 57.49 FEET; AND

(5) SOUTH 88° 09' 00" WEST 86.68 FEET; THENCE SOUTH 00° 00' 34" EAST 421.65 FEET; THENCE SOUTH 89° 59' 26" WEST 413.45 FEET TO THE WESTERLY LINE OF SAID PARCEL A; THENCE SOUTH 00° 00' 34" EAST 88.71 FEET ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING.

DESCRIBED AS LOT 2 IN THE NOTICE OF LOT LINE ADJUSTMENT RECORDED NOVEMBER 23, 1998 AS INSTRUMENT NO. 14517863 OF OFFICIAL RECORDS.

APN: 104-43-051

EXHIBIT B

FORM OF GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

_____

Attention:

MAIL TAX STATEMENT TO:

Attention:

(Space Above Line for Recorder's Use Only)

The undersigned grantor(s) declare(s):
Documentary transfer tax is: $_____
( ) Computed on full value of property conveyed, or
( ) Computed on full value less value of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: ( ) City of _____, and

GRANT DEED

FOR VALUE RECEIVED, the receipt and sufficiency of which are hereby acknowledged, **SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA**, successor to the former Redevelopment Agency of the City of Santa Clara, California, a separate public entity, hereby grants to Jamestown Realty Co., LLC, an Ohio limited liability company, all of that certain real property more particularly described in Schedule 1 attached hereto and incorporated herein by this reference, together with any and all tenements, hereditaments, easements, rights-of-way, appurtenances, development rights or intangible property anywise appertaining to the same, subject to (a) all non-delinquent real property taxes, (b) all non-delinquent special assessments, if any, (c) all other liens, leases, easements, encumbrances, covenants, conditions, restrictions and other matters of record, and (d) all matters affecting the status of title that would be revealed by an accurate survey of the subject property.

Grantor disclaims any and all express or implied warranties regarding the Property other than the implied warranties stated in Section 1113 of the California Civil Code.

SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA,
A separate public entity

APPROVED AS TO FORM

_____
BRIAN DOYLE
City Attorney

ATTEST:

_____
JENNIFER YAMAGUMA
Acting City Clerk

_____
DEANNA SANTANA
City Manager/Executive Officer
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

Date:_____

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 _____, 2018 before me,
(here 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 C

FORM OF CERTIFICATE OF BUYER

Jamestown Realty Co., LLC, an Ohio limited liability company, the Buyer under that certain Agreement for Purchase and Sale of Property dated _____, 2018, by and between Buyer and Seller (the "**Agreement**") does hereby certify that all representations and warranties of Buyer set forth in the Agreement remain true in all material respects as of _____ _____, 2018.

Jamestown Realty Co., LLC
an Ohio limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT D

ASSIGNMENT AND ASSUMPTION OF THE LEASE

THIS ASSIGNMENT AND ASSUMPTION OF THE LEASE (this "**Assignment**") is made and entered into as of _____, 2018, by and between the Successor Agency to the Redevelopment Agency of the City of Santa Clara, a separate public entity ("**Assignor**"), and Jamestown Realty Co., LLC, an Ohio limited liability company ("**Assignee**").

Recitals

A. Assignor, as seller, and Assignee, as buyer, entered into that certain Agreement of Purchase and Sale dated as of _____, 2018 (the "**Agreement**"), pursuant to which Assignor agreed to sell to Assignee, and Assignee agreed to acquire from Assignor, among other things, Assignor's ownership interest in the land legally described on **Exhibit A** attached hereto and all of Assignor's right, title and interest in the building located at such parcel commonly known as 4911 Great America Parkway, Santa Clara, California (the "**Property**"), including Assignor's interest in certain leases related thereto.

B. As part of the acquisition transaction contemplated by the Agreement, Assignor has agreed to assign to Assignee, and Assignee has agreed to assume, Assignor's interest as landlord and tenant (together with all rights and obligations relating thereto) under the South Lease (as defined in the Agreement), a schedule of which Lease is attached hereto as **Exhibit B** and incorporated herein by this reference (herein, the "**Lease**").

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Transfer and Assignment by Assignor**. Assignor hereby transfers and assigns to Assignee all of Assignor's right, title and interest, in, to and under the Lease.

2. **Assumption by Assignee**. Assignee hereby accepts the foregoing assignment and assumes and agrees to perform all of the duties, obligations, liabilities, commitments and covenants of Assignor, accruing from and after the date hereof with respect to or arising under the Lease.

