

MILPITAS OVERSIGHT BOARD

TO THE CITY OF MILPITAS ACTING AS THE RDA SUCCESSOR AGENCY

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

MILPITAS OVERSIGHT BOARD MEETING

Milpitas Committee Room
455 E. Calaveras Blvd., Milpitas, CA 95035

MEMBERS:

Emma Karlen
Bruce Knopf, Vice Chair
Mike McInerney, Chair
Michael Mendizabal
Althea Polanski
Matthew Tinsley
Glen Williams

ALTERNATES:

Russell Morreale
Alan Minato

Jane Corpus Takahashi
Suzanne Carrig
Michael Murdter

DRAFT Minutes of the February 19, 2016 Meeting

I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

Chair McInerney called the meeting to order at 1:02 p.m.

ROLL CALL

MEMBERS PRESENT: Suzanne Carrig (arrived at 1:08 p.m.), Bruce Knopf, Mike McInerney, Mike Mendizabal, Russell Morreale, Althea Polanski, and Glen Williams

MEMBERS ABSENT: None

II. PUBLIC FORUM

A member of the public spoke on the Board's rule regarding a speaker's option to not identify himself or herself or state the speaker's home address. The speaker expressed concern that Board Chair McInerney did not do enough to protect the identity of those speakers who did not identify themselves at the start of their comments. Board Chair McInerney said he would do better in the future.

III. APPROVAL OF AGENDA

Moved by Mr. Williams and seconded by Ms. Polanski to approve the agenda. The motion passed unanimously.

IV. APPROVAL OF MINUTES FOR January 25, 2016 Meeting

The following changes to the minutes are as follows: Include Mike Mendizabal as being present at the meeting. Moved by Mr. Morreale and seconded by Ms. Polanski to approve the minutes of the January 25, 2016 as amended. The motion passed with the following vote: **AYES:** Knopf, McInerney, Mendizabal, Morreale, Polanski and Williams **NOES:** 0 **ABSTAIN:** Carrig **ABSENT:** 0

V. OLD BUSINESS

None

VI. NEW BUSINESS

A. Receive and Consider Report and Recommendations from the Ad Hoc Committee of the Oversight Board Regarding Results of Request for Proposals (RFP) Process for the Sale of Property No. 2 Listed on the Long Range Property Management Plan (LRPMP) and Located at Alder Drive & Barber Lane, Milpitas, California (APN 086-02-086).

1. Adoption of Resolution No. 76 of the Oversight Board Approving the Sale of Property Located at Alder Drive & Barber Lane, Milpitas, California (APN 086-02-086) to Lodging Dynamics Development, LLC Pursuant to the Long Range Property Management Plan and a Request for Proposals (RFP) Process.

Ms. Montoy presented the staff report.

Board Member Williams said that he was pleased to see that they had four competitive bids that were different from first issuance. He added that the Ad Hoc Committee members along with City Manager Williams were unanimous on the recommendation of the selected bid.

Board Member Polanski expressed appreciation that the Ad Hoc Committee found a time to meet and discuss the submitted proposals. She also was pleased with receiving four bids and concluded that the Ad Hoc Committee is putting forward an excellent recommendation.

City Manager Williams stated that the Successor Agency concurs and he personally was pleased with the process and sees it as an example of exactly what the disposition of parcels was meant to be and the City fully supports the sale of this land for a hotel. He pointed out that City staff spent a great deal of time with all four of the proposers in their due diligence to submit their RFPs and the City is excited to be working with this particular company to have a hotel built.

No member of the public spoke on this item and there was no discussion between the Board Members.

Moved by Mr. Knopf and seconded by Ms. Polanski to approve the adoption of Resolution No. 76. The motion passed unanimously.

Before proceeding to the next item, Chair McInerney surveyed the public in attendance on which item(s) they planned to speak. All indicated they would speak only on Item VI.C.

Moved by Mr. Knopf and seconded by Mr. Mendizabal to amend the agenda to take up Item VI.C first. The motion passed unanimously.

C. Receive and Consider Report and Alternative Resolutions from the Ad Hoc Committee of the Oversight Board Regarding Disposition of 230 N. Main St. Listed on the Long Range Property Management Plan as Property No. 3.

1. Alternative A: Resolution No. 78 of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Approving a Request for Proposals (RFP) for the Sale of Property Located at 230 N. Main Street, Milpitas, California, and listed on the Long Range Property Management Plan as Property No. 3.
2. Alternative B: Resolution No. 78 of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Amending the Long Range Property Management Plan to Authorize Retention of Property No. 3 Located at 230 N. Main Street, Milpitas, California for Governmental Use.

Ms. Montoy presented the staff report explaining the differences between the two alternatives of Resolution No. 78. Ms. Montoy indicated that the staff report included a brief summary regarding the Dissolution Law regarding the issues of governmental use that has been discussed before and, whether there is authority to amend the LRPMP.

City Manager Williams stated that the parcel meets the Dissolution Law's test of an asset constructed and used for a governmental purpose because the parcel is zoned and used as an open space with an approved park and museum planned for

the site. The construction of the park became delayed when the Dissolution law became effective and the City is ready to move forward with the project. The City Manager also expressed the view that the question of allowing amendments to approved Long Range Property Management Plans, as the Legislature did for parking facilities, has not been answered for other governmental use parcels. He requested a third party review of this question and asked the Board's special counsel if the Dissolution Law expressly prohibits an amendment to the Successor Agency's LRPMP. He recommended that the Board adopt Alternative B of Resolution No. 78 to authorize retention of this piece of property for governmental use.

Board Member Polanski clarified for the public that the Ad Hoc Committee first discussed in great detail the 86 N. Main St parcel and concluded to present Alternatives A & B to the Oversight Board. Then came the discussion on 230 N. Main St. where the Committee agreed to present the same alternatives for it as the Committee had decided for 86 N. Main St. On 86 N. Main St. she believes the parcel is not marketable and therefore there is no need for an RFP process. She stated that she prefers to amend the LRPMP and that she has the same questions on amending the LRPMP that the Successor Agency has. She reminded the Board that months ago she pushed for an amendment in order to present it to DOF and hopefully resolve the question of the Board's authority to amend the LRPMP. She concluded that she sees this property as a park, always has seen it that way and that's why she wanted to bring an amendment alternative to the full Board.

Board Member Williams clarified that Ad Hoc Committee made no recommendation on either of these two properties. The Committee decided to present two possible alternatives to the full Board for the Board's consideration. Therefore, the Ad Hoc Committee had no consensus on any particular action to take other than to take the opportunity for the full Board to talk about the parcel's disposition.

Chair McInerney took public comments and the following individuals addressed the Board on this item: Mr. Steve Munzel, Mr. Jerry Epps, Mr. Roger Skuse, Mr. Dana Arbaugh, Mr. Joseph Weinstein, Mr. Richard Santos, Ms. Janna Schmitz and Ms. Danielle Goldstein.

Ms. Montoy responded to questions from the City Manager and members of the public:

- a. With respect to the duties of the Board it has a statutorily created duty, a fiduciary duty to the holders of enforceable obligations and to all the taxing entities that benefit from property taxes and from other revenues.
- b. With respect to governmental use, the plain language interpretation of the statute says that any of those types of facilities such as parks must have been constructed and used. The statute does not say zoned for parks or reserved for parks, it says constructed and used as a public facility.
- c. City Manager Williams is correct that there is no expressed prohibition to amending the LRPMP. However, the specific language of the Dissolution Law says that previously approved LRPMPs, like the one for Milpitas, may only be amended once and solely for retention of parking facilities.
- d. With respect to accepting any bid, the Board is not required to accept any bid and, if this process moves forward and the Board is at a point in the future where a bid is received, the Board would make a determination based on all the facts and circumstances at that time.

Board Member Knopf addressed a remark on tax dollars made during the public comments. He stated that he views tax increment dollars as funds the City's RDA borrowed from other taxing entities that the City had to use for redevelopment purposes. In this case the City used tax increment dollars to purchase this property. He further pointed out that when the State Legislature terminated redevelopment and disbanded redevelopment agencies, it said that any RDA project that has not been completed and used for a governmental purpose must be sold to the City through a compensation agreement with the taxing entities or sold to the highest bidder with the proceeds distributed back to the taxing entities.

After more discussion it was moved by Mr. Knopf and seconded by Mr. Williams to postpone action of this item until the completion of dispositions of the other properties. The motion passed with the following vote: **AYES:** Carrig, Knopf, McInerney, Mendizabal, Morreale, and Williams **NOES:** Polanski **ABSTAIN:** 0 **ABSENT:** 0

With the vote, City Manager Williams made three points for the record:

- a. The Milpitas Redevelopment Agency has not deprived taxing entities of any tax revenue. It has created value for those other taxing entities.
- b. The Oversight Board is depriving the citizens and tax payers of the City of Milpitas because the City has already purchased 230 N. Main St for approximately 7 million dollars. If the Board is depriving anyone, the Board is depriving the City of Milpitas as a taxing entity.

c. The Successor Agency whole-heartedly disagrees with Board Member Knopf's comments on the tax increment.

There was a 10 minute recess.

- B. Receive and Consider Report and Alternative Resolutions from the Ad Hoc Committee of the Oversight Board Regarding Disposition of 86 N. Main St. Listed on the Long Range Property Management Plan as Property No. 1.
1. Alternative A: Resolution No. 77 of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Approving a Request for Proposals (RFP) for the Sale of Property Located at 86 N. Main Street, Milpitas, California, and listed on the Long Range Property Management Plan as Property No. 1.
 2. Alternative B: Resolution No. 77 of the Oversight Board of the Successor Agency of the Former Milpitas Redevelopment Agency Amending the Long Range Property Management Plan to Authorize Retention of Property No. 1 Located at 86 N. Main Street, Milpitas, California for Governmental Use.

Ms. Montoy presented the staff report.

After a lengthy discussion it was moved by Mr. Knopf and seconded by Ms. Polanski to approve the adoption of Resolution No. 77A, with the following change: In Section 2, second sentence be: "That the RFP be posted no earlier than 60 days after the Board's adoption of Resolution No. 77A." The motion passed unanimously.

D. Update on Sale of 540 S. Abel Street Property (Cracolice Building).

Board Member Morreale presented the update saying that the sale is proceeding. The buyer provided a deposit payment on February 5, 2016 that the City sent to Chicago Title, the escrow company. Unfortunately, depositing the check has been delayed because the check was made payable to the Successor Agency and it needs to be re-issued to Chicago Title. Escrow is scheduled to close by June 6, 2016.

Moved by Ms. Polanski and seconded by Mr. Knopf to accept the verbal report. The motion passed unanimously.

VII. NEXT MEETING

A. Identify Potential Agenda Items.

1. 86. N. Main St

B. Set Date and Time.

It was agreed that the next meeting will be held on July 18, 2016 at 1:00 p.m.

VIII. MEETING ADJOURNMENT

Moved by Mr. Knopf and seconded by Ms. Polanski, Chair McInerney adjourned the meeting at 3:44 p.m., on the consensus of the Board.

*Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary*

Approved on July 18, 2016.

Mike McInerney
Oversight Board Chair

Barbara Crump
Oversight Board Secretary

MILPITAS OVERSIGHT BOARD

TO THE CITY OF MILPITAS ACTING AS THE RDA SUCCESSOR AGENCY

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MILPITAS OVERSIGHT BOARD MEETING

**Milpitas City Hall Committee Room
455 East Calaveras Blvd.
Milpitas, CA 95035**

MEMBERS:

*Bruce Knopf, Vice Chair
Mike McInerney, Chair
Michael Mendizabal
Russell Morreale
Althea Polanski
Matthew Tinsley
Glen Williams*

ALTERNATES:

*Alan Minato

Jane Corpus Takahashi

Suzanne Carrig
Michael Murdter*

DRAFT Minutes of the May 6, 2016 Special Meeting

I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

Chair McInerney called the meeting to order at 1:33 p.m.

ROLL CALL

MEMBERS PRESENT: Bruce Knopf, Mike McInerney, Mike Mendizabal, Russell Morreale, Althea Polanski, Matthew Tinsley and Glen Williams

MEMBERS ABSENT: 0

II. APPROVE MINUTES FROM APRIL 14, 2016 SPECIAL MEETING

Moved by Mr. Tinsley and seconded by Ms. Polanski to approve the minutes for the April 14, 2016 Special Meeting as submitted. The motion passed by the following vote: **AYES:** McInerney, Mendizabal, Polanski, Tinsley and Williams
NOES: 0 ABSTAIN: Knopf and Morreale **ABSENT: 0**

III. AMENDMENT TO PURCHASE SALE AGREEMENT BETWEEN SUCCESSOR AGENCY AND RAJYOGA MEDIATION & RESEARCH CENTER

Consideration of Request from Rajyoga Meditation & Research Center to Amend Purchase Sale Agreement by Extending the Due Diligence Period Regarding Property Located at 540 S. Abel Street, Milpitas California (APN 086-10-025).

- A. Adoption of Resolution No. 80, Approving First Amendment to Real Property Purchase and Sale Agreement and Mutual Escrow Instructions for Property Located at 540 S. Abel Street, Milpitas California (APN 086-10-025) and Authorizing Issuance of a New RFP Regarding said Property if Closing is Not Effected.

Ms. Montoy presented the staff report that indicated that Rajyoga Meditation and Research Center (RMRC), a nonprofit corporation, requests a ninety (90) day extension to the due diligence period. She stated that if the Board approves an extension, the proposed Resolution 80 also provides that the Successor Agency and Ad Hoc Committee are authorized to issue a new Request for Proposal in case the sale does not close successfully. She further corrected an error in the staff report that incorrectly stated that Santa Clara County had withdrawn its offer on 540 S. Abel Street when in fact the County had written a letter in support of the Oversight Board choosing the highest bid received.

City Manager Williams stated that if the RMRC was seeking full entitlements prior to the close of escrow, then the Successor Agency recommends extending the due diligence period for up to 12 months. This time period would allow for the processing of a General Plan amendment, a re-zoning of the parcel, and a California Environmental Quality Act (CEQA) review. The reason for the different applications stems from the addition of a residential/caretaker unit which throws the entitlement process into a different designation.

Mr. Atma Dayam of RMRC explained that his organization has begun a process to achieve a residence/caretaker unit within the existing building's structure. If the residence does not happen then this property does not work for his group.

Mr. Knopf asked if RMRC has received any comments yet on the general plan application.

Ms. Sara Fleming, Milpitas Senior Planner, stated that to date RMRC has submitted applications for a General Plan amendment, a Specific Plan amendment, and a Conditional Use Permit. City staff has deemed the applications incomplete and is drafting a letter to RMRC indicating that status.

Board member Mendizabal asked Mr. Dayam if his organization is willing to have the process take up to 12 months to achieve a residential/caretaker unit. Mr. Dayam said yes.

Board members Williams and Morreale asked questions related to the expected progress in ninety days and the expected length of the CEQA review process.

Ms. Fleming responded that the RMRC will likely take some time from receiving the letter to submit a revised application and City staff again will have up to 30 days to comment. Once the City has a complete project, the CEQA review process will start. With respect to the CEQA review, Ms. Fleming commented that the City staff will not know how long the CEQA review might take until there is a complete project application. Once the application is complete, the City staff works with one of the City's on-call consulting firms to determine what type of CEQA study will be required. She indicated that under the worst case scenario it might take nine months to complete the CEQA review and submit a fully complete package to the Planning Commission.

Board member Williams asked if the City had separate zoning and review processes for churches as opposed to the project reflected in the application that RMRC had submitted.

Ms. Fleming stated that the City has no separate zoning for churches and the review process is the same. City staff believes that a mixed use zoning is the most appropriate designation for the intended use. Mixed use zoning is consistent with the surrounding parcels and it allows for both the assembly and residential uses the RMRC is requesting. City Manager Williams commented that the level of scrutiny of the project is not based on the church aspect but the residential unit component.

Board member Polanski asked about the likelihood of the City approving the re-zoning to mixed use.

Ms. Fleming cautioned that the City staff does not speak for the City Council which makes the final decision. However, if RMRC addresses the concerns identified through the review process, then staff would make a favorable recommendation.

Board member Williams asked about the chances that the CEQA review would result in a negative declaration.

Ms. Fleming said she is not a CEQA expert and did not know. City Manager Williams said he sees no insurmountable issues to the proposed request for a caretaker residence on the site.

Moved by Mr. Knopf and seconded by Mr. Morreale to adopt Resolution No. 80 with the modification that the due diligence period is increased from ninety days to six months with a requirement to identify the end of the due diligence period with a specific date. Furthermore, the Oversight Board delegates authority to the Chair of the Board to approve an additional extension of up to 6 months, upon a demonstration of reasonable progress by both the RMRC and the City. The Chair will also provide a written report to the Oversight Board regarding any approved increase. The motion passed unanimously.

III. MEETING ADJOURNMENT

Moved by Mr. Knopf and seconded by Mr. Williams, Chair McInerney adjourned the meeting at 2:31 p.m., on the consensus of the Board.

*Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary*

Approved on July 18, 2016.

Mike McInerney
Oversight Board Chair

Barbara Crump
Oversight Board Secretary

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: July 18, 2016

ITEM VI.A: Report from Ad Hoc Committee of Oversight Board Regarding Results of Request for Proposals (RFP) Process for the Sale of Property No. 1 Listed on the Long Range Property Management Plan and Located at 86 N. Main Street, Milpitas California (APN 028-24-025).

RECOMMENDED ACTION:

The Oversight Board Ad Hoc Committee recommends Adoption of Resolution No. 81, Approving the Sale of Property Located at 86 N. Main Street, Milpitas, California (APN 028-24-025) to Harpreet and Neha Chaudhary Pursuant to the Long Range Property Management Plan and a Request for Proposals (RFP) Process.

BACKGROUND AND DISCUSSION:

On February 19, 2016 the Oversight Board Ad Hoc Committee recommended and the Oversight Board adopted Resolution No. 77 which authorized issuance of an RFP for Property No. 1 on the LRPMP located at 86 N. Main Street, Milpitas, CA (APN 028-24-025). The proposals were due on June 20, 2016 at 5 p.m. Two proposals were received in response to the RFP.

Attached hereto is a comparison of the two proposals. Both proposals met all the requirements. It is noted that while financial capacity of the proposal from the higher bidder could be inferred (all cash offer, reduction of 90 day Due Diligence Period, and submittal of signed Purchase Sale Agreement) the bid did not include express language as to financial capacity. Special Counsel was directed to contact Bidder's Representative and request financial capacity information. A bank statement was submitted in that regard.

The Ad Hoc Committee reviewed the proposals received and determined that Harpreet and Neha Chaudhary submitted a timely proposal, the highest bid, and a proposal that met all requirements of the RFP.

Proposed Resolution 81 provides as follows:

1. Approves the sale of Property No. 1 located at 230 N. Main Street, Milpitas, California to Harpreet and Neha Chaudhary ("Buyers"). The Purchase Sale Agreement shall be executed by Buyers within ten days of the adoption of the resolution.
2. Directs and authorizes the Successor Agency to execute the Purchase Sale Agreement attached hereto as Exhibit B within thirty days of its execution by the Buyers.
3. Directs and authorizes the opening of escrow and the execution of escrow instructions consistent with the Purchase Sale Agreement.
4. Authorizes that the \$3,345.00 constituting one half of the Buyer's Broker's Fee be paid from the proceeds of the sale to Gary Wimp, Broker.
5. Authorizes that the Successor Agency's (Seller's) portion of escrow fees shall be paid from proceeds of the sale. The term "customary escrow fees" does not include the Successor Agency's costs, if any, that are associated with providing clean title to the property including but not limited to the removal of liens or encumbrances.
6. Authorizes the Oversight Board Chairperson, Successor Agency Executive Director, and Oversight Board Special Counsel to collectively make any non-substantive, technical, and clerical corrections to the Purchase Sale Agreement.

COMPARISON OF PROPOSALS
86 N. Main Street

RFP	PROPOSAL #1 Chaudhary	PROPOSAL #2 Santa Clara County
Format Completeness	Yes	Yes
Timely Hardcopy	Yes	Yes
Timely Email Offer	Yes	Yes
Offer	\$223,000	\$80,000
Deposit Enclosed	Yes	Yes
Agree to Add'l Dep.	Yes	Yes
Due Diligence Period (DDP)	Yes	Yes
Financial Capacity	Yes	Yes
Closing 90 days from OB Approval	45 days	Yes
PSA Signed within 10 days of OB Approval	Submitted signed PSA	Yes
Proposer Information	Yes	Yes
CONTACT	Gary Wimp	Jenny DeAngelis
Other	Split of 3% of Broker Fees: \$3,345	

RESOLUTION NO. 81

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING THE SALE OF PROPERTY LOCATED AT 86 N. MAIN STREET, MILPITAS, CALIFORNIA (APN 028-24-025) TO HARPREET AND NEHA CHAUDHARY PURSUANT TO THE LONG RANGE PROPERTY MANAGEMENT PLAN AND A REQUEST FOR PROPOSALS (RFP) PROCESS

WHEREAS, the Oversight Board to the RDA Successor Agency for the City of Milpitas (“Oversight Board”) has been established to direct the RDA Successor Agency for the City of Milpitas (“Successor Agency”) to take certain actions to wind down the affairs of the Redevelopment Agency in accordance with the California Health and Safety Code; and

WHEREAS, among the duties of successor agencies under the Dissolution Act is the preparation of a long-range property management plan (LRPMP) that addresses the disposition and use of the real properties of the former redevelopment agency for consideration by a local oversight board and California Department of Finance (“DOF”); and

WHEREAS, the LRPMP for the Successor Agency was approved by the Oversight Board on February 10, 2015, and by DOF on March 9, 2015 and identifies properties as assets of the Successor Agency that the Successor Agency is to sell; and

WHEREAS, the Oversight Board approved an Appraisal Contract with Valbridge Property Advisors on December 2, 2014, which provides for appraisal of properties listed on the LRPMP; and

WHEREAS, the Oversight Board has utilized a Request for Proposals (“RFP”) process to solicit offers for the disposition of the properties in accordance with the LRPMP; and

WHEREAS, at its meeting of April 8, 2015, the Oversight Board designated an Ad Hoc Committee of the Board to oversee the RFP process and present RFPs to the Oversight Board for approval; and

WHEREAS, a first effort to sell the subject property pursuant to an RFP process was not successful; and

WHEREAS, on February 19, 2016, the Oversight Board adopted Resolution No. 77 and thereby approved issuance of an RFP for the property located at 86 N. Main Street, Milpitas, CA;

WHEREAS, proposals under the RFP were due on June 20, 2016, at 5 p.m.; and

WHEREAS, two proposals were received pursuant to the RFP as described in the staff report and related attachment at this meeting of the Oversight Board; and

WHEREAS, the Successor Agency and the Oversight Board Ad Hoc Committee have reviewed the proposals; and

WHEREAS, the Ad Hoc Committee recommends the sale of the property to Harpreet and Neha Chaudhary as they are the proposer submitting the highest bid and it met all requirements of the RFP; and

WHEREAS, the Successor Agency agrees with the Ad Hoc Committee's recommendation.

NOW, THEREFORE, the Oversight Board of the former Milpitas Redevelopment Agency resolves as follows:

Section 1. The recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. The Oversight Board:

- a. Approves the sale of property located at 86 N. Main Street, Milpitas, California to Harpreet and Neha Chaudhary (hereafter "Buyers"). The Purchase Sale Agreement attached hereto as Exhibit A shall be executed by Buyers within ten days of the adoption of this resolution.
- b. Directs and authorizes the Successor Agency to execute the Purchase Sale Agreement within twenty days of its execution by Buyers.
- c. Directs and authorizes the Successor Agency's opening of escrow and the execution of escrow instructions consistent with the Purchase Sale Agreement.
- d. Authorizes that the Successor Agency's (Seller's) portion of escrow fees shall be paid from proceeds of the sale. The term "customary escrow fees" does not include the Successor Agency's costs, if any, that are associated with providing clean title to the property including but not limited to the removal of liens or encumbrances.
- e. Authorizes that the \$3,345.00 constituting one-half of the Buyer's Broker's Fee be paid from the proceeds of the sale to Gary Wimp, Broker.

Section 3. The Oversight Board Chairperson, Successor Agency Executive Director, and Oversight Board Special Counsel are collectively authorized to make any non-substantive, technical, and clerical corrections to the Purchase Sale Agreement.

Section 4. The Oversight Board authorizes and directs the return of the cashier's check received from the other proposer as a deposit with its proposal.

PASSED AND ADOPTED on July 18, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Michael McInerney
Oversight Board Chair

**DRAFT REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND
MUTUAL ESCROW INSTRUCTIONS**

**(86 N. MAIN
APN NO. 028-24-025, MILPITAS, CA 95035)**

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (the "Agreement") is entered effective on the date fully executed by and between the Successor Agency of the Former Redevelopment Agency of the City of Milpitas, a separate public entity ("Successor Agency" or "SELLER") and _____ ("BUYER").

RECITALS

A. The real property which is subject to this Agreement is generally located at 86 N. Main, Milpitas, California, (APN 028-24-025) and legally described in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Property"). The property is vacant land.

B. The California State Legislature enacted Assembly Bill x1 26 in 2011 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*, as amended by Assembly Bill 1484 in 2012 and Senate Bill 107 in 2015) hereafter referenced as "Dissolution Law". All references to Health and Safety Code sections in this Agreement are references to the Dissolution Law.

C. Prior to the effective date of the Dissolution Law, the Redevelopment Agency of the City of Milpitas (the "Former Redevelopment Agency") owned fee interest title in and to the Property.

D. On February 1, 2012 and upon dissolution of the Former Redevelopment Agency, the City of Milpitas, acting in a separate limited capacity and as a separate legal entity, became the Successor Agency of the Former Redevelopment Agency of the City of Milpitas ("Successor Agency").

E. Successor Agency ("SELLER") now holds fee title interest in and to the Property.

F. SELLER is responsible for the disposition of the Property in accordance with the procedures and requirements of Dissolution Law. Pursuant to Health and Safety Code Section 34177, successor agencies are required to dispose of assets and properties of the Former Redevelopment Agency expeditiously and in a manner aimed at maximizing the value.

G. In accordance with Health and Safety Code Section 34191.5, the SELLER prepared and the Oversight Board of the Successor Agency ("Oversight Board") approved a "Long-Range Property Management Plan" which included sale of the Property under a Request for Proposals ("RFP") process.

H. On February 19, 2016, SELLER approved issuance of a Request for Proposals for the purchase of the Property.

I. BUYER is the successful bidder under the RFP process.

J. SELLER has submitted this Agreement to the Oversight Board for approval which has adopted a resolution approving the sale and submitted it to the California Department of Finance (DOF).

K. The parties acknowledge and agree that the purchase and sale of the Property pursuant to this Agreement may be reviewed by the California Department of Finance (DOF).

L. SELLER desires to convey fee title interest in and to the Property to BUYER in a manner consistent with the Dissolution Law requiring, *inter alia*, the disposition of its former property.

M. BUYER desires to purchase the Property from SELLER and SELLER desires to sell the Property on the terms and conditions contained in this Agreement.

AGREEMENT

The foregoing recitals are incorporated herein as if fully set forth. For valuable consideration and subject to the terms and conditions hereof, BUYER and SELLER agree as follows:

1. PURCHASE AND SALE.

A. Conveyance of Property. SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER, the Property on the terms and conditions set forth in this Agreement. BUYER and SELLER agree that the Property is vacant land. The Legal Description of the Property is attached as Exhibit A.

B. Purchase Price for the Property. The total purchase price to be paid by BUYER to the SELLER for the Property is _____ Dollars (\$) (the "Purchase Price").

2. OPENING OF ESCROW AND DEPOSIT.

A. Opening Escrow. Within five (5) business days of the Effective Date of this Agreement, SELLER shall open an escrow (the "Escrow") with _____ (the "Title Company" or "Escrow Holder") for conveyance of the Property to BUYER. This Agreement shall constitute mutual instructions to the Escrow Holder. The Opening Date of escrow shall be the date on which Escrow Holder receives a fully executed copy of this Agreement. BUYER and SELLER shall execute additional escrow instructions as may be required to enable the Escrow Holder to close the escrow consistent with the terms of this Agreement and as BUYER and SELLER may approve, which approval shall not be unreasonably withheld.

B. Deposit.

- (1) **Initial Deposit.** Together with BUYER's response to the Request for Proposal, BUYER delivered to SELLER a check in the sum of Ten Thousand Dollars (\$10,000.00) ("Initial Deposit"). Immediately upon the opening of Escrow, SELLER shall deliver the Initial Deposit to Escrow Holder for the benefit of BUYER.
- (2) **Additional Deposit.** Within ten (10) days of the Effective Date of this Agreement, BUYER shall deposit into Escrow such additional funds ("Additional Deposit") such that said Additional Deposit, together with the Initial Deposit equal ten percent (10%) of the Purchase Price.
- (3) **DEPOSIT.** Collectively, the Initial Deposit and the Additional Deposit shall be referred to as the "DEPOSIT".
- (4) **Conditions for Refund of DEPOSIT.** The DEPOSIT shall become nonrefundable to BUYER upon expiration of the Due Diligence Period if this Agreement has not been terminated; except that the DEPOSIT shall be refundable to BUYER if: (i) Escrow fails to close due to SELLER's default or breach of its representations or warranties under this Agreement or (ii) Closing fails to occur due to the failure of any condition to Closing set forth in this Agreement which is for the benefit of the BUYER. A full refund or partial refund of DEPOSIT may also be made to BUYER pursuant to Section 3.B of this Agreement. If upon termination of this Agreement SELLER is entitled to retain any portion of the Deposit, then BUYER shall within one (1) business day thereafter instruct Escrow Holder to immediately release such portion of the Deposit to SELLER (which obligation shall survive the termination of this Agreement). Upon termination of this Agreement, the parties shall have no further obligations hereunder except for the Surviving Obligations. As used in this Agreement, "Surviving Obligations" shall mean all obligations of BUYER and/or SELLER which are expressly stated in this Agreement to survive Close of Escrow (defined in Section 6.A) or termination of this Agreement.
- (5) **Handling of Deposit.** The Deposit shall be deposited in an interest bearing money market or savings account with a national banking association or federally chartered savings and loan association, which interest shall accrue to the benefit of the BUYER and shall be applied to the Purchase Price at the Closing.

3. **DUE DILIGENCE PERIOD AND INSPECTIONS.**

A. Due Diligence Period. BUYER shall have until sixty (60) days following the Effective Date to conduct BUYER's due diligence, as BUYER deems necessary, but at BUYER's sole cost and expense, including but not limited the right to review and approve the Property Materials, to inquire and meet with all governmental or quasi-governmental authorities,

and to inspect and approve the physical conditions of and all other matters concerning the Property (the "Due Diligence Period"). If BUYER is not satisfied for whatever reason, or no reason, with the condition of the Property, BUYER has the affirmative duty to terminate this Agreement not later than the expiration of the Due Diligence Period by providing SELLER and Escrow Holder written notice thereof ("Buyer's Termination Notice") prior to the end of the Due Diligence Period. If BUYER fails to deliver BUYER's Termination Notice, then, BUYER shall be deemed to have elected not to terminate this Agreement.

B. Return of Deposit During Due Diligence Period. Upon receipt of Buyer's Termination Notice in escrow pursuant to Section 3.A., the full DEPOSIT **shall be refunded upon notification by the Buyer within the Due Diligence Period that it is cancelling the contract.**

After the Due Diligence Period, if the Agreement is not terminated pursuant to Section 3.A., the DEPOSIT shall become nonrefundable.

C. Property Materials. Not later than three (3) days following the Effective Date, SELLER shall deliver to BUYER the following documents relating to the Property to the extent in the possession or control of SELLER (collectively, the "Property Materials"): (i) all soils, groundwater, environmental, property inspection and other reports and test results relating to the physical condition of the Property, including without limitation engineers' and consultants' plans, reports, and studies relating to the physical condition of the Property; (ii) all notices of violations of laws, if any, from any governmental or quasi-governmental authorities related to the Property; and (iii) other correspondence and notices from any governmental or quasi-governmental authorities related to the Property.

D. Access. Subject to this Section below, until the earlier to occur of the Close of Escrow or termination of this Agreement, BUYER shall have the right to enter upon the Property to inspect, investigate and conduct tests upon the Property, as BUYER, in its sole discretion deems necessary but at its sole cost and expense. BUYER shall keep the Property free and clear of any and all liens related to BUYER's inspections, test, and investigations. All entry onto and inspections of the Property shall be subject to the following:

- (1) BUYER shall give SELLER not less than one (1) business day prior notice of any entry onto the Property by BUYER or by BUYER's agents, employees, consultants, and contractors (collectively, "BUYER's Representatives").
- (2) If the Property is physically damaged in connection with any of BUYER's or BUYER's Representatives' activities on, in or about the Property pursuant to this Agreement, then BUYER, at BUYER's sole cost and expense, shall promptly repair such damage.
- (3) BUYER shall indemnify, protect, defend (with counsel reasonably acceptable to SELLER) and hold harmless SELLER and each of SELLER's employees, agents, officer, directors, and City Council for, from and against any and all claims, damages, liens, suits, causes of action, legal or administrative proceedings, finds, penalties, judgments, demands, obligations, costs,

liabilities and losses (including mechanics' liens) and expenses (including, without limitation, reasonable attorneys' fees) (all collectively and each individually referred to herein as the "Claims and Liabilities") for property damage (both real and personal), death or personal injury to the extent caused by the acts or negligence of BUYER or BUYER's Representatives acting on behalf of BUYER pursuant to this Agreement while on, in, or about the Property, subject to this Section 4.C below, which obligation shall survive Close of Escrow or termination of this Agreement.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

A. Representations by SELLER. SELLER represents and warrants to BUYER based on information and belief as follows:

- (1) The Dissolution Law requires that the Oversight Board's approval of the disposition of this property be submitted to the California Department of Finance (DOF). No other consent or approval is required for the execution and delivery of this Agreement by SELLER or the performance by SELLER of its obligations hereunder other than those already obtained by SELLER, or specifically set forth in this Agreement.
- (2) To the best of SELLER's knowledge, based on information and belief presently available to SELLER at the time of this Agreement, the Property Materials delivered to BUYER are complete copies of such documents in the actual possession or control of SELLER, and are all of the Property Materials known to be in the actual possession or control of SELLER. Prior to Closing, SELLER agrees to promptly deliver to BUYER any additional documents received by SELLER relating to the physical condition, use, and operation of the Property.
- (3) SELLER has not received written notice from any governmental or quasi-governmental authority of existing violations of any laws or other legal requirements specifically with respect to the Property.
- (4) As of the Closing, there shall be no outstanding contracts made by SELLER for any improvements to the Property which have not been fully paid for, and SELLER shall cause to be discharged and removed as an exception to title all mechanics' and materialmen's liens arising from any labor and material furnished prior to the Closing (other than those caused by work performed by BUYER).

The representations and warranties of SELLER set forth in this Section 4.A shall survive the Close of Escrow.

B. Representations by BUYER. BUYER represents and warrants to SELLER that no consent or approval from anyone other than BUYER is required for the execution and delivery of this Agreement by BUYER or the performance of BUYER of its obligations

hereunder. The representations and warranties of BUYER set forth in this Section 4.B shall survive the Close of Escrow.

C. Mutual Representations and Indemnity. Each party represents and warrants to the other that it has had no dealings with any real estate broker, agent, or finder in connection with the negotiation of this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with this Agreement, BUYER, if such claim is based upon an alleged relationship with or any agreement alleged to have been made by BUYER, hereby agrees to indemnify, protect and defend with counsel reasonably acceptable to SELLER and hold SELLER and its officers, agents, employees, successors and assigns harmless against any and all such claims and liabilities which SELLER may or does sustain or incur by reason of such claim or claims. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith, SELLER, if such claim is based upon an alleged relationship with or any agreement alleged to have been made by SELLER, hereby agrees to indemnify, protect, and defend with counsel reasonably acceptable to BUYER, and hold BUYER, officers, agents, employees, successors and assigns harmless against any and all Claims and Liabilities which BUYER may sustain or incur by reason of such claim or claims. The provisions of this Section 4.C shall survive the Close of Escrow or termination of this Agreement.

D. Covenants of SELLER. SELLER hereby agrees as follows:

- (1) After the Effective Date and prior to the Closing, no part of the Property, or any interest therein, shall be sold, encumbered or otherwise transferred without BUYER's prior written consent.
- (2) Prior to Closing, SELLER Shall promptly notify BUYER of any fact or circumstance of which SELLER becomes aware which would make any of SELLER's representations and warranties untrue in any material respect, or any covenant of SELLER under this Agreement incapable or improbably of being cured or performed.

E. Covenants of BUYER.

- (1) BUYER shall not cause or be the reason for the imposition of any mechanics' and materialmen's liens to be placed on or attached to the Property prior to Closing.
- (2) Prior to Closing, BUYER shall promptly notify SELLER of any fact or circumstance of which BUYER becomes aware which would make any of BUYER's representations and warranties untrue in any material respect, or any covenant of BUYER under this Agreement incapable of being cured or performed.

5. AS-IS.

A. "AS-IS" Purchase. BUYER EXPRESSLY ACKNOWLEDGES AND AGREES, AND REPRESENTS AND WARRANTS TO SELLER, THAT, EXCEPT FOR THE SELLER

REPRESENTATIONS AND COVENANTS EXPRESSLY SET FORTH HEREIN BUYER IS PURCHASING THE PROPERTY "AS-IS", AND "WITH ALL FAULTS", AFTER SUCH INSPECTION, ANALYSIS, EXAMINATION AND INVESTIGATION BUYER DESIRES TO MAKE AND EXPRESSLY WITHOUT SELLER'S COVENANT, WARRANTY OR REPRESENTATION AS TO PHYSICAL CONDITION, TITLE, LEASES, RENTS, REVENUES, INCOME, EXPENSES, OPERATION, ACCESS, ZONING OR OTHER REGULATION, COMPLIANCE WITH LAW, SUITABILITY FOR PARTICULAR PURPOSES OR ANY OTHER MATTER WHATSOEVER, EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH IN THIS AGREEMENT OR ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING. SELLER HAS NO OBLIGATION TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS TO THE PROPERTY, OR TO PAY ANY FEES, COSTS OR EXPENSES RELATED TO THE PROPERTY EXCEPT AS PROVIDED IN THIS AGREEMENT. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (A) THE VALUE OF THE PROPERTY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR DEVELOPMENT OF THE PROPERTY; (D) THE HABITABILITY, MARKETABILITY, MERCHANTABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (E) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (F) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, SOILS AND GEOLOGY; (G) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (H) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, CALIFORNIA HEALTH AND SAFETY CODE, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 CFR PART 261, CERCLA, AS AMENDED, RCRA, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT AND THE TOXIC SUBSTANCE CONTROL ACT, AS ANY OF THE FOREGOING MAY BE AMENDED FROM TIME TO TIME AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING FROM TIME TO TIME; (I) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY; (J) THE CONTENT, COMPLETENESS OR ACCURACY OF THE PROPERTY DOCUMENTS AND ANY OFFERING CIRCULAR OR

