

5-29-18

Item 1 #18-770

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May 25, 2018

VIA HAND DELIVERY AND EMAIL

Hon. Chair Donald Gage and Members
Santa Clara Successor Agency Oversight Board
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Sale of North-South Parcel

Members of the Board:

This office represents Jamestown Realty Co., LLC ("Jamestown") with regard to the sale by the Successor Agency to the City of Santa Clara Redevelopment Agency ("Successor Agency") of the so-called the North-South Parcel ("Parcel") which the Oversight Board is scheduled to consider at its May 29, 2018 meeting. Jamestown submitted the highest offer in accordance with the bid procedures established for the sale of this Parcel. The Oversight Board should direct the Successor Agency to sell the Parcel to Jamestown pursuant to the proffered Purchase and Sale Agreement, a signed copy of which has already been submitted by Jamestown.

The City of Santa Clara ("City"), after declining to participate in the bidding process established by the Oversight Board's Evaluation Team, has requested that the Oversight Board approve a proposed sale of the Parcel to the City, at an as yet undisclosed price that it characterizes as "competitive" with the offer previously submitted by Jamestown. No defect in the bidding process or in Jamestown's offer was cited – the City merely decided at the eleventh hour that it would rather disregard the established bidding process and award the property to itself.

This subversion of the disposition process administered by the Oversight Board cannot stand. The Oversight Board cannot allow, let alone actively participate in, this clear abuse of process and unlawful deviation from the Board-approved Long-Range Property Management Plan and the bidding rules established by the Evaluation Team for the sale of the Parcel. To do so would threaten not only the Oversight Board's effort to dispose of this Parcel, but the trust of the market in the fundamental fairness of future sales offerings.

I. Relevant Statutes and Board Actions Governing Sale

California Health and Safety Code Section 34170, *et seq.*, governs the dissolution of redevelopment agencies and disposition of former redevelopment agency properties. Provisions particularly relevant to the sale of the North-South Parcel follow:

POST MEETING MATERIAL

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- California Health and Safety Code Section 34177(h): The Successor Agency must expeditiously wind down the affairs of the redevelopment agency in accordance with the direction of the Oversight Board.
- California Health and Safety Code Section 34177(e): The Successor Agency must dispose of assets and properties of the former redevelopment agency as directed by the Oversight Board.
- California Health and Safety Code Section 34191.3: The Successor Agency has the authority to dispose of assets and properties of the former redevelopment agency only in accordance with a long-range property management plan approved by the Department of Finance.

The Board approved a long-range property management plan for the Successor Agency by Resolution No. 2015-08 (the "LRPMP"). The Department of Finance approved the LRPMP by letter dated December 15, 2015. Accordingly, all dispositions of the assets and properties of the Successor Agency must be made in accordance with the LRPMP.

The Board also adopted a resolution specific to the sale of the North/South Parcel on February 2, 2018. That resolution authorized the Successor Agency to engage Eastdil Secured as the broker for the North-South Parcel and also authorized the Evaluation Team to "approve the sales process for North South and Great America Theme Park properties based on recommendations from Eastdil Secured..." The Successor Agency has no authority to deviate from the process established by the Evaluation Team.

II. Facts for the Record

Pursuant to the Evaluation Team's direction, Eastdil began marketing the property. Jamestown expressed interest and received the due diligence package assembled by City staff on behalf of the Successor Agency. Jamestown retained counsel and expended funds in due diligence.

Several rounds of bidding on the Parcel were administered by Eastdil. To the best of our knowledge, the City did not submit any offers through this process. In late April, Eastdil, as agent for the Successor Agency and Board, issued bid instructions for "one last round" of bidding ("N-S Bid Instructions"). Bidders were instructed to submit "final" bids for the N-S Parcel, along with a signed copy of the N-S Bid Instructions. The N-S Bid Instructions state clearly that all bids submitted will be considered final offers, that the participants must execute the Successor Agency's purchase agreement without revision, and, most importantly, that the "**Successor Agency will not accept any subsequent bids.**"

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Jamestown scrupulously complied with the N-S Bid Instructions, providing an executed acknowledgment of the N-S Bid Instructions on April 24, 2018, and submitting the executed Purchase Agreement and requisite \$500,000 deposit prior to the deadline of 10:00 a.m. on April 25, 2018. When the sealed bids were opened at 4:00 p.m. at Santa Clara City Hall on April 25, Jamestown's bid was the highest offer at \$5,150,000.49. Eastdil notified Jamestown that it had submitted the highest offer.

The Successor Agency convened its public meeting on May 8 to review the bids and provide a recommendation to the Oversight Board. At that meeting, to our client's great surprise, City Mayor Lisa Gillmor, nominally as board member of the Successor Agency, erroneously claimed that the City had not been given the opportunity to participate in the bid¹, and recommended that the City should purchase the property instead. The Successor Agency then tabled the resolution for further discussion and to give the City the opportunity to determine whether it wanted to purchase the N-S Parcel.

On May 22, the City Council, in a joint meeting of Successor Agency and the City and acting on a single agenda item, determined that the City should offer to purchase the Property at an as yet undisclosed price "competitive" with that Jamestown offered and the Successor Agency should recommend acceptance of that offer to the Oversight Board. The Successor Agency did not disapprove, or really even discuss, the Jamestown offer.

For reference, we have attached:

1. The N-S Bid Process Instructions, executed by Jamestown April 25, 2018
2. Oversight Board Resolution Approving Eastdil and Sale of North-South Parcel, which we understand was adopted on February 2, 2018 ("N-S Resolution")
3. Long-Range Property Management Plan of the Santa Clara Successor Agency dated December 18, 2015, adopted by the Oversight Board as Resolution No. 2015-08 ("LRPMP")
4. Department of Finance Approval of the LRPMP dated December 22, 2015

¹ The Mayor sits on the Oversight Board and is chairperson of the Board of the Successor Agency. We cannot imagine any credible basis for a claim that she or the City was unaware of, or was misled about, the City's opportunity to bid on the sale of the Parcel. Given the conflicting interests of the City, Successor Agency and Oversight Board, we do not believe the Mayor can discharge her fiduciary duties in this matter as a member of the Oversight Board.

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5. Agreement of Purchase and Sale Agreement, executed and submitted by Jamestown to Successor Agency on April 26, 2018 ("Purchase Agreement")

III. The Oversight Board Must Approve the Jamestown Offer

The Oversight Board must reject the City's brazen "end around" the established bidding process and direct the Successor Agency to counter-sign the Purchase and Sale Agreement already submitted by Jamestown. Acceptance of the City's offer would violate the Dissolution Law and the requirements of the Long-Range Property Management Plan, would inevitably delay realization by the affected taxing entities of the sales proceeds and could expose the Redevelopment Property Tax Trust Fund to liability for damages due to Jamestown.

The N-S Bid Instructions, issued by Eastdil on behalf of the Evaluation Team, created a contractual obligation on the part of the seller – the Successor Agency and the Oversight Board collectively -- not to consider any other offers. The breach of that contractual obligation, if allowed by the Oversight Board, would give rise to a claim for breach of contract and put the RPTTF at risk for this liability. Further, Successor Agency's deviation from both the LRPMP and its own N-S Bid Instructions and abuse of process would fatally taint any sale of the N-S Parcel to the City.

The N-S Bid Instructions, issued by the seller's agent and duly executed by Jamestown, clearly indicated the Successor Agency's intent to create a binding contract with the highest bidder. (See *Carver v. Teitsworth* (1991) 1 Cal. App. 4th 845, 851 ("[W]here the seller has manifested an intent to be bound by the highest bid submitted, his request for bids is an offer . . . and each bid operates as an acceptance . . .") (internal quotations and citations omitted).) Here, by submitting the highest bid, along with the required executed Purchase and Sale Agreement requiring only the Successor Agency's counter-signature, Jamestown accepted the Successor Agency's offer to sell the North South Parcel, and a contract between the parties was created.

The Successor Agency has breached that contract by failing, as promised, to "move forward with the highest bidder". Furthermore, the contract created an implied covenant of good faith and fair dealing, and it is hard to imagine a clearer example of bad faith than the City's effort here to redirect the property to itself despite the commitments made to Jamestown.

The process described in the Successor Agency's Bid Instructions was designed to be competitive, fair, and transparent, providing for sealed final offers, and expressly stating that no late or subsequent bids would be accepted. Instead, by inviting the City—and only the City—to circumvent these requirements entirely, the Successor Agency has threatened to impermissibly taint the process with fraud, corruption, and self-dealing. (See *Domar Elec., Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 173 (the validity of competitive bidding procedures must be evaluated against their purposes, "which are to guard against favoritism, improvidence,

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extravagance, fraud and corruption; to prevent the waste of public funds; and to obtain the best economic result for the public") (internal quotations omitted).)

For example, in *Eel River Disposal and Resource Recovery, Inc. v. County of Humboldt* (2013) 221 Cal. App. 4th 209, 214, Humboldt County engaged in a competitive bidding process in which the lowest qualified bid was to be awarded the County's waste collection and disposal contract. Instead, after the sealed bids were submitted, the County changed the selection criteria, and decided to award the contract to a local company that was not the lowest qualified bidder. (Id. at 217-18.) On appeal, the Court ordered that the contract be awarded to the lowest qualified bidder, finding that "deviations from strict adherence to competitive bidding standards" turned the bidding process "into a charade," and created "potential for abuses likely to arise from significant deviations from standards designed to eliminate favoritism, fraud, and corruption." (Id. at 236-238; see also *Konica Bus. Machines U.S.A. Inc. v. Regents of Univ. of California* (1988) 206 Cal. App. 3d 449, 456.)

The abusive conduct the *Eel River* court feared is exactly what the City is requesting the Oversight Board to condone. The City-cum-Successor Agency seeks to change the rules of the game, after all the sealed bids had been submitted and reviewed, in order to name the City as the victor. This is fundamentally unfair. The City's bid to purchase the Parcel cannot be accepted by the Board.

IV. Conclusion

Jamestown submitted the highest offer in accordance with the bid procedures established for the sale of this Parcel. The Oversight Board must itself follow the bid instructions issued on its behalf, and direct the Successor Agency to sell the Parcel to Jamestown.

