

AGREEMENT FOR PURCHASE OF REAL PROPERTY AND ESCROW INSTRUCTIONS

This agreement for purchase of real property ("Agreement"), dated for convenience as of _____, 2019, is made and entered into by and between the CITY OF SANTA CLARA, a chartered municipal corporation of the State of California ("City") and SUMMERHILL LAWRENCE STATION LLC, a California limited liability company ("Seller") who agree as follows:

RECITALS

- A. Seller is the owner of a certain parcel of land in the City of Santa Clara, County of Santa Clara, State of California described in **EXHIBIT A** attached hereto and incorporated by this reference (the "Property").
- B. The City Council of the City of Santa Clara has found and determined that the Property is needed for, or adaptable to, municipal purposes and that the public interest and necessity will be served by its purchase.
- C. Seller desires to sell the Property and City desires to purchase the Property from Seller, as permitted by the Charter of the City of Santa Clara, California, all upon the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

- 1. **PURCHASE AND SALE.** Seller agrees to sell the Property to City, and City agrees to purchase the Property from Seller, upon the terms and conditions set forth.
 - 1.1. The effective date ("Effective Date") of this Agreement is the Wednesday following the Tuesday evening City Council meeting during which the Council approves the Agreement. For purposes of this Agreement the Effective Date is _____, 2019.
- 2. **PURCHASE PRICE.**
 - 2.1. **Amount of Purchase Price.** The purchase price for the Property shall be four million seventy-seven thousand and two hundred dollars (\$4,077,200) ("Purchase Price") or approximately one hundred thirty dollars (\$130) per square foot (approximately 31,363 square feet) and shall be paid by Seller as follows:
 - a. **The Initial Deposit.** One week after the City Council approves this Agreement, City will deposit into escrow the sum of five percent (5%) of Purchase Price dollars (5% of \$4,077,200) (the "Initial Deposit"), in the form of a check made payable to Escrow Holder (defined in Section 3.1 below). The Initial Deposit shall be held in an interest bearing account,

with interest accruing for the benefit of City and credited by Escrow Holder toward payment of the Purchase Price at the Close of Escrow (defined in Section 3.3 below). Immediately upon deposit with Escrow, forty thousand eight hundred Dollars (\$40,800) of the Initial Deposit shall be non-refundable. The non-refundable portion of the deposit may increase, as provided in Sections 3.3 and 3.5.

- b. **Extension Deposits.** City may extend the original Closing Date for up to sixty (60) additional days by depositing the First Extension Deposit and the Second Extension Deposit and by otherwise complying with Section 3.3. The Initial Deposit, First Extension Deposit and Second Extension Deposit (described below), if any shall be collectively referred to as the "Deposits."
- c. **Balance of Purchase Price.** In good and sufficient funds, City shall deposit or cause to be deposited, with the Escrow Holder, the balance of the Purchase Price, plus additional funds as may be required to pay the Closing Costs (defined in Section 3.4 below) no later than one (1) business day prior to the Closing Date.
- d. **Calculation of Days.** The Effective Date shall be considered when determining the due date for any payment or other action taken within a certain number of days after the Effective Date, and the action or payment shall be due prior to 5:00 PM PST on the due date. Unless specified otherwise, a reference to "day" shall refer to a calendar day. If time for performance of any duty under this Agreement falls on a day other than a business day, the time for performance shall be extended to the next business day.

3. **ESCROW**

- 3.1. **Opening of Escrow.** The transaction contemplated by this Agreement shall be consummated through escrow number NCS-901119-SC ("Escrow") opened by Seller with First American Title Insurance Company located at 1737 North First Street, San Jose, California 95112; Attention: Linda Tugade ltugade@firstam.com (referred to herein as "Escrow Holder" through its escrow department and "Title Company" through its title department).
- 3.2. **Deposits by Seller.** Seller shall deliver to Escrow Holder, on or before three (3) business days prior to the Closing Date, a California grant deed, duly executed and acknowledged (the "Grant Deed") conveying the Property to Seller, subject to the Seller's easements, covenants and restrictions, if any, as set forth on the attached **EXHIBIT B**.
- 3.3. **Closing Date; Close of Escrow.**

- a. Escrow shall close on or before _____, 2019, the day occurring fourteen (14) days after the Effective Date (the "Closing Date").

For purposes of this agreement, "Close of Escrow" or the "Closing Date" shall mean the date the Grant Deed is recorded in the Official Records of Santa Clara County, State of California.