3. **Indemnification by Assignor**. Assignor hereby agrees to indemnify, defend and hold harmless Assignee, and its partners, directors, members, shareholders, affiliates, managers, employees and agents, from, of and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the breach by Assignor of any of the obligations, terms or covenants of Assignor, under or pursuant to the Lease, which obligations, terms or covenants accrued prior to the date hereof; provided, however, that Assignor shall have no obligation hereunder to so indemnify, defend or hold harmless the aforementioned parties with respect to breaches by Assignor of obligations, terms or covenants under or pursuant to the Lease that relate to the physical or environmental condition of the Property, regardless of whether such obligations, terms or covenants arose or accrued (or arise or accrue) prior to, on or after Closing and

regardless of whether such conditions exist or come into existence prior to, on or after Closing. The indemnification obligation contained in this Section 3 shall be subject to the limitations on liabilities and other provisions contained in the Agreement relating to the Assignor's liability.

4. **Indemnification by Assignee**. Assignee hereby agrees to indemnify, defend and hold harmless Assignor, and its partners, officers, directors, members, shareholders, affiliates, managers, employees and agents, from, of and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the breach by Assignee of any of the other obligations, terms or covenants of Assignor, under or pursuant to the Lease, which other obligations, terms or covenants accrue from and after the date hereof. The indemnification obligation contained in this Section 4 shall be subject to all applicable limitations on liabilities and other provisions contained in the Agreement relating to Assignee's liability.

5. **Further Assurances**. The parties hereto covenant and agree to execute such further instruments and take such further action as may be reasonably required by either party to fully effectuate the terms and provisions of this Assignment and the transactions contemplated herein.

6. **Survival of Provisions**. The covenants and obligations contained in this Assignment shall survive the consummation of the closing of the transactions contemplated by the Agreement and this Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

7. **Attorneys' Fees and Costs**. If either party commences an action for the judicial interpretation, reformation, enforcement or rescission hereof, the prevailing party will be entitled to a judgment against the other party for an amount equal to reasonable attorneys' fees and court and other costs incurred.

8. **Governing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

9. **Counterparts**. This Assignment may be executed in counterparts which, when integrated, shall constitute one original of this Assignment.

10. **Conflict**. In the event of any conflict or inconsistency between the terms hereof and the terms of the Agreement, the terms of the Agreement shall govern and control. Without limitation of the foregoing, all waivers, releases and other limitations on liability expressly set forth in the Agreement shall apply to this Assignment and the liabilities of the parties hereunder.

11. **No Representation**. Except as expressly set forth in the Agreement or this Assignment, it is hereby acknowledged that Assignor makes no representation or warranty of any kind or nature relative to the Leases. Assignor represents and warrants that it has good title to and has not assigned or pledged the Lease.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their duly authorized officers on the date first written above.

ASSIGNOR:

SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA,
A separate public entity

APPROVED AS TO FORM

_____
BRIAN DOYLE
City Attorney

ATTEST:

_____
JENNIFER YAMAGUMA
Acting City Clerk

_____
DEANNA SANTANA
City Manager/Executive Officer
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

Date:_____

ASSIGNEE:

JAMESTOWN REALTY CO., LLC
an Ohio imited liability company

By:_____
Its:_____

EXHIBIT A TO ASSIGNMENT AND ASSUMPTION OF LEASE

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PARCEL B AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 29, 1985 IN BOOK 543 OF MAPS, PAGES 50 AND 51, IN THE OFFICE OF THE SANTA CLARA COUNTY RECORDER.

TOGETHER WITH THAT PORTION OF PARCEL A, AS SAID PARCEL IS SHOWN ON SAID PARCEL MAP, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL A; THENCE SOUTH 89° 33' 00" EAST 600.99 FEET ALONG THE SOUTHERLY ONE OF SAID PARCEL A TO THE SOUTHEAST CORNER OF SAID PARCEL A; THENCE NORTH 00° 00' 34" WEST 475.57 FEET ALONG THE EASTERLY LINE OF SAID PARCEL A; THENCE NORTHWESTERLY AND WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL A THE FOLLOWING FIVE COURSES:

(1) NORTHWESTERLY ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 40.00 FEET, FROM WHICH A RADIAL LINE TO SAID CURVE BEARS NORTH 89° 58' 31" EAST, THROUGH A CENTRAL ANGLE OF 93° 06' 28" FOR AN ARC LENGTH 65.00 FEET;

(2) SOUTH 86° 52' 03" WEST 1.00 FEET

(3) NORTH 03° 05' 47" WEST 5.00 FEET;

(4) WESTERLY ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2643.00 FEET, FROM WHICH A RADIAL LINE TO SAID CURVE BEARS SOUTH 03° 05' 47" EAST, THROUGH A CENTRAL ANGLE OF 1° 14' 47" FOR AN ARC LENGTH OF 57.49 FEET; AND

(5) SOUTH 88° 09' 00" WEST 86.68 FEET; THENCE SOUTH 00° 00' 34" EAST 421.65 FEET; THENCE SOUTH 89° 59' 26" WEST 413.45 FEET TO THE WESTERLY LINE OF SAID PARCEL A; THENCE SOUTH 00° 00' 34" EAST 88.71 FEET ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING.