We do not know why the City chose not to participate in the bidding process. There can be no argument that the City was unaware that the property was for sale -- City staff were very much involved in administering the process on behalf of the Successor Agency and the City's representatives on the Oversight Board participated in the Board's approval of the N-S Resolution and a City staff person is a member of the Evaluation Team. These City representatives now have an untenable conflict of interest and should be recused from further Board consideration regarding the disposition of the N-S Parcel.

The Oversight Board will be overseeing the sale of much more valuable assets in the months to come. The affected taxing entities, to whom this Board owes a fiduciary duty, cannot allow potential bidders in those sales to lose faith in the integrity of the bidding processes, for which this Board is ultimately responsible.

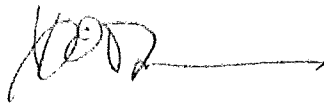
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The Oversight Board's obligations under the Dissolution Law, the Long Range Property Management Plan, and the process it established for the sale of this Parcel are clear. It must direct the Successor Agency to enter into the Purchase and Sale Agreement with Jamestown.

Sincerely,

COBLENTZ PATCH DUFFY & BASS LLP

A handwritten signature in black ink, appearing to read "H. O'Brien", followed by a horizontal line extending to the right.

Harry O'Brien

Enclosures

cc: Timon Kaple, Jamestown Realty Co., LLC
Deanna Santana, City Manager
Brian Doyle, City Attorney
James Williams, County Counsel
Christopher Cheleden, Lead Deputy County Counsel

1



EASTDIL SECURED

160 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113
TEL 408 533 9200 FAX 408 533 9205

Dear Tim, Larry, Harry, Misti,

The Successor Agency is conducting one last round of bidding for the North South Parcel.

To Participate:

- 1) Please sign below and return via e-mail acknowledging receipt and agreement to abide by bidding instructions/rules. Signed agreements must be returned to Eastdil Secured no later than 3:00 PM pacific on **Wednesday, April 25, 2018**. gcioth@eastdilsecured.com

Submittal instructions and process for the sealed bidding are as follows:

- 1) Final bids must be received by Eastdil Secured's San Jose office (Attention Greg Cloth/Tommy Kim) no later than 10:30 am on Thursday, April 26, 2018. The bids (Signed Purchase and Sale Agreement and check) shall be delivered in hard copy format in a sealed envelope, and not electronically. Sealed bid envelopes will not be opened until later that day-see below.
- 2) All bids submitted will be considered final offers.
- 3) Each bid must include a complete copy of the Purchase and Sale Agreement with the proposed Purchase Price indicated in Section 1.2 of the Agreement. The minimum bid amount is \$4,200,000.00
- 4) The submitted bid amount (purchase price) should be indicated to the one hundredth decimal (i.e., to the penny)
- 5) The Purchase and Sale Agreement (PSA) must be executed by an authorized officer
- 6) The Successor Agency will not accept any revisions to the form Purchase and Sale Agreement
- 7) Each bid must be accompanied by a \$500,000 check for the non-refundable deposit in accordance with the PSA (The Successor Agency will deposit the successful bidder's check into escrow and immediately return the check to the unsuccessful bidder). The City of Santa Clara will retain all the PSAs.
- 8) Sealed envelopes will be opened at 4:00 pm at Santa Clara City Hall – Council Conference Room, 1500 Warburton Avenue, Santa Clara.
- 9) Bidders or bidders' representatives may attend the bid opening as witnesses.
- 10) Successor Agency will not accept any subsequent bids.

At the conclusion of the bid process, the Successor Agency will move forward with the highest bidder and request Successor Agency/City Council approval of the PSA on May 8 and the Oversight Board approval of the PSA on May 15th.

The bidders acknowledge receipt of the above bidding instructions and by signing below and by submitting a bid have agreed to comply with the above rules.

JAMESTOWN REALTY COMPANY LLC

Received & Agreed: Signature: Timon M. Kaple

Print Name: TIMON M. KAPLE

Date: 4/25/2018

AUTHORIZED SIGNATORY

(Return via e-mail to gcioth@eastdilsecured.com)

2



**OVERSIGHT BOARD FOR SUCCESSOR AGENCY
TO THE CITY OF SANTA CLARA
REDEVELOPMENT AGENCY**

February 02, 2018

**10:00 AM SPECIAL MEETING
City Hall Council Chambers**

A complete agenda packet will be available for public review in the City Hall Council Chambers and the City Clerk's Office at the same time the public records are distributed to the Oversight Board.

1. CALL TO ORDER/ROLL CALL:

2. CONTINUANCE/EXCEPTIONS:

3. APPROVAL OF MINUTES:

A. June 30, 2017.

4. PUBLIC PRESENTATIONS:

This item is reserved for persons to address the Oversight Board on any matter not on the agenda that is within the subject matter jurisdiction of the City. The law does not permit Oversight Board action on, or extended discussion of, any item not on the agenda except under special circumstances. The Oversight Board, or staff, may briefly respond to statements made or questions posed, and the City Manager may request staff to report back at a subsequent meeting. Although not required, please submit to the City Clerk your name and subject matter on forms available by the door in the Council Chambers.

5. NEW BUSINESS:

A. Adoption of a Resolution authorizing the Successor Agency to enter into an agreement with Eastdil Secured for brokerage and advisory services related to the sale of North South and Great America Theme Park parcels, authorizing the Successor Agency to incur certain costs necessary for the sale, and authorizing the Evaluation Team to determine the procedures for the sale.

6. ADJOURNMENT:

A. The next regular scheduled meeting is on Friday, February 16, 2018 at 10:00 am, in the City Hall Council Chambers.

02-02-2018

3.A

**MINUTES OF THE CITY OF SANTA CLARA OVERSIGHT BOARD FOR
SUCCESSOR AGENCY TO THE CITY OF SANTA CLARA REDEVELOPMENT
AGENCY FOR A SPECIAL MEETING HELD ON
FRIDAY, JUNE 30, 2017**

Chairperson Gage called the Special Meeting of the Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency to order at 10:00 am, on the above-mentioned date, in the City Hall Council Chambers.

Present: Mayor of the City of Santa Clara appointees: Angela Kraetsch, Acting Finance Director and Lisa Gillmor, Mayor; Santa Clara County Board of Supervisors appointees: Debbie Cauble and Glen Williams; Santa Clara County Board of Education appointee: Matthew Tinsley; Chancellor of California State Community College appointee: Edralin (Ed) Maduli and Santa Clara Valley Water District (SCVWD) appointee: Donald Gage, Chairperson.

Absent: Oversight Board Legal Counsel, Hilda Cantu-Montoy.

City staff present: Ruth Shikada, Assistant City Manager; Karen Tiedemann, Successor Agency Legal Counsel, Goldfarb & Lipman, LLC; and Jose Jasso, Successor Agency Clerk.

3.A **MOTION** was made by Tinsley, seconded and unanimously carried (Cauble and Maduli Abstained), that the **Minutes** for the regular meeting of **April 21, 2017** be adopted.

5.A **MOTION** was made by Madli, seconded and unanimously carried, that the **Meeting Dates for the remainder of 2017 through July 2018** be approved as follows:

July 21, 2017	January 19, 2018
August 18, 2017	February 16, 2018
September 15, 2017	March 16, 2018
October 20, 2017	April 20, 2018
November 17, 2017	June 15, 2018
December 15, 2017	July 20, 2018

5.B The Oversight Board proceeded to consider the adoption of a Resolution approving the sale of 4949 Great America Parkway ("Santa Clara Hilton"), authorizing the Successor Agency to enter into a Purchase and Sale Agreement with Ontario Airport Hotel Corporation for a purchase price of \$24,250,000 and minor amendments as may be necessary to accomplish the transfer (APN: 104-43-054). The Assistant City Manager provided a brief overview of the item. Greg Cloth, Eastdil Secured provided some brief comments. Following a brief Board discussion, **MOTION** was made by Maduli, seconded [Cauble noted changes needed on Pages 1-4 of the Resolution] and unanimously carried with the noted changes, that the Board adopt **Resolution No. 2017-02 (OVERSIGHT BOARD)** entitled, "A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA APPROVING THE SALE OF 4949 GREAT AMERICA PARKWAY (SANTA CLARA HILTON)", AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH ONTARIO AIRPORT HOTEL CORPORATION AND MINOR AMENDMENTS AS MAY BE NECESSARY TO ACCOMPLISH THE TRANSFER.

Chairman Gage thanked staff for all of their work. Member Williams inquired about adding a third member to the Long Range Property Management Plan Evaluation Team. The Assistant City Manager reported that Angela Kraetsch is the newest member representing the City.

6. There being no further business, the Oversight Board adjourned at 10:11 am. The next regular scheduled meeting is on July, 21, 2017, at 10:00 am in the City Hall Council Chambers.

APPROVE: _____
Chairperson

ATTEST: _____
Clerk



AGENDA REPORT

Date: February 2, 2018

To: Oversight Board for Action

From: Assistant City Manager

Subject: Adoption of a Resolution Authorizing an Agreement with Eastdil Secured to Provide Brokerage and Advisory Services for North South and Great America Theme Park Properties, Authorizing The Successor Agency or Eastdil to obtain due diligence and disclosure reports and Authorizing the Evaluation Team to Modify the Long Range Property Management Plan Disposition Process

EXECUTIVE SUMMARY

Eastdil Secured ("Eastdil"), a subsidiary of Wells Fargo Bank, is a real estate investment bank providing a broad range of corporate advisory services including real estate brokerage. Eastdil has 14 offices globally with local presence in both San Jose and San Francisco.

Eastdil has been providing the Successor Agency with brokerage and advisory services after its selection by the Successor Agency following a competitive bid process in 2016. The Successor Agency and Oversight Board have benefitted from Eastdil's expertise and work efforts during the marketing and successful closing of the Gateway Parcel 2 and Santa Clara Hilton properties.

