

- i. A copy of the Grant Deed signed by SELLER, showing recording information, and certified by the Escrow Holder as being a true and complete copy of the Grant Deed recorded in the Official Records;
- ii. A copy of the Non-Foreign Status Certificate, and Form 593-C;
- iii. The original Title Policy; and
- iv. A copy of all other documents deposited into Escrow.

## **7. CONDEMNATION.**

If between the date of this Agreement and the Closing Date any condemnation or eminent domain proceedings are initiated which would result in the taking of any portion of the Property, then BUYER may terminate this Agreement by written notice of the commencement or occurrence of any condemnation or eminent domain proceedings affecting the Property. If such proceedings are initiated for the taking of any part of the Property, BUYER shall then notify SELLER, within ten (10) business days after BUYER's receipt of SELLER's notice (but in no event later than the Closing Date), whether or not BUYER elects to terminate this Agreement. If BUYER elects not to terminate this Agreement or fails to make an election within such ten (10) business day period or prior to the Closing Date, whichever is earlier, then BUYER shall be deemed to have elected to proceed with the Closing without any reduction to the Purchase Price, in which event SELLER shall assign to BUYER at Closing all of SELLER's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings, or if such payment has been received by SELLER such payment shall be credited to BUYER at the Closing, and Closing shall be delayed, if necessary, until the later to occur of (i) the Closing Date, or (ii) ten (10) days after the expiration of the ten (10) business day period. If this Agreement is terminated in accordance with this Section 7, then the Nonrefundable Consideration shall be released to SELLER, the Deposit Balance shall be refunded to BUYER by the Escrow Holder, and SELLER and BUYER shall thereupon be released from all further obligations under this Agreement other than the Surviving Obligations.

## **8. RISK OF LOSS.**

If prior to the Closing, the Improvements, or any part thereof, are materially and substantially damaged or destroyed such that the total cost of restoring the Property to the condition that existed just prior to the damage or destruction is equal to or exceeds thirty percent (30%) of the Property's fair market value prior to the damage or destruction, BUYER has the right, exercisable by giving written notice to the SELLER within ten (10) days after receiving written notice of such damage or destruction (but in any event no later than the Closing Date, either (i) to terminate this Agreement, in which case the Nonrefundable Consideration shall be released to SELLER, the Deposit Balance shall be returned to BUYER, and any other money or documents in escrow shall be returned to the party depositing the same, and neither party shall have any further rights or obligations under this Agreement other than the Surviving Obligations, or (ii) to accept the Property in its then condition and to proceed with the Closing. A failure by BUYER to notify SELLER in writing within such ten (10) business day period or prior to the Closing Date, whichever is earlier, will be deemed an election to proceed under clause (B) above. If BUYER

elects (ii) in the prior sentence, all of SELLER's insurance proceeds, if any, shall be retained by SELLER, and in no event shall BUYER have any obligation under the Lease to repair or restore the Property, all such repairs and restoration to be performed by SELLER if SELLER wants the Property repaired or restored.

**9. DEFAULT AND REMEDIES.**

A. DEFAULT BY BUYER; LIQUIDATED DAMAGES. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT UNDER THIS AGREEMENT, ESCROW HOLDER SHALL BE INSTRUCTED BY SELLER TO CANCEL THE ESCROW, SELLER AND BUYER SHALL THEREUPON BE RELEASED FROM EACH OF ITS RESPECTIVE OBLIGATIONS HEREUNDER (OTHER THAN THE SURVIVING OBLIGATIONS), AND AS LIQUIDATED DAMAGES HEREUNDER, THE DEPOSIT (DEFINED IN SECTION 2.B), TO THE EXTENT MADE, SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY BUYER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES OR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT DESIGNATED AS LIQUIDATED DAMAGES IN THIS SECTION 9.A. HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS REASONABLE LIQUIDATED DAMAGES PURSUANT TO THE TERMS HEREOF, CALIFORNIA CIVIL CODE SECTIONS 1671 AND 1677 AND ANY RETENTION OF LIQUIDATED DAMAGES AS A RESULT THEREOF SHALL CONSTITUTE SELLER'S ONLY AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT OF A DEFAULT ON THE PART OF BUYER. 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. THE PROVISIONS OF THIS SECTION 9.A. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SELLER'S INITIALS: \_\_\_\_\_ BUYER'S INITIALS: \_\_\_\_\_

B. Default or Breach by SELLER. If SELLER materially defaults in the performance of its obligations hereunder or is otherwise in material breach of the terms hereof, such that BUYER is materially and adversely impacted, BUYER shall, at its election, have the right to:

- (1) Seek specific performance of SELLER's obligation to convey the Property to BUYER pursuant to this Agreement, and SELLER agrees that because of the unique nature of the Property, specific performance is an appropriate remedy for enforcement of SELLER's obligation to convey the Property to BUYER pursuant to the Agreement; provided, however, that in the event Buyer elects to

sue Seller for specific performance of Seller's obligations under this Agreement; (i) Buyer must have reasonably demonstrated that it is prepared to deliver into Escrow all funds and documents required by this Agreement in order for the Closing to occur, and Buyer shall be ready and willing in all other respects to close Escrow in accordance with the terms and conditions of this Agreement; and (ii) Buyer must have filed a petition with the Superior Court of Santa Clara County, seeking specific performance of Seller's obligations under this Agreement, within sixty (60) days after the scheduled Closing Date (as the same may be mutually extended by the parties).

- (2) Terminate this Agreement, upon which termination BUYER's remedy shall be the return of the Deposit and recovery of all out of pocket expenses incurred by BUYER in connection with this Agreement and BUYER's due diligence investigations relating to the Property and all other damages incurred by BUYER as the result of SELLER's default; and
- (3) Such other rights to BUYER by law or in equity. The provisions of this Section 9.B. shall survive the Close of Escrow or the termination of this Agreement.

C. Remedies.

- (1) SELLER'S Default. If SELLER defaults hereunder, or the Closing does not occur by reason of Seller's default hereunder which is not cured within ten (10) days after Seller's first have knowledge of such default, then Buyer shall be entitled to pursue its right to specifically enforce this Agreement or to terminate this Agreement. In the event Buyer terminates this Agreement, Seller, to the extent that any Deposit has been released, or Escrow Holder, to the extent any Deposit has not been released, shall immediately return said Deposit(s) to Buyer and except as otherwise provided, neither party will have any further obligations under this Agreement.
- (2) BUYER'S Default. **BUYER AND SELLER AGREE THAT IN THE EVENT THE CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT OR BREACH (NOT DUE TO SELLER'S WRONGFUL ACTS OR OMISSIONS OR SELLERS' BREACH) HEREUNDER, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THEREFORE THE DEPOSIT, TO THE EXTENT MADE AND RELEASED AND BECOME NON-REFUNDABLE, IS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLERS, SUCH DAMAGES INCLUDING COSTS OF NEGOTIATING AND DRAFTING OF THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER UPON BUYER'S DEFAULT, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HEREWITH. ACCORDINGLY, BUYER AGREES THAT UPON BUYER'S RECEIPT OF NOTICE OF SUCH DEFAULT**

**OR BREACH FROM SELLER, WHICH NOTICE SHALL SPECIFY THE BREACH IN DETAIL, AND FAILURE BY BUYER TO CURE SAID BREACH, DEFAULT OR FAILURE TO PERFORM WITHIN TEN (10) DAYS AFTER RECEIPT OF SUCH NOTICE, AND CLOSING FAILS TO OCCUR BECAUSE OF SUCH BREACH OR DEFAULT, SELLERS' DAMAGES SHALL BE LIMITED TO THE DEPOSIT, TO THE EXTENT SAID DEPOSIT HAS BEEN MADE, RELEASED AND HAVE BECOME NON-REFUNDABLE, AS LIQUIDATED DAMAGES, AS SELLER'S SOLE REMEDY IN THE EVENT OF ANY SUCH MATERIAL BREACH OR DEFAULT BY BUYER HEREUNDER. THE PARTIES ACKNOWLEDGE THAT SELLER'S RETENTION OF LIQUIDATED DAMAGES AS CONTEMPLATED IN THIS SECTION 9 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 UNDER CALIFORNIA CIVIL CODE SECTIONS 1671, 1676, AND 1677. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S SURVIVING OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OF BUYER TO INDEMNIFY SELLERS OR WITH RESPECT TO ANY DEFAULT BY BUYER WHICH OCCURS FOLLOWING THE APPLICABLE CLOSING.**

INITIALS OF BUYER: \_\_\_\_\_ INITIALS OF SELLERS: \_\_\_\_\_ / \_\_\_\_\_

- (3) **Arbitration of Disputes. EXCEPT AS PROVIDED BELOW, IF A DISPUTE ARISES OUT OF OR RELATES TO THIS AGREEMENT, UPON THE WRITTEN DEMAND OF EITHER PARTY, THE DISPUTE SHALL BE RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL ARBITRATION RULES EXCEPT THAT THE ARBITRATION SHALL BE CONDUCTED BY ONE (1) ARBITRATOR WHO IS A RETIRED JUDGE OR AN ATTORNEY WITH NOT LESS THAN FIFTEEN (15) YEARS' EXPERIENCE IN REAL ESTATE MATTERS. DISCOVERY SHALL BE ALLOWED AS PROVIDED IN CODE OF CIVIL PROCEDURE SECTION 1283.05, THE PROVISIONS OF WHICH ARE INCORPORATED BY REFERENCE. THE ARBITRATOR MAY ORDER SPECIFIC PERFORMANCE WHEN THAT REMEDY IS PROVIDED FOR IN THIS AGREEMENT. THE JUDGMENT UPON THE ARBITRATION AWARD SHALL BE FINAL AND BINDING UPON THE PARTIES AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. IF THE PARTIES DO NOT AGREE UPON AN ARBITRATOR WITHIN FIFTEEN (15) DAYS AFTER DELIVERY OF A WRITTEN DEMAND FOR ARBITRATION, THEN THE ARBITRATOR SHALL BE CHOSEN BY THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATOR SHALL ALLOCATE THE FEES AND COSTS OF ARBITRATION BETWEEN**

**THE PARTIES AND SHALL AWARD COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, TO EITHER PARTY. NOTHING CONTAINED IN THIS SECTION SHALL RESTRICT EACH PARTY FOR SEEKING EQUITABLE RELIEF FROM THE COURT SYSTEM PENDING RESOLUTION OF THE ARBITRATION.**

**NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.**

SELLER'S INITIALS: \_\_\_\_\_

BUYER'S INITIALS: \_\_\_\_\_

D. Jury Waiver. BUYER and SELLER each waives the right to a jury in any litigation in connection with this Agreement, or the property, or the transactions contemplated by this Agreement. BUYER and SELLER each acknowledges that this waiver has been freely given after consultation by it with competent counsel. This section 9.D has been included only for the event that, despite the parties' intention, the agreement to utilize judicial reference or arbitration as provided above is held to be inapplicable, and nothing in this section 9.D is intended to qualify the parties' agreement to resolve all disputes via order of reference.

**10. NOTICE.**

All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to BUYER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to SELLER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any notices required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by telecopier with confirmation of successful transmission, provided the original is concurrently sent by first class mail, and provided that notices received by telecopier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, and postage-prepaid.

**11. TIME OF ESSENCE.**

Time is of the essence of this Agreement.

**12. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any choice of law principles. Venues for all court proceedings or alternative forms of dispute resolution proceedings shall be Santa Clara County.

**13. COUNTERPARTS.**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**14. CAPTIONS.**

The captions/headings in this Agreement are inserted for convenience of reference and in no way define, describe, or limit the scope or intent of this Agreement or any of the provisions hereof.

**15. ASSIGNABILITY.**

BUYER shall not assign this Agreement without prior written consent of SELLER.

**16. BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of both parties hereto and their respective successors and permitted assigns.

**17. MODIFICATIONS; WAIVER.**

No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

**18. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

**19. AMBIGUITIES.**

This Agreement shall be interpreted as if it had been jointly drafted by both parties. Therefore, the normal rule of construction that ambiguities are construed against the drafter is waived.

**20. SEVERABILITY.**

Any provision of this Agreement which is void, unenforceable or invalid or the inclusion of which would adversely affect the validity, legality or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect.

**21. SUBMISSION OF AGREEMENT.**

The submission of this Agreement by one party to the other or their agents or attorneys for review will not be deemed an offer to sell or purchase the Property, and no agreement with respect to the purchase and sale of the Property will exist unless and until this Agreement is executed and delivered by both SELLER and BUYER.

**22. REAL ESTATE REPORTING PERSON.**

Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 16 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall, after review and approval by SELLER (such approval not to be unreasonably withheld, conditioned or delayed), file a Form

1099 information return and send the statement to SELLER as required under the aforementioned statute and regulation.

### **23. COMPUTATION OF TIME.**

In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such legal holiday. As used in the Agreement, "business day" shall mean a day which is not a Saturday, Sunday, or legal holiday recognized as such in California.

### **24. WAIVER.**

No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

### **25. NUMBER AND GENDER.**

When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

### **26. NEGOTIATED TERMS.**

Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

### **27. SIGNATURES.**

Signatures and initials to this Agreement created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original of this Agreement with its actual signature and initials to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own electronically created and/or electronically transmitted signature and initials and shall accept the electronically created and/or electronically transmitted signature and initials of the other party to this Agreement.

### **28. EXCLUSIVITY.**

During the terms of this Agreement, SELLER shall not offer the Property or any interest therein for sale or lease to any other party, or negotiate, solicit, or entertain any offers.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**SELLER:**

Successor Agency of the Former Redevelopment  
Agency of the City of Milpitas

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Name: \_\_\_\_\_

Clerk, Successor Agency

**BUYER:**

Entity ( if any)

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT INDEX

<u>Exhibit Reference</u>	<u>Content</u>
Exhibit A	Legal Description of Real Property
Exhibit B	Grant Deed