DESCRIBED AS LOT 2 IN THE NOTICE OF LOT LINE ADJUSTMENT RECORDED NOVEMBER 23, 1998 AS INSTRUMENT NO. 14517863 OF OFFICIAL RECORDS.

APN: 104-43-051

EXHIBIT B TO ASSIGNMENT AND ASSUMPTION OF LEASES

SCHEDULE OF LEASES

That certain South Ground Lease dated as of June 5, 1988, by and between the former Redevelopment Agency of the City of Santa Clara, predecessor in interest to Assignor as "Agency", and Cazimer Szlendak and Gerald I. Waissman, d/b/a/ Caz Development Company, predecessor in interest to Assignor as "Lessee", as amended by this First Amendment dated as of June 17, 1999.

EXHIBIT E

BILL OF SALE

THIS BILL OF SALE is made by the undersigned, **SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA,** a separate public body ("**Seller**"), in favor of and to Jamestown Realty Co., LLC, an Ohio limited liability company ("**Buyer**").

WHEREAS, Seller, as seller, and Buyer, as buyer, entered into that certain Agreement of Purchase and Sale dated as of _____, 2018 (the "**Agreement**"), pursuant to which Seller agreed to sell to Buyer, and Buyer agreed to acquire from Seller, among other things, Seller's ownership interest in the land legally described on **Exhibit A** attached hereto and all of Seller's right, title and interest in the building located at such parcel commonly known as 4911 Great America Parkway, Santa Clara, California (the "**Property**"), including Seller's interest in certain real and personal property related thereto;

WHEREAS, as part of the acquisition transaction contemplated by the Agreement, Seller is to sell, convey, and transfer to Buyer, by bill of sale, the Personality (as defined in the Agreement) and the Intangible Property (as defined in the Agreement).

NOW, THEREFORE, pursuant to the Agreement, and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller by these presents does GIVE, GRANT, CONVEY, ASSIGN, TRANSFER, BARGAIN, SELL, REMISE, RELEASE, ALIENATE, SET OVER, and CONFIRM, unto Buyer, its successors and assigns, forever, as an entirety, all of Seller's right, title, and interest, if any, in and to (a) the Personality (as defined in the Agreement); and (b) the Intangible Property (as defined in the Agreement).

Except as otherwise expressly provided in the Agreement, Seller makes no representations or warranties whatsoever, regarding said Personalty or the Intangible Property, including, without limitation, any representations or warranties related to title, quality, merchantability or fitness for a particular purpose.

In the event of any conflict or inconsistency between the terms hereof and the terms of the Agreement, the terms of the Agreement shall govern and control. Without limitation of the foregoing, all limitations on liability expressly set forth in the Agreement shall apply to this Bill of Sale and the liabilities of Seller hereunder.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed by its duly authorized officer this _____ day of _____, 2018.

SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA,
A separate public entity

APPROVED AS TO FORM

_____
BRIAN DOYLE
City Attorney

ATTEST:

_____
JENNIFER YAMAGUMA.
Acting City Clerk

_____
DEANNA SANTANA
City Manager/Executive Officer
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

Date:_____

EXHIBIT A TO BILL OF SALE

LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

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(2) SOUTH 86° 52' 03" WEST 1.00 FEET

(3) NORTH 03° 05' 47" WEST 5.00 FEET;

(4) WESTERLY ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2643.00 FEET, FROM WHICH A RADIAL LINE TO SAID CURVE BEARS SOUTH 03° 05' 47" EAST, THROUGH A CENTRAL ANGLE OF 1° 14' 47" FOR AN ARC LENGTH OF 57.49 FEET; AND

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DESCRIBED AS LOT 2 IN THE NOTICE OF LOT LINE ADJUSTMENT RECORDED NOVEMBER 23, 1998 AS INSTRUMENT NO. 14517863 OF OFFICIAL RECORDS.

APN: 104-43-051