In fall 2017, the three-member Oversight Board Evaluation Team (Ed Maduli, WV-Mission Community College District; Glen Williams, County of Santa Clara; and Angela Kraetsch, Santa Clara Successor Agency) met with Successor Agency staff and recommended the continued use of Eastdil for brokerage services on the remaining Successor Agency properties.

Key terms of the proposal and the proposed agreement with Eastdil include:

Properties	North South: 4911 Great America Parkway, Santa Clara Great America Theme Park: 1 Great America Parkway, Santa Clara
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Exclusivity Term:	Eastdil would be selected to provide exclusive brokerage and advisory services on North South and Great America Theme Park parcels through August 31, 2018.
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Fee (North South):	6% of the gross sale price of the North South property.
(Great America):	0.65% of the first \$120,000,000 of the gross sale price for the Great America property plus 0.35% of the portion of the gross sale price above \$120,000,000.

All fees and expenses as described below will be payable only out of sales proceeds at closing.

Reports/Expenses:	If requested by the Successor Agency, Eastdil will secure due diligence reports as may be necessary to facilitate the disposition process. Any expenses to procure these reports will be payable out of sales proceeds at closing.
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Disposition Process: During the disposition of the Santa Clara Gateway Parcel 2 and Santa Clara Hilton properties, Eastdil recommended modifications to the previously approved Long Range Property Management Plan (LRPMP) disposition process to facilitate an environment more conducive to encouraging prospective buyers to submit stronger bid proposals. Approval of the recommended action would allow the Evaluation Team to again make modifications to the sale procedures for inclusion in the bid offering.

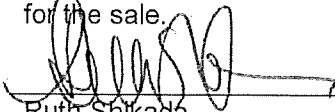
Similar to the Santa Clara Gateway Parcel 2 and Santa Clara Hilton disposition processes, Eastdil has recommended that certain due diligence reports be obtained prior to the solicitation of offers, including a Phase 1 environmental report and a geotechnical report. Either Eastdil or the Successor Agency may obtain these reports. If Eastdil obtains the reports, the costs of the reports would be reimbursable costs to be paid from sales proceeds, or if the sale does not occur for any reason, payable by the Successor Agency. If the Successor Agency obtains the reports, the Successor Agency would be reimbursed from the sales proceeds prior to the distribution of the sales proceeds to the taxing entities. The Successor Agency is requesting authorization to enter into such contracts as may be necessary to obtain the due diligence reports recommended by Eastdil, subject to the Evaluation Team approving the scopes of service.

ECONOMIC/FISCAL IMPACT

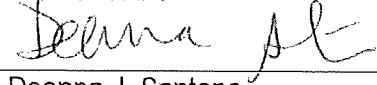
There is not an immediate fiscal impact associated with this report. If the Oversight Board authorizes the selection of a brokerage firm, any associated fees for brokerage services and reports will be paid from the sales proceeds of the North South and Great America Theme Park parcels.

RECOMMENDATION

That the Oversight Board adopt a Resolution authorizing the Successor Agency to enter into an agreement with Eastdil Secured for brokerage and advisory services related to the sale of North South and Great America Theme Park parcels, authorizing the Successor Agency to incur certain costs necessary for the sale, and authorizing the Evaluation Team to determine the procedures for the sale.


Ruth Shikada
Assistant City Manager

APPROVED:


Deanna J. Santana
City Manager
Executive Officer to Successor Agency

Attachments:
Resolution

RESOLUTION NO. 2018 - __ (OVERSIGHT BOARD)

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO AN AGREEMENT WITH EASTDIL SECURED TO PROVIDE BROKERAGE AND ADVISORY SERVICES FOR THE NORTH SOUTH AND GREAT AMERICA THEME PARK PROPERTIES CONSISTENT WITH THE TERMS PRESENTED, AUTHORIZING THE SUCCESSOR AGENCY TO INCUR CERTAIN COSTS NECESSARY FOR THE SALE OF THE NORTH SOUTH AND GREAT AMERICA THEME PARK PROPERTIES, INCLUDING SECURING DUE DILIGENCE AND DISCLOSURE REPORTS, WHICH COSTS WILL BE REIMBURSED FROM SALE PROCEEDS AND AUTHORIZING THE EVALUATION TEAM TO DETERMINE THE PROCEDURES FOR SALE OF THE SANTA CLARA HILTON PROPERTY IN CONSULTATION WITH THE BROKER

BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the California Legislature enacted Part 1.85 of the Health and Safety Code, Sections 34170 et seq. (the "Dissolution Law") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.); and

WHEREAS, pursuant to Health and Safety Code Section 34173, the City Council of the City of Santa Clara (the "City Council") declared that the City of Santa Clara, a charter city (the "City"), would act as successor agency (the "Successor Agency") for the dissolved City of Santa Clara Redevelopment Agency (the "RDA") effective February 1, 2012; and

WHEREAS, on February 1, 2012, the RDA was dissolved pursuant to Health and Safety Code Section 34172; and

WHEREAS, prior to dissolution of the RDA, the RDA owned certain properties which have subsequently been transferred to the Successor Agency; and

WHEREAS, in accordance with the Dissolution Law, the Oversight Board and the Department of

Finance have approved a Long Range Property Management Plan (“LRPMP”) providing for the disposition of the former RDA properties; and

WHEREAS, the Oversight Board pursuant to Resolution No. 2016-03 approved the appointment of an Evaluation Team consisting of members of the Oversight Board to work with the Successor Agency with regards to the sale of the former RDA properties in accordance with the LRPMP; and

WHEREAS, the Evaluation Team recommended to the Oversight Board that the Successor Agency engage the services of a real estate broker and pursuant to Resolution No. 2016-06 the Oversight Board directed the Evaluation Team to solicit proposals for a real estate broker and to make a recommendation to the Oversight Board for the selection of a broker including a sales commission structure for such broker; and

WHEREAS, the Successor Agency solicited proposals for brokerage services from real estate brokers with the required experience and received five proposals and selected Eastdil Secured; and

WHEREAS, Eastdil Secured provided valuable real estate marketing and brokerage advice and expertise to the Successor Agency and Evaluation Team that lead to the successful close of the Gateway Parcel 2 and Santa Clara Hilton properties; and

WHEREAS, based on the success of the Gateway Parcel 2 and Santa Clara Hilton efforts, the Evaluation Team requested additional advice from Eastdil on the sales and marketing approach that would maximize the sales proceeds on several Successor Agency properties including the North South property at 4911 Great America Parkway, Santa Clara, CA (APN 104-43-051) and Great America Theme Park properties located at 1 Great America Parkway, Santa Clara, CA (APN 104-42-014 and 104-42-019); and

WHEREAS, Eastdil provided the requested analysis to the Evaluation Team and the Evaluation Team requested that Eastdil prepare a proposal to market the North South and Great America Theme Park properties; and

WHEREAS, the Evaluation Team has determined that the commission structure proposed by

Eastdil Secured as set forth in their proposal is a fair and reasonable commission; and

WHEREAS, in order to maximize the sales proceeds from the North South and Great America Theme Park properties, the broker may recommend that certain disclosure and due diligence reports be prepared by the Successor Agency prior to solicitations; and

WHEREAS, the Oversight Board, pursuant to Resolution No. 2016-04 established procedures for the sale of the properties identified in the LRPMP to be sold; and

WHEREAS, similar to the Gateway Parcel 2 and Santa Clara Hilton transactions, the Evaluation Team may determine that alternative procedures for the sale of the North South and/or Great America Theme Park properties from the procedures identified in Resolution No. 2016-04 may maximize the sales proceed received for the property.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. The Oversight Board hereby finds, resolves, and determines that the foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff, Oversight Board members, and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

SECTION 2. The Oversight Board hereby approves the Evaluation Team 's recommendation that the Successor Agency hire Eastdil Secured to act as the real estate broker for the sale of the North South and Great America Theme Park properties and authorizes the Successor Agency to enter into a brokerage agreement with Eastdil Secured that provides for a commission to be paid to Eastdil Secured consistent with the commission structure set forth in the Eastdil Secured Proposal dated January 30, 2018 and attached to this Resolution as Exhibit A. The commission and any costs incurred by Eastdil Secured that are required to be reimbursed by the Successor Agency shall be paid from the sale proceeds received for North South and Great America Theme Park properties

prior to distribution of the sales proceeds to the taxing entities.

SECTION 3. The Oversight Board hereby authorizes the Successor Agency to enter into contracts and obtain services necessary to complete disclosure and due diligence reports recommended by Eastdil Secured, including, but not limited to, environmental reports, geological reports, and title reports. The Successor Agency shall be reimbursed for any costs incurred related to such contracts and services from the Successor Agency property sales proceeds prior distribution of such sales proceeds to the taxing entities.

SECTION 4. The Oversight Board hereby authorizes the Evaluation Team to approve the sales process for North South and Great America Theme Park properties based on recommendations from Eastdil Secured, notwithstanding the sales process approved by the Oversight Board pursuant to Resolution No. 2016-4.

SECTION 5. This resolution shall take effect immediately in accordance with Health and Safety Code Section 34191.5(f).

SECTION 6. Severability. If any provision or clause of this Resolution or the application thereof is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or application; and to this end, the provisions of this Resolution are declared to be severable.

CERTIFICATION

I HEREBY CERTIFY THE FORGOING TO BE A TRUE COPY OF A RESOLUTION PASSED
AND ADOPTED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE
CITY OF SANTA CLARA REDEVELOPMENT AGENCY AT A SPECIAL MEETING
THEREOF HELD ON ____ DAY OF FEBRUARY 2018, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS

NOES: BOARD MEMBERS

ABSTAIN: BOARD MEMBERS

ABSENT: BOARD MEMBERS

APPROVE:

ATTEST:

Don F. Gage
Chairperson

Rod Diridon, Jr.
Clerk to the Oversight Board



EASTDIL
SECURED
160 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113
TEL 408 533 9200 FAX 408 533 9205

January 30, 2018

Ms. Ruth Shikada
Successor Agency to the Former Redevelopment
Agency of the City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: North South Parcel/Great America Land, Santa Clara, California

Dear Ruth:

The purpose of this letter is to describe the terms and conditions under which Eastdil Secured Broker Services, Inc. (the "Broker") is authorized to arrange the sale of (i) the leased fee and leasehold interests in the North South Parcel located at 4911 Great America Parkway, in Santa Clara, California ("North South") and (ii) the leased fee interest in the Great America Land Parcel located at 1 Great America Parkway, in Santa Clara, California ("Great America" and collectively with North South, individually and collectively the "Property") on behalf of Successor Agency to the former Redevelopment Agency of the City of Santa Clara (the "Owner").

