

File No. 130658

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date June 24, 2013

Board of Supervisors Meeting Date _____

Cmte Board

- Motion
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- Ordinance
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- Department/Agency Cover Letter and/or Report
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OTHER (Use back side if additional space is needed)

- Categorical Exemption Form, dtd 12/19/12
- Restated Option Agreement
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Completed by: Alisa Miller Date June 21, 2013

Completed by: _____ Date _____

1 [Restated Option Agreement - Sale of Surplus Real Property in Mountain View to MV
2 Urban Village Homes, LLC - \$8,100,000]

3
4 **Resolution approving a Restated Option Agreement for the sale of surplus lands under**
5 **the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) located in**
6 **Mountain View, Santa Clara County, California near the intersection of Whisman and**
7 **Tyrella Avenues, to MV Urban Village Homes, LLC, a California limited liability company**
8 **(Optionee), a joint venture between KMJ Urban Communities, LLC (KMJ), and**
9 **SummerHill Homes, LLC (SummerHill) in the amount of \$8,100,000, and reserving an**
10 **easement to the SFPUC; authorizing the Director of Property or the SFPUC's General**
11 **Manager to execute documents, make modifications, and take actions in furtherance of**
12 **this Resolution; and adopting findings that the transactions contemplated by the**
13 **Restated Option Agreement are consistent with the City's General Plan and with the**
14 **Eight Priority Policies of City Planning Code Section 101.1.**

15
16 WHEREAS, The City and County of San Francisco ("City") owns certain real
17 property under the jurisdiction of the SFPUC located at Whisman and Tyrella Way in
18 Mountain View, California and also known as a portion of Parcels 189, 190, 191 and
19 192 ("Property"); and

20 WHEREAS, the Property is part of the SFPUC right of way for, and contains,
21 Bay Division Pipelines (BDPL) Nos. 3 and 4 used for the transmission of water
22 through Santa Clara County; and

23 WHEREAS, By SFPUC Resolution 04-0215, the SFPUC determined in 2004
24 that the Property, except for an eighty (80)-foot wide portion containing BDPL Nos. 3 and
25

1 4's right of way ("Pipeline Interests") , is no longer required for SFPUC operational
2 needs; and that, the SFPUC shall reserve an easement for the Pipeline Interests; and

3 WHEREAS, The SFPUC published a Request for Qualifications/Proposals on
4 February 13, 2004 seeking proposals to purchase the Property; and

5 WHEREAS, KMJ and its predecessor-in-interest, MasterDevCo, submitted a high
6 bid of Eight Million One Hundred Thousand Dollars (\$8,100,000) and the SFPUC
7 selected KMJ to enter into an option agreement for the sale of the Property to KMJ; and

8 WHEREAS, The SFPUC approved the form of an option agreement and the
9 transactions contemplated thereby pursuant to SFPUC Resolution No. 04-1215; and

10 WHEREAS, On March 10, 2006, the Board of Supervisors adopted Resolution No.
11 120-06 to authorize the Director of Real Property or the General Manager of the SFPUC
12 to enter into an option agreement with KMJ providing for the sale of the Property to KMJ,
13 a copy of which is on file with the Clerk of the Board of Supervisors in File No. 060119;
14 and

15 WHEREAS, City and KMJ signed an option agreement in 2006 ("Former Option
16 Agreement"), which was amended by six amendments approved by the SFPUC, whereby
17 (i) KMJ agreed to pay City Eight Million One Hundred Thousand Dollars (\$8,100,000) as
18 the purchase price for the Property, (ii) City was to reserve a permanent eighty (80)-foot
19 easement across the Property that would allow City to access, maintain, replace, and
20 repair its Pipeline Interests, (iii) KMJ paid City the aggregate sum of Six Hundred
21 Thousand Dollars (\$600,000) as a non-refundable deposit to be applied against the
22 purchase price for the Property, and (iv) KMJ had until December 30, 2010 to (a) pay City
23 the additional sum of One Hundred Fifty Thousand Dollars (\$150,000) due as a further
24 non-refundable deposit to be applied against the purchase price for the Property, and (b)
25

