

**DRAFT/DECEMBER 4, 2014**

**AGREEMENT FOR PURCHASE AND SALE  
OF  
REAL PROPERTY**

**BY AND BETWEEN**

**THE CITY OF SAN JOSE  
A MUNICIPALITY OF THE STATE OF CALIFORNIA,**

**AS SELLER**

**AND**

**JACKSON TAYLOR PARTNERS, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY  
A DELAWARE LIMITED LIABILITY COMPANY,**

**AS BUYER**

**PROPERTY:**

**“JAPANTOWN CORPORATION YARD”  
SAN JOSE, CALIFORNIA**

**AGREEMENT FOR PURCHASE AND SALE  
OF REAL PROPERTY**

**THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY** (as amended from time to time, this **Agreement**) is dated for reference purposes as of December \_\_\_, 2014 (the **Effective Date**), by and between **THE CITY OF SAN JOSE**, a municipality of the State of California (**Seller**), and **JACKSON TAYLOR PARTNERS LLC**, a Delaware limited liability company (**Buyer**). Buyer and Seller are sometimes referred to herein, collectively, as the **Parties** and individually, as a **Party**.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Definitions** { TC "1. Definitions" \l "1" \y}. Unless the context otherwise specifies or requires, for the purposes of this Agreement all words and phrases having their initial letters capitalized herein shall have the meanings set forth below:

**Affiliate** has the meaning set forth in Section 15.4.

**Agreement** has the meaning set forth in the caption to this Agreement.

**Appurtenances** means all of the following owned or held by Seller now or prior to the Closing in its proprietary capacity (as opposed to its capacity as a regulatory body): all rights, privileges and easements appurtenant to the Land, if any, (exclusive of the Park Site and the Performance Center Site) including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land.

**Assignment of Intangible Property** has the meaning set forth in Section 11.2.4.

**Bill of Sale** has the meaning set forth in Section 11.2.2.

**Business Day** has the meaning set forth in Section 15.11.

**Buyer** has the meaning set forth in the caption to this Agreement and includes any successor or assign permitted in Section 15.4.

**Closing** has the meaning set forth in Section 11.1.

**Closing Certificate** has the meaning set forth in Section 11.2.5.

**Closing Date** has the meaning set forth in Section 11.1.

**“Commencement of Construction”** means that Buyer has commenced construction of the improvements on Phase I or Phase II, as the context of the use of this term shall indicate. “Commencement of Construction” includes obtaining a grading permit for, and commencing, grading work that will be required on Phase I, by FEMA.

**“Conditional Notice to Proceed”** has the meaning set forth in Section 6.1.

**“Contract Obligations”** means those contracts, agreements, commitments, employment agreements, service contracts, utility contracts, construction contracts, maintenance agreements, management contracts, leasing and brokerage agreements, employment contracts, membership contracts, and all other contracts and agreements, whether or not in writing, and all amendments thereto, which relate to the ownership, operation, management, maintenance, use or occupancy of the Property and which will or may continue in effect on or after the Closing Date, and be binding upon Buyer as Seller’s successor-in-interest as owner of the Property all of which, to Seller’s Actual Knowledge as of the Effective Date, are listed on Exhibit A.

**“Deed”** has the meaning set forth in Section 11.2.1.

**“Deposit”** has the meaning set forth in Section 3.2.1.

**“Development Agreement”** has the meaning set forth in Section 5.5.

**“Effective Date”** means the date on which this Agreement is executed by Seller. Upon such execution, Seller shall memorialize the Effective Date by inserting such date in the caption to this Agreement and delivering a fully executed counterpart of this Agreement to Buyer.

**“Entitlements”** has the meaning set forth in Section 5.3.1.

**“Entitlements Contingency Period”** means the period commencing on the last day of the General Contingency Period and terminating at 5:00 p.m. Pacific Time on June 30, 2016. Notwithstanding the foregoing, if during the Entitlements Contingency Period the Entitlements have been obtained but the same have been challenged or appealed or the period during which such challenge or appeal may be taken has not expired, the Entitlements Contingency Period shall be extended (but not shortened) until the earlier of (i) one (1) Business Day after the last date for any such challenge or appeal to be filed, with no such challenge or appeal having been filed, and (ii) if such challenge or appeal has been filed within the time permitted for filing, thirty (30) days after the ultimate disposition of such challenge or appeal (without the right for further appeal). Notwithstanding the foregoing, without the written consent of the Parties, the Entitlements Contingency Period may not end later than June 30, 2018.

**“Entitlement Contingency”** has the meaning set forth in Section 5.3.3.

**“Environmental Laws”** means any and all federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of any federal, state or local governmental agency, court, board, bureau or other authority having jurisdiction with respect to or relating to the environment, to any Hazardous Substance or to any activity involving Hazardous Substances, and shall include, without limitation, the Comprehensive Environmental Response,

Compensation, and Liability Act (42 U.S.C. Section 9601, *et seq.*, the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et seq.*) and all amendments thereto.

“**FEMA**” is defined in Section 5.6.

“**FEMA Conditional Approval**” is defined in Section 5.6.

“**Financing Contingency**” is defined in Section 5.4.

“**Force Majeure Event**” means an event or events beyond the control of a Party except to the extent caused by such Party’s fault or negligence, including, but not limited to: acts of God, the public enemy, or of another party; fires, floods, epidemics, quarantine restrictions, strikes, bid protests, freight embargoes, earthquake, explosion, mob violence, or riot; litigation or appeals filed by one or more third parties that prevent or delay a Party’s performance; the inability or delay in procuring, or the rationing, of labor, equipment, facilities, sources of energy, material or supplies in the open market; malicious mischief; condemnation; and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events, occurrences, or both, beyond the control of the Parties; provided, however, that no such event shall constitute a Force Majeure Event unless the Party claiming the benefit of the Force Majeure Event promptly notifies the other Party during the pendency thereof and, then, only to the extent such event actually causes delay. No single Force Majeure Event, or combination of related Force Majeure Events, shall extend the time for the performance under this Agreement of any Party by more than one (1) year. Neither the inability of Buyer to obtain construction financing for the Project nor the condition of, or changes in, the residential housing market shall constitute a Force Majeure Event.

“**General Contingency Period**” means the period commencing on the Effective Date and terminating at 5:00 p.m. Pacific Time on the date that is ninety (90) days after the Effective Date.

“**Hazardous Substances**” means and includes any chemical, compound, material, mixture, waste or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosiveness, reactivity, carcinogenicity, or toxicity including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixture of natural gas and such synthetic gas). “Hazardous Substances” shall include, without limitation, any hazardous or toxic substance, material or waste or any chemical, compound or mixture which is: (a) asbestos; (b) designated as a “hazardous substance” pursuant to Section 1317 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*); (c) defined as a “hazardous waste” pursuant to Section 6903 of the Federal Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 *et seq.*); (d) defined as “hazardous substances” pursuant to Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; or (e) listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR part 302); or in any and all amendments thereto; or such

chemicals, compounds, mixtures, substances, materials or wastes otherwise regulated under any applicable local, state or federal Environmental Laws.

“**Holiday**” has the meaning set forth in Section 15.11.

“**Independent Contract Consideration**” has the meaning set forth in Section 3.2.3.

“**Independent Defense Event**” has the meaning set forth in Section 10.

“**Intangible Property**” means all intangible personal property now or prior to the Closing owned or controlled by Seller in its proprietary capacity (as opposed to its capacity as a regulatory body), if any, and used in the ownership, use or operation of either or both of the Real Property (exclusive of the Park Site and Performance Center Site) or Personal Property but only so long as the same may be transferred to Buyer without cost to Seller, including, without limitation: the right to use the name “Japantown Corporation Yard” and any other trade name or service marks, used in connection with the Real Property; to the extent approved by Buyer pursuant to this Agreement, any Contract Obligations; all on- and/or off-site parking rights in any way relating to the Real Property; any and all transferable or assignable permits, building plans and specifications, certificates of occupancy, operating permits, sign permits, development rights and approvals, certificates, licenses, warranties and guarantees, engineering, soils, pest control and other reports relating to the Property; all of Seller’s right, title and interest in and to all contracts, warranties and agreements relating to the construction, rehabilitation and/or modification of the Property, manufacture and supply of projects for the Property, and the engineering and design of the Property, including, without limitation, all rights at law and in equity, for any and all claims (whether known or unknown, accrued or not accrued prior to the Closing), damages, rights and causes of action (including, without limitation, causes of action arising in breach of implied warranty, negligence, unjust enrichment and/or any claim that can be pursued relating to the condition of the Property), immediate and permanent injury, actual and appreciable harm, construction defects, engineering and/or design defects, inadequate or negligent construction, and inadequate or negligent design against any participant in the design, engineering, maintenance, repair, construction or supervision of the Property; and all other agreements or rights relating to the ownership, use and operation of the Property.

Notwithstanding the foregoing, Seller shall have no obligation to transfer Intangible Property to Buyer at the Closing to the extent Seller would incur any cost in doing so, unless Buyer agrees to and does pay such cost to Seller at Closing.

“**Land**” means the unimproved real property commonly known as “Japantown Corporation Yard,” which is bounded by Sixth, Seventh, Jackson, and Taylor Streets, in San Jose, California, and more particularly described in Exhibit B to this Agreement. The Land contains approximately 5.25 acres in area.

“**Laws and Restrictions**” means all applicable federal, state, local and other laws, statutes, regulations, codes, orders, ordinances and rules including, without limitation, those relating to fire, safety, land use, subdivision, health, labor, environmental protection, seismic design, conservation, parking, handicapped access, zoning and building, all Environmental Laws, all applicable provisions of the Fair Housing Act of 1968 and the Americans With Disabilities Act of 1990, and all amendments thereto.

“**Non-Affiliate Assignee**” has the meaning set forth in Section 15.4.

**Non-Foreign Affidavit** has the meaning set forth in Section 11.2.3.

**OFAC** has the meaning set forth in Section 8.2.4.

**Order** and **Orders** have the meanings set forth in Section 8.2.4.

**Owner’s Policy** has the meaning set forth in Section 7.1.4.

**Park Site** means the proposed site for a public park (**Park**) which will be located on a to-be created legal lot within the Real Property having an approximate area of 0.75 acres. The approximate location of the Park Site is shown in Exhibit I and its final dimensions will be shown on the Subdivision Map.

**Parties** and **Party** have the meanings set forth in the caption to this Agreement.

**Performance Center** means a center for the support of performing and other creative arts, or other cultural or community-based activities and organizations.

**Performance Center Site** means the proposed site for the Performance Center which will be located on a to-be created legal lot within the Real Property having an approximate area of 0.75 acres. The approximate location of the Performance Center Site is shown in Exhibit I and its final dimensions will be shown on the Subdivision Map.

**Performance Center Deed** has the meaning set forth in Section 11.3.4.

**Personal Property** means all personal property now or prior to the Closing owned or controlled by Seller in its proprietary capacity (as opposed to its capacity as a regulatory body) and used in connection with and located upon any or all of the Land (exclusive of the Park Site and Performance Center Site), including, without limitation, all furniture, fixtures, machinery, appliances and equipment located on the Property, other than personal property owned by tenants of the Property. A current list of the Personal Property, to Seller’s Actual Knowledge as of the Effective Date, is attached hereto as Exhibit C.

**Phase I** and **Phase II** refer to the two phases of the development of the Property and shall be determined by and shown in the Subdivision Map obtained as part of the Entitlements.

**Project** has the meaning set forth in Section 5.2.

**Property** means, collectively, the Real Property, the Personal Property (if any), and the Intangible Property.

**Property Condition** has the meaning set forth in section 4.1.1.

**Proposals** has the meaning set forth in Section 5.1.

**Purchase Funds** has the meaning set forth in Section 11.3.1.

“**Purchase Price**” has the meaning set forth in Section 3.

“**Real Property**” collectively means the Land and the Appurtenances.

“**Seller**” has the meaning set forth in the caption to this Agreement.

“**Seller’s Actual Knowledge**” means the actual, present knowledge of the members of the real estate staff of Seller who have been involved with the sale of the Property to Buyer, with no duty of such individuals to investigate or do any further inquiry. Under no circumstances shall any such individuals have any personal liability whatsoever for any breach by Seller of any obligation, representation or warranty hereunder.

“**Specific Notice to Proceed**” has the meaning set forth in Section 6.2.

“**Subdivision Map**” has the meaning set forth in Section 5.3.1.

“**Survey**” has the meaning set forth in Section 4.2.

“**Title Commitment**” has the meaning set forth in Section 4.2.

“**Title Company**” means First American Title Guaranty Company whose address for this transaction is as follows:

First American Title Guaranty Company  
1 First American Way  
Santa Ana, CA 92707  
Attn: Gina Balding  
Fax No. (714) 250-3467

**2. Purchase and Sale**{ TC "2. Purchase and Sale" \l "1" \y}. Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and subject to the conditions set forth in this Agreement.

**3. Total Purchase Price; Allocation between Phases**{ TC "3. Total Purchase Price; Allocation between Phases" \l "1" \y}. The total purchase price for the Property is Eighteen Million Five Hundred Thousand Dollars (\$18,500,000 (the “**Purchase Price**”). The allocation of the Purchase Price between the Phases shall be as follows: (a) the portion of the Purchase Price (including the value of the Performance Center Site) allocated to Phase I shall be determined by the mutual agreement of the Parties before the end of the Entitlements Contingency Period; provided, that if the Parties have not documented their agreement by such time, such portion shall be the amount that bears the same relation to the Purchase Price as the land area in Phase I bears to the aggregate land area of the Land; and (b) the portion of the Purchase Price that shall be allocated to Phase II is the difference between the Purchase Price and the amount of the Purchase Price allocated to Phase I.

**3.1 Payment of the Purchase Price**{ TC "3.1 Payment of the Purchase Price" \l "2" \y}. The Purchase Price shall be paid by Buyer to Seller through escrow on the Closing Date,

and the Parties shall pay or be credited for through escrow the items described in Sections 11.5 and 11.6.

**3.2 Deposit; Closing Payments** { TC "3.2 Deposits; Closing Payments" \l "2" \y}.

**3.2.1 Deposit.** Within ten (10) days after the Effective Date, Buyer shall deliver to Title Company earnest money in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), which Title Company shall deposit in a federally insured interest-bearing money market account at a financial institution approved by Buyer, with the interest from such account to be credited to Buyer. The amount referenced in the preceding sentence, together with interest earned thereon, is referred to herein as the "Deposit." If Buyer delivers to Seller the Specific Notice to Proceed on or before the expiration of the Entitlements Contingency Period, the Deposit shall be non-refundable to Buyer except as otherwise provided in this Agreement and shall be credited against the Purchase Price at Closing.

**3.2.2 Closing Payment.** The balance of the Purchase Price shall be paid in cash on the Closing Date.

**3.2.3 Independent Consideration.** Buyer shall pay One Hundred and No/100ths Dollars (\$100.00) (the "Independent Contract Consideration") to Seller in consideration of Seller's execution and delivery of this Agreement and for Buyer's right of review and inspection of the Property and right to terminate or proceed under this Agreement. The Independent Contract Consideration has been separately bargained for, is independent of any other consideration or payment provided for in this Agreement and is non-refundable to Buyer in all events. Concurrently with the delivery of the Deposit, Purchaser shall deposit into escrow the Independent Contract Consideration and Title Company shall disburse the Independent Contract Consideration immediately to Seller via check or wire transfer to an account designated by Seller. If the Closing occurs, the Independent Contract Consideration shall be credited towards the Purchase Price.

**4. Review and Inspection** { TC "4. Review and Inspection" \l "1" \y}.

**4.1 General Review and Inspection** { TC "4.1 General Review and Inspection" \l "2" \y}.

**4.1.1** Buyer shall, at all reasonable times, have the right in its sole and absolute discretion, to conduct, at its sole cost and expense, such investigations, studies, surveys, analyses and tests on and of the Property and its physical, economic and legal condition as Buyer shall, in its sole and absolute discretion, determine are necessary or desirable, including, without limitation, structural tests, soil tests, utility reviews, archeological resource analysis, and other engineering tests, and to make such evaluations as Buyer may, in its sole and absolute discretion, determine are necessary or desirable under the circumstances, all subject to Section 4.1.2. Notwithstanding the foregoing, Buyer acknowledges that it has completed its due diligence with respect to the condition of title to the Property and is satisfied with respect to such condition, subject to the FEMA condition in Section 7.1.5. Buyer has not completed its investigation of the environmental condition of the Property but expects to complete the same during the General

Contingency Period. In order to perform the foregoing investigations, Buyer, its agents, contractors, employees and potential lenders, shall have reasonable access to the Property, all for the purposes of inspecting the same and conducting tests, inspections, and analyses thereon and making evaluations thereof, all at Buyer's expense, and Seller shall, within five (5) business days after the Effective Date, provide Buyer with reasonable access to all documents and materials that, to Seller's Actual Knowledge, are in Seller's possession and control pertaining to the Property, including, without limitation, all of the following: environmental reports, surveys, entitlement documents and correspondence, development agreements, traffic studies for the Property or properties in the vicinity of the Property, the latest design package for the Property, if any, contracts, leases, permits, licenses, rent rolls, financial statements, monthly operating reports, tax bills, plans, studies, reports, budgets and all other current and historical information about the Property as Buyer shall request. EXCEPT FOR THE REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER EXPRESSLY CONTAINED IN THIS AGREEMENT, BUYER SHALL RELY SOLELY UPON ITS OWN INVESTIGATION WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE PROPERTY'S PHYSICAL, ENVIRONMENTAL OR ECONOMIC CONDITION, COMPLIANCE OR LACK OF COMPLIANCE WITH ANY ORDINANCE, ORDER, PERMIT OR REGULATION OR ANY OTHER ATTRIBUTE OR MATTER RELATING THERETO (COLLECTIVELY HEREINAFTER SOMETIMES REFERRED TO AS THE "PROPERTY CONDITION"). SUBJECT TO THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION AS TO THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS REFERENCED IN THIS SECTION 4.1.1 AND IS PROVIDING THE SAME OR MAKING THE SAME AVAILABLE FOR BUYER'S REVIEW SOLELY AS AN ACCOMMODATION TO BUYER. Without limiting the generality of the foregoing, Buyer is aware of the past use of the Land as a fueling and servicing area for Seller vehicles, that such use involved releases of Hazardous Substances into the soils and groundwater from a number of underground storage tanks, that the Land has been the subject of numerous characterizations and mitigation efforts, and that Hazardous Substances, including without limitation, petroleum products and related constituents, as well as metals and solvents, continue to impact the Land. Without limiting the generality of the foregoing, Buyer acknowledges the notification requirements set forth in the County of Santa Clara's case closure letter dated March 15, 2011.

**4.1.2** Seller expressly agrees that Buyer shall have the right to enter onto and inspect and test the Property, and to inspect all documents relating thereto, from the Effective Date through the Closing Date under the terms of a Right of Entry Agreement between the Parties dated as of September 26, 2014.

**4.2 Title Review** { TC "4.2 Title Review" \l "2" \y}. Buyer has obtained a title commitment issued by Title Company relating to the Property (the "Title Commitment"), a copy of which is attached hereto as part of Schedule 4.2, which reflects the results of the ALTA/ACSM survey of the Property (the "Survey") previously obtained by Buyer from a licensed surveyor. Buyer agrees to accept title to the Property at Closing subject to all of the matters shown in the Title Commitment.

## 5. Development of the Property{ TC "5. Development of the Property" \l "1" \y}.

**5.1 Proposals**{ TC "5.1 Proposals" \l "2" \y}. The parties acknowledge that, prior to the Effective Date, Buyer submitted to City: (a) a preliminary development concept for the Project consisting of a preliminary development program and conceptual land use plan; and (b) a detailed preliminary development proposal, which includes site, massing, and phasing plans (collectively, the "Proposals"). Buyer also submitted to an agent of City a financial plan which includes a financial proforma and description of the sources of funding; however, such submittal was marked "Confidential".

**5.2 Project**{ TC "5.2 Project" \l "2" \y}. Buyer intends to develop the Property, consistent with the Proposals, as a residential/commercial mixed-use development project consisting of between four hundred twenty-five (425) and six hundred (600) residential units and between sixteen thousand (16,000) and twenty-five thousand (25,000) square feet of retail space in two buildings (collectively, the "Project"). The Project will be developed in two phases and is intended to include a public park on the Park Site, as described in Section 5.3.1. Buyer agrees that the Project will be developed to a very high standard of quality and to development limitations beyond those otherwise required by the existing City zoning code as follows: the Project will include certain materials, equipment, amenities and design upgrades or enhancements of higher quality than other competitive properties of wood frame construction in the area of the Land. Buyer's compliance with such standards and limitations in the foregoing sentence shall conclusively be deemed satisfied upon approval by City of Buyer's PD Permit application and the completion by Buyer of the improvements contemplated therein in accordance with such permit.

## 5.3 Entitlement Contingency{ TC "5.3 Entitlement Contingency" \l "2" \y}.

**5.3.1** At Buyer's sole cost and expense, Buyer shall have the right to apply for and obtain the land use and zoning approvals (including, without limitation, any variances and amendments to Seller's general plan), land divisions, environmental clearances, building permits and designations, and other governmental or agency approvals for the Real Property as Buyer desires in order for Buyer to develop the Project in a manner consistent with the Proposals, and shall also bear responsibility for all costs and expenses which may be incurred in connection with challenges or appeals associated therewith, which obligations shall survive termination of this Agreement and the Closing, although Buyer shall not be required to reimburse the City for any time spent by internal City staff or counsel. Exhibit D contains a description of all of such matters (collectively, the "Entitlements") within a Schedule of Target Dates for obtaining the Entitlements. Exhibit I shows the intended configuration of the Land pursuant to a parcel or subdivision map (the "Subdivision Map") thereof to be recorded. Seller shall reasonably cooperate, without cost or expense to Seller, with Buyer in applying for and obtaining the Entitlements. The Schedule of Target Dates reflects what the Parties consider are reasonably achievable dates for obtaining the Entitlements, given standard City entitlement processing guidelines and taking into consideration additional community outreach efforts and additional time for delays which may occur notwithstanding the Parties' good faith efforts to timely make submissions, and to timely review and respond to such submissions. For the avoidance of doubt, following the Closing, Buyer shall be responsible, at its sole cost and expense, for complying with all applicable Entitlement requirements and other costs of development, including without

limitation applicable CEQA mitigation measures, all agreements, bonds and other obligations associated with the Subdivision Map, and an agreement with Seller through its Department of Parks, Recreation & Neighborhood Services (öPRNSö) in form and content to be determined (and subject to the approval of Seller's City Council) during the General Contingency Period, which shall act as an encumbrance to the Land and shall provide for Buyer's design and construction of the park improvements on the Park Site, subsequent dedication of the Park Site to Seller for public park purposes, and the payment of certain additional fees in an amount to be determined by PRNS (öParkland Agreementö). Notwithstanding the specificity of the time periods and dates set forth in Exhibit D which are applicable to the processing of and obtaining Entitlements, such time periods and dates remain only good faith estimates, and the failure to meet any of the same shall not otherwise affect the Parties' rights or obligations under this Agreement. Further, for the avoidance of doubt, any reference to Seller's approval in Exhibit D shall be subject to the provisions of Section 15.16.

**5.3.2** The Parties acknowledge PG&E has performed the work necessary to cause existing overhead power lines to be relocated underground. When a building permit is issued to Buyer for improvements on the Real Property, Buyer shall be responsible for reimbursing PG&E (or Seller, if Seller has reimbursed PG&E) for the cost of such work, which obligation shall survive the Closing.