Grant. The Owner hereby grants to Broker the exclusive right to sell the Property for a period commencing on the date hereof and continuing through and including August 31, 2018 (the "Exclusive Period").

If the Owner should enter into a written agreement for the sale of the Property before the termination of the Exclusive Period, but the closing does not occur until after the termination of such period, Broker shall be entitled to be paid the compensation in accordance with the terms of this agreement whenever the closing occurs.

If the Owner sells the Property to a party with whom Broker dealt during the Exclusive Period and a closing of the sale with such party, or any affiliate or subsidiary thereof, takes place within 6 months after the termination of the Exclusive Period, Broker shall be entitled to the compensation provided for in this agreement. The provisions of this paragraph shall in no way be deemed to limit Broker's right in the previous paragraph.

Compensation. Owner agrees to pay Broker, and Broker agrees to accept from Owner, compensation for arranging the sale of the Property in an amount equal to (i) for North South, 6% of the gross sale price of the Property and (ii) for Great American, 0.65% of the first \$120,000,000 of the gross sale price plus 0.35% of that portion of the gross sale price of the Property that equals or exceeds \$120,000,000. In each case, gross sale price shall (i) include,

without limitation, any cash consideration paid or payable in connection with a sale, the then outstanding principal balances of any mortgages or deeds of trust constituting a lien on the Property assumed, or to which the Property is taken subject, by the purchaser, the face amount of any seller financing provided by the Owner and the fair market value of all other consideration payable (including, without limitation, insurance proceeds) in connection with the sale of the Property, without deduction for closing expenses, adjustments or costs of any kind. Said compensation shall be earned by and payable to Broker as, if and when the closing of the sale occurs. Broker, in all events, shall be entitled to the aforesaid compensation if the Owner consummates the sale of the Property or signs a written agreement for the sale of the Property during the Exclusive Period whether or not the Owner utilizes Broker's services. The Property may be sold in two separate transactions and the compensation payable in respect of the sale of one Property shall not be conditioned on there being a sale arranged for the other Property.

Notwithstanding anything contained herein to the contrary, if a sale of the Property should not close due to the Owner's willful default in any of its obligations under any contract that may be signed for the sale of the Property, Broker shall be entitled to the compensation set forth in this agreement on the date of such default, provided that Broker would have been entitled to receive the compensation provided in this agreement if the sale of the Property had actually closed on such date.

Broker shall also be entitled to the compensation set forth in this agreement if the Owner elects to enter into an exchange, assignment or other transfer option or refinance ("Alternative Transaction"), so long as a purchase offer or offer to enter into an Alternative Transaction was accepted by the Owner prior to the end of the Exclusive Period. In the event of an exchange, assignment or other transfer, the compensation will be based on the fair market value of the Property that is being exchanged, assigned or transferred. In the event of a refinancing, the compensation shall be based on the gross financing commitment, including the amount of any earnout or holdback. To the extent Broker only arranges mezzanine debt, the gross financing commitment shall be the aggregate of the mezzanine debt plus the amount of the underlying first mortgage debt that remains on the Property.

Due Diligence Expenses. Owner has requested that Broker obtain certain reports and disclosures related to the Property including, but not limited to, an ALTA Survey, a Phase 1 environmental assessment of each Property and a geotechnical report on each Property ("Due Diligence Reports"). Broker agrees to obtain such Due Diligence Reports as Owner may request, provided, that prior to entering into any contract for any Due Diligence Report, Broker obtains the consent of the Owner to the scope and payment terms of such Contract. Owner agrees to reimburse the Broker for any costs incurred by the Broker in obtaining the Due Diligence Reports at the close of the sale of a Property, provided, however, if the Property has not closed during the Exclusivity Period for whatever reason, the Owner agrees to pay the Broker the costs incurred for the Due Diligence Reports at the expiration of the Exclusive Period. Broker shall provide the Owner with copies of the Due Diligence Reports and all such reports shall be the property of the Owner and Owner shall be entitled to rely upon the information provided in the reports as if the Owner had commissioned the Due Diligence Reports.

Information. The Owner shall make available to Broker the documents and other information in the Owner's possession which in the reasonable judgment of Broker are

necessary or appropriate for the fulfillment of its assignment hereunder and the proper marketing of the Property. All documents and information supplied to Broker by the Owner shall, to the best of the Owner's knowledge, be complete and accurate and the Owner shall correct any information which it learns is incomplete or inaccurate. The Owner may designate certain information as confidential, and Broker will so treat such information. The Owner understands that the information provided to Broker may be used in the preparation of marketing materials that will be distributed to prospective purchasers. The Owner will be asked to approve all marketing materials in advance of their use. The Owner acknowledges and agrees that, as between Broker and the Owner, the Owner is responsible for the accuracy and completeness of all information regarding the Property that is provided by or at the direction of the Owner. Additionally, Owner agrees to provide to Broker a copy of the final form of the closing or settlement statement(s) prepared in connection with the closing and settlement of the sale transaction(s).

Analysis. To the extent that Broker prepares any analysis, valuation, appraisal or other report ("Analysis") regarding the economic value of the Property or Owner's interest therein, Owner acknowledges and agrees that any such Analysis will be an estimate only and will not constitute a representation, warranty, covenant or guaranty, either expressed or implied, regarding future events or performance. The Owner represents that the Analysis will be used for its internal purposes only, and will not be disseminated to any third party without the written consent of Broker.

Reporting. Broker shall keep the Owner current as to the progress of its marketing efforts and the Owner shall refer promptly to Broker all inquiries concerning the Property. To the extent that Owner fails to refer any such inquiry to Broker, or prevents or requests Broker to refrain from contacting, or delivering a marketing brochure to any such party, such party shall be deemed to be a party with whom Broker dealt for all purposes of this agreement. The Owner shall provide Broker, within 15 days of executing this agreement, a list of the names of all parties with whom the Owner had discussed the sale of the Property prior to the date hereof.

Insurance. Broker will provide to the Successor Agency evidence of insurance as described in Exhibit A attached.

Owner's Authority. The Owner is the Successor Agency to the former Redevelopment Agency of the City of Santa Clara. As such, in accordance with State law, any sale of the Property is required to be approved by the governing board of the Successor Agency and the Oversight Board to the Successor Agency, and both entities retain discretion to accept or reject any offer for the acquisition of the Property.

Purchaser Representation. Owner acknowledges and agrees that the potential purchaser of the Property may request Broker to act as its financial advisor to arrange financing for the purchase of the Property. Owner agrees that Broker may assist such purchaser in arranging financing to complete the acquisition of such Property and that Broker may be paid a fee by such purchaser for arranging any such financing and such fee shall in no event reduce, or be credited against, any fee payable hereunder.

Attorney's Fees. In the event that any action, suit or other proceeding in law or in equity is brought in connection with any term or provision in this agreement, and such action results in the award of a judgment for money damages or in the granting of any injunction or restraining order, all expenses (including reasonable attorneys' fees) of the prevailing party in such action, suit or other proceeding shall be paid promptly by the non-prevailing party.

Limitations. The Owner also understands that Broker will not advise it as to the legal or tax effects of any transaction, and that the Owner should, if it has not done so already, promptly engage legal and tax professionals to advise it as to all such matters during the course of this engagement and any transaction that may result. Broker shall also have no obligation to investigate conditions on or the condition of the Property, except to the extent that the Owner has requested the Broker to obtain the Due Diligence Reports, nor the financial stability or capability of any prospective purchaser. The Owner should engage technical staff and other analytical personnel to advise and assist it in each of these areas.

Assignment. Neither party shall assign this agreement or any right or obligation hereunder without the prior written consent of the other party.

Arbitration. Any claim or dispute arising out of or in any way relating to this agreement or its alleged breach shall be determined in a binding arbitration by a single arbitrator that is a retired State or Federal court judge. The arbitration shall be administered by the American Arbitration Association under its commercial dispute resolution procedures which are in effect at the time of the arbitration. The arbitration shall take place in San Jose, California. The parties may seek, from a court of competent jurisdiction, provisional remedies or injunctive relief in support of their respective rights and remedies hereunder without waiving their right to arbitration. However, the merits of the action that involves such provisional remedies or injunctive relief, including without limitation, the terms of any permanent injunction, shall be determined by arbitration under this section. Judgment on the arbitrator's award may be entered in any court of competent jurisdiction.

Disclaimer. Owner acknowledges that (i) Broker is an affiliate of Wells Fargo & Company, (ii) other affiliates of Wells Fargo & Company including Wells Fargo Bank, N.A. ("Other Affiliates") may now or hereafter have an interest in debt directly or indirectly related to the Property ("Related Debt"), and (iii) Broker has no control over, and will not seek to influence decisions, actions or forbearances on the part of any Other Affiliate with regard to Owner, the Property or Related Debt.

Broker will not disclose any nonpublic information relating to the proposed transaction, the Property or Owner to any party (including an Other Affiliate) actually known by Broker to have an interest in any Related Debt, unless Owner authorizes such disclosure in writing and agrees to participate in any discussion between Broker and such party.

Advertisement. Owner hereby consents to Broker using its name and logo in any "tombstone" or other advertisement announcing the successful consummation of any of the transactions contemplated hereunder.

Miscellaneous. The party executing this agreement on behalf of the Owner represents and warrants that he is duly authorized to bind the Owner with respect to the terms and conditions of this agreement.

This agreement contains the entire agreement of the parties hereto and replaces any prior agreements or understandings with respect to the subject matter hereof. It may not be changed, amended or modified except by an instrument in writing signed by the parties hereto.

Provided the terms and conditions of this agreement meet with your approval, please evidence your agreement by executing this letter on behalf of the Owner, and return it to me.