1 to exercise its option to purchase the Property. A copy of the Former Option Agreement
2 is on file with the Clerk of the Board of Supervisors in File No. 060119; and

3 WHEREAS, Prior to December 30, 2010, City and KMJ engaged in negotiations
4 regarding a further extension of the option exercise date and the date upon which KMJ
5 was to pay City additional amounts as further non-refundable deposits against the total
6 purchase price. City and KMJ reached no further agreement and, accordingly, the
7 Former Option Agreement expired by its terms on December 30, 2010; and

8 WHEREAS, Since the termination of the Former Option Agreement, KMJ and
9 SummerHill formed Optionee to demonstrate to City that KMJ has sufficient financial
10 resources to satisfy Optionee's obligations arising under the proposed option and sale
11 transaction; and

12 WHEREAS, City and Optionee have engaged in negotiations whereby Optionee
13 has reaffirmed its desire to acquire an option to purchase the Property for Eight Million
14 One Hundred Thousand Dollars (\$8,100,000) and pursuant to substantially the same
15 terms as provided in the Former Option Agreement; and

16 WHEREAS, City obtained an independent appraisal of the Property dated June
17 11, 2012, that stated that the market value of the Property is Six Million Six Hundred
18 Thousand Dollars (\$6,600,000), assuming the reservation of a permanent eighty (80)-foot
19 easement that allows City to access, maintain, replace, and repair its Pipeline Interests
20 over and across the Property; and

21 WHEREAS, It is impractical to rebid this option and sale transaction because the
22 SFPUC has conducted extensive negotiations first with KMJ and then with, Optionee,
23 and Optionee has a thorough understanding of the Property and the prospects for
24 development entitlements thus increasing the probability that Optionee will exercise the
25 Restated Option at the purchase price of \$8,100,000, which is in excess of the most

1 recent appraised value, which might not be the case if new proposals were solicited, and
2 additional SFPUC and City Attorney staff time and resources would be required to re-bid
3 the Property with no real guarantee such effort would result in a higher purchase price;
4 and

5 WHEREAS, The SFPUC now proposes and recommends that the City enter into a
6 restated option agreement with Optionee ("Restated Option Agreement"), a copy of which,
7 together with all exhibits thereto, is on file with the Clerk of the Board of Supervisors in
8 File No. 130658, pursuant to which, among other provisions, (i) City will grant Optionee an
9 option to purchase the Property for a purchase price of Eight Million One Hundred
10 Thousand Dollars (\$8,100,000), (ii) Optionee's obligation to pay the purchase price will be
11 reduced by the Six Hundred Thousand Dollars (\$600,000) previously paid by KMJ
12 pursuant to the Former Option Agreement, (iii) Optionee will deposit a further Three
13 Hundred Thousand Dollars (\$300,000) to be credited against the purchase price at the
14 time of the closing of the sale of the Property, and (iv) City will reserve pursuant to the
15 Declaration of Covenants, Conditions, and Restrictions and Grant of Easement attached
16 as an exhibit to the Restated Option Agreement (the "Easement Agreement") a permanent
17 eighty (80)-foot easement across the Property for the Pipeline Interests to allow the City to
18 access, maintain, replace, and repair its Pipeline Interests; and

19 WHEREAS, The SFPUC approved the transactions contemplated by the Restated
20 Option Agreement pursuant to SFPUC Resolution No. 12-0104; and

21 WHEREAS, On December 19, 2012, in Planning Department Case No.
22 2012.1508E, the Environmental Review Officer in the Department of City Planning found
23 that sale of the Property, is categorically exempt from the requirements of the California
24 Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15312. A
25

1 copy of such determination is on file with the Clerk of the Board of Supervisors, in File
2 No. 130658; and