**5.3.3** Buyer's obligation to close the purchase of the Property shall be conditioned upon Buyer obtaining confirmation, on or before the expiration of the Entitlements Contingency Period, that the Entitlements are final and nonappealable, each on terms and conditions acceptable to Buyer in Buyer's sole discretion (the öEntitlement Contingencyö). The Entitlement Contingency is for the benefit of, and may be waived, solely by Buyer.

**5.4 Financing Contingency**{ TC "5.4 Financing Contingency" \l "2" \y}. Buyer's obligation to close the purchase of the Property shall be conditioned upon Buyer obtaining financing in amounts and under terms acceptable to Buyer in Buyer's sole and absolute discretion on or before the expiration of the Entitlements Contingency Period (the öFinancing Contingencyö).

**5.5 Development Agreement**{ TC "5.5 Development Agreement" \l "2" \y}. The Parties have negotiated and, subject to obtaining the necessary approvals from City's City Council, anticipate entering into a development agreement relating to the Property and the Project (the öDevelopment Agreementö). If and when the Development Agreement has received the necessary approvals and has been executed by the Parties, it shall be recorded by Seller as provided therein. In the event the Development Agreement has not received the necessary approvals and been executed by the Parties on or before the expiration of the General Contingency Period, either Party hereto may terminate this Agreement upon written notice to the other Party.

**5.6 FEMA**{ TC "5.6 FEMA" \l "2" \y}. The Parties acknowledge that the Property is currently listed by the Federal Emergency Management Agency (öFEMAö) as within a 100-year floodplain, and Buyer must have conditional assurances prior to Closing that FEMA will approve a plan to remove the Property from such listing in form and substance reasonably satisfactory to Buyer (the öFEMA Conditional Approvalö). The Parties acknowledge that it is

a practical necessity that the Subdivision Map be recorded before requesting the FEMA Conditional Approval. Buyer agrees to apply for such approval at its expense after the Subdivision Map is recorded, in accordance with Exhibit D, and Seller agrees to cooperate with Buyer, at no cost to Seller. Buyer is advised that it should expect to receive the FEMA Conditional Approval within sixty (60) days following its request, which sixty-day period has been taken into consideration in calculating the Entitlements Contingency Period.

**6. Contingency Periods; Contract Obligations** { TC "6. Contingency Periods; Contract Obligations" \l "1" \y}.

**6.1 General Contingency Period** { TC "6.1 General Contingency Period" \l "2" \y}. Buyer may, at any time during the General Contingency Period, terminate this Agreement for any reason or no reason at all in Buyer's sole and absolute discretion upon written notice to Seller. Buyer shall deliver written notice to Seller on or before 5:00 p.m. on the last day of the General Contingency Period (as it may be extended) of (i) Buyer's election to conditionally proceed under the terms of this Agreement (the "Conditional Notice to Proceed") or (ii) Buyer's election to terminate this Agreement. If Buyer does not timely deliver one of the foregoing notices, then Buyer shall be deemed to have elected to terminate this Agreement. Buyer and Seller expressly acknowledge that the Conditional Notice to Proceed shall pertain solely to Buyer's satisfaction or waiver of general inspection contingencies, and delivery of a Conditional Notice to Proceed shall not be deemed a satisfaction or waiver by Buyer of the Entitlement Contingency or the Financing Contingency, or any other condition to Closing that runs to the benefit of Buyer. Upon any termination under this Section 6.1, the Deposit shall be promptly returned to Buyer and, except for those obligations specifically surviving termination of this Agreement, no Party shall have any further obligations under this Agreement. All due diligence investigations pertaining to the Property, if any, and the results, reports, and other work product relating thereto, shall be Buyer's property and solely for the benefit of Buyer; provided, however, that copies thereof (except for financial information, including project pro formas) shall be delivered to Seller without representation or warranty of any kind by Buyer.

**6.2 Entitlements Contingency Period** { TC "6.2 Entitlement Contingency Period" \l "2" \y}. Buyer may, in Buyer's sole and absolute discretion, terminate this Agreement at any time during the Entitlements Contingency Period if Buyer determines that either or both of the Entitlement Contingency or the Financing Contingency will not be satisfied on or before the expiration of the Entitlements Contingency Period. Unless Buyer delivers written notice to Seller on or before 5:00 p.m. on the last day of the Entitlements Contingency Period that the Entitlement Contingency and the Financing Contingency have been satisfied or waived, in each case in Buyer's sole and absolute discretion (the "Specific Notice to Proceed"), then Buyer shall be deemed to have elected to terminate this Agreement. Buyer and Seller expressly acknowledge that delivery of a Specific Notice to Proceed shall not be deemed a satisfaction or waiver by Buyer of any other condition to Closing that runs to the benefit of Buyer. Upon any termination or deemed termination under this Section 6.2, the Deposit shall be promptly returned to Buyer and, except for those obligations specifically surviving termination of this Agreement, no Party shall have any further obligation under this Agreement. All due diligence investigations, if any, and the results, reports, and other work product relating thereto, shall be Buyer's property and solely for the benefit of Buyer; provided, however, that copies thereof shall be delivered to Seller at its request. Notwithstanding the foregoing, Buyer shall not be obligated

to deliver to Seller any financial information obtained or developed during such due diligence investigations, including cost estimates.

**6.3 Assumption of Contract Obligations** { TC "6.3 Assumption of Contract Obligations" \l "2" \y}. Buyer may, in Buyer's sole and absolute discretion, elect to assume or not assume any or all of the Contract Obligations. Buyer shall make such election in writing on or before the expiration of the Entitlements Contingency Period, which election shall identify those Contract Obligations, if any, Buyer will not assume as of the Closing Date. Such notice may be included in the Specific Notice to Proceed. Buyer's failure to notify Seller of Buyer's election not to assume any particular Contract Obligation shall be deemed Buyer's acceptance of such Contract Obligation. Seller, at its cost and expense, shall cause to be terminated as of the Closing all Contract Obligations that Buyer timely elects not to assume.

**7. Conditions of Parties' Obligation to Close** { TC "7. Conditions of Parties' Obligation to Close" \l "1" \y}.

**7.1** Buyer's obligation to purchase the Property shall be conditioned expressly upon the fulfillment to Buyer's satisfaction (as determined by Buyer in its sole and absolute discretion) of each of the following conditions precedent within the time periods specified:

**7.1.1** Prior to the expiration of the General Contingency Period, Buyer having delivered the Conditional Notice to Proceed.

**7.1.2** Prior to the expiration of the Entitlements Contingency Period, Buyer having delivered the Specific Notice to Proceed.

**7.1.3** Prior to the expiration of the Entitlements Contingency Period, the Subdivision Map having been recorded.

**7.1.4** At the Closing (a) the issuance by Title Company, upon payment of its normal premium, of an ALTA owner's policy of title insurance showing title to the Real Property in Buyer subject only to the matters described in the Title Commitment and Schedule 4.2 (the "Owner's Policy"), and (b) Seller's execution and delivery of the deliverables referenced in Section 11.2.

**7.1.5** Prior to the expiration of the Entitlements Contingency Period, FEMA shall have issued the FEMA Conditional Approval to Buyer.

**7.1.6** Satisfaction of the Financing Contingency on or before the end of the Entitlements Contingency Period.

**7.1.7** Prior to or at the Closing, the Parkland Agreement having been recorded.

**7.1.8** Prior to or at the Closing, the Development Agreement having been amended for the purpose of vesting the entitlements obtained by Developer during the Entitlements Period.

The foregoing conditions are solely for the benefit of Buyer. At any time or times on or before the date for the satisfaction or waiver of each condition, at Buyer's election in its sole and absolute discretion, Buyer may waive any of the foregoing conditions by written notice to Seller. No waiver shall be effective unless made in writing specific as to the conditions or matters so waived. No such waiver shall be inferred or implied by any act or conduct of Buyer or reduce the rights or remedies of Buyer arising from any breach of any undertaking, agreement, covenant, warranty, or representation of Seller under this Agreement.

In the event any of the foregoing conditions or other conditions to this Agreement which are for the benefit of Buyer are neither fulfilled nor waived in writing by Buyer within the time provided in this Agreement, Buyer, at its election in its sole and absolute discretion, by written notice to Seller, may terminate this Agreement and be released from all obligations under this Agreement except to the extent such obligations expressly survive termination of this Agreement. Buyer's failure to notify Seller within one (1) business day after the date for satisfaction or waiver of each condition that such condition has been satisfied or waived, shall be deemed to be Buyer's election to terminate this Agreement. In the event of such termination by Buyer, (i) the Deposit and all other funds deposited in escrow by Buyer or paid by Buyer to Seller outside of escrow (other than the Independent Contract Consideration) and all interest accrued on such funds (less Buyer's share of any escrow or title cancellation fees) shall be returned immediately to Buyer, (ii) all documents deposited in escrow by Buyer or Seller shall be returned to the depositing Party and (iii) the Parties shall cooperate to cause any bonds or other collateral posted by Buyer in order to obtain the Subdivision Map to be returned and Buyer to be relieved of any liability or obligation with regard to the subdivision of the Land.

**7.2** Seller's obligation to sell the Property shall be conditioned expressly upon the fulfillment to Seller's satisfaction (as determined by Seller in its sole and absolute discretion) of each of the following conditions precedent within the time periods specified:

**7.2.1** On or before the Closing, the Subdivision Map and Parkland Agreement having been recorded.

**7.2.2** On or before the Closing, Buyer shall have delivered to Seller (i) a written commitment from a reputable construction lender to the effect that such lender will provide construction financing for Phase I of the Project, subject to the fulfillment by Buyer of commercially reasonable conditions, and (ii) a written statement from such lender that Phase I has received credit approval. Such commitment and letter shall be satisfactory to Seller in the exercise of its reasonable discretion.

**7.2.3** At the Closing, Buyer's execution and delivery of the deliverables referenced in Section 11.3.

The foregoing conditions are solely for the benefit of Seller. At any time or times on or before the date for the satisfaction or waiver of each condition, at Seller's election in its sole and absolute discretion, Seller may waive any of the foregoing conditions by written notice to Buyer. No waiver shall be effective unless made in writing specific as to the conditions or matters so waived. No such waiver shall be inferred or implied by any act or conduct of Seller or reduce

the rights or remedies of Seller arising from any breach of any undertaking, agreement, covenant, warranty, or representation of Buyer under this Agreement.

In the event any of the foregoing conditions or other conditions to this Agreement which are for the benefit of Seller are neither fulfilled nor waived in writing by Seller within the time provided in this Agreement, Seller, at its election in its sole and absolute discretion, by written notice to Buyer, may terminate this Agreement and be released from all obligations under this Agreement except to the extent such obligations expressly survive termination of this Agreement. Seller's failure to notify Buyer within one (1) Business Day after the date for satisfaction or waiver of each condition that such condition has been satisfied or waived, shall be deemed to be Seller's election to terminate this Agreement. In the event of such termination by Seller, (i) the Deposit and all other funds deposited in escrow by Buyer or paid by Buyer to Seller outside of escrow (other than the Independent Contract Consideration) and all interest accrued on such funds (less Buyer's share of any escrow or title cancellation fees) shall be returned immediately to Buyer, (ii) all documents deposited in escrow by Buyer or Seller shall be returned to the depositing party and (iii) the Parties shall cooperate to cause any bonds or other collateral posted by Buyer in order to obtain the Subdivision Map to be returned and Buyer to be relieved of any liability or obligation with regard to the subdivision of the Land.

## **8. Representations, Warranties, and Covenants**{ TC "8. Representations, Warranties, and Covenants" \l "1" \y}.

**8.1 Representations and Warranties of Seller**{ TC "8.1 Representations and Warranties of Seller" \l "2" \y}. Seller hereby makes the following representations and warranties to and for the benefit of Buyer, each of which representations and warranties: (a) is material and being relied upon by Buyer; (b) is made as an inducement to Buyer to enter into this Agreement and consummate the transaction contemplated hereby; (c) is true in all respects as of the date of this Agreement; (d) shall be true in all respects on the Closing Date; and (e) shall survive Closing for a period of one year:

**8.1.1** Seller is a municipality of the State of California and has the full power, authority and legal right to enter into and perform this Agreement. The execution, delivery and performance of this Agreement and all documents and agreements executed or to be executed pursuant to this Agreement, have been duly authorized by all necessary action on the part of Seller.

**8.1.2** To Seller's Actual Knowledge, the list of Contract Obligations attached hereto as Exhibit A is complete and accurate and except as described in the Title Commitment, there are no legal or equitable interests in the Property claimed by third parties.

**8.2 Representations and Warranties of Buyer**{ TC "8.2 Representations and Warranties of Buyer" \l "2" \y}. Buyer hereby makes the following representations and warranties to and for the benefit of Seller, each of which representations and warranties: (a) is material and being relied upon by Seller; (b) is made as an inducement to Seller to enter into this Agreement and consummate the transaction contemplated hereby; (c) is true in all respects as of the date of this Agreement; and (d) shall be true in all respects on the Closing Date:

**8.2.1** Buyer is a limited liability company with full power, authority and legal right to enter into and perform this Agreement. The execution, delivery and performance of this Agreement and all documents and agreements executed or to be executed pursuant to this Agreement have been duly authorized by all necessary action on the part of Buyer.

**8.2.2** Buyer has no knowledge of any pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the ability of Buyer to perform Buyer's obligations under this Agreement.

**8.2.3** Buyer has not: (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any voluntary petition by its creditors; (c) suffered the appointment of a receiver to take possession of all or substantially all of its assets; or (d) suffered the attachment or other judicial seizure of all or substantially all of its assets.

**8.2.4** Buyer is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of Treasury ("OFAC") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation or orders collectively called the "Orders"). Neither Buyer nor its members: (a) is listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders; (b) is a Person (as defined in the Order) who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (c) to Buyer's knowledge is owned or controlled by (including without limitation by virtue of such Person being a director or owning voting shares or interests), or acts for or on behalf of, any Person on the Lists.

**8.3 Seller Covenants**{ TC "8.3 Seller Covenants" \l "2" \y}. Seller hereby specifically covenants and agrees as follows:

**8.3.1** From the Effective Date through the Closing Date, Seller shall: (a) manage, maintain, operate, and service the Property to the same standard as existed at the Effective Date; (b) timely perform all its obligations under all Contract Obligations, and Laws and Restrictions including, without limitation, the payment of all bills, charges, invoices, salaries, benefits, and other expenses arising in connection with the Property; and (c) not enter into any new contracts or arrangements which will affect the Property on or after the Closing Date.

**8.3.2** Seller shall promptly notify Buyer in writing if Seller becomes aware of any fact or occurrence that would render any representation or warranty by Seller under Section 8.1 above untrue in any material respect.

**8.4 Buyer Covenants**{ TC "8.4 Buyer Covenants" \l "2" \y}. Buyer acknowledges that Seller is agreeing to sell the Property to Buyer through direct negotiation for economic development purposes, as provided in the San Jose Municipal Code Section 4.20.100. In

consideration of, and as a condition to, Seller's agreement to sell the Property under such Code Section, Buyer hereby specifically covenants and agrees as follows, which covenants are included as a part of the Development Agreement and shall survive the Closing as covenants running with the Land:

**8.4.1** Subject to such extensions of time as may be provided in the Development Agreement, if any, no later than one (1) year after the Closing Buyer shall obtain building permits for at least Phase I, which phase shall include a building that will contain the commercial retail space, and Commencement of Construction on Phase I shall have occurred. Following such Commencement of Construction, Buyer shall thereafter diligently and continuously proceed with such construction until completion and shall complete such construction no later than four (4) years after the Closing, subject in each case to Force Majeure.

**8.4.2** Subject to such extensions of time as may be provided in the Development Agreement, if any, no later than four (4) years after the Closing, Buyer shall obtain building permits for Phase II, which phase shall include the second building of the Project, and Commencement of Construction on Phase II shall have occurred. Buyer shall thereafter diligently and continuously proceed with such construction until completion and shall complete such construction no later than seven (7) years after the Closing, subject in each case to Force Majeure.

**8.4.3** Without the prior written consent of Seller, no use of the Property other than the Project substantially consistent with the Entitlements shall be permitted; provided, that this provision shall be void and of no further force or effect once Buyer or its successors in interest have obtained a temporary certificate of occupancy, or its equivalent, for at least four hundred twenty-five (425) residential units and fifteen thousand (15,000) square feet of retail space on the Land substantially consistent with the Entitlements. Once this provision is void, Seller agrees to provide to Buyer with a written statement to that effect in recordable form, identifying the Land.

**9. As Is and Buyer Release** { TC "9. As Is and Buyer Release" \l "1" \y}.

**9.1 BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ITS AGENTS, OR REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE PROPERTY CONDITION, INCLUDING WITHOUT LIMITATION: (a) the quality, nature, adequacy and physical condition and aspects of the Property, including, but not limited to, the structural elements, seismic aspects of the Property, appurtenances, access, landscaping, and the square footage of the Property; (b) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater; (c) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (d) the compliance of the Property or its operation with any applicable Laws and Restrictions; (e) the presence of Hazardous Substances on, under or about the Property or the**

adjoining or neighboring property; (f) the quality of any labor and materials used in any improvements on the Property; (g) the availability of access to the Property from a public street; and (h) the economics of the operation of the Property. Nothing in this Section 9 shall limit Buyer's right to enforce the provisions of this Agreement or to rely on the representations, warranties and covenants of Seller contained herein.

**9.2** To the maximum extent permitted by applicable Law and Restrictions, from and after the Closing, Buyer hereby releases Seller, its officers, employees and agents (collectively, "Indemnified Parties") from any and all claims, demands, liabilities, losses, damages, costs and expenses (collectively, "Claims") known or unknown, foreseen or unforeseen, that Buyer may now or hereafter have resulting from or arising in connection with the ownership, use, development, management or leasing of the Property by Buyer, or the Property Condition (including, without limitation, Hazardous Substances located on or under the Land), and regardless of the neglect or other fault of the Indemnified Parties. The provisions of the foregoing release are expected to be included as a part of the Development Agreement and shall survive the Closing as covenants running with the Land. Buyer hereby expressly waives the benefits of section 1542 of the California Civil Code, and any other State or Federal statute or common law principle of similar effect. To the extent section 1542 of the California Civil Code might apply, Buyer hereby waives its provisions, which are as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." BUYER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE PROVISIONS OF THIS SECTION 9.2, AND BY ITS INITIALS IMMEDIATELY BELOW CONFIRMS ITS AGREEMENT TO BE BOUND BY ITS TERMS.

Buyer's Initials: \_\_\_\_\_

**10. Indemnification by Buyer** { TC "10. Indemnification by Buyer" \l "1" \y}. To the maximum extent permitted by applicable Law and Restrictions, from and after the Closing, Buyer agrees to indemnify, protect and defend the Indemnified Parties against and hold the Indemnified Parties harmless from any and all Claims asserted against, incurred or suffered by the Indemnified Parties resulting from or arising in connection with the ownership, use, development, management or leasing of the Property by Buyer, or the Property Condition (including, without limitation, Hazardous Substances located on or under the Land), including without limitation (a) all reasonable attorneys' fees and (b) any personal injury or property damage occurring on the Property, and regardless of the neglect or other fault of the Indemnified Parties; provided, however, that Buyer shall not be responsible under the foregoing indemnity and hold harmless for that portion of any Claim brought by a third party for personal injury caused to such third party on the Land, which injury has occurred prior to the Closing; provided, further, however, that such limitation shall not apply to any Claim brought more than seven (7) years following the Closing. Further, except as provided below and except as to Claims resulting from or arising in connection with Buyer's use, development or occupancy thereof, Buyer shall not be responsible under the foregoing indemnity and hold harmless for any costs or expenses incurred by Seller with respect to the Property Condition of the Park Site or Performance Center Site. However, if Buyer acquires the Performance Site as contemplated in Section 11.10, the

forgoing indemnity and hold harmless provisions shall apply to the Performance Site from and after the date of acquisition, except that (i) Buyer shall not be responsible under the same for that portion of any Claim brought by a third party for personal injury caused to such third party on the Performance Center Site, which injury has occurred prior to the date Buyer acquires the Performance Center Site and (ii) the limitation in clause (i) shall not apply to any Claim brought more than seven (7) years following the date of Buyer's acquisition of the Performance Center Site. Upon the written request of Seller, Buyer shall undertake the defense of Seller, at Buyer's sole cost and expense, with counsel reasonably approved by Seller, in connection with any action or proceeding covered by the foregoing indemnity. In the event Buyer refuses to undertake the defense of Seller after receiving such request, or fails to diligently and continuously conduct such defense after receiving such request, or if Buyer is not a party to the action or proceeding, or is a party to the action or proceeding and, in Seller's reasonable opinion, there is a potential conflict of interest in the sharing of counsel by Buyer and Seller (and "Independent Defense Event"), then Seller may undertake its own defense without reducing, limiting or waiving Seller's indemnity obligations under this Section 10; provided, that legal counsel used by City for such defense shall be subject to Buyer's reasonable approval. The actual out-of-pocket costs incurred by Seller in undertaking its own defense in these circumstances, including but not limited to reasonable out-of-pocket attorneys' fees, costs and expenses, shall constitute a portion of the indemnification obligations of Buyer under this Section 10. In the absence of an Independent Defense Event, Seller may elect to engage additional or different counsel at any time without reducing Buyer's obligations to protect, indemnify and hold harmless Seller as provided in this Section 10, except that the out-of-pocket attorneys' fees and costs incurred by Seller in engaging such additional or different counsel shall not constitute an indemnification duty of Buyer to Seller under this Section 10. The provisions of the foregoing indemnification are expected to be included as a part of the Development Agreement and shall survive the Closing as covenants running with the Land.

## 11. Closing{ TC "11. Closing" \l "1" \y}.

**11.1 Closing Date**{ TC "11.1 Closing Dates" \l "2" \y}. The purchase of the Property shall be closed through escrow with the Title Company, as evidenced by Buyer's payment of the Purchase Price and recordation of the Deed to Buyer (the "Closing"). Subject to satisfaction or waiver by Buyer and Seller of the conditions set forth in Section 7, the Closing shall occur on the earlier of the following (the "Closing Date"): (a) the date of closing of Buyer's construction loan for Phase I of the Project, and (b) the date that is three (3) months following the expiration of the Entitlements Contingency Period.

**11.2 Deposits and Deliveries by Seller**{ TC "11.2 Deposits and Deliveries by Seller" \l "2" \y}. On or before the Closing, Seller shall deposit or cause to be deposited into escrow with Title Company, or deliver directly to Buyer outside of escrow, each of the following documents duly executed and acknowledged as required:

**11.2.1** A duly executed and acknowledged quitclaim deed in the form attached hereto as Exhibit E (the "Deed") conveying all of the right, title and interest of Seller to the Real Property to Buyer;

**11.2.2** A duly executed bill of sale in the form attached hereto as Exhibit F transferring the Personal Property to Buyer (the **“Bill of Sale”**).

**11.2.3** A duly executed and acknowledged affidavit of non-foreign status in form attached hereto as Exhibit G (the **“Non-Foreign Affidavit”**) and a California Form 593-C.

**11.2.4** Two duly executed counterparts of an assignment of intangible property in the form attached hereto as Exhibit H transferring to Buyer the Intangible Property (the **“Assignment of Intangible Property”**).

**11.2.5** A duly executed closing certificate confirming the accuracy and completeness as of the Closing Date of each representation and warranty made herein (the **“Closing Certificate”**).

**11.2.6** A duly executed and acknowledged counterpart of the quitclaim deed (the **“Performance Center Deed”**), in the form of Exhibit K.

**11.2.7** Seller’s written escrow instructions to close escrow in accordance with the terms of this Agreement, and Seller’s executed settlement statement as prepared by Title Company and approved by Seller.

**11.2.8** Evidence reasonably acceptable to Buyer’s counsel that the documents delivered to Buyer by Seller at the Closing have been duly authorized by Seller, duly executed on behalf of Seller and when delivered constitute valid and binding obligations of Seller.

**11.2.9** Such other documents, resolutions, consents and affidavits reasonably necessary or advisable to effect the valid consummation of the transaction evidenced by this Agreement; provided, however, that Seller shall have no obligation to provide owner affidavits or similar assurances to Title Company.

**11.3 Deposits and Deliveries by Buyer** { TC "11.3 Deposits and Deliveries by Buyer" \l "2" \y}. On or before the Closing, Buyer shall deposit or cause to be deposited into escrow with Title Company, or deliver directly to Seller outside of escrow, each of the following documents duly executed and acknowledged as required, and funds:

**11.3.1** Cash, wire transfer, cashier’s check, or other immediately available funds, which, together with the Deposit, shall equal the Purchase Price (the **“Purchase Funds”**).

**11.3.2** Buyer’s written escrow instructions to close escrow in accordance with the terms of this Agreement, and Buyer’s executed settlement statement as prepared by Title Company and approved by Buyer.

**11.3.3** Two duly executed counterparts of the Assignment of Intangible Property.

**11.3.4** A duly executed and acknowledged counterpart of the Performance Center Deed.

**11.4 Closing** { TC "11.4 Closing" \l "2" \y}. Title Company shall close escrow on the Closing Date when it is irrevocably committed to issue the Owner's Policy and has received all of the documents and funds listed in Sections 11.2 and 11.3, above. Title Company shall close escrow by:

**11.4.1** Recording the Deed, and the Performance Center Deed, in that order.

**11.4.2** Issuing to Buyer the Owner's Policy.

**11.4.3** Delivering to Buyer the original Bill of Sale, a counterpart original of the Assignment of Intangible Property, the Non-Foreign Affidavit and the Closing Certificate, each duly executed by Seller.

**11.4.4** Delivering to Seller the Purchase Funds after deducting Seller's share of closing costs and prorations, and the counterpart original of the Assignment of Intangible Property executed by Buyer.

**11.4.5** Delivering to Buyer and Seller conformed copies of the Deed and the Performance Center Deed, showing all recording information thereon, and copies of all other documents and things deposited and/or delivered through escrow, the originals of which are not being delivered by Title Company to such parties, together with Title Company's final Buyer's and Seller's closing statement.

**11.5 Prorations** { TC "11.5 Prorations" \l "2" \y}.

**11.5.1** The following are to be apportioned as of the Closing Date:

**11.5.1.1 Utility Charges.** Seller shall cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used as of the Closing Date. Notwithstanding the foregoing, if it is not feasible to read such meters on the Closing Date, the cost of all such utilities shall be prorated based upon the most recently available bills, subject to reconciliation as provided in Section 11.5.3.

**11.5.1.2 Other Apportionments.** Amounts payable under any Contract Obligations expressly assumed in writing by Buyer at Closing, annual or periodic permit and/or inspection fees (calculated on the basis of the period covered), and liability for other operation and maintenance expenses and other recurring costs for the Property.

**11.5.1.3 Real Estate Taxes and Special Assessments.** Inasmuch as Seller is a municipal corporation owning the Real Property, there will have been no general real estate taxes assessed or payable for the relevant periods prior to Closing. Buyer shall be responsible for real estate taxes and assessments assessed and payable for periods beginning with the Closing Date in respect of the Real Property, other than the Performance Center Site and, following dedication thereof to City, the Park Site.

**11.5.2 Preliminary Closing Adjustment.** Seller and Buyer shall jointly prepare a preliminary closing adjustment statement on the basis of known sources of income and expenses, and shall deliver such computation to Title Company prior to the Closing.

**11.5.3 Post-Closing Reconciliation.** If any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either Party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other Party within ten (10) days after delivery of a bill therefor.

**11.5.4 Survival.** The provisions of this Section 11.5 shall survive the Closing.

**11.6 Closing Costs**{ TC "11.6 Closing Costs" \l "2" \y}. At the Closing:

**11.6.1** Seller shall pay: (a) fifty percent (50%) of all transfer taxes, if any are payable; (b) sales tax (if any) on the Personal Property; (c) the CLTA portion of the title insurance premiums for the Owner's Policy (but only for a liability amount equal to the Purchase Price); and (d) Seller's legal fees and costs incurred in connection with the contemplated transaction.

**11.6.2** Buyer shall pay: (a) the balance of the title insurance premium for the Owner's Policy; (b) the costs of any Survey; (c) Buyer's legal fees and costs incurred in connection with the contemplated transaction; and (d) fifty percent (50%) of all transfer taxes, if any are payable.

**11.6.3** Recording fees and all other costs and charges of the escrows for the sales not otherwise provided for in this Section 11.6 or elsewhere in this Agreement shall be allocated in accordance with the then-existing closing customs for Santa Clara County, California.

**11.7 Possession**{ TC "11.7 Possession" \l "2" \y}. Right to possession of the Property shall transfer to Buyer on the Closing Date. Seller shall transfer and deliver to Buyer on the Closing Date the originals of all assumed Contract Obligations, all instruments and documents evidencing or relating to the Intangible Property, files, books and records, correspondence, and all other documents transferred to Buyer by this Agreement which have not yet been delivered to Buyer. Notwithstanding the foregoing, Seller shall not transfer to Buyer on the Closing Date possession of the Performance Center Site or any Personal Property or Intangible Property associated therewith.

**11.8 Filing Of Reports**{ TC "11.8 Filing Of Reports" \l "2" \y}. Title Company shall be solely responsible for the timely filing of any reports or returns required pursuant to the provisions of Section 6045(e) of the Internal Revenue Code of 1986 (and any similar reports or returns required under any state or local laws) in connection with the closing of the transaction contemplated in this Agreement.

**11.9 Cooperation**{ TC "11.9 Cooperation" \l "2" \y}. Without further consideration, but without further cost to Seller, Seller shall execute, acknowledge and deliver to Buyer on or after the Closing Date any and all other instruments or documents, and do and perform any other acts which may be required or which Buyer may reasonably request in order to fully assign, transfer and/or convey to Buyer, and vest in Buyer, the Property, and each and every part and component thereof.

**11.10 Post Closing Covenants regarding the Performance Center Site**{ TC }.

**11.10.1** From and after the Closing, Seller shall grant to Buyer a revocable, non-exclusive license to use the Performance Center Site for staging and other purposes related to development of the Project, until such time that Seller in its sole discretion determines that Seller or the Performance Center Site developer needs exclusive control of the Performance Center Site for purposes of facilitating development of the Performance Center Site. During the period that Seller allows Buyer to use the Performance Center Site, as described above, such right to use will be granted to Buyer for One Dollar (\$1) per year pursuant to a separate right of entry agreement to be entered into by and between Seller and Buyer concurrently with the Closing setting forth the terms, including but not limited to the insurance requirements to be satisfied by Buyer. The form of such right of entry agreement shall be substantially similar to the Right of Entry Agreement between the Parties dated as of September 26, 2014; provided, however, that the purposes shall be as described above and the maximum term thereof shall be seven (7) years following the Closing.

**11.10.2** If by the sixth (6<sup>th</sup>) anniversary of the Closing (the **PCS Deadline**), developer of the Performance Center selected by City has not obtained all necessary entitlements and consents, in final form, to construct the Performance Center, raised (with committed construction funds from a construction lender) sufficient funds to begin and complete construction of the Performance Center and commenced construction on the Performance Center Site (which, for this purpose shall mean that such developer has obtained a building permit and commenced work on the foundations of the proposed Performance Center), then Buyer shall have the exclusive right and option (**PCS Option**) to purchase the Performance Center Site from City on the following terms:

**11.10.2.1** Buyer may exercise the PCS Option by giving notice to City no later than thirty days after the PCS Deadline, accompanied by a good faith deposit of five percent (5%) of the purchase price therefor (the **Purchase Deposit**). The price for the Performance Center Site (the **PCS Price**) shall be Two Million Six Hundred Fifty-Nine Thousand Three Hundred Thirty-Eight Dollars (\$2,659,338), which is the pro rata portion of the Purchase Price. The Purchase Deposit shall be credited towards the PCS Price at the closing of the sale of the Performance Center Site.

**11.10.2.2** Buyer may elect, at its sole option, to extend the date for the exercise of the PCS Option by notifying City of such election within thirty days after the PCS Deadline, accompanied by a payment to City of the sum of Five Hundred Thousand Dollars (\$500,000.00), by cashier's check, wire transfer, or any other method of transferring good funds. Upon such election, the last date for the exercise of the PCS Option shall be extended to the close of business on the date that is one year after the date of exercise of the PCS Option. The foregoing payment shall not be a credit against the PCS Price at the closing.

**11.10.2.3** If Buyer timely exercises the PCS Option, City shall convey the Performance Center Site to Buyer against receipt from Buyer of the PCS Price through an escrow created by the parties, promptly after such exercise, and through a closing described therein, by way of quitclaim deed, on an *as-is, where-is*, but free and clear of any liens or encumbrances that did not encumber such site at the Closing, other than any liens or encumbrances caused by Buyer. At such closing, Buyer shall provide City with the same indemnities and releases with respect to the Performance Center Site as Buyer is providing City

with respect to the balance of the Property, in form reasonably satisfactory to City. Buyer's obligation to close shall be subject to its ability to obtain a title insurance policy in its favor in the amount of the purchase price, subject only to those matters described in the Title Commitment and Schedule 4.2, and any liens or encumbrances caused by Buyer.

(a) If Buyer duly elects to extend the last date for the exercise of the PCS Option, as provided above, it shall have the right to pursue entitlements for the Performance Center Site during the one year extension period, and City agrees to cooperate (at no cost to City) in such pursuit. Such cooperation shall be in City's capacity as the seller of the Performance Center Site, not in its capacity as a municipal corporation whose approval will be necessary for such entitlements.

(b) The parties shall prorate between them the same items that they are obligated to prorate at the Closing, and shall observe any other agreements between themselves relating to the purchase of the Performance Center Site that are in the Development Agreement.

## 12. Remedies{ TC "12. Remedies" \l "1" \y}.

**12.1 Seller's Remedies – Liquidated Damages{ TC "12.1 Seller's Remedies ó Liquidated Damages" \l "2" \y}.** In the event that: (a) all of the conditions of Buyer with respect to the purchase and sale of the Property have been satisfied, or waived in writing by Buyer; (b) Seller shall have performed or tendered performance of all of its obligations under this Agreement; and (c) Buyer shall default in its obligation to close the acquisition of the Property, then the Deposit shall be paid by Title Company to Seller as liquidated damages. **BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT SELLER'S DAMAGES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE AMOUNT OF THE DEPOSIT IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES SELLER WOULD SUFFER IN THE EVENT THE TRANSACTION PROVIDED FOR IN THIS AGREEMENT FAILS TO CLOSE UNDER THE FOREGOING CONDITIONS, AND IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT. BUYER AND SELLER AGREE THAT THE SELLER'S RIGHT TO RETAIN THE DEPOSIT SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF SELLER IN THE EVENT OF SUCH A DEFAULT OF THIS AGREEMENT BY BUYER.**

\_\_\_\_\_  
BUYER

\_\_\_\_\_  
SELLER

**12.2 Buyer's Remedies{ TC "12.2 Buyer's Remedies" \l "2" \y}.** The Parties understand and agree that the Property is unique and for that reason, among others, Buyer will be irreparably damaged in the event that this Agreement is not specifically enforced. Accordingly, in the event of any breach or default in or of this Agreement or any of the warranties, terms or provisions hereof by Seller, Buyer shall have, in addition and without prejudice to any right or remedy available at law or in equity, the right to demand and have specific performance of this Agreement, including without limitation of Seller's obligations under Sections 11.2 and 11.5.

**13. Damage and Destruction; Condemnation**{ TC "13. Damage and Destruction; Condemnation" \l "1" \y}. Seller shall notify Buyer immediately of the occurrence of any damage to or destruction of the Property (and any portion thereof), or the institution or maintenance of any condemnation or similar proceedings with respect to the Property (and any portion thereof). In the event of any damage to or destruction of the Property for which the cost to repair exceeds One Hundred Thousand Dollars (\$100,000.00), or in the event any such condemnation or other proceedings are instituted or maintained, or in the event Seller becomes aware of any fact or occurrence that would render any representation under Section 8.1 untrue in any material respect, Buyer at its option either may (a) terminate this Agreement by notice to Seller and receive the return of the Deposit (and interest accrued thereon) as its sole remedy, or (b) waive such changed condition and consummate the purchase evidenced by this Agreement without regard thereto except as provided immediately below. In the event that Buyer elects to consummate the purchase pursuant to (b) above, all condemnation proceeds, as applicable, collected by Seller prior to the Closing Date, shall be credited against the Purchase Price on Buyer's account, and all entitlement to all other condemnation proceeds arising out of such proceedings and not collected prior to the Closing Date shall be assigned by Seller to Buyer on the Closing Date.

**14. Commissions**{ TC "14. Commissions" \l "1" \y}. Each Party represents and warrants to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby that arises from the acts of the representing Party. Each Party agrees to and does hereby indemnify and hold the other Party harmless from and against the payment of any commission to any other person or entity claiming by, through or under such Party, as applicable. This indemnification shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive each Closing or termination of this Agreement.

**15. General Provisions**{ TC "15.General Provisions" \l "1" \y}.

**15.1 Notices**{ TC "15.1 Notices" \l "2" \y}. Any notice required or permitted to be given under this Agreement shall be in writing and: (a) personally delivered; (b) sent by United States mail, registered or certified mail, return receipt requested; (c) sent by Federal Express or other reputable overnight courier service; or (d) transmitted by facsimile with a hard copy sent within one (1) business day by any of the foregoing means; and in any case with all postage or delivery charges pre-paid. Notice shall be addressed as follows:

**TO SELLER:** City of San Jose  
OED ó Real Estate Services  
200 E. Santa Clara Street, 4th Floor  
San Jose, California 95113  
Attention: Nanci Klein  
Fax No. (408) \_292-6719  
Phone No. (408) 535-8184

with copies to: City of San Jose  
Office of the City Attorney

200 E. Santa Clara Street  
San Jose, California 95113  
Fax No. (408) 998-3131  
Phone No. (408) 535-1900

**TO BUYER:** Williams/Dame & Associates, Inc.  
1308 NW Everett Street  
Portland, Oregon 97209  
Attn: Gary Finicle  
Fax No. (503) 227-7996  
Phone No. (408) 227-6593

**And:** The Related Companies of California  
18201 Von Karman Avenue, Suite 900  
Irvine, California 95612  
Attn: President  
Fax No. 949-660-7273  
Phone No. 949-660-7272

**with copies to:** Paul Hastings LLP  
55 Second Street, Fl. 24  
San Francisco, CA 94105  
Attn: Real Estate Department  
Fax No. 415-856-7101  
Phone No. 415-856-7001

Any such notice shall be deemed given on the earlier of actual delivery or refusal of a Party to accept delivery thereof; provided that notices sent by facsimile transmission shall be deemed delivered on the date transmitted if sent by 5:00 p.m. Pacific Time and the next business day if sent after 5:00 p.m. Pacific Time, provided in either case that there is evidence of the transmission time printed by the sending machine. Any Party may change its address for notice by written notice given to the other in the manner provided in this Section 15.1. Counsel to a Party may provide notice on behalf of that Party.

**15.2 Entire Agreement; No Modifications**{ TC "15.2 Entire Agreement; No Modifications" \l "2" \y}. This Agreement, together with the schedules and exhibits attached hereto, incorporates all agreements, warranties, representations and understandings between the Parties with respect to the subject matter hereof and constitutes the entire agreement of the Parties and their affiliates with respect to the purchase and sale of the Property, including without limitation the Reimbursement Agreement dated September 25, 2013 between Seller and Williams/Dame & Associates; provided, however, that the Second Reimbursement due thereunder from Williams/Dame & Associates to Seller, in the amount of \$65,000.00, shall be made by Buyer to Seller no later than forty-five days after the Effective Date; Seller agrees that Buyer shall make such payment and that Williams/Dame & Associates shall have no responsibility whatsoever for such payment. Subject to the foregoing, any prior or contemporaneous correspondence, memoranda, understandings, offers, negotiations and

agreements, oral or written, are merged herein and replaced in total by this Agreement and the Schedules and exhibits hereto and shall be of no further force or effect. This Agreement may not be modified or amended except in a writing signed by Seller and Buyer.

**15.3 Time; Exhibits** TC "15.3 Time" \l "2" \y}. Time is of the essence in the performance of the Parties' respective obligations set forth in this Agreement. References in this Agreement to "Exhibits" and "Schedules" are to the Exhibits and Schedules listed in the List of Exhibits and Schedules attached hereto, all of which are hereby incorporated by reference into this Agreement.

**15.4 Assignment; Successors and Assigns** TC "15.4 Assignment; Successors and Assigns" \l "2" \y}. Buyer agrees and acknowledges that the Project is important to the general welfare of the community, and the qualifications and identity of Buyer are of particular concern to the community and Seller. Accordingly, except as permitted by this Section 15.4, neither this Agreement nor any rights or obligations hereunder may be assigned or delegated by Buyer without the prior written consent of Seller, which consent may be granted or withheld by Seller in its sole and absolute discretion. Subject to the foregoing provision, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Buyer shall have the right to assign and delegate all of its rights and obligations under this Agreement (including its rights to the Deposit) to an entity controlled by Related California Urban Residential, LLC and/or Williams Dame & Associates, or in which either of such parties directly or indirectly has power to direct or cause the direction of the management or policies of such entity or the ability to control the day-to-day operations of the same, and which entity is actively managed by either of such parties ("Affiliate"). Any such assignment of this Agreement to an Affiliate shall be: i) permitted only with respect to the entire Agreement, ii) subject to prior written disclosure to Seller of all parties, terms and conditions related thereto, and iii) evidenced by documentation reasonably acceptable to Seller (including, without limitation, an assumption of all of the obligations of Buyer under this Agreement by the Affiliate and an agreement to be subject to all conditions and restrictions to which the Buyer is subject). Buyer acknowledges that should the applicable Affiliate cease to be an Affiliate following any such assignment without the prior written approval of Seller, which approval shall be provided or withheld at Seller's sole discretion, such event shall constitute an assignment in violation of the foregoing proscription. If the foregoing conditions are satisfied, upon such assignment and the assignee's assumption of Buyer's rights hereunder, the assigning Buyer shall be released from any obligation under, or liability accruing pursuant to, this Agreement, other than Buyer's release of City in Section 9.2, which release shall remain in effect. Buyer shall have the right to assign and delegate all of its rights and obligations under this Agreement to an unrelated third party ("Non-Affiliate Assignee") subject to Seller's sole but reasonable prior written consent, which consent shall be based upon the proposed assignee's track record and ability to carry out development of the Project. Prior to Seller's consideration of any such proposed assignment, Buyer and the proposed Non-Affiliate Assignee shall submit to Seller, for its review and approval: i) reliable evidence of the proposed Non-Affiliate Assignee's qualifications as Seller may reasonably request, and ii) all other legal documents proposed to effect any such assignment and by which the proposed Non-Affiliate Assignee shall expressly assume all of the obligations of Buyer under this Agreement and agree to be subject to all conditions and restrictions to which Buyer is subject. In the absence of specific written agreement by Seller, no such assignment to a Non-Affiliate Assignee shall be deemed to relieve Buyer from any obligations under this Agreement.

Without limiting the generality of the foregoing, Seller's consent to any such Non-Affiliate Assignee shall not be deemed to have been unreasonably withheld in the event that such Non-Affiliate Assignee does not provide reasonably satisfactory evidence of its professional knowledge, experience and financial ability to develop projects that are of similar scope and nature the Project and to satisfactorily complete the obligations of Buyer under this Agreement. There are no restrictions on the ability of Buyer to assign its rights under this Agreement after the Commencement of Construction on Phase I.

**15.5 Counterparts**{ TC "15.5 Counterparts" \l "2" \y}. This Agreement may be executed in counterparts and each such counterpart shall be deemed to be an original; all counterparts so executed shall constitute one instrument and shall be binding on all of the parties to this Agreement notwithstanding that all of the Parties are not signatory to the same counterpart. Facsimile or electronic mail (.pdf) copies of this Agreement signed by the Parties shall be binding and enforceable as if the same were executed originals.

**15.6 Construction**{ TC "15.6 Construction" \l "2" \y}. This Agreement shall be governed by and construed under the laws of the State of California, without regard to such state's conflicts of law provisions. In the event that suit shall be brought by either Party hereunder, the Parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara, or where appropriate, in the United States District Court for the Northern District of California, San Jose, California. Words used in the singular shall include the plural, and vice-versa, and any gender shall be deemed to include the other. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof. References herein to "Articles" or "Sections" are to the Articles and Sections in this Agreement, unless provided otherwise when used. Further, each Party hereby acknowledges that such Party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement and the schedules or exhibits to it, and, given the opportunity each has had to comment, each shall be deemed to have drafted it. As such, the terms of this Agreement and the schedules or exhibits to it shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications, schedules or exhibits hereto or thereto. If any provision of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

**15.7 Confidentiality**{ TC "15.7 Confidentiality" \l "2" \y}. The parties acknowledge that Seller is subject to the California Public Records Act, which generally provides that written documents retained by Seller are subject to disclosure upon the request of any third party except for specific limited exceptions provided for therein. Buyer shall designate as "Confidential" any information which Buyer provides to Seller that Buyer desires to keep confidential. If a request for disclosure of any information designated as "Confidential" by Buyer is made under such act, Seller shall notify Buyer in writing and Buyer shall have such opportunity to object to the release of such information as provided by such act.

**15.8 No Waiver**{ TC "15.8No Waiver" \l "2" \y}. 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, nor shall a waiver in any instance constitute a waiver in any subsequent instance. No waiver shall be binding unless executed in writing by the Party making the waiver.

**15.9 Further Acts**{ TC "15.9 Further Acts" \l "2" \y}. Each Party, at the request of the other, shall execute, acknowledge or have notarized (if appropriate) and deliver in a timely manner such additional documents, and do such other additional acts, also in a timely manner, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

**15.10 No Intent to Benefit Third Parties**{ TC "15.10 No Intent to Benefit Third Parties" \l "2" \y}. Seller and Buyer do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party, and no third party shall be entitled to enforce, or otherwise shall acquire any right, remedy or benefit by reason of, any provision of this Agreement.

**15.11 Performance Due on Day other than Business Day**{ TC "15.11 Performance Due on Day other than Business Day" \l "2" \y}. If the time period for the performance of any act called for under this Agreement expires on a Saturday, Sunday or any other day on which banking institutions in the State of California are authorized or obligated by law or executive order to close (a **Holiday**), such time period shall automatically be extended to the next succeeding day that is not a Saturday, Sunday or Holiday. As used herein, **Business Day** means each day that is not a Holiday, a Saturday, or a Sunday.

**15.12 No Joint Venture**{ TC "15.12 No Joint Venture" \l "2" \y}. Nothing set forth in this Agreement shall be construed to create a joint venture between Buyer and Seller.