- b. City may extend the Closing Date for up to an additional thirty (30) days (to occur no later than forty four (44) days after the Effective Date), by providing written notice and making an additional non-refundable deposit of eighty-one thousand five hundred Dollars (\$81,500) with Escrow Holder, in the form of cash, certified check or cashier's check made payable to Escrow Holder ("First Extension Deposit") as further described in Section 3.5. The First Extension Deposit must be made no later than fourteen (14) days after the Effective Date and shall be held in an interest bearing account, with interest accruing for the account of City.

City shall deliver to Escrow the balance of the purchase price no later than forty four (44) days after the Effective Date, unless on or prior to that date, City:

- (i) Delivers written notice to Seller and Escrow requesting an additional thirty (30) day extension of the Closing Date (extending the Closing Date to occur no later than seventy four (74) days after the Effective Date); and
 - (ii) Deposits an additional non-refundable deposit of one hundred twenty-two thousand three hundred dollars (\$122,300) in Escrow ("Second Extension Deposit") in the form of cash certified check or cashier's check made payable to Escrow Holder (making the total non-refundable deposit held by Escrow Agent equal to four hundred seven thousand seven hundred dollars (\$407,700)).
- c. City may close prior to the Closing Date set forth above, as it may be extended, by delivering written notice to Seller and Escrow Holder no less than five (5) business days prior to the proposed Closing Date, along with Seller's approval of all contingencies not previously approved.

- 3.4. **Costs and Expenses.** The costs incidental to the sale (collectively "Closing Costs") shall be paid by Seller. In the event of cancellation of the transaction, each party shall pay half of the escrow cancellation fees, if any. Seller shall pay for the ALTA standard coverage portion of the Title Policy, the documentary transfer tax and recording fees, if any. Seller and City shall each pay their own costs for document preparation, courier and notary fees. Seller shall pay any other closing costs not specified in this Agreement and not explicitly assumed by City.

3.5. **City's Review.**

- a. **Documents and Records.** As promptly as practicable, but no later than ten (10) business days after the Opening of Escrow, unless otherwise specified, Seller shall deliver to City each of the following materials:

- (i) Copies of any Environmental Site Assessment Reports ("Reports") to the extent that any exist, are held by Seller and Seller is aware of the Reports.
- (ii) Copies of existing leasehold interests on the site.

If Escrow fails to close for any reason, City agrees to promptly return to Seller the documents and other materials delivered by Seller. Upon the Close of Escrow, Seller agrees to deliver to City all original documents in Seller's possession not previously delivered to City. Seller makes no warranties or representations regarding the truth, adequacy, and/or accuracy of the Reports or any documents or records delivered to City by Seller, Seller expressly disclaims any liability for any and all defects or deficiencies contained therein, and City shall accept such Reports, documents and materials in their "AS IS" condition.

- b. **City's Conditions.** City's obligation to purchase the Property under this Agreement is conditional on City's approval of the specified conditions set forth below. If City expressly disapproves such conditions in the manner and time periods set forth below, then City shall have the right to terminate this Agreement. Upon termination, all refundable deposits and interest earned thereon as well as other funds delivered to Title Company by City shall be returned to City, and all documents delivered to City by Seller shall be returned to Seller. If City fails to deliver written notice of disapproval of a condition to Seller and Escrow Holder within the time period set forth below, then the condition shall be deemed approved by City.

- (i) **Review of Title.** No later than seven (7) days after the Effective Date, City shall deliver written notice to Seller and Escrow Holder of its disapproval of the exceptions to the preliminary title report prepared by Title Company, with the exception that City hereby approves the standard exceptions and exclusions to title described in Section 4.2 (a) and (b).

If City has not notified Seller and Escrow Holder in writing of its disapproval prior to 5:00 PM PDT of the seventh (7th) day after the Effective Date, an additional forty thousand seven hundred seventy-two dollars (\$40,772) of the Initial Deposit shall become

non-refundable (making the total non-refundable Deposit equal to eighty-one thousand five hundred fifty-four dollars (\$81,544)).

- (ii) **Physical Condition of Property.** No later than ten (10) days after the Effective Date, City shall deliver to Seller and Escrow Holder written approval or disapproval of the physical condition of the Property, including the condition of the Property with respect to Hazardous Materials and approval or disapproval of the documentation and information delivered pursuant to Section 3.5 (a).

If City does not deliver either notice, City shall be construed to have approved all conditions, the non-refundable Deposit shall increase to two hundred three thousand eight hundred sixty dollars (\$203,860) and City shall be obligated to Purchase the Property no later than the original Closing Date.