3 WHEREAS, The City's Planning Department has found that the transactions
4 contemplated by the Restated Option Agreement are consistent with the City's General
5 Plan and with the Eight Priority Policies of City Planning Code Section 101.1, a copy of
6 these findings are on file with the Clerk of the Board of Supervisors under File No.
7 060119, and are incorporated herein by this reference; now, therefore be it

8 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
9 finds, based on the record before it and in its independent judgment, that the transactions
10 contemplated by the Restated Option Agreement are consistent with the City's General Plan
11 and with the Eight Priority Policies of City Planning Code Section 101.1; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
13 Francisco, in accordance with the recommendations of the SFPUC and the Director of
14 Property hereby approves the terms and conditions of the Restated Option Agreement for
15 sale of the Property between the City and County of San Francisco and MV Urban Village
16 Homes, LLC, and, together with all attached exhibits, including without limitation, the
17 Easement Agreement, and approves the transaction contemplated thereby; and, be it

18 FURTHER RESOLVED, That the Director of Property or the SFPUC General Manager
19 shall be authorized to enter into any amendments or modifications of the Restated Option
20 Agreement, including, without limitation, completion and execution of the Restated Option
21 Agreement's exhibits, and to take all steps, including, but not limited to the execution and
22 delivery of all certificates, notices, consents, agreements, memoranda, and other documents,
23 that the Director of Property or the SFPUC General Manager determines, in consultation with
24 the City Attorney, are in the best interests of the City, and do not materially increase the
25 obligations or liabilities of the City, are necessary or advisable to complete the transaction

1 contemplated in the Restated Option Agreement and effectuate the purpose and intent of the
2 Restated Option Agreement or this resolution are in compliance with all applicable laws,
3 including the City's Charter, with such determination to be conclusively evidenced by the
4 execution and delivery by the Director of Property or the SFPUC General Manager of the
5 Restated Option Agreement, together with all exhibits, including without limitation, the
6 Easement Agreement and all its amendments; and, be it

7 FURTHER RESOLVED, That the Director of Property or the SFPUC General Manager
8 is hereby authorized and directed to execute the Restated Option Agreement for the sale of
9 the Property and all of its exhibits, including, without limitation, the Easement Agreement, and
10 to execute and deliver the deed to the Property to Urban Village Homes, LLC, a California
11 limited liability company, or its successors or assigns, upon the closing in accordance with the
12 terms and conditions of the Restated Option Agreement, and to take all steps, including, but
13 not limited to, the execution and delivery of all certificates, notices, consents, agreements,
14 memoranda, and other documents that the Director of Property or the SFPUC General
15 Manager deems necessary or appropriate in order to consummate the conveyance of the
16 Property pursuant to the Restated Option Agreement, or to otherwise effectuate the purpose
17 and intent of this resolution, such determination to be conclusively evidenced by the execution
18 and delivery by the Director of Property or the SFPUC General Manager of any such
19 documents.

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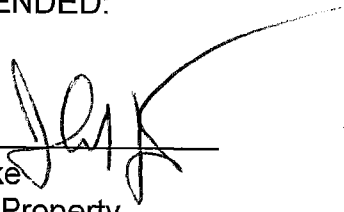
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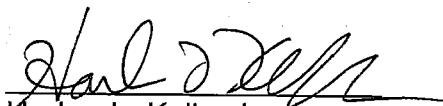
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1 RECOMMENDED:

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3 _____
4 John Updike
5 Director of Property

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7 _____
8 Harlan L. Kelly, Jr.
9 SFPUC General Manager

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SAN FRANCISCO PLANNING DEPARTMENT

CEQA CATEGORICAL EXEMPTION FORM

PROJECT NAME: Mountain View 6.46 acre Surplus Parcel

PROJECT LOCATION: Between Whisman Road and Tyrella Ave, Mountain View

CASE NUMBER: 2012.1508E DATE: 12/19/12

PROJECT TYPE: New Facility Replacement Facility/Equipment

Facility Repair/Maintