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 Community Center Large Meeting Room (7 & 8)
457 East Calaveras Blvd.
Milpitas, CA 95035

MEMBERS:	**ALTERNATES:**
Jane Corpus	
Bruce Knopf, Vice Chair	*Alan Minato*
Mike McInerney, Chair	
Michael Mendizabal	
Althea Polanski	
Matthew Tinsley	*Suzanne Carrig*
Glen Williams	*Michael Fogelstrom*

DRAFT Minutes of the June 14, 2017 Meeting

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

Chair McInerney called the meeting to order at 1:31 p.m. Chair McInerney introduced and welcomed Chief Steve Pangelinan, the Acting City Manager, and Mr. Will Fuentes, the new Director of Finance. Mr. Fuentes stated he will be joining the Board at the next regular meeting with Ms. Corpus continuing to serve as an alternate.

ROLL CALL

MEMBERS PRESENT: Jane Corpus, Bruce Knopf, Mike McInerney, Althea Polanski, Matthew Tinsley and Glen Williams

MEMBERS ABSENT: Mike Mendizabal

II. PUBLIC FORUM: None

III. APPROVAL OF AGENDA

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

IV. APPROVAL OF MINUTES: March 13, 2017 Meeting.

Moved by Mr. Williams and seconded by Ms. Polanski to approve the minutes of March 13, 2017. The motion passed by the following vote: **AYES:** Corpus, McInerney, Polanski, Tinsley and Williams **NOES:** 0 **ABSENT:** Mendizabal **ABSTAIN:** Knopf.

V. OLD BUSINESS: POSTPONED ITEM: Receive and Consider Report and Alternative Resolutions from the Ad Hoc Committee of the Oversight Board Regarding Disposition of 230 N. Main Street Listed on the Long Range Property management Plan as Property No. 3.

1. Alternative A: Resolution No. 86 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. 86 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 Resolution 86 Alternatives A and B. She also reported that several hours before the meeting started, the Board had received a letter from the Milpitas City Attorney in support of Alternative B.

Three members of the public, including Mr. Jerry Epps and Mr. Pete McHugh, both residents of Milpitas, all spoke in support of retaining 230 N. Main Street for governmental use and turning it over to the City to develop as a community park.

Chief Pangelinan told the Board that there is overwhelming community support for having a public park at 230 N. Main Street reflected by the fact that over 80 percent of Milpitas voters supported Measure K in the November 2016 election. Therefore, as a representative of the community he recommends approval of retaining the property for governmental use.

Board Member Polanski commented that she was on the City Council when the City purchased the parcel and the City did so because the Council had overwhelming numbers of people, citizens of Milpitas, saying they wanted a park at that location. She was also the Council's representative to the Parks, Recreation, and Cultural Resources Commission that worked with community members and groups, including the Milpitas Historical Society, on development plans for that park that were tremendous. She knows the citizens of Milpitas want a community park, and she strongly agrees with them. She also believes that although the current City Council is completely different from the one that purchased the property, it strongly supports open space. Therefore, she requests the Board support Resolution Alternative B and send it to the State and see what happens.

Board Member Williams stated his opinion that no Board member is opposed to a park on this parcel. He identified three factors that, in his view, did not give the Board the flexibility to adopt Alternative B. First, the property does not meet the technical requirements established by the State Legislature to be eligible for the Board to retain the parcel for governmental use. Second, the Dissolution Law does not allow the Board to modify a Long Range Property Management Plan once the State has approved it, except for the singular exception that the Legislature created for parking lots. Third, the City, the County, the County Office of Education and the State of California entered into a settlement agreement that calls for this parcel to be sold to maximize the financial return to the taxing entities.

Board Member Knopf also indicated that Board Members have a great deal of sympathy for meeting the expectations of the citizens of Milpitas. He compared the status of 230 N. Main Street to a situation where a developer owns several parcels within a City and as part of gaining approval of a development on one parcel agrees to donate another parcel for a school site. The City zones the one parcel for a school and before the City grants the other entitlements, the developer goes out of business. The community wants a school on the parcel but the school project is unable to proceed without a different owner committed to a school use. In the case of 230 N. Main Street, the Successor Agency owns the property but under the Dissolution Law has no authority to build a park. The City has the authority to build a park but must own the property to proceed. Mr. Knopf encouraged the City to consider making a bid on the property if the Board proceeds with a RFP process. If the City's bid is successful, then everyone is happy.

Moved by Mr. Knopf and seconded by Mr. Williams to adopt Resolution 86, Alternative A, with one modification to extend the submission date for the RFP to 120 days instead of 90 days. Before the Board acted on this motion, there was a motion to have a substitute motion.

Moved by Ms. Polanski and seconded by Ms. Corpus to have a substitute motion to the primary motion: The motion failed by the following vote: **AYES:** Corpus and Polanski **NOES:** Knopf, McInerney, Tinsley and Williams. **ABSENT:** Mendizabal **ABSTAIN:** 0

The Board then returned to the motion by Mr. Knopf and seconded by Mr. Williams. The motion passed by the following vote: **AYES:** Knopf, McInerney, Tinsley and Williams **NOES:** Corpus and Polanski **ABSENT:** Mendizabal **ABSTAIN:** 0

VI. NEW BUSINESS

Consider Resolution No. 87 Approving Second Amendment to Administrative Services Agreement between the County of Santa Clara and the Oversight Board of the successor Agency of the Milpitas Redevelopment for Continued Administrative Support Services.

Ms. Montoy presented the staff report.

No member of the public requested to speak when provided the opportunity and there was no Board discussion.

Moved by Mr. Williams and seconded by Ms. Polanski to approve Resolution No. 87 which extends the Administrative Service Agreement to June 30, 2018. The motion passed by the following vote: **AYES:** Corpus, Knopf, McInerney, Polanski, Tinsley and Williams **NOES:** 0 **ABSENT:** Mendizabal **ABSTAIN:** 0

VII. NEXT MEETING

A. Identify Potential Agenda Items.

1. Responses to RFP related to 230 N. Main Street.
2. Potential amendments to Recognized Obligation Payment Schedule (ROPS) for the second half of fiscal year from January 1, 2018 through June 30, 2018.

B. Set Date and Time.

Board members indicated a quorum would be available for an "on call" meeting on September 26, 2017 at 1:30 p.m. in case the Successor Agency needs to amend the ROPS for FY 2017-18 and for a second meeting on November 8, 2017 at 1:30 p.m. to consider responses to the RFP related to 230 N. Main Street.

VIII. MEETING ADJOURNMENT

Moved by Mr. Knopf and seconded by Ms. Polanski, Chair McInerney adjourned the meeting at 2:57 on the consensus of the Board.

Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary

Approved on November 8, 2017

Mike McInerney
Oversight Board Chair

Barbara Crump
Oversight Board Secretary

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: November 8, 2017

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. 3 Listed on the Long Range Property Management Plan and Located at 230 N. Main Street, Milpitas, California (APN 028-34-001 through 028-34-094).

RECOMMENDED ACTION:

The Oversight Board Ad Hoc Committee recommends Adoption of Resolution No. 88 Approving the Sale of Property Located at 230 N. Main Street, Milpitas, California (APN 028-34-001 through 028-34-094) pursuant to the Long Range Property Management Plan and a Request for Proposals (RFP) Process.

BACKGROUND AND DISCUSSION:

On June 14, 2017, the Oversight Board by resolution authorized issuance of an RFP for Property No. 3 on the LRPMP located at 230 N. Main Street, Milpitas, CA. The proposals were due on October 23, 201, at 5 p.m.

Two timely proposals were received: one from Milpitas Community Museum and the other from the County of Santa Clara. Attached is a comparison of the two proposals. Both proposals met all the requirements. The Ad Hoc Committee comprised of Althea Polanski, Glen Williams, and Mike McInerney joined by Acting City Manager Pangelinan reviewed the proposals received and determined that the property should be sold to Milpitas Community Museum as the higher of the two proposals.

Per direction from the Ad Hoc Committee, on October 30, 2017, Special Counsel confirmed with Messrs. Peoples and Munzel their financial ability to proceed with the sale and desire to complete the sale as soon as possible. They noted that their main focus is in obtaining the Seller's records and reviewing same regarding environmental reports and remediation on the site. Apparently, the site used to be a gasoline station. In that regard, the full 90 day Due Diligence Period may not be needed but is preferred by them.

They were provided with the Draft Purchase Sale Agreement and I pointed them to the sections which address the Due Diligence Period, property documents, access to the property, and Closing Date.

I note that Chris Diaz, City Attorney and counsel for the Successor Agency, asked that I make certain edits to the Purchase Sale Agreement. I made edits which consisted of clarifying that the text regarding documents to be provided by the Seller to Buyer relate to condition of the property, adding initials in one of the sections, clarifying invasive vs. noninvasive access to the property during the Due Diligence Period, and deleting text waiving a jury and requiring arbitration.

The proposed Purchase Sale Agreement retains the 90 day Due Diligence Period noted on the PSA attached to the RFP and sets the Closing Date at March 16, 2016, which is about 130 days from the approval of the sale or sooner upon mutual approval of the parties. It also includes the above referenced edits requested by Successor Agency's counsel.

Proposed Resolution No. 88 provides as follows:

1. Approves the sale of Property No. 3 located at 230 N. Main Street, Milpitas, California to Milpitas Community Museum. The Purchase Sale Agreement shall be executed by Buyers within three 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 fifteen 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 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.

5. Authorizes the return of the deposit check to the County of Santa Clara (second and unsuccessful proposer).

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
230 N. Main Street
October 26, 2017

RFP	MUSEUM	COUNTY
Format and Completeness	Yes	Yes
Timely Hardcopy	Yes	Yes
Timely Email Offer	Yes	Yes
All Cash Offer	$315,000	$49,999
Deposit Enclosed	Yes	Yes
Due Diligence Period (DDP)	Yes	Yes
Financial Capacity	Proposal says Yes	$6-Million Reserve
Readiness to Proceed	Yes	Yes
All Conditions Accepted	Yes	Yes
Contact	Steve Munzel	Jenny Treis

RESOLUTION NO. 88

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING THE SALE OF PROPERTY LOCATED AT 230 N. MAIN STREET, MILPITAS, CALIFORNIA (APN 028-34-001 THROUGH 028-34-094) TO MILPITAS COMMUNITY MUSEUM 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 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 June 14, 2017, the Oversight Board adopted Resolution No. 86 and thereby approved issuance of an RFP for the property located at 230 N. Main Street, Milpitas, CA; and

WHEREAS, proposals under the RFP were due on October 23, 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 Milpitas Community Museum as it is the proposer submitting the highest bid and it met all requirements of the RFP; and

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

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 230 N. Main Street, Milpitas, California to Milpitas Community Museum (hereafter "Buyer"). The Purchase Sale Agreement attached hereto as Exhibit A shall be executed by Buyers within three days of the adoption of this resolution.

b. Directs and authorizes the Successor Agency ("Seller") to execute the Purchase Sale Agreement within fifteen days of its execution by Buyer.

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 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.

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.

Certification on next page

PASSED AND ADOPTED on November 8, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Barbara Crump
Oversight Board Secretary

APPROVED:

Michael McInerney
Oversight Board Chair

REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND
MUTUAL ESCROW INSTRUCTIONS

(230 N. Main Street, Milpitas CA 95035; APN 028-34-001 through 028-34-094)

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (the "Agreement") is entered 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 Milpitas Community Museum ("BUYER") on _____, 2017.

RECITALS

A. The real property which is subject to this Agreement is located at 230 N. Main Street, Milpitas, California, (APN 028-34-001 through 028-34-094) and legally described in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Property"). The Property is vacant land and is approximately 1.609 acres in size.

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 June 14, 2017, the Oversight Board approved Seller's issuance of a Request for Proposals for the purchase of the Property.

I. BUYER was 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. 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 three hundred fifteen thousand dollars ($315,000.00) (the "Purchase Price").

C. Effective Date. The Effective Date is the last date set forth opposite the signatures of the parties at the end of this Agreement and which is entered at the beginning of this Agreement.

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 Chicago Title at 12156 Saratoga Sunnyvale Road, Saratoga, CA 95070 (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) **Deposit**. Together with BUYER's response to the Request for Proposal, BUYER delivered to SELLER a check in the sum of Fifty Thousand Dollars ($50,000.00) ("Deposit"). Immediately upon the opening of Escrow, SELLER shall deliver the Deposit to Escrow Holder for the benefit of BUYER.

(2) **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. 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.

(3) **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 ninety (90) 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 may 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 Deposit shall be returned to BUYER. 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 for BUYER's review and copying the following documents relating to the condition of the Property to the extent in the possession or control of SELLER (collectively, the "Property Materials"): (i) all soils, groundwater, and environmental assessments; (ii) all notices of violations of laws, if any, from any governmental or quasi-governmental authorities; and (iii) other correspondence and notices from any governmental or quasi-governmental authorities.

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 non-invasive tests upon the Property, as BUYER, in its sole discretion deems necessary but at its sole cost and expense. The written consent of BUYER shall be required for invasive tests. 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, fines, 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.

_____
BUYER'S Initials

B. Release. Effective upon the Closing, except for the Excluded Claims and 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 the Excluded Claims and/or any Liabilities of (or Claims against) the Excluded Parties. 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 March 18, 2018, 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 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 agrees 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 Deposit shall be released 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, customary escrow costs shall be paid from the proceeds of the sale. The term customary escrow costs does not include SELLER'S costs, if any, associated with providing clean title to the property including but not limited to removal of liens or encumbrances as set forth in Subsection G immediately above.

I. Disbursement of Funds. On the Close of Escrow, Escrow Holder shall be instructed to disburse the Purchase Price less customary escrow costs pursuant to Subsection H immediately above.

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 Nonrefundable Consideration shall be released to SELLER, the Deposit Balance shall be refunded to BUYER by the Escrow Holder, and SELLER and BUYER shall thereupon be released from all further obligations under this Agreement other than the Surviving Obligations.

8. RISK OF LOSS.

If prior to the Closing, the existing 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 of 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 option , 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, to elect either of the following options: (i) to terminate this Agreement, in which case 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 (ii) above. If BUYER elects option (ii) all of SELLER's insurance proceeds as a consequence of such casualty, if any, shall be assigned or paid to BUYER.

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 AGREEMENET, 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 CLODE SECTIONS 1671 AND 1677 AND ANY RETENTION OF LIQUIDATED DAMAGES AS A RESULT THEROF 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

C. Remedies.

(1) SELLER'S Default. If SELLER defaults hereunder, or the Closing does not occur by reason of Seller's default hereunder which is not cured within ten (10) days after Seller's first have knowledge of such default, then Buyer shall be entitled to pursue its right to specifically enforce this Agreement or to terminate this Agreement. In the event Buyer terminates this Agreement, Seller, to the extent that any Deposit has been released, or Escrow Holder, to the extent any Deposit has not been released, shall immediately return said Deposit(s) to Buyer and except as otherwise provided, neither party will have any further obligations under this Agreement.

(2) BUYER'S Default. **BUYER AND SELLER AGREE THAT IN THE EVENT THE CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT OR BREACH (NOT DUE TO SELLER'S WRONGFUL ACTS OR OMISSIONS OR SELLERS' BREACH) HEREUNDER, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THEREFORE THE DEPOSIT, TO THE EXTENT MADE AND RELEASED AND BECOME**

NON-REFUNDABLE, IS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLERS, SUCH DAMAGES INCLUDING COSTS OF NEGOTIATING AND DRAFTING OF THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER UPON BUYER'S DEFAULT, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HEREWITH. ACCORDINGLY, BUYER AGREES THAT UPON BUYER'S RECEIPT OF NOTICE OF SUCH DEFAULT OR BREACH FROM SELLER, WHICH NOTICE SHALL SPECIFY THE BREACH IN DETAIL, AND FAILURE BY BUYER TO CURE SAID BREACH, DEFAULT OR FAILURE TO PERFORM WITHIN TEN (10) DAYS AFTER RECEIPT OF SUCH NOTICE, AND CLOSING FAILS TO OCCUR BECAUSE OF SUCH BREACH OR DEFAULT, SELLERS' DAMAGES SHALL BE LIMITED TO THE DEPOSIT, TO THE EXTENT SAID DEPOSIT HAS BEEN MADE, RELEASED AND HAVE BECOME NON-REFUNDABLE, AS LIQUIDATED DAMAGES, AS SELLER'S SOLE REMEDY IN THE EVENT OF ANY SUCH MATERIAL BREACH OR DEFAULT BY BUYER HEREUNDER. THE PARTIES ACKNOWLEDGE THAT SELLER'S RETENTION OF LIQUIDATED DAMAGES AS CONTEMPLATED IN THIS SECTION 9 IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER UNDER CALIFORNIA CIVIL CODE SECTIONS 1671, 1676, AND 1677. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S SURVIVING OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OF BUYER TO INDEMNIFY SELLERS OR WITH RESPECT TO ANY DEFAULT BY BUYER WHICH OCCURS FOLLOWING THE APPLICABLE CLOSING.

INITIALS OF BUYER: _____ INITIALS OF SELLERS: _____/_____

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 tele copier with confirmation of successful transmission, provided the original is concurrently sent by first class mail, and provided that notices received by tele copier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after Deposit with a recognized overnight delivery service, or (iv) on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, and postage-prepaid.

11. TIME OF ESSENCE.

Time is of the essence of this Agreement.

12. GOVERNING LAW AND VENUE.

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

13. COUNTERPARTS.

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

14. CAPTIONS.

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

15. ASSIGNABILITY.

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

16. BINDING EFFECT.

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

17. MODIFICATIONS; WAIVER.

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

18. ENTIRE AGREEMENT.

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

19. AMBIGUITIES.

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

20. SEVERABILITY.

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

21. SUBMISSION OF AGREEMENT.

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

22. REAL ESTATE REPORTING PERSON.

Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 16 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall, after review and approval by SELLER (such approval not to be unreasonably withheld, conditioned or delayed), file a Form 1099 information return and send the statement to SELLER as required under the aforementioned statute and regulation.

23. COMPUTATION OF TIME.

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

24. WAIVER.

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

25. NUMBER AND GENDER.

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

26. NEGOTIATED TERMS.

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

27. SIGNATURES.

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

enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own electronically created and/or electronically transmitted signature and initials and shall accept the electronically created and/or electronically transmitted signature and initials of the other party to this Agreement.

28. EXCLUSIVITY.

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

[Signature pages follow]

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

SELLER:

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

_____

Name:_____
Title:_____

Date:_____

ATTEST:

_____

Name:_____
Clerk, Successor Agency

BUYER:

_____

Name:_____
Title:_____

Date:_____

ATTEST:

Name:_____
Title:_____

EXHIBIT INDEX

Exhibit Reference	Content
Exhibit A	Legal Description of Real Property
Exhibit B	Grant Deed