Sincerely,
EASTDIL SECURED BROKER SERVICES, INC.

By: _____
Name: Greg Cioth
Title: Managing Director

AGREED AND ACCEPTED:

Successor Agency to the former Redevelopment
Agency of the City of Santa Clara

By: _____

Name:

Title:

Country of Citizenship: USA

Dated: _____

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE
SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA
AND
EASTDIL SECURED BROKER SERVICES**

EXHIBIT A

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Broker (Contractor)'s indemnification of the Successor Agency, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

COMMERCIAL GENERAL LIABILITY INSURANCE

A. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

1. \$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance

Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the Successor Agency to the Former Redevelopment Agency of the City of Santa Clara, its Agency Board, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The Successor Agency to the Former Redevelopment Agency of the City of Santa Clara, its Agency Board, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for Agency, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance. Contractor agrees that its insurance shall be primary and not require contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to Contractor at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Contractor agrees to provide City with at least thirty (30) days prior notice of any cancellation of material change in coverage reasonably expected to result in non-compliance with the insurance requirements outlined herein.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and Agency agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by Agency, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to Agency for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Agency or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.
3. The Agency reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement. The Agency agrees to provide a 30 day remedy period to allow Contractor to resolve any material noncompliance issue prior to withholding payments.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain

not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to Agency and as described in this Agreement. Contractor shall file with the Agency all certificates and endorsements for the required insurance policies for Agency's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to Agency, or its representative as set forth below, at or prior to execution of this Agreement. Upon Agency's request, Contractor shall submit to Agency copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to Agency pursuant to this Agreement shall be mailed to:

The Successor Agency to the Former Redevelopment Agency of the City of Santa Clara

c/o EBIX Inc.

P.O. 12010-S2

Hemet, CA 92546-8010

or

151 North Lyon Avenue

Hemet, CA 92543

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

3

RESOLUTION NO. 2015 - 08 (OVERSIGHT BOARD)

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY OF THE REDEVELOPMENT
AGENCY OF THE CITY OF SANTA CLARA, APPROVING A
LONG-RANGE PROPERTY MANAGEMENT PLAN
PURSUANT TO HEALTH AND SAFETY CODE SECTION
34191.5**

WHEREAS, pursuant to ABx1 26 enacted in June 2011 (as amended by AB 1484 enacted in June 2012, the "Dissolution Law"), the Santa Clara Redevelopment Agency (the "Dissolved RDA") was dissolved as of February 1, 2012, and the City of Santa Clara, acting in a separate limited capacity and known as the Successor Agency of the Santa Clara Redevelopment Agency, has elected to serve as the successor agency (the "Successor Agency") of the Dissolved RDA;

WHEREAS, pursuant to Health and Safety Code Section 34173(g), as added by the Dissolution Law, the Successor Agency is a separate legal entity from the City of Santa Clara (the "City");

WHEREAS, an oversight board for the Successor Agency (the "Oversight Board") has been established and is functioning in accordance with Health and Safety Code Section 34179;

WHEREAS, the Successor Agency is charged with paying the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Dissolved RDA;

WHEREAS, the Dissolved RDA acquired certain properties (the "Properties") for redevelopment with uses consistent with, and for projects identified in, the Redevelopment Plan;

WHEREAS, the Successor Agency received a "Finding of Completion" from the California Department of Finance (the "DOF") pursuant to Health and Safety Code Section 34179.7, confirming that the Successor Agency has made specified required payments under the Dissolution Law;

WHEREAS, pursuant to Health and Safety Code Section 34191.5(b), the Successor Agency must prepare and submit a Long-Range Property Management Plan (the "LRPMP") to the Oversight Board and the Department of Finance for approval no later than December 31, 2015;

WHEREAS, in accordance with Health and Safety Code Section 34191.5, the Successor Agency has prepared an LRPMP, a copy of which is on file with the Successor Agency Secretary;

WHEREAS, the LRPMP provides for the disposition and use of the Properties in a manner consistent with and to implement projects identified in the Redevelopment Plan;

WHEREAS, because of such proposed disposition and use, the LRPMP further calls for the transfer of the properties identified as the Convention Center properties in the LRPMP to the City pursuant to a compensation agreement in accordance with the LRPMP, upon approval of the LRPMP by the Oversight Board and the DOF, all as authorized by Health and Safety Code Section 34191.5(c)(2)(A);

WHEREAS, in accordance with Health and Safety Code Section 34181(a) and the LRPMP, certain Properties acquired by the Dissolved RDA were acquired for governmental purposes, in particular the Martinson Day care Center property ("Governmental Use Properties");

WHEREAS, in accordance with Health and Safety Code Section 34181(a) the LRPMP calls for the transfer of the Governmental Use Properties to the Santa Clara Unified School District for continued use for governmental purposes;

WHEREAS, in accordance with Health and Safety Code Section 34191.5, the LRPMP calls for the disposition of certain properties that were acquired by the Dissolved RDA for redevelopment purposes with the net proceeds of the sale, after payment of the costs of sale, to be used first to pay enforceable obligations of the Successor Agency and only after such enforceable obligations are fully repaid, for the distribution of the remaining sales proceeds to the taxing entities in accordance with Health and Safety Code Section 34183;

WHEREAS, the Successor Agency has determined that the approval of the LRPMP is exempt from the California Environmental Quality Act pursuant to Section 15061(B)(3) which exempts projects

under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and the Successor Agency has determined with certainty that there is no possibility that the adoption of the LRPMP will have a significant effect on the environment; and,

WHEREAS, the staff report (the "Staff Report") accompanying this Resolution contains additional information and analysis upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct, and together with the Staff Report and other information provided by the Successor Agency staff and the public, form the basis for the findings and actions set forth in this Resolution.

SECTION 2. The Oversight Board Designated Contact Official or his or her designee, is hereby authorized and directed to file appropriate notice with respect to this Resolution and the actions set forth in this Resolution in accordance with the applicable provisions of CEQA.

SECTION 3. The Oversight Board hereby approves the LRPMP in the form attached hereto.

SECTION 4. The Oversight Board hereby directs the Successor Agency to transfer the Governmental Use Properties to the Santa Clara Unified School District in accordance with the LRPMP upon approval of the LRPMP by the DOF.

SECTION 5. The Oversight Board hereby directs the Successor Agency to transfer the Convention Center properties to the City upon execution of a compensation agreement with the taxing entities in accordance with Health and Safety Code Section 34180(f).

SECTION 6. The Oversight Board hereby directs the Successor Agency to begin the process of disposition of the properties designated for disposition in the LRPMP as soon as practicable after approval of the LRPMP by the Department of Finance.

SECTION 7. The Oversight Board hereby directs its Designated Contact Official, or the Designated Contact Official's designee, to provide written notice and information about this Resolution to the California Department of Finance in accordance with Health and Safety Code Section 34179(h). The actions set forth in this Resolution shall be subject to effectiveness in accordance with Health and Safety Code 34179(h).

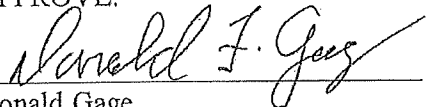
SECTION 8. Effective date. This resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

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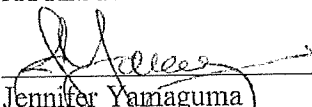
I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A SPECIAL MEETING THEREOF HELD ON THE 18th DAY OF DECEMBER, 2015, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:	Ameling, Cauble, Guthrie, Matthews and Chairperson Gage
NOES:	BOARD MEMBERS:	None
ABSENT:	BOARD MEMBERS:	Maduli and Zaderey
ABSTAINED:	BOARD MEMBERS:	None

APPROVE:


Donald Gage
Chairperson

ATTEST:


Jennifer Yamaguma
Clerk to the Oversight Board

Attachments incorporated by reference:
Exhibit A – Long Range Property Management Plan

**LONG-RANGE PROPERTY MANAGEMENT PLAN
(Pursuant to Health and Safety Code Section 34191.5)**

Santa Clara Successor Agency

December 18, 2015

Introduction

Procedural Background

The Redevelopment Agency of the City of Santa Clara (the "Former RDA") was dissolved on February 1, 2012, pursuant to ABx1 26 (as amended by AB 1484 and SB 107, the "Redevelopment Dissolution Statutes"). The Redevelopment Dissolution Statutes govern the dissolution of the Former RDA, which includes the disposition of its former real property including housing assets, governmental use properties and other real property assets of the Former RDA.

Under Health and Safety Code Section 34191.5(b), upon receipt of the finding of completion, the Successor Agency to the Redevelopment Agency of the City of Santa Clara (the "Successor Agency"), successor in interest of the Former RDA under Health and Safety Code Section 34173, shall prepare a Long-Range Property Management Plan (the "LRPMP") in connection with the disposition of the real property assets of the Former RDA (excluding "housing assets" as defined in Health and Safety Code Section 34176 and separately transferred). The Successor Agency must submit the LRPMP to its Oversight Board and the State Department of Finance (the "DOF"), no later than six months following the issuance by the DOF of the Finding of Completion.

In order to obtain a "finding of completion" the Successor Agency has made a series of required payments in accordance with the Redevelopment Dissolution Statutes. This document constitutes the Long-Range Property Management Plan prepared in accordance with Health and Safety Code Section 34191.5.

This LRPMP was approved by the Successor Agency's Oversight Board and approved by DOF in accordance with Health and Safety Code Section 34191.5(b).

Organization of LRPMP

Part I of this LRPMP sets forth the parameters that will govern the disposition and use of the Properties (defined in Part II below) prescribed under this LRPMP.

In accordance with Health and Safety Code Section 34191.5(c), Part II of this LRPMP contains summary sheets for each of the Properties setting forth the inventory information required under Health and Safety Code Section 34191.5(c)(1) and summarizing the directed designated use and disposition for each of the Properties.

Accompanying this LRPMP is the information checklist required by the DOF (Appendix A) and the DOF Tracking Worksheet (Appendix B).

Part I: Parameters for Transfers Pursuant to LRPMP

This Part I sets forth the parameters that will govern the disposition and use of the Properties prescribed in Part II of this LRPMP.

The Successor Agency is now responsible for disposition of the Properties in accordance with the procedures and requirements of Redevelopment Dissolution Statutes, with particular reference to Health and Safety Code Sections 34191.1, 34191.3, 34191.4(a), and 34191.5.

Property Uses/Disposition. Health and Safety Code Section 34191.5 authorizes four categories for disposition of a successor agency's property, as summarized in Table 1, below:

Table 1: Permitted Uses/Disposition of Successor Agency Real Property Under a LRPMP (Health and Safety Code Section 34191.5)

Plan Category	Use/Disposition Purpose of Property	Property Transferee
Enforceable Obligation	Use Consistent with Enforceable Obligation Terms	Designated Enforceable Obligation Recipient
Governmental	Governmental Use in Accordance with Section 34181(a)	Appropriate Public Jurisdiction
Approved Redevelopment Plan Project	Direct Use, or Liquidation and Use of Proceeds, for Project Identified in Approved Redevelopment Plan, pursuant to a compensation agreement with the taxing entities.	Host Community (City of Santa Clara)
Other Liquidation	Distribution of Sale Proceeds as Property Taxes to Affected Taxing Entities	Approved Purchaser

Part II of this LRPMP contains the proposed designated use and disposition for each of the Properties.

Governmental Use. One of the Properties is directed under this LRPMP to be transferred to a public agency for a governmental use. Governmental use properties will be transferred to the appropriate public agency for no consideration.

Liquidation. Most of the Properties are directed under this LRPMP are to be liquidated by the Successor Agency. The intent of this LRPMP is to maximize the value of all Properties directed for liquidation to the affected taxing entities. Notwithstanding any other provision of this LRPMP, the Oversight Board shall retain flexibility to ensure the maximization of value in accordance with Health and Safety Code section 34181(a) and to take appropriate steps, consistent with its fiduciary duty to the affected taxing entities, to maximize such value.

The Successor Agency has obtained appraisals of all of the properties that are designated for liquidation. Most of the Properties designated for liquidation are encumbered with long term ground leases. The improvements on the Properties encumbered with ground leases are owned by the lessee. Prior to marketing some of the Properties, including the Properties located in the Convention Center Complex and the Great America Theme Park, the Successor Agency and the

City will need to work with leaseholders to address long term access, parking and easements rights.

In order to maximize the sales proceeds from the Properties while minimizing costs of sales, the Successor Agency intends to market the properties through an open solicitation process that will include soliciting the holders of the leasehold interests encumbering the Properties as well as other parties. The Successor Agency will post information about the Properties on a website, advertise the properties in commercial listing services as well as direct solicitation of brokers, developers and adjacent property owners. The Successor Agency may, at the direction of the Oversight Board engage real estate brokerage firms to sell individual properties. Solicitation materials will include a deadline for submittals of bids as well as a purchase and sale agreement that must be signed by the bidder in order for any bid to be deemed complete. The solicitation period will be no less than 90 days.

Bids will be evaluated by an Evaluation Team consisting of a representative of the City of Santa Clara and two from other taxing entities, all of which will be chosen and approved by the Oversight Board. It is highly desirable for the members of the Evaluation Team to have experience with commercial real estate transactions. The Evaluation Team may seek advice from real estate professionals such as a real estate economist, appraiser or broker. The Successor Agency and the Evaluation Team will initially review all bids to determine completeness of the bids and the highest bidder. The Successor Agency and the Evaluation Team will present all bids and their recommendation of the successful bidder to the Oversight Board. If none of the bids are accepted by the Oversight Board, the Oversight Board may direct an additional solicitation or alternative disposition strategies to maximize value, after which, if applicable, the Oversight Board will be presented with all bids from either the first or second solicitation along with the recommendation of the Evaluation Team.

All the bids with the recommended bid and Purchase and Sale Agreement shall be forwarded to the Oversight Board for approval. If the Oversight Board approves the bid, the Successor Agency will execute the approved purchase and sale agreement and take all steps necessary to proceed with the close of escrow and transfer of the Property. The Oversight Board approval of a bid does not require further approval of the Department of Finance. (Health and Safety Code Section 34191.5) The proceeds of the sale minus the documented costs to the Successor Agency for transferring the property, including broker fees, and appraisal costs, but not staff time, will be retained to fulfill enforceable obligations on approved recognized obligation payment schedules or for distribution as property tax to the affected taxing entities, in accordance with the terms of Health and Safety Code Section 34191.5(c)(2)(B).

Part II: LRPMP Property Information Inventory and Proposed Uses

The properties that transferred to the ownership of the Successor Agency in connection with the Former RDA's dissolution that were not housing assets disposed of pursuant to Health and Safety Code Section 34176, consists of the Former RDA properties listed in Table below (herein collectively referred to as the "Properties").

Table 2 below summarizes the designated use and disposition for the Properties under Health and Safety Code Section 34191.5(c)(2).

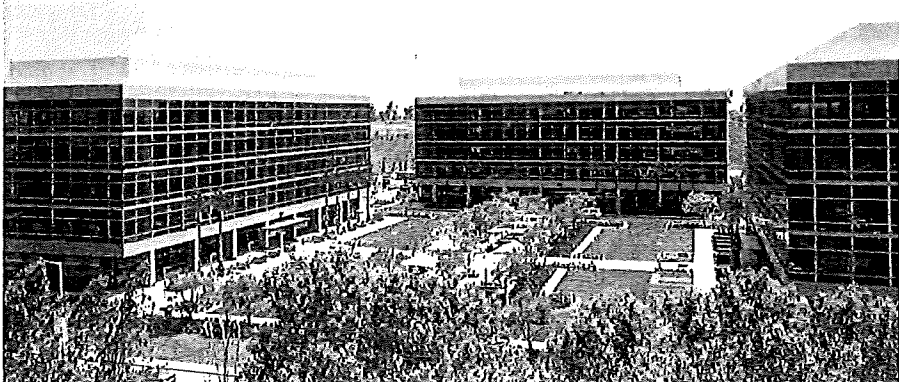
Table 2: Summary of LRPMP List of Properties and Designated Use/Disposition

	Site Description	APN(s)	Interests Affected	Recommended Disposition
1.	Gateway Property Parcel #2	104-01-100	Fee Simple, Subject to Ground Lease	Liquidation
2.	Santa Clara Convention Center, 5001 Great America Parkway	104-55-016, 104-55- 017; 104-43-025	Fee Simple title of land.	Transfer to the City pursuant to Compensation Agreement/ Settlement Agreement
3.	Techmart Meeting Center & Office Complex, 5201 Great America Parkway	104-55-013	Fee Simple, Subject to Ground Lease	Liquidation
4.	Hyatt Regency Santa Clara, 5105 Great America Parkway	104-55-005, 104-55- 012	Fee Simple, Subject to Ground Lease	Liquidation
5.	Hilton Santa Clara, 4949 Great America Parkway	104-43-054 (old APN 104-43-042)	Fee Simple, Subject to Ground Lease	Liquidation

	Site Description	APN(s)	Interests Affected	Recommended Disposition
6.	Great America Theme Park, 4701 Great America Parkway	104-42-014, 104-42- 019	Fee Simple, Subject to Ground Lease With Limited Right of First Refusal	Liquidation
7.	North/South Lot (adjacent to the Hilton Hotel)	104-43-051	Fee Simple, Subject to Ground Lease	Liquidation
8.	Martinson Child Development Center, 1350 Hope Street	097-08-053	Fee Simple, Subject to Ground Lease	Governmental Use

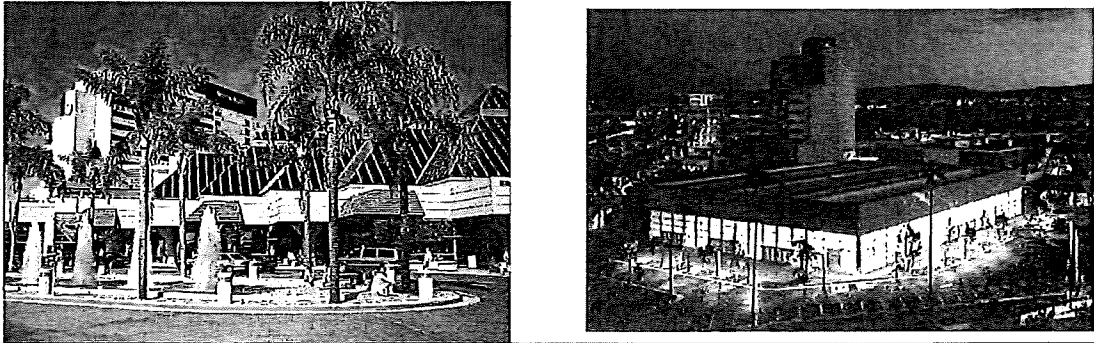
The Property Inventory Sheets, below, provide the required information for the Properties transferred from the Former RDA to the Successor Agency. The Inventory Sheets also address the specific LRPMP requirements listed in Health and Safety Code Section 34191.5(c)(1).

Table 3: Property Inventory Sheet for Gateway Parcel 2

	
Property Background and Description (§34191.5(c)(1)(B)-(C))	
Address	5451 Great American Parkway
APN	104-01-100
Lot Size	20.58 acres, 896,765 square feet, net
Acquisition Date	2001
Purchase Price/Value	\$0
Current Zoning	PD Planned Development
Current Use	Office Building
Purpose of acquisition	This property was originally part of the City landfill.
Estimate of Current Property Value (§34191.5(c)(1)(A))	
Estimated Current Value	\$90,000,000
Date of Estimated Current Value	May 31, 2015
Value Basis	Appraisal
Proposed Sale Value	\$90,000,000.
Proposed Sale Date	First quarter 2016.
Revenue Generated by Property	
Lease or rental income for the private use of property	\$4,031,481 per year
Contractual Requirements	See Ground Lease and easements
History of Environmental Contamination/Remediation	
The property was originally acquired by the City as part of a solid waste landfill site but was not actually used as landfill. However, because the property was adjacent to an active landfill, the City and the Agency undertook certain remediation activities prior to the development of the site, including the installation of monitoring wells and the installation of a bentonite wall sealing off the property from the former active landfill. Maintenance of the bentonite wall is the responsibility of the City pursuant to an Access Easement Agreement recorded against the Property.	
Disposition Plan	
History of previous development proposals	Property was developed in accordance with the terms of a Disposition and Development Agreement.
Potential for transit oriented development	Property is fully developed
Reuse potential/advancement of planning objectives	Property is fully developed.
Recommended Action	
The Successor Agency will liquidate the fee interest for Gateway Parcel 2 for maximum value and the proceeds of	

the sale minus the documented costs to the Successor Agency for transferring the property will be retained to fulfill enforceable obligations on approved recognized obligation payment schedules or for distribution as property tax to the affected taxing entities, in accordance with the terms of Health and Safety Code Section 34191.5(c)(2)(B). Buildings and other improvements on the parcel are privately owned.

Table 4: Property Inventory Sheet for Santa Clara Convention Center

	
Property Background and Description (§34191.5(c)(1)(B)-(C))	
Address	5001 Great America Parkway, Santa Clara, CA 95054
APN	104-55-016, 104-55-017; 104-43-025 (pedestrian bridge parcel)
Lot Size	25.27 acres
Acquisition Date	1965
Purchase Price/Value	\$1,650,000 for 179 acres of which the property is a portion
Current Zoning	PD Planned Development
Current Use	Convention Center, Parking Structure and common areas for Hotel and Office complex, and pedestrian bridge over San Tomas Channel.
Purpose of acquisition	This property was acquired originally for the development of electrical generation facilities by the City of Santa Clara Electrical Utility Department.
Estimate of Current Property Value (§34191.5(c)(1)(A))	
Estimated Current Value	Negative \$1,990,000 if owned by a tax exempt entity, negative \$8,251,000 if owned by a non-tax exempt entity, based on continuing the current use. The property has a substantially higher value if considered for redevelopment.
Date of Estimated Current Value	April 13, 2015
Value Basis	Fair market value appraisal
Proposed Sale Value	\$15,000,000
Proposed Sale Date	First quarter of 2016
Revenue Generated by Property	
Lease or rental income for the private use of property	\$0
Contractual Requirements	The property is subject to certain restrictions pursuant to Ground Leases for Hyatt Hotel and Techmart properties requiring that property continue to be maintained and operated for convention center purposes, parking and common area.
History of Environmental Contamination/Remediation	

History of contamination/remediation- None	
Disposition Plan	
History of previous development proposals	Property was undeveloped prior to its development with the Convention Center Complex.
Potential for transit oriented development	Property is fully developed
Reuse potential/advancement of planning objectives	Property is fully developed and subject to restrictions that would limit redevelopment for an alternative use.
Recommended Action	
The City is proposing to acquire the fee interest under: the Convention Center (i.e., the land under the building); all common areas and the land and parking structure improvements in accordance with a Compensation Agreement for \$15,000,000. The terms of the proposed Compensation Agreement are outlined in the December 2015 Settlement Agreement between the City, County, County Office of Education, Santa Clara Unified School District, State Controller, and State Department of Finance, including appropriate covenants, conditions and restrictions with respect to the Techmart and Hyatt properties.	

Table 5: Property Inventory Sheet for Techmart Office Building

	
Property Background and Description (§34191.5(c)(1)(B)-(C))	
Address	5201 Great America Parkway
APN	104-55-013
Lot Size	1.58 acres
Acquisition Date	1965
Purchase Price/Value	\$1,650,000 for 179 acres of which the property is a portion
Current Zoning	PD Planned Development
Current Use	Office Building
Purpose of acquisition	This property was acquired by the City of Santa Clara Electrical Utility Department for the construction of electric generating facilities.
Estimate of Current Property Value (§34191.5(c)(1)(A))	
Estimated Current Value	\$23,750,000
Date of Estimated Current Value	April 13, 2015
Value Basis	Fair Market Value Appraisal
Proposed Sale Value	\$23,750,000
Proposed Sale Date	First quarter of 2016
Revenue Generated by Property	
Lease or rental income for the private use of property	\$1,210,000 per year
Contractual Requirements	Property is currently subject to Ground Lease that provides parking rights on adjacent properties. Property is also subject to a maintenance assessment district that requires annual payments for costs of maintaining common areas
History of Environmental Contamination/Remediation	
History of contamination/remediation	None
Disposition Plan	
History of previous development proposals	Property was vacant land prior to development with existing office building.
Potential for transit oriented development	Property is fully developed

Reuse potential/advancement of planning objectives	Property is fully developed
Recommended Action	
The Successor Agency will liquidate the fee interest in the land under the Techmart building for maximum value and the proceeds of the sale minus the documented costs to the Successor Agency for transferring the property will be retained to fulfill enforceable obligations on approved recognized obligation payment schedules or for distribution as property tax to the affected taxing entities, in accordance with the terms of Health and Safety Code Section 34191.5(c)(2)(B). The Techmart building on the parcel is privately owned.	

Table 6: Property Inventory Sheet for Hyatt Regency Santa Clara

	
Property Background and Description (§34191.5(c)(1)(B)-(C))	
Address	5105 Great America Parkway
APN	104-55-005, 104-55-012
Lot Size	1.76 acres
Acquisition Date	1965
Purchase Price/Value	\$1,650,000 for 179 acres of which the property is a portion
Current Zoning	PD Planned Development
Current Use	502 room hotel including function rooms and ballroom.
Purpose of acquisition	This property was acquired to by the City of Santa Clara Electrical Utility Department for the construction of electric generating facilities.
Estimate of Current Property Value (§34191.5(c)(1)(A))	
Estimated Current Value	\$34,000,000
Date of Estimated Current Value	April 13, 2015
Value Basis	Fair market Value Appraisal
Proposed Sale Value	\$34,000,000.
Proposed Sale Date	First quarter of 2016.
Revenue Generated by Property	
Lease or rental income for the private use of property	Minimum of \$400,000 per year with percentage rent. Rent annually ranges from \$1 million to \$1.2 million
Contractual Requirements	Property is currently subject to Ground Lease that provides parking rights on adjacent properties as well as parking requirements off-site. Property is also subject to a maintenance assessment district that requires annual payments for costs of maintaining common areas
History of Environmental Contamination/Remediation	
History of contamination/remediation	none
Disposition Plan	
History of previous development proposals	The property was vacant land prior to its development as a hotel.

Potential for transit oriented development	Property is fully developed.
Reuse potential/advancement of planning objectives	Property is fully developed.
Recommended Action	
The Successor Agency will liquidate the fee interest in the land under the Hyatt Hotel building for maximum value and the proceeds of the sale minus the documented costs to the Successor Agency for transferring the property will be retained to fulfill enforceable obligations on approved recognized obligation payment schedules or for distribution as property tax to the affected taxing entities, in accordance with the terms of Health and Safety Code Section 34191.5(c)(2)(B). The Hyatt Hotel building on the parcel is privately owned.	

Table 7: Property Inventory Sheet for Hilton Santa Clara

	
Property Background and Description (§34191.5(c)(1)(B)-(C))	
Address	4949 Great America Parkway
APN	104-43-054
Lot Size	3.927 acres
Acquisition Date	1965
Purchase Price/Value	\$1,650,000 for 179 acres of which the property is a portion
Current Zoning	CP Commercial Park
Current Use	280 room Hotel
Purpose of acquisition	This property was acquired by the City of Santa Clara Electrical Utility Department for the construction of electric generating facilities.
Estimate of Current Property Value (§34191.5(c)(1)(A))	
Estimated Current Value	\$20,750,000
Date of Estimated Current Value	June 4, 2015
Value Basis	Fair market Value Appraisal
Proposed Sale Value	\$20,750,000.
Proposed Sale Date	First quarter of 2016
Revenue Generated by Property	
Lease or rental income for the private use of property	\$400,000 fixed rent plus percentage rent.
Contractual Requirements	none
History of Environmental Contamination/Remediation	
History of contamination/remediation	none
Disposition Plan	
History of previous development proposals	The property was vacant land prior to its development as a hotel. The hotel operator has expressed interest in additional development on the site.
Potential for transit oriented development	Property is fully developed
Reuse potential/advancement of planning objectives	Property is fully developed, but the hotel operator has expressed interest in additional development on the site.
Recommended Action	

The Successor Agency will liquidate the fee interest in the land under the Hilton Hotel Property for maximum value and the proceeds of the sale minus the documented costs to the Successor Agency for transferring the property will be retained to fulfill enforceable obligations on approved recognized obligation payment schedules or for distribution as property tax to the affected taxing entities, in accordance with the terms of Health and Safety Code Section 34191.5(c)(2)(B). The Hilton Hotel building and other improvements on the parcel are privately owned.

Table 8: Property Inventory Sheet for Great America Theme Park

	
Property Background and Description (§34191.5(c)(1)(B)-(C))	
Address	4701 Great America Parkway
APN	104-42-014, 104-42-019
Lot Size	116 acres
Acquisition Date	1985
Purchase Price/Value	\$15,809,278
Current Zoning	CT Thoroughfare Commercial
Current Use	Theme Park
Purpose of acquisition	This property was acquired to retain the current use as a theme park.
Estimate of Current Property Value (§34191.5(c)(1)(A))	
Estimated Current Value	\$155,000,000 but valuation assumes that parking lots are included with property. The Main Lot is owned by the City of Santa Clara and will not be conveyed with the Theme Park.
Date of Estimated Current Value	April 1, 2015
Value Basis	Appraisal
Proposed Sale Value	Sale value will be determined by the highest offer.
Proposed Sale Date	First quarter of 2016
Revenue Generated by Property	
Lease or rental income for the private use of property	\$5,300,000 annually plus percentage rent if certain thresholds are met.
Contractual Requirements	Property is subject to a ground lease that grants the Ground Lessee a right of first refusal if the property is sold for theme park use.
History of Environmental Contamination/Remediation	
History of contamination/remediation	None
Disposition Plan	
History of previous development proposals	Property was developed as theme park in 1976
Potential for transit oriented development	Property is fully developed and subject to a long term lease for current use.