**15.13 Intentionally omitted**{ TC "15.13 Intentionally omitted" \l "2" \y}.

**15.14 Not an Offer**{ TC "15.14 Not an Offer" \l "2" \y}. The presentation of drafts of this Agreement by one Party to the other shall not be deemed to be an offer, and this Agreement shall only become a binding and enforceable contract upon the execution and delivery of this Agreement by both Parties.

**15.15 No Merger**{ TC "15.15 No Merger" \l "2" \y}. The provisions of this Agreement shall merge with the delivery of the Deed, except as otherwise provided in this Agreement.

**15.16 Approvals**{ TC "15.16 Approvals" \l "2" \y}. Buyer agrees and expressly acknowledges that any approval or consent required or permitted hereunder by the Seller, acting in its proprietary capacity as owner of the Property under this Agreement, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority. When, acting in such proprietary capacity, Seller's approval or consent is required or permitted hereunder, the Director of Economic Development of the City of San Jose shall be authorized to provide such approval or consent, except as may be expressly otherwise provided.

**15.17 Representatives** { TC "15.17 Representatives" \l "2" \y}. Until otherwise notified, Seller's designated representative, for notice purposes, is Nanci Klein. Until otherwise notified, Buyer's designated representative, for notice purposes and for purposes of providing Buyer's approval or consent when required or permitted hereunder, is Susan Smartt.

*[Remainder of page intentionally blank; signature page follows.]*

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the date and year first written above.

SELLER: THE CITY OF SAN JOSE, a municipality of the State of California

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Kenneth D. Johnson, Sen. Dep. City Attorney

BUYER: JACKSON TAYLOR PARTNERS LLC, a Delaware limited liability company

By RELATED/JTOWN, LLC, a California limited liability company, its manager

By: Related California Urban Housing, LLC,  
a California limited liability company,  
Its sole member

By: \_\_\_\_\_  
William A. Witte, President

The undersigned has executed this Agreement solely to confirm it will act as Escrow Agent pursuant to the terms of this Agreement.

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**

By: \_\_\_\_\_

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

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

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

**EXHIBIT A**  
**LIST OF CONTRACT OBLIGATIONS**

**NONE**

**EXHIBIT B**

**LEGAL DESCRIPTION OF THE LAND**

LOTS 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243 AND 244 IN BLOCK 23, WHITEøS ADDITION, AS SHOWN ON THAT CERTAIN MAP ENTITLED öCITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEERö, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, IN BOOK A OF MAPS, AT PAGES 72 AND 73.

APN: 249-39-039

**EXHIBIT C**  
**LIST OF PERSONAL PROPERTY**

**NONE**

**EXHIBIT D**

**SCHEDULE OF TARGET DATES**

**San Jose, CA - Japantown Schedule of Performance**

<b><u>ACTION</u></b>	<b><u>PROJECTED DATE</u></b>	<b><u>REQUIRED COMPLETION DATE</u></b>
<b>PD ZONING</b>		
Developer must submit to City PD Zoning Application for review and approval.	April 8, 2015	14 business days after the Conditional Notice to Proceed.
City to approve PD Zoning at City Council.	October 15, 2015	20 business days after Planning Commission Hearing as scheduled by City Clerk.
City must approve, disapprove or conditionally approve the PD Permit Application in writing (First Review).	November 12, 2015	
<b>DEVELOPMENT AGREEMENT</b>		
City to approve Amendment to the Development Agreement at City Council.	October 15, 2015	Concurrent with approval of PD Zoning.
<b>PD PERMIT</b>		
Developer to submit PD Permit Application	October 15, 2015	20 business days after Planning Commission Hearing.
City to approve PD Permit Application at Directorø Hearing.	March 16, 2016	
PD Permit Effective Date (expiration of appeal period)	March 28, 2016	15 days after Directorø Hearing approval.
<b>FEMA CLOMR APPROVAL</b>		
Developer must submit to City a parcel map for review and approval.	April 22, 2014	10 business days after PD Zoning Application submittal.
City must approve Grading Plan Permit Set.	July 22, 2015	20 business days after submittal of Grading Plan Permit Set.
FEMA must approve CLOMR Application	August 19, 2015	40 business days after submittal of CLOMR Application.

**EXHIBIT E**  
**FORM OF DEED**

**RECORDED AT REQUEST OF:**

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

**WHEN RECORDED MAIL TO:**

**THE TRANSFER TAX IS SHOWN  
ON A SEPARATE SHEET ATTACHED HERETO AND  
IS NOT TO BE MADE A PART OF THE PUBLIC  
RECORD**

**MAIL TAX STATEMENTS TO:**

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

**QUITCLAIM DEED**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, THE CITY OF SAN JOSE, a municipality of the State of California (õCityö) hereby transfers and quitclaims to JACKSON TAYLOR PARTNERS LLC, a Delaware limited liability company, all of the right, title and interest of City in and to that certain real property located in the City of San Jose, County of Santa Clara, State of California, described in Schedule A attached hereto and made a part hereof.

Dated: \_\_\_\_\_, 20\_\_

THE CITY OF SAN JOSE, CALIFORNIA, a  
municipality of the State of California

By: \_\_\_\_\_

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

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

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Schedule A to Deed**  
**Legal Description**

LOTS 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243 AND 244 IN BLOCK 23, WHITEøS ADDITION, AS SHOWN ON THAT CERTAIN MAP ENTITLED õCITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEERö, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, IN BOOK A OF MAPS, AT PAGES 72 AND 73.

APN: 249-39-039

**EXHIBIT F**

**FORM OF BILL OF SALE**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, THE CITY OF SAN JOSE, a municipality of the State of California (õSellerö), does hereby give, grant, bargain, sell, transfer, assign, convey and deliver to JACKSON TAYLOR PARTNERS, a Delaware limited liability company (õBuyerö), pursuant to that certain Agreement for Purchase and Sale of Real Property dated as of December \_\_, 2014, between Seller and Buyer (the õPurchase Agreementö), all Seller's right, title and interest in, to and under the personal property identified and described on Schedule A attached hereto and made a part hereof together with all other Personal Property (as defined in the Purchase Agreement) to be transferred to Buyer as provided in the Purchase Agreement. Seller makes no representations or warranties of any kind with respect to the assets transferred hereunder, it being understood that Buyer takes the same on an õas is, where isö basis.

All references to õSellerö and õBuyerö herein shall be deemed to include their respective heirs, representatives, nominees, successors and/or assigns, where the context permits.

Dated: \_\_\_\_\_, 20\_\_

**THE CITY OF SAN JOSE,**  
a municipality of the State of California

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule A to Bill of Sale  
Personal Property Inventory**

Any personal property owned by Seller and located on the property bounded by Sixth, Seventh, Jackson, and Taylor Streets, San Jose, California, other than personal property located on the Performance Center Site or the Park Site, as such terms are defined in the Purchase Agreement.

**EXHIBIT G**

**FORM OF NON-FOREIGN AFFIDAVIT**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by THE CITY OF SAN JOSE, a municipality of the State of California (the Seller), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign limited liability company, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Income Tax Regulations.

3. Seller's U.S. employer identification number is \_\_\_\_\_; and

4. Seller's office address is: City of San Jose  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Seller understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Dated: \_\_\_\_\_, 20\_\_\_\_

**THE CITY OF SAN JOSE**, a municipality of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT H**

**FORM OF ASSIGNMENT OF INTANGIBLE PROPERTY**

**THIS ASSIGNMENT OF INTANGIBLE PROPERTY** is executed as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by THE CITY OF SAN JOSE, a municipality of the State of California (õAssignorö), in favor of \_\_\_\_\_, a \_\_\_\_\_ (õAssigneeö), pursuant to that certain Agreement for Purchase and Sale of Real Property, dated December\_\_\_\_, 2014 (the õPurchase Agreementö), by and between Assignor, as Seller, and JACKSON TAYLOR PARTNERS, a Delaware limited liability company, as Buyer.

**FOR VALUE RECEIVED**, Assignor hereby grants, conveys, transfers and assigns to Assignee, and Assignee hereby accepts, all of Assignor's right, title and interest in, to and under the Intangible Property (as such term is defined in the Purchase Agreement), other than Intangible Property that is exclusively with reference to the Performance Center Site or the Park Site (as such terms are defined in the Purchase Agreement).

Assignor hereby covenants that it will, at any time and from time to time upon written request therefor, execute and deliver to Assignee, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which Assignee, its nominees, successors and/or assigns, may reasonably request and which may be performed without cost to Assignor in order to fully assign and transfer to and vest in Assignee, its nominees, successors and/or assigns, and protect its and/or their rights, title and interest in and enjoyment of, all of the assets of Assignor intended to be transferred and assigned hereby, or to enable Assignee, its nominees, successors and/or assigns, to realize upon or otherwise enjoy any such assets.

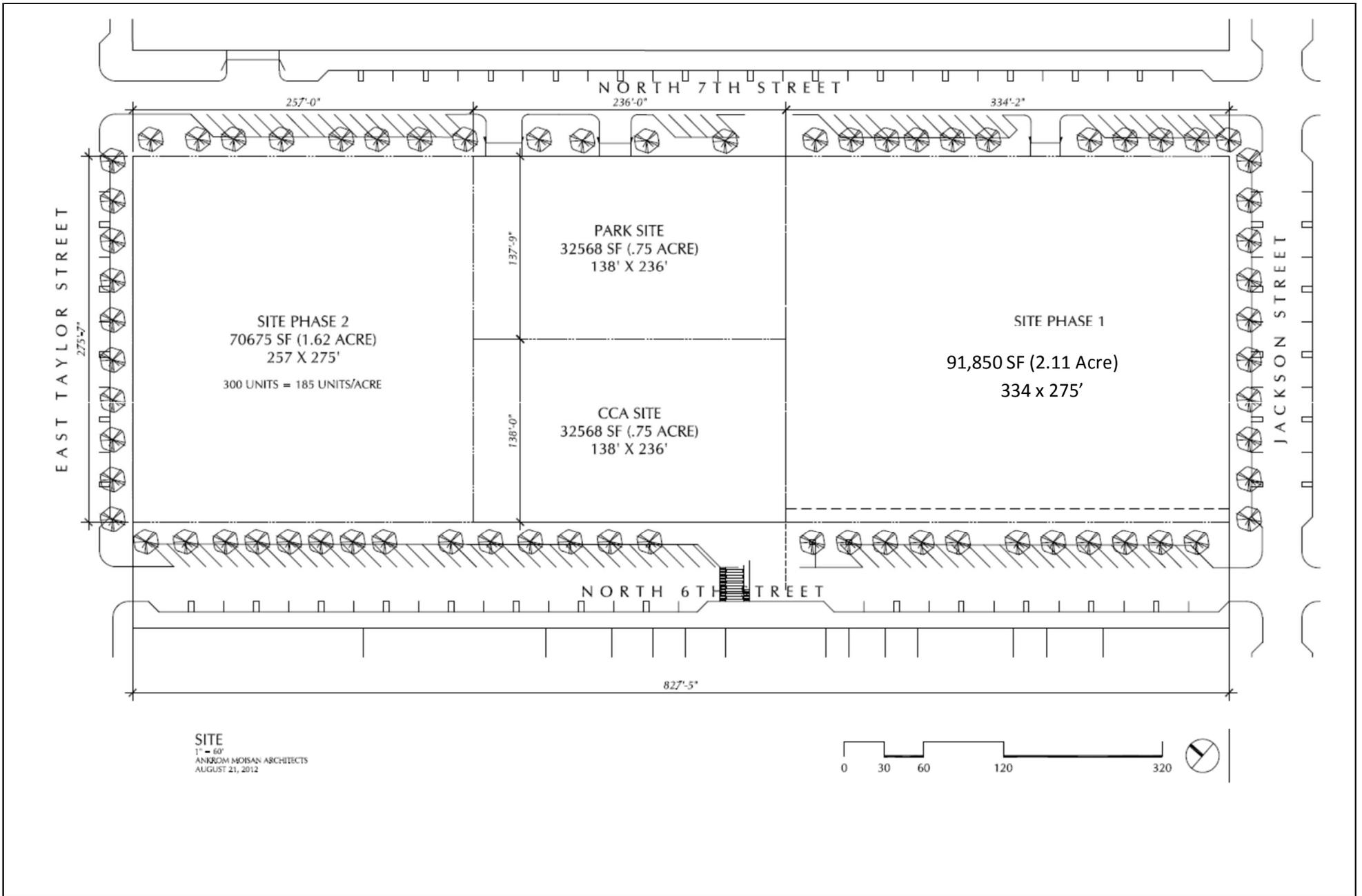
The provisions of this Assignment of Intangible Property shall be binding upon and inure to the benefit of Assignor, Assignee and their successors and permitted assigns.