- (iii) **Non-Refundable/Refundable Deposits.** If City disapproves items (i) or (ii) above in compliance with the foregoing sections, this Agreement shall terminate and City shall be released from its obligation to purchase the Property. Escrow Holder shall immediately release to Seller all portions of the Deposit, which are non-refundable to City prior to Seller's disapproval notice. Escrow Holder shall then pay to City the remaining refundable portions of the Deposit plus any interest accruing from the Deposit.

- (iv) **Right of Entry.** Seller hereby grants to City the following rights for the purposes set forth below.

- A. The right to conduct or cause to be conducted, any and all tests, investigations and/or inspections in, on, under, above, or about the Property in order to determine the condition of the Property, including without limitations, the right to take groundwater samples and soil borings.

The foregoing right shall be subject to the following terms and conditions:

- B. The rights of entry granted by Seller under this Section shall commence immediately upon execution of this Agreement, and shall terminate on the date of termination of this Agreement or the Closing Date, whichever is the first to occur.
- C. All costs, expenses, or charges incurred in or related to City's investigation of the Property shall be paid by City.

- D. A copy of all reports resulting from such investigation of the Property shall be made available to the Seller no later than thirty days (30) following the investigation date.
- E. City shall leave the Property in similar condition after its test, investigations and/or inspections as it was found. City shall indemnify, defend and hold Seller harmless from injuries or damage to the Property, arising out of or caused by City or City's agents entry onto the Property.
- F. City shall provide Seller with no less than forty-eight (48) hours' notice prior to such entry. City shall not unreasonably interfere with Seller's activities on the Property.

- c. Waiver. If the Close of Escrow occurs, then the specified conditions of City set forth in this Agreement, including without limitation the conditions in Section 4, shall be deemed satisfied or waived by City.

3.6. Disbursements and Other Actions by Escrow Holder. Upon expiration of the City's review period provided for in Section 3.5, the parties hereto instruct the Escrow Holder to promptly undertake all of the following in the manner and in the order indicated:

- a. Prepare separate closing statements for City and Seller for their respective approvals, setting forth all debits and credits to be made in Escrow (the "Closing Statement(s)");
- b. Cause the Grant Deed to be recorded in the Official Records of Santa Clara County, State of California;
- c. Disburse to Seller promptly upon the Close of Escrow all funds deposited with Escrow Holder by City towards payment of the Purchase Price as set forth in City's approved Closing Statement.
- d. Pay all Closing Costs from those funds deposited by City in excess of the Purchase Price and disburse the balance of such excess funds, if any, to City;
- e. Disburse and deliver to such persons or entities any and all other funds and documents which Escrow Holder is authorized or required to deliver or distribute pursuant to these, or any additional escrow instructions. Seller and City hereby grant to Escrow Holder such other rights, powers and authority which are incidental to, or may be required in connection with Escrow Holder's carrying out of the instructions set forth herein.

Seller and City hereby agree upon request of Escrow Holder, to execute and deliver to Escrow Holder any other specific or general escrow instructions which Escrow Holder may reasonably require in connection with the performance of its obligations hereunder; and

- f. Issue the Title Policy in the form approved pursuant to Section 4.3 of this Agreement.

4. **TITLE.**

4.1. **Delivery of Preliminary Title Report.** Promptly after the Effective Date, Seller shall deliver to City recent preliminary title reports prepared by the Title Company covering the Property.

4.2. **Condition of Title.** Seller shall convey to City fee title to the Property, subject to:

- a. Any of Seller's easements or any other reservation of rights as set forth in the Grant Deed attached as **EXHIBIT B** if applicable;
- b. The printed exclusions and exceptions of the Title Company as set forth in the Title Policy; and,
- c. Additional exceptions approved by City pursuant to Section 3.5(b).
- d. Mechanics' liens or any other liens caused as a result of City's investigations or other activities on the Property.
- e. The TCE (defined in Section 4.4 below).
- f. The Landscape Easement (defined in Section 4.5 below).

Seller shall convey title in the aforesaid condition by its execution and delivery of the Grant Deed, duly notarized. All matters concerning title to the Property shall merge into the Grant Deed upon Close of Escrow.

4.3. **Title Policy.** Title Company shall, at a minimum, issue a CLTA Standard Owner's Form Policy of Title Insurance, showing title to the Property vested in City in the condition set forth in Section 4.2 alone. If Title Company cannot issue the Title Policy as provided in this section, Title Company shall notify the parties as soon as practicable prior to the Closing Date.

4.4. **Temporary Construction Easement.** The Property is subject to an easement for access on, over and across the Property for the purpose of performing construction activities (the "TCE") on Seller's property located adjacent to the Property ("Seller's Property"). The TCE includes the right to install scaffolding,

movement of construction vehicles and equipment and other activities incidental to the construction of improvements on Seller's Property. City shall not block or restrict the use of the TCE in any way.

- 4.5. **Landscape Easement.** The Property is subject to an easement for the purpose of installing and maintaining landscape improvements on the Property (the "Landscape Easement").

5. **DISCLAIMER; INDEMNIFICATION; AND WAIVER.**

- 5.1. **Indemnification.** Seller agrees to protect, defend, indemnify and hold harmless, City, its officers, employees, representatives, and agents, from and against any and all claims, costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses, including without limitation, attorneys' fees and court costs, of whatever kind or nature (collectively, "claims"), whether paid, incurred, suffered, alleged, asserted, or related thereto arising directly or indirectly from or attributable to Seller's use of, or conditions existing or alleged to exist in, on, under, above, or about the Property prior to the Closing Date, including but not limited to: any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous materials on, under or about the Property existing prior to the Closing Date, regardless of whether undertaken due to governmental action, or otherwise. To the fullest extent permitted by law, the foregoing hold harmless and indemnification provision shall apply except where (i) such claim is the result of sole active negligence or willful misconduct of City, its officers, employees, representatives, or agents, (ii) such claim occurred or is the result of the conduct or activities of City, its officers, employees, representatives, or agents during their entry onto the Property for the purpose of conducting tests, investigations and/or inspections in, on, under, above or about the Property, or (iii) such claim is made or arises after the Closing Date. Without limiting the generality of this indemnity and hold harmless provision in any way, this provision is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order to indemnify, defend, protect and hold harmless City for any liability pursuant to such sections. Seller and City agree that for purposes of this Agreement, the term "Hazardous Materials" shall have the definition set forth in **EXHIBIT C** which is attached to this Agreement and incorporated by reference. The obligations of Seller under this Section shall survive Close of Escrow and delivery of the Grant Deed.
- 5.4. **Materiality.** Seller acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Seller for the benefit of City set forth in this Agreement are a material element of the consideration to the City for the performance of City's obligations under this Agreement, and that the City would not have entered this Agreement but for such obligations of Seller as provided for herein.

6. **REPRESENTATIONS AND WARRANTIES.**

6.1. In addition to any express agreements of Seller otherwise contained in this Agreement, the following constitute representations and warranties of Seller and shall be true and correct as of the Close of Escrow (and the truth and accuracy of which shall constitute a condition of Seller to the Close of Escrow and which shall survive the Close of Escrow):

- a. The execution and delivery of this Agreement by Seller and Seller's performance, and the transactions contemplated have been duly authorized on the part of Seller and the person or persons signatory to the Agreement on behalf of Seller have full power and authority to execute same.

6.2. In addition to any express agreements of City otherwise contained in this Agreement, the following constitute representations and warranties of City and shall be true and correct as of the Close of Escrow (and the truth and accuracy of which shall constitute a condition of City to the Close of Escrow and which shall survive the Close of Escrow):

1. City or City's employees, agents, representatives, consultants, and/or contractors ("City's Agents") have the requisite expertise to diligently inspect and investigate the condition of the Property and to evaluate the data obtained in order to ascertain whether the Property is suitable for City's intended use.
2. City has been given the opportunity to sufficiently inspect the Property.
3. "AS IS WITH ALL FAULTS" PURCHASE: City represents and warrants that prior to the Closing Date will satisfy itself, as to the physical, environmental, legal and economic condition of the Property and its suitability for the purposes intended by City. City acknowledges and agrees that City is acquiring the Property on an "AS IS, WHERE IS" and "WITH ALL FAULTS, LIABILITIES, AND DEFECTS, LATENT OR OTHERWISE, KNOWN OR UNKNOWN" basis subject to all existing laws, ordinances, rules and regulations and City assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigations. Except for those representations and warranties expressly set forth in this Agreement, Seller disclaims the making of any representations or warranties, express or implied, regarding the Property, the condition of the Property or matters affecting the Property. City acknowledges that (a) City has entered into this Agreement with the intention of making and relying upon its own or its expert's investigation of the physical, environmental, economic and legal condition of the Property, and (b) that, except for those representations and warranties expressly set forth in this Agreement, City is not relying on any representations or warranties made by Seller. As of the Closing Date City waives, releases, acquits and forever discharges Seller, Seller's employees, agents, partners,

and any other person acting on or in behalf of Seller, of and from any and all claims, liabilities, obligations, demands actions, causes of action, rights, damages, costs, expenses or compensation whatsoever (collectively "Claims"), direct or indirect, known or unknown, foreseen or unforeseen, that City now has, or which may arise in the future, on account of or in any way growing out of or connected with the conditions of the Property. Notwithstanding anything in this section or in this Agreement to the contrary, nothing herein shall relieve Seller of any liability for fraud or intentional misrepresentation of any kind.

7. **MISCELLANEOUS PROVISIONS.**

- 7.1. **Notices.** All notices or other communications required or permitted hereunder shall be in writing, addressed to the person to receive such notice at the addresses set forth next to the signatures of Seller and City below or in Section 3.1 for Escrow Holder, and shall be personally delivered, sent by courier service, sent by facsimile or email transmission (if also sent by one of the other methods provided in this Section) or sent by registered or certified mail, first class postage prepaid, return receipt requested. These addresses shall be used for service of process.

Notice shall be effective or deemed effective on the date of delivery, if personally delivered or sent by courier service, on the date of transmittal if sent by email or facsimile or if mailed, three (3) days after deposit with the United States Postal Service. Any party to this Agreement may change its address for receipt of notices by giving notice to the other party in the manner set forth in this Section. Neither the rejection of a notice by the addressee nor the inability to deliver a notice because of a change of address for which no change of address notice was received, shall affect the date on which notice is deemed received.

- 7.2. **Recordation.** City shall not record or cause to be recorded in the Santa Clara County Recorder's Office this Agreement or a short form memorandum of this Agreement.
- 7.3. **Required Actions of Seller and City.** Seller and City agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use reasonable efforts to accomplish the Close of Escrow in accordance with the provisions hereof.
- 7.4. **Time of Essence.** Time is of the essence in the performance of each and every term, condition, obligation and provision hereof.
- 7.5. **No Obligations to Third Parties.** Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties to this Agreement, to any third person or entity.

- 7.6 **Waiver.** The waiver of any breach or violation of any term or condition or failure to enforce any provision of this Agreement by City shall not operate as a waiver of any other term or condition contained in this Agreement or a waiver of any subsequent breach or violation of the same or any other term or condition.
- 7.7 **Applicable Law.** This Agreement shall be deemed to be made in and construed in accordance with the laws of the State of California. In the event either party brings suit hereunder, the parties agree that venue for such action shall be vested in the state courts of California in the County of Santa Clara.
- 7.8 **Entire Agreement.** This Agreement supersedes any prior oral or written understandings or agreements and contains the entire agreement between Seller and City regarding the sale of the Property to City. The terms of this Agreement may not be modified or amended except in writing and no subsequent agreement, representation, or promise made by either party hereto, or by any employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.
- 7.9 **Brokers.** City and Seller each represents that it has not used any brokers in connection with the purchase or sale of the Property. Seller and City each agree to indemnify, defend, protect, and hold the other and its employees, officer, and representatives harmless from and against any claims, liabilities, damages, costs, fees and expenses, including attorneys' fees and costs, arising in connection with any claim for or payment of any commissions, finders' fees or other payments of a similar nature which arise or allegedly arise in connection with this Agreement.
- 7.10 **Exhibits.** All exhibits, and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment to this Agreement or any exhibits or addenda attached hereto, are by reference incorporated into this Agreement and shall be deemed a part hereof as if fully set forth herein.
- 7.11 **Assignment by City.** On or prior to the Close of Escrow, City shall not assign all or any portion of any right or interest of City in the Property or under this Agreement to any third party.
- 7.12 **Binding on Successors.** Without limiting the provisions of Section 7.11 above, this Agreement inures to the benefit of and is binding on, the parties, and their respective heirs, personal representatives, successors and assignees.
- 7.13 **Offer to Purchase.** This Agreement until executed by both Seller and City, shall be deemed an irrevocable offer by City to purchase the Property from Seller on the terms set forth herein. In no event shall this Agreement be deemed accepted by or binding upon City until the City Council of the City of Santa Clara has approved the terms and provisions of this Agreement; this approval shall be at the

sole discretion of the City Council. In the event this Agreement is not approved by the City Council, City then agrees to take such actions and execute such instruments as Seller deems necessary in order to waive, release and/or discharge any right, title or interest City may have in the Property.