INFORMATION PACKAGE PROVIDED BY SELLER; (K) THE CONFORMITY OF THE PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS; (L) DEFICIENCY OF ANY DRAINAGE OR UNDERSHORING; (M) THAT THE PROPERTY MAY BE LOCATED ON OR NEAR EARTHQUAKE FAULTS; (N) THE EXISTENCE OR NON-EXISTENCE OF LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY; (O) THE ENTITLEMENT STATUS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, GENERAL PLAN STATUS, SPECIFIC PLAN STATUS, ZONING STATUS, SUBDIVISION STATUS UNDER THE CALIFORNIA SUBDIVISION MAP ACT; (P) THE APPLICABILITY OF THE FEDERAL OR CALIFORNIA ENDANGERED SPECIES ACTS AND THE EXISTENCE OF ANY SPECIES PROTECTED THEREUNDER; (Q) ANY NON-COMPLIANCE OF THE PROPERTY OR ANY IMPROVEMENTS; (R) ANY ERRORS, INACCURACIES OR DEFECTS IN THE WORK PRODUCT RELATING TO THE PROPERTY; OR (S) ANY OTHER MATTER CONCERNING THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND HAVING OBTAINED AND EXAMINED SUCH INFORMATION AND DOCUMENTATION AFFECTING THE PROPERTY AS BUYER HAS DEEMED NECESSARY OR APPROPRIATE, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATIONS AND REVIEW, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER OTHER THAN THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING. AT THE CLOSING BUYER SHALL HAVE INDEPENDENTLY CONFIRMED, SUBJECT TO THE SELLER REPRESENTATIONS AND COVENANTS SET FORTH HEREIN AND ANY REPRESENTATIONS AND COVENANTS OF SELLER SET FORTH IN ANY DOCUMENT DELIVERED BY SELLER AT THE CLOSING, TO ITS SATISFACTION ALL INFORMATION THAT IT CONSIDERS MATERIAL TO ITS PURCHASE OF THE PROPERTY, INCLUDING WITHOUT LIMITATION THE EXISTENCE OF ANY AND ALL MUNICIPAL FEES, CHARGES, OR OTHER LIABILITIES THAT MAY EXIST WITH RESPECT TO THE PROPERTY. EXCEPT FOR THE SELLER REPRESENTATIONS AND COVENANTS, BUYER ASSUMES ALL RISK OF DISCOVERING AND UNDERSTANDING ALL FACTS AND CIRCUMSTANCES RELATING TO THE PROPERTY, INCLUDING PHYSICAL FEATURES AND CONDITIONS, PERMIT AND ENTITLEMENT STATUS, DEVELOPMENT OBLIGATIONS, LIABILITIES, AND OTHER FACTORS RELEVANT TO THE DEVELOPMENT OF THE REAL PROPERTY. SELLER FURTHER ADVISES BUYER THAT PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1102, 1103.1(A), 3434 AND OTHER APPLICABLE PROVISIONS OF CALIFORNIA LAW, SELLER IS NOT LIABLE AND SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE OCCASIONED BY ANY CONSTRUCTION DEFECT OR OTHER DEFECT IN THE REAL OR PERSONAL PROPERTY SO DESIGNED, MANUFACTURED, CONSTRUCTED, REPAIRED, MODIFIED OR IMPROVED OR FOR ANY LOSS OR DAMAGE RESULTING FROM THE FAILURE OF SELLER OR ANY OTHER PARTY THAT PARTICIPATED IN THE DESIGN OR CONSTRUCTION OF THE PROPOSED IMPROVEMENTS ON THE PROPERTY TO USE DUE CARE IN THE DESIGN, MANUFACTURE, CONSTRUCTION, REPAIR, MODIFICATION OR IMPROVEMENT OF SUCH REAL OR PERSONAL PROPERTY.

THIS PROVISION WILL SURVIVE THE CLOSING AND CONSTITUTE MATERIAL CONSIDERATIONS FOR SELLER'S AGREEMENT TO SELL THE PROPERTY TO BUYER.

B. Release. Effective upon the Closing, except as otherwise provided herein or in any documents delivered at the Closing, BUYER, on behalf of itself, and the BUYER representatives fully, unconditionally, and irrevocably release SELLER from any and all claims that BUYER may now have or hereafter acquire against SELLER for any liabilities arising from or related to Property, its design, development, entitlements or any conditions existing or events occurring on, in or about the Property before the Closing, including without limitation any construction defects, or other conditions, latent or otherwise, including, without limitation, environmental matters affecting the Property or any portion thereof; provided, however, that nothing herein shall constitute a release of any other claims for liabilities other than as specified above. The foregoing release includes claims of which BUYER is presently unaware or which Buyer does not presently suspect to exist which, if known by BUYER, would materially affect Buyer's release of the Released Parties. In connection with this release, BUYER specifically waives the provision of California Civil Code Section 1542, 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.

This release by BUYER shall constitute a complete defense to any claim, cause of action, defense, contract, liability, indebtedness or obligation released pursuant to this release. Nothing in this release shall be construed as (or shall be admissible in any legal action or proceeding as) an admission by SELLER or any other released party that any defense, indebtedness, obligation, liability, claim or cause of action exists which is within the scope of those hereby released.

BUYER'S Initials

SELLER'S Initials

6. CLOSING AND ESCROW INSTRUCTIONS.

A. Closing. The consummation of the purchase and sale of the Property (the "Closing" or "Close of Escrow") shall take place on the Closing Date, through the escrow established with Escrow Holder ("Escrow"), as evidence by recordation of the Grant Deed described in Section 6.B. in the Official Records of Santa Clara County, California ("Official Records"). The "Closing Date" shall be _____ or such earlier date as the parties may mutually agree upon (without obligation to so agree).

B. SELLER'S Deposits.

Prior to Closing, in sufficient time prior thereto to allow Closing on the Closing Date, SELLER shall cause to be delivered into the Escrow:

(1) A Grant Deed executed by SELLER, with signatures notarized for recording in the Official Records, conveying to BUYER the Property, in the form of Exhibit B attached hereto ("Grant Deed"), which Grant Deed shall be recorded in the Official Records at the Closing;

(2) An affidavit in compliance with the Foreign Investment and Real Property Tax Act and a California Tax Withholding Form 593-C, executed by SELLER (the "Non-Foreign Status Certificate" and "Form 593-C", respectively), certifying that SELLER is not subject to withholding under federal or state law; and

(3) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and an owner's affidavit reasonably required by the Title Company to enable the Title Company to issue the Title Policy to BUYER at the Closing.

C. BUYER'S Deposits. Prior to Closing, in sufficient time prior thereto to allow Closing to occur on the Closing Date, BUYER shall cause to be delivered into the Escrow the following:

- (1) In immediately available funds a sum equal to the Purchase Price, plus BUYER's estimated Closing Costs, less the Deposit, together with any interest earned thereon; and
- (2) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions.

D. Failure to Timely Close Escrow. If the Closing does not occur by the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party. If neither party is in default, then the cost of cancellation of the Escrow shall be shared equally between BUYER and SELLER, unless otherwise expressly provided in the Agreement. If only one of the parties hereto is in default, then such defaulting party shall pay for the entire cost of cancellation of the Escrow. The termination of this Agreement and cancellation of the Escrow, as provided herein, shall be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement, that BUYER or SELLER may have against each other arising out of this Agreement and the Escrow, which rights shall survive the termination of this Agreement.

E. Conditions to Closing.

- (1) **BUYER'S Conditions.** In addition to all other conditions to the completion of the transaction described in this Agreement, SELLER and BUYER agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by BUYER of

the matters specified below in this Section 6.E.(1), which conditions are solely for the benefit of the BUYER and can be unilaterally waived by BUYER:

- i. The Title Company shall be irrevocably committed to issue to BUYER at the Closing an Owner's Standard ALTA policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in BUYER subject to no exceptions other than the Permitted Exceptions, in the form and with endorsements to be approved by BUYER prior to the end of the Due Diligence Period (the "Title Policy");
- ii. There shall have been no material adverse change in the physical condition of the Property from the Effective Date through the Closing Date; and
- iii. SELLER shall not be in material default of SELLER's obligations under this Agreement, and all of SELLER's express representations and warranties set forth in this Agreement shall continue to be true, correct, and unchanged in all material respects as of the Closing.

(2) **SELLER's Conditions.** In addition to all other conditions to the completion of the transaction described in this Agreement, SELLER and BUYER agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by SELLER of the matters specified below in this Section 6.E(2), which conditions are solely for the benefit of SELLER and can be unilaterally waived by SELLER:

- i. BUYER shall not be in material default of BUYER's obligations under this Agreement, and all of BUYER's express representations and warranties set forth in this Agreement shall continue to be true, correct, and unchanged in all material respects as of the Closing.

F. **Title.** At Closing, title to the Property shall be conveyed to BUYER subject to only the following exceptions (collectively, "Permitted Exceptions"): (i) non-delinquent real property taxes and assessments (if any), (ii) the standard pre-printed exceptions and exclusions contained in an ALTA Standard coverage owner's policy of title insurance, and (iii) liens and encumbrances resulting from the acts of BUYER or any of BUYER's representatives. Anything to the contrary in this Agreement notwithstanding, SELLER shall pay or discharge, or cause to be removed, whether or not specifically objected to by BUYER, all monetary liens or encumbrances affecting the Property (other than non-delinquent real property taxes and assessments, and other than monetary liens and encumbrances created by BUYER, but otherwise including without limitation all deeds of trust and mortgages and other encumbrances relating thereto, judgment liens, mechanics' and materialmen's liens or claims of lien, and liens relating to defaulted taxes), and all liens or encumbrances voluntarily created or assumed by SELLER prior to the Close of Escrow; and in no event shall SELLER be allowed to elect or be deemed to have elected not to pay, discharge or cause to be removed such matters.

If following the Effective Date, the Title Company discloses additional exceptions not previously disclosed as exceptions in the preliminary title report delivered to BUYER before the Effective Date, other than the Permitted Exceptions, then unless BUYER accepts to accept title as it then is without reduction of the Purchase Price, BUYER may, at its option determined in BUYER's sole and absolutely discretion, terminate this Agreement, in which event the Nonrefundable Consideration shall be released to SELLER if such exception has not been caused by SELLER's default under this Agreement (and otherwise it shall be released to BUYER), and the Deposit Balance shall be returned to BUYER.

G. Prorations.

- (1) Subject to Subsection (2) below, all revenues and expenses of the Property, including without limitation real property taxes, special taxes, assessments (if any) shall be prorated and apportioned between BUYER and SELLER as of the Closing Date, so that SELLER bears all expenses with respect to the Property, and has the benefit of all income with respect to the Property, through and including the date immediately preceding the Closing Date. If any portion of the Property is affected by any assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien due and payable as part of the annual ad valorem property tax bill received for the Property, then such installment shall be prorated as of the Closing Date; and if any such assessment or other charge is not payable in installments or are not billed as part of the annual ad valorem property tax bill for the Property, shall be paid in full by SELLER at the Closing. Notwithstanding the foregoing, SELLER shall be solely responsible for clearing all possessory interest taxes from the Property not later than the Closing. Any necessary adjustment due either party on receipt of a supplemental tax bill will be made by the parties outside of this Escrow within the time required by this Section 10 below, which obligation shall survive the Closing.
- (2) Subject to Subsection (1) above, if any of the items to be prorated as of Closing cannot be finally determined as of Closing, the prorations shall be made at Closing based on the last available information, and post-closing adjustments between BUYER and SELLER shall be made within twenty (20) days after the date that the actual amounts are determined, and if payment is not made within this twenty (20) day period the party owing such sums shall pay interest thereon, at the rate of ten percent (10%) per annum, from the date of delivery of the bill to the non-paying party to the date of payment. This subsection shall survive the Closing.

H. Title Charges, Other Closing Costs. If this transaction is terminated by BUYER prior to the expiration of the Due Diligence Period for any reason other than SELLER's default hereunder, BUYER shall pay all escrow costs billed by the Escrow Holder and Title Company. If this transaction closes as provided in this Agreement:

- (1) SELLER shall pay that portion of the premium for the Title Policy attributable to ALTA Standard Owner's Policy of coverage (exclusive of endorsements), and the escrow fees;
- (2) BUYER shall pay recording fees for the recording of the Grant Deed (if any), and the portion of the premium for the Title Policy attributable to an ALTA Extended Policy coverage and endorsements issued with the Title Policy, if BUYER so elects to obtain an ALTA Extended Policy; and
- (3) All other Closing costs, if any, shall be allocated between SELLER and BUYER in accordance with the custom in Santa Clara County, California.

I. Disbursement of Funds. On the Close of Escrow, Escrow Holder shall be instructed to disburse the Purchase Price less: (i) SELLER's share of prorations as determined pursuant to Subsection G immediately above, and (ii) SELLER share of costs of Escrow in immediately available funds, as directed by SELLER.

J. Delivery of Documents. Escrow Holder shall be instructed to, upon the Close of Escrow, deliver all instruments and documents as follows:

- (1) Escrow Holder shall be instructed to deliver to SELLER:
 - i. A copy of the Grant Deed executed 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. A copy of all other documents deposited into Escrow; and
 - iv. The Purchase Price, less the costs and prorations chargeable to SELLER pursuant to this Agreement.
- (2) Escrow Holder shall be instructed to deliver to BUYER following the Close of Escrow the following:
 - 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 Deposit 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 Deposit 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,

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. Seller shall also pay for 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 a result of Seller's default. 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 may not assign its rights, remedies and obligations under this Agreement, in whole or in part, without Seller's prior written consent, which may be withheld in Seller's sole discretion, except to an affiliate of Buyer. For purposes of this paragraph, an "affiliate" of Buyer is any corporation, partnership, joint venture, individual, business trust, real estate investment

trust, or any other legal entity who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Buyer.

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]

EXHIBIT INDEX

Exhibit Reference

Content

Exhibit A

Legal Description of Real Property

Exhibit B

Grant Deed

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: July 18, 2016

ITEM VI.B: Consideration of Request from Lodging Dynamics Development, LLC to Extend the Due Diligence Period and Closing Period Relating to Property Located at NWC of Alder Drive and Barber Lane, Milpitas California (APN 086-02-025).

RECOMMENDED ACTION:

The Oversight Board Ad Hoc Committee recommends consideration and adoption of Resolution No. 82 of the Oversight Board Approving Second Amendment to Purchase Sale Agreement Between Lodging Dynamics Development, LLC and Successor Agency to Extend the Due Diligence Period and Closing Date Relating to Property Located at NWC of Alder Drive and Barber Lane (APN 086-02-025) Subject to Certain Terms and Conditions.

BACKGROUND AND DISCUSSION:

On February 19, 2016, the Oversight Board adopted Resolution No. 76 approving the Successor Agency's sale of real property located at Alder Drive and Barber Lane, Milpitas, CA (APN 086-02-086) to Lodging Dynamics Development, LLC (hereafter "Buyer"). The parties entered into a Real Property Purchase Sale Agreement and Mutual Escrow Instructions (hereafter "Purchase Sale Agreement"). The effective date of the Purchase Sale Agreement is March 16, 2016. Thereafter, the Oversight Board adopted Resolution No. 79 approving the First Amendment to the Purchase Sale Agreement extending by 13 days the initial 30 day period of the Due Diligence Period relating to return of deposit. The overall Due Diligence Period was not extended by the First Amendment.

Request for Extension

On July 7, 2016, Buyer submitted the attached letter requesting an extension of the Due Diligence Period and the Closing Date. Under the Purchase Sale Agreement (PSA), the Due Diligence Period ends July 14, 2016 and the Closing Date is August 17, 2016.

Buyer seeks a 60 day extension of the Due Diligence Period which would get it to September 12, 2016 and a 30 day extension therefrom to the Closing date which would get it to October 12, 2016. The request also states "During this extended Due Diligence Period, we request that the full Deposit be refundable as we will need to review and revise our financial projections for the project."

The basis for Buyer's request is that the entitlement process is taking longer. While Buyer did not anticipate full approval by now, Buyer had anticipated conceptual approval before the end of the Due Diligence Period. The Buyer has not received conceptual approval from the City at this point.

The PSA calls for a sliding refundable deposit. At the time the request was received, the parties were in the “more than ninety (90) but less than one hundred twenty (120) days of the Due Diligence Period.”

Consideration of Requests

In prior requests for extensions of the due diligence period the following considerations have been taken into account by the Oversight Board:

- (i) The Purchase Sale Agreement relates to sale of the land not development and entitlements.
- (ii) Denial of requested extension may result in failure of the sale to close and the process for sale of the property would have to start over.
- (iii) A new RFP process including review of submissions, award of a contract, and a new escrow period will exceed the requested extension and may produce a lower proposal price for sale of the property.
- (iv) Expeditious sale of Successor Agency properties is required under the Dissolution Law and approval of the extension to the Due Diligence Period promotes sale of the property sooner than starting a new RFP process.

Ad Hoc Committee Review

On July 11, 2016, the Ad Hoc Committee reviewed various potential recommendations: full approval, partial approval, and denial. The Ad Hoc Committee considered Buyer’s request and determined that the refund of the full deposit would change the entire scheme of the sliding scale refund. The Ad Hoc Committee agreed not to recommend full approval of the request.

Rather, the Ad Hoc Committee agreed to recommend the approval of the request in part as follows:

- a. The Due Diligence Period shall be extended 60 days (hereafter “extended Due Diligence Period”) subject to the following:
 - (i) Buyer shall instruct escrow to have \$525,000 of the deposit immediately released from escrow to Seller.
 - (ii) The remaining deposit of \$175,000 shall be refundable to Buyer if the Purchase Sale Agreement is cancelled on or before the end of the first 30 days of the extended Due Diligence Period.
 - (iii) If the Purchase Sale Agreement is not cancelled on or before the end of the first 30 days of the extended Due Diligence Period, on the 31st day of the extended Due Diligence Period, Buyer shall instruct

escrow to have the remaining \$175,000 deposit released from escrow to Seller.

- b. If the foregoing is agreed to by Buyer, the Closing Period shall be extended to October 12, 2016.

Communication of Recommendation to Buyer and Buyer's Amended Request

The Ad Hoc Committee directed Special Counsel Montoy to advise Buyer as to the recommendation that the Ad Hoc Committee would be making to the Board. On July 11, 2016, special counsel communicated by telephone call the recommendation that would be made to Mr. Adam Ricks, attorney for Buyer.

On Wednesday, July 13, 2016, Mr. Ricks submitted an amended request on behalf of Buyer as follows:

- Immediate Release of \$350,000 Earnest Money from Escrow to Seller.
- 60 Day Due Diligence extension - with the remaining \$350,000 Earnest Money Deposit refundable through all 60 days.
- 30 Day Close after the end of the 60 Day Due Diligence Period extension.

Buyer will be present at the Oversight Board Meeting.

Proposed Resolution No. 82

The attached Resolution No. 82 provides for the approval of a Second Amendment to the Purchase Sale Agreement subject to the following terms and conditions:

1. The Due Diligence Period shall be extended 60 days subject to the following terms and conditions:
 - a. Buyer shall instruct escrow to release immediately \$525,000.00 of the deposit from escrow to Seller.
 - b. The remaining deposit of \$175,000.00 shall be refundable to Buyer if the Purchase Sale Agreement is cancelled on or before the end of the first 30 days of the extended Due Diligence Period.
 - c. If the Purchase Sale Agreement is not cancelled on or before the end of the first 30 days of the extended Due Diligence Period, on the 31st day of the extended Due Diligence Period, Buyer shall instruct escrow to have the remaining \$175,000.00 deposit released from escrow to Seller.
2. The Closing Period shall be extended to October 12, 2016.

July 7, 2016

Hilda Cantu Montoy
2125 Kern Street, STE 308
Fresno, CA 93821

RE: Alder and Barber Lane Property – Milpitas, CA

Dear Hilda,

This letter is to formalize our request for extending the Closing Date and reopening the Due Diligence Period on the Alder and Barber Lane Property (the “Property”) acquisition.

Our due diligence efforts on the Property have recently taken a significant turn following our most recent meetings with the outgoing and incoming city planners. Initially, we were speaking with the interim planning director, the economic development manager, and were assigned a city planner. In all of these talks, we had presented a hotel concept of approximately 175-220 rooms. All of us were working towards this end when we met with the city planning managers two weeks ago. At that meeting, we were told that our plans were underutilizing the site, and that we could do a lot more with the land. We were told that we could disregard the FAR restrictions and setbacks on the property and not worry about the number of parking stalls in order to better utilize the space. We were asked to consider creating a higher density plan for the site, including a plan to construct structures as tall as 10 stories. This request represents to us a significant departure from the vision of the property that had been communicated to us during the proposal, contracting, and due diligence process.

Because of the magnitude of change this new direction represents, Lodging Dynamics will need to start over with many aspects of our due diligence, including initiating new conversations with city staff to better understand the impact of this direction, and to ensure the project remains financially viable. Unfortunately, this process will set us back several months on both our Due Diligence as well as the Closing. As such – we are requesting that the Due Diligence Period be extended by sixty (60) days or until such time as we obtain a clear path forward with city staff, including a preliminary approval of our redesigned site plan (all of our due diligence is complete except for this approval). During this extended Due Diligence Period, we request that the full Deposit be refundable as we will need to review and revise our financial projections for the project. We would also ask that the Closing Date be extended to thirty (30) days after the close of the extended Due Diligence Period.

We are still very excited about this project. However, because of the conditions presented mid-stream in the project, these amendments need to be made in order for us to restart on this portion of our due diligence.

Sincerely,

Adam Ricks

Adam G. Ricks
Internal Legal Counsel

RESOLUTION NO. 82

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING SECOND AMENDMENT TO PURCHASE SALE AGREEMENT BETWEEN LODGING DYNAMICS DEVELOPMENT, LLC AND SUCCESSOR AGENCY TO EXTEND THE DUE DILIGENCE PERIOD AND CLOSING DATE RELATING TO PROPERTY LOCATED AT NWC OF ALDER DRIVE AND BARBER LANE SUBJECT TO CERTAIN TERMS AND CONDITIONS

WHEREAS, Lodging Dynamics Development, LLC and the Successor Agency entered into a Real Property Purchase Sale Agreement and Mutual Escrow Instructions (hereafter "Purchase Sale Agreement") for purchase of said real property in accordance with Resolution No. 76; and

WHEREAS, the Oversight Board adopted Resolution No. 79 approving the First Amendment to the Purchase Sale Agreement extending by 13 days the initial 30 day period of the Due Diligence Period relating to return of deposit; and

WHEREAS, on July 7, 2016, Buyer submitted a letter requesting an extension of the Due Diligence Period and the Closing Date; and

WHEREAS, Buyer seeks a 60 day extension of the Due Diligence Period and a 30 day extension to the Closing Date from the extended Due Diligence Period; and

WHEREAS, the Purchase Sale Agreement provides that the property is sold "as is" and is not subject to completion of land use entitlements; and

WHEREAS, denial of the 90 day extension may result in failure of the sale to close and the process for sale of the property would have to start over; and

WHEREAS, a new RFP process including review of submissions, award of a contract, and a new escrow period will exceed 90 days and the results of such a process may not be favorable; and

WHEREAS, approval of the Lodging Dynamics Development's request to extend the Due Diligence Period is in the best interest of the Successor Agency and taxing entities to ensure the sale is completed and to avoid commencement of a new RFP process.

NOW, THEREFORE, the Oversight Board of the former Milpitas Redevelopment Agency resolves as follows:

Section 1. The recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. The Oversight Board approves a Second Amendment to the Purchase Sale Agreement as follows:

A. Special Counsel shall prepare a Second Amendment to the Purchase Sale Agreement consistent with the following:

1. The Due Diligence Period shall be extended 60 days subject to the following terms and conditions:

- a. Buyer shall instruct escrow to release immediately \$525,000.00 of the deposit from escrow to Seller.
- b. The remaining deposit of \$175,000.00 shall be refundable to Buyer if the Purchase Sale Agreement is cancelled on or before the end of the first 30 days of the extended Due Diligence Period.
- c. If the Purchase Sale Agreement is not cancelled on or before the end of the first 30 days of the extended Due Diligence Period, on the 31st day of the extended Due Diligence Period, Buyer shall instruct escrow to have the remaining \$175,000.00 deposit released from escrow to Seller.

2. The Closing Period shall be extended to October 12, 2016.

B. The Successor Agency is authorized to execute the Second Amendment to the Purchase Sale Agreement.

PASSED AND ADOPTED July 18, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Michael McInerney
Oversight Board Chair