Reuse potential/advancement of planning objectives	Property is fully developed and subject to a long term lease for current use.
Recommended Action	
The Successor Agency will liquidate the fee interest in the land under the Great America Theme Park Property for maximum value and the proceeds of the sale minus the documented costs to the Successor Agency for transferring the property will be retained to fulfill enforceable obligations on approved recognized obligation payment schedules or for distribution as property tax to the affected taxing entities, in accordance with the terms of Health and Safety Code Section 34191.5(c)(2)(B). Prior to sale of the property, agreements between the lessee and the City will need to be negotiated to address the lessee's continued use of the parking lot. The current ground lease for the property grants the lessee a right of first refusal to purchase the property if the lessor sells the property under certain conditions. The right of first refusal extends for three years after the expiration or termination of the Lease. All buildings, rides and other improvements on the parcel are privately owned.	

Table 9: Property Inventory Sheet for North-South Lot

	
Property Background and Description (§34191.5(c)(1)(B)-(C))	
Address	Great America Parkway, south of Santa Clara Hilton
APN	104-43-051
Lot Size	9.57 acres
Acquisition Date	1965
Purchase Price/Value	\$1,650,000 for 179 acres of which the property is a portion
Current Zoning	B Public/Quasi-Public
Current Use	Parking for Theme park and stadium.
Purpose of acquisition	This property was acquired to by the City of Santa Clara Electrical Utility Department for the construction of electric generating facilities.
Estimate of Current Property Value (§34191.5(c)(1)(A))	
Estimated Current Value	To be determined
Date of Estimated Current Value	N/A
Value Basis	Appraisal
Proposed Sale Value	Fair Market Value
Proposed Sale Date	To be determined to maximize sale value.
Revenue Generated by Property	
Lease or rental income for the private use of property	\$26,000
Contractual Requirements	Property is subject to ground lease in favor of owner of Great America theme park allowing use of the property for parking. Additionally, the property is subject to a 2012 parking agreement and easement with the Santa Clara Stadium Authority and the San Francisco 49ers Stadium Company granting both rights to park on the property for Stadium related events.
History of Environmental Contamination/Remediation	
History of contamination/remediation - None	
Disposition Plan	
History of previous development proposals	Property was the subject of a Disposition and Development agreement in the late 1980s proposing development of the property with a hotel.
Potential for transit oriented development	Property use is restricted for 60 years to parking uses.

Reuse potential/advancement of planning objectives	Property use is restricted for 60 years for parking uses.
Recommended Action	
The Successor Agency will liquidate fee interest for the land under the North/South lot property for maximum value and the proceeds of the sale minus the documented costs to the Successor Agency for transferring the property will be retained to fulfill enforceable obligations on approved recognized obligation payment schedules or for distribution as property tax to the affected taxing entities, in accordance with the terms of Health and Safety Code Section 34191.5(c)(2)(B).	

Table 10: Property Inventory Sheet for Martinson Child Development Center

	
Property Background and Description (§34191.5(c)(1)(B)-(C))	
Address	1350 Hope Street
APN	097-08-053
Lot Size	52,272
Acquisition Date	November 2003
Purchase Price/Value	\$2,438,375
Current Zoning	PDMC Planned Development Master Community
Current Use	Day care center
Purpose of acquisition	This property was acquired for future redevelopment.
Estimate of Current Property Value (§34191.5(c)(1)(A))	
Estimated Current Value	N/A
Date of Estimated Current Value	N/A
Value Basis	N/A
Proposed Sale Value	Not Applicable
Proposed Sale Date	Not Applicable
Revenue Generated by Property	
Lease or rental income for the private use of property	No lease or rental revenue is being generated.
Contractual Requirements	Not applicable.
History of Environmental Contamination/Remediation	
History of contamination/remediation	
Disposition Plan	
History of previous development proposals	None
Potential for transit oriented development	Property is currently developed with a child care center which use is proposed to continue
Reuse potential/advancement of planning objectives	
Recommended Action	
The Successor Agency will transfer the property (land and building) to the Santa Clara Unified School District as a governmental use property for the continued use and operation of a child development center. So long as the property is retained in the ownership of the School District, the net proceeds will consist of lease rental income, use fee income or other income, if any, that may be received by the School District with respect to the Property minus the documented costs to the School District of improvement, operation and maintenance of the property.	

APPENDIX A
LRPMP CHECKLIST



LONG-RANGE PROPERTY MANAGEMENT PLAN CHECKLIST

Instructions: Please use this checklist as a guide to ensure you have completed all the required components of your Long-Range Property Management Plan. Upon completion of your Long-Range Property Management Plan, email a PDF version of this document and your plan to:

Redevelopment_Administration@dof.ca.gov

The subject line should state "[Agency Name] Long-Range Property Management Plan". The Department of Finance (Finance) will contact the requesting agency for any additional information that may be necessary during our review of your Long-Range Property Management Plan. Questions related to the Long-Range Property Management Plan process should be directed to (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

Pursuant to Health and Safety Code 34191.5, within six months after receiving a Finding of Completion from Finance, the Successor Agency is required to submit for approval to the Oversight Board and Finance a Long-Range Property Management Plan that addresses the disposition and use of the real properties of the former redevelopment agency.

GENERAL INFORMATION:

Agency Name: **Successor Agency to the City of Santa Clara Redevelopment Agency**

Date Finding of Completion Received: 12/10/2015 (anticipated)

Date Oversight Board Approved LRPMP: 12/18/2015

Long-Range Property Management Plan Requirements

For each property the plan includes the date of acquisition, value of property at time of acquisition, and an estimate of the current value.

☒ Yes ☐ No

For each property the plan includes the purpose for which the property was acquired.

☒ Yes ☐ No

For each property the plan includes the parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.

☒ Yes ☐ No

For each property the plan includes an estimate of the current value of the parcel including, if available, any appraisal information.

☒ Yes ☐ No

For each property the plan includes an estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.

☒ Yes ☐ No

For each property the plan includes the history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.

☒ Yes ☐ No

For each property the plan includes a description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.

☒ Yes ☐ No

For each property the plan includes a brief history of previous development proposals and activity, including the rental or lease of the property.

☒ Yes ☐ No

For each property the plan identifies the use or disposition of the property, which could include 1) the retention of the property for governmental use, 2) the retention of the property for future development, 3) the sale of the property, or 4) the use of the property to fulfill an enforceable obligation.

☒ Yes ☐ No

The plan separately identifies and list properties dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation.

☒ Yes ☐ No

ADDITIONAL INFORMATION

- If applicable, please provide any additional pertinent information that we should be aware of during our review of your Long-Range Property Management Plan.

Long Range Property Management Plan is consistent with the proposed Settlement Agreement in Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara et al., Sacramento County Superior Court (Case No. 34-2013-80001396),

Agency Contact Information

Name: Julio J. Fuentes

Name: Ruth Shikada

Title: City Manager/Executive Officer

Title: Assistant City Manager

Phone: 408-615-2210

Phone: 408-615-2210

Email: manager@santaclaraca.gov

Email: rshikada@santaclaraca.gov

Date: 12/10/2015

Date: 12/10/2015

Department of Finance Local Government Unit Use OnlyDETERMINATION ON LRPMP: ☐ APPROVED ☐ DENIED

APPROVED/DENIED BY: _____ DATE: _____

APPROVAL OR DENIAL LETTER PROVIDED: ☐ YES DATE AGENCY NOTIFIED: _____

APPENDIX B
DOF TRACKING WORKSHEET

LONG RANGE PROPERTY MANAGEMENT PLAN: PROPERTY INVENTORY DATA

[illegible]

4



EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

December 22, 2015

Mr. Gary Ameling, Assistant City Manager and Director of Finance
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mr. Ameling:

Subject: Long-Range Property Management Plan

Pursuant to Health and Safety Code (HSC) section 34191.5 (b), the City of Santa Clara Successor Agency (Agency) submitted a Long-Range Property Management Plan (LRPMP) to the California Department of Finance (Finance) on December 18, 2015. Finance has completed its review of the LRPMP, which may have included obtaining clarification for various items.

The Agency received a Finding of Completion on December 15, 2015. Further, based on our review and application of the law, we are approving the Agency's use or disposition of all the properties listed on the LRPMP. However, Finance notes the following which does not require a revision to the LRPMP:

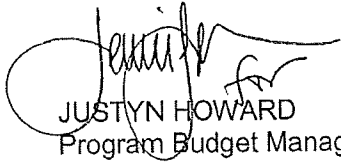
The Property Inventory Sheet for the Santa Clara Convention Center states the City will acquire the Convention Center, all the common areas and the land and parking structure improvements in accordance with a Compensation Agreement for \$15,000,000. The terms of the proposed Compensation Agreement are outlined in the December 2015 Settlement Agreement between the City, County, County Office of Education, Santa Clara Unified School District, State Controller, and Finance, including appropriate covenants, conditions and restrictions with respect to the Techmart and Hyatt properties. Finance notes it has not executed the December 2015 Settlement Agreement.

In accordance with HSC section 34191.4 (a), upon receiving a Finding of Completion from Finance and approval of a LRPMP, all real property and interests in real property shall be transferred to the Community Redevelopment Property Trust Fund of the Agency, unless that property is subject to the requirements of an existing enforceable obligation. Pursuant to HSC section 34191.3 (a) the approved LRPMP shall govern, and supersede all other provisions relating to, the disposition and use of all the real property assets of the former redevelopment agency.

Mr. Gary Ameling
December 22, 2015
Page 2

Please direct inquiries to Wendy Griffe, Supervisor, or Jared Smith, Lead Analyst, at (916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justyn Howard', is written over a circular stamp. The signature is fluid and cursive.

JUSTYN HOWARD
Program Budget Manager

cc: Mr. Marcelo Penha, Assistant Director of Finance, City of Santa Clara
Ms. Emily Harrison, Finance Agency Director, Santa Clara County

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 re-prorate 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 PURSUANT 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 constitute 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.**

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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.

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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

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.

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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

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 Personality 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

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APN: 104-43-051