**IN WITNESS WHEREOF**, the undersigned has executed this Assignment of Intangible Property as of the date first above written.

**THE CITY OF SAN JOSE**, a municipality of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT I  
ANTICIPATED PROJECT CONFIGURATION**



## **SCHEDULE 4.2**

The Title Commitment is attached to this Schedule 4.2. All matters shown on the Title Commitment are acceptable to Buyer, as are any additional matters that are recorded at the Closing as required in this Agreement or that are required as part of the Entitlements being obtained by Buyer.



**First American Title Company  
National Commercial Services**  
1737 North First Street, Suite 500  
San Jose, CA 95112

Ridrigo Juarez  
Related California  
333 Pine St. #300  
San Francisco, CA 94104

Escrow Officer: Carol M. Herrera  
Phone: (408)451-7829  
Email: cmherrera@firstam.com  
Title Officer: Mike D. Hickey  
Phone: (408)451-7905  
Owner: City of San Jose  
Property: Vacant land, San Jose, CA

**PRELIMINARY REPORT**

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar limit of liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**



Dated as of July 30, 2014 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

ALTA Standard Owner s Policy 2006 with Western Regional Exceptions (6-17-06)

ALTA loan Policy 1056.6 (6-17-06)

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

City of San Jose, a municipal corporation of the State of California

The estate or interest in the land hereinafter described or referred to covered by this Report is:

Fee Simple

The land referred to herein is described as follows:

(See attached legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2014-2015, a lien not yet due or payable.
2. General and special taxes and assessments for the fiscal year 2013-2014 are exempt. If the exempt status is terminated an additional tax may be levied. A.P. No.: 249-39-039.
3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
4. The fact that the land lies within the boundaries of the Japantown Redevelopment Project Area, as disclosed by the document recorded December 13, 1993 as Instrument No. [12257780](#) in Book N187, Page 1398 of Official Records.
5. Rights of parties in possession.
6. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/ACSM survey.
7. Prior to the issuance of any policy of title insurance, the Company will require:

An ALTA/ACSM survey of recent date which complies with the current minimum standard detail requirements for ALTA/ACSM land title surveys.

INFORMATIONAL NOTES
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- None
1. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:  
None
  2. The property covered by this report is vacant land.
  3. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.
  4. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:
    - A. WITH RESPECT TO A CORPORATION:
      - a. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
      - b. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
      - c. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
    - B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:
      - a. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
      - b. A full copy of the partnership agreement and any amendments;
      - c. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
      - d. Requirements which the Company may impose following its review of the above material and other information which the Company may require.
    - C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:
      - a. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
      - b. A full copy of the partnership agreement and any amendment;
      - c. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;

- d. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

**D. WITH RESPECT TO A GENERAL PARTNERSHIP:**

- a. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-I), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;
- b. A full copy of the partnership agreement and any amendments;
- c. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.

**E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:**

- a. A copy of its operating agreement and any amendments thereto;
- b. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
- c. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
- d. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
  - (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
  - (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
- e. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

**F. WITH RESPECT TO A TRUST:**

- a. A certification pursuant to Section 18100.5 of the California Probate Code in a form satisfactory to the Company.
- b. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending

transaction.

- c. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.

G. WITH RESPECT TO INDIVIDUALS:

- a. A statement of information.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

## LEGAL DESCRIPTION

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

LOTS 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243 AND 244 IN BLOCK 23, WHITE'S ADDITION, AS SHOWN ON THAT CERTAIN MAP ENTITLED "CITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, IN [BOOK A OF MAPS, AT PAGES 72 AND 73](#).

APN: 249-39-039

## NOTICE I

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier s checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier s checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

## NOTICE II

As of January 1, 1991, if the transaction which is the subject of this report will be a sale, you as a party to the transaction, may have certain tax reporting and withholding obligations pursuant to the state law referred to below:

In accordance with Sections 18662 and 18668 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to three and one-third percent of the sales price in the case of the disposition of California real property interest by either:

1. A seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds be sent to a financial intermediary of the seller, OR
2. A corporate seller which has no permanent place of business in California.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR
2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a resident of California, or if a corporation, has a permanent place of business in California, OR
3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the seller s principal residence (as defined in Section 1034 of the Internal Revenue Code).

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

The parties to this transaction should seek an attorney s, accountant s, or other tax specialist s opinion concerning the effect of this law on this transaction and should not act on any statements made or omitted by the escrow or closing officer.

The Seller May Request a Waiver by Contacting:

Franchise Tax Board  
Withhold at Source Unit  
P.O. Box 651  
Sacramento, CA 95812-0651  
(916) 845-4900

## Privacy Policy

### We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

### Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at [www.firstam.com](http://www.firstam.com).

### Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

### Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.



**CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - (a) building;
  - (b) zoning;
  - (c) land use;
  - (d) improvements on the land;
  - (e) land division; and
  - (f) environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
  - (a) that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - (b) that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - (c) that result in no loss to You; or
  - (d) that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. lack of a right:
  - (a) to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - (b) in streets, alleys, or waterways that touch the land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors rights laws.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner s Coverage Statement as follows: For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar limit of liability shown in Schedule A.

<u><b>Your Deductible Amount</b></u>	<u><b>Our Maximum Dollar Limit of Liability</b></u>
Covered Risk 16: 1% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21: 1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

**ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and laws and regulations concerning:
  - (a) and use
  - (b) improvements on the land
  - (c) and division
  - (d) environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
  - (a) a notice of exercising the right appears in the public records on the Policy Date
  - (b) the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
  - (a) that are created, allowed, or agreed to by you
  - (b) that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
  - (c) that result in no loss to you
  - (d) that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. lack of a right:
  - (a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
  - (b) in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**2006 ALTA LOAN POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - i. the occupancy, use, or enjoyment of the land;
  - ii. the character, dimensions, or location of any improvement erected on the land;
  - iii. the subdivision of land; or
  - iv. environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - a. created, suffered, assumed, or agreed to by the Insured Claimant;
  - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - c. resulting in no loss or damage to the Insured Claimant;
  - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - a. a fraudulent conveyance or fraudulent transfer, or
  - b. a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the land or that may be asserted by persons in possession of the land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

#### **2006 ALTA OWNER'S POLICY (06-17-06)**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

- i. the occupancy, use, or enjoyment of the land;
- ii. the character, dimensions, or location of any improvement erected on the land;
- iii. the subdivision of land; or
- iv. environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
  3. Defects, liens, encumbrances, adverse claims, or other matters
    - a. created, suffered, assumed, or agreed to by the Insured Claimant;
    - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
    - c. resulting in no loss or damage to the Insured Claimant;
    - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
    - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
  4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the land is situated.
  5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
  6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that the transaction creating the lien of the Insured Mortgage, is
    - a. a fraudulent conveyance or fraudulent transfer, or
    - b. a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
  7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the land or that may be asserted by persons in possession of the land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

#### **ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)**

##### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - i. the occupancy, use, or enjoyment of the land;
  - ii. the character, dimensions, or location of any improvement erected on the land;
  - iii. the subdivision of land; or
  - iv. environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters
  - a. created, suffered, assumed, or agreed to by the Insured Claimant;
  - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - c. resulting in no loss or damage to the Insured Claimant;
  - d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - a. a fraudulent conveyance or fraudulent transfer, or
  - b. a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

**EXHIBIT J**  
**RESERVED**

**EXHIBIT K**

**PERFORMANCE CENTER DEED**

**RECORDED AT REQUEST OF:**

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**WHEN RECORDED MAIL TO:**

**TRANSFER TAX:**

**MAIL TAX STATEMENTS TO:**

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**QUITCLAIM DEED**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, JACKSON TAYLOR PARTNERS, a Delaware limited liability company (öTransferorö), hereby transfers and quitclaims to THE CITY OF SAN JOSE, a municipality of the State of California, all of the right, title and interest of Transferor in and to that certain real property located in the City of San Jose, County of Santa Clara, State of California, described in Schedule A attached hereto and made a part hereof (the öPerformance Center Siteö).

In its proprietary capacity, City agrees, as owner of the Performance Center Site, that unless and until Transferor acquires the Performance Center Site, the Performance Center Site shall not be used for any purpose other than (i) a use similar to the Performance Center, or (ii) any other public or private use that is compatible with the uses on the balance of the Land (defined below). The foregoing covenants of City are intended to be binding upon City, as such owner only, and all of its successors in interest as owners of an interest in the Performance Center Site (but only during the respective periods of ownership as to either City or such successors), and such covenants are intended to be for the benefit of, and be enforceable by the owner(s) from time to time of any fee interest in, the Land (excepting the Performance Center Site). As used herein, (i) öPerformance Centerö means a center for the support of performing and other creative arts, or other cultural or community-based activities and organizations and (ii) öLandö means the following described real property (excepting therefrom the Performance Center Site): LOTS 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243 AND 244 IN BLOCK 23, WHITEöS ADDITION, AS SHOWN ON THAT CERTAIN MAP ENTITLED öCITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEERö, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE

OF THE RECORDER OF SANTA CLARA COUNTY, IN BOOK A OF MAPS, AT PAGES 72 AND 73.

APN: 249-39-039.

It is the express intention of City and Transferor that City is acting in its capacity as owner of the Performance Center Site and not as a government entity, and City shall retain the full right and ability to exercise its regulatory, taxing and/or police powers with respect to the other parties and the Performance Center Site, and in no event shall City have any liability arising under deed by virtue of any exercise of any such regulatory, taxing and/or police powers.

In witness whereof, Transferor has executed this Quitclaim Deed as of \_\_\_\_\_, 20\_\_ .

JACKSON TAYLOR PARTNERS LLC, a  
Delaware limited liability company

By: [Related Entity],  
A \_\_\_\_\_ limited liability company

By: \_\_\_\_\_  
An authorized person

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: WDA -- JT Development LLC,  
An Oregon limited liability company

By: \_\_\_\_\_  
An authorized person

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED AND AGREED:

THE CITY OF SAN JOSE, a municipality of the State  
of California

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

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

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

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**DESCRIPTION OF PERFORMANCE CENTER SITE**

The location of the Performance Center Site is shown on Exhibit I. The legal description of such Site shall be provided once it is finally determined by the subdivision map that Buyer and City intend to file.

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**LIST OF EXHIBITS AND SCHEDULES**

- Exhibit A - List of Contract Obligations
- Exhibit B - Legal Description of Real Property
- Exhibit C - List of Personal Property
- Exhibit D - List of Entitlements and Schedule of Anticipated Filing and Response Dates
- Exhibit E - Form of Deed to Real Property
- Exhibit F - Form of Bill of Sale
- Exhibit G - Form of Non-Foreign Affidavit
- Exhibit H - Form of Assignment of Intangible Property
- Exhibit I - Anticipated Project Configuration
- Exhibit J - Reserved
- Exhibit K - Form of Performance Center Deed

Schedule 4.2: Title Matters