8. **FAILURE TO CLOSE.**

8.1 **Seller's Failure.** If Seller should refuse to transfer title to the Property to City at the time and in the manner herein provided, City's sole remedy shall be:

1. To accept or undertake to compel by action for specific performance such performance as Seller is able to tender without diminution in the purchase price; or,
2. Terminate this Agreement. If City should terminate this Agreement by reason of Seller breach, unless City is in default, all sums paid or deposited hereunder by City shall forthwith be returned.

8.2 **City's Failure.** IF CITY FAILS TO PURCHASE THE PROPERTY FOR ANY REASON OTHER THAN A MATERIAL BREACH BY SELLER UNDER THE TERMS OF THIS AGREEMENT, CITY SHALL BE RELEASED FROM ANY FURTHER OBLIGATIONS UNDER THIS AGREEMENT AND CITY SHALL HAVE NO INTERESTS, CLAIMS, RIGHTS, OR ENTITLEMENTS IN OR TO THE PROPERTY. SELLER AND CITY AGREE THAT THE DAMAGES THAT SELLER MAY SUSTAIN AS A RESULT OF ESCROW FAILING TO CLOSE WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN AND AGREE THAT THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF SELLER'S DAMAGES CONSIDERING ALL CIRCUMSTANCES EXISTING AT THE TIME OF EXECUTION OF THIS AGREEMENT. THEREFORE, THE PARTIES AGREE THAT IF ESCROW FAILS TO CLOSE DIRECTLY OR INDIRECTLY AS A RESULT OF A BREACH BY CITY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, SELLER SHALL BE ENTITLED TO RETAIN THE AMOUNT OF THE DEPOSIT AS LIQUIDATED DAMAGES, IN LIEU OF ANY OTHER REMEDY, DAMAGES, OR MONETARY RELIEF AND SHALL NOT BE CONSIDERED AS A PENALTY. SELLER AND CITY ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION AND BY INITIALING IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

SELLER'S INITIALS

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CITY'S INITIALS

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[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth opposite their respective signatures.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

ATTEST:

NORA PIMENTEL, MMC
Assistant City Clerk

Copy of Notice to:

City of Santa Clara
Office of the City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Clerk
Fax #: (408) 241-6771
Phone #: (408) 615-2220

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

"CITY"

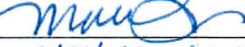
Notice to City:

City of Santa Clara
City Manager's Office
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Assistant City Manager
Fax #: (408) 241-6771
Phone #: (408) 615-2210

SUMMERHILL LAWRENCE STATION LLC,
a California limited liability company

By: SummerHill Lawrence Station Manager LLC,
a Delaware limited liability company
Its: Manager

By: SummerHill Homes LLC,
a California limited liability company
Its: Manager

By: 
Name: MONICA WONG
Title: CONTROLLER

By: 
Name: Joshua Taylor
Title: Assistant Secretary

Notice to Seller

Seller:
SummerHill Lawrence Station LLC
777 California Ave.
Palo Alto, CA 94304
Attn: General Counsel

NOTARY ACKNOWLEDGMENT OF SELLER'S SIGNATURES

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 the document.

STATE OF CALIFORNIA) SS
COUNTY OF CONTRA COSTA)

On February 22, 2019, before me, Veronica Simon, Notary Public, personally appeared Monica Wong and Joshua Taylor, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

Veronica Simon



My Commission Expires: September 16, 2019

This area for official notarial seal

Notary Name: Veronica Simon
Notary Registration Number: 2126016

Notary Phone: 925-575-5794
County of Principal Place of Business: Contra Costa

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

LOT "U", AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 10400 LAWRENCE STATION", FILED FOR RECORD DECEMBER 21, 2017 IN BOOK 910 OF MAPS, PAGES 27-36, FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

APN(S): 216-34-036 (a portion), 216-34-051 (a portion) and 216-34-073 (a portion)

EXHIBIT B

RECORDED COVENANTS

The Temporary Construction Easement recorded February 25, 2019 as Document No. 24121941 in the official records of Santa Clara County.

The Landscape Easement and Maintenance Agreement recorded February 25, 2019 as Document No. 24121940 in the official records of Santa Clara County.

EXHIBIT C

HAZARDOUS MATERIALS DEFINITION

The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA, 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq. and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

The term "Environmental Laws" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, and all Hazardous Materials, including without limitation, all federal or state superfund or environmental clean-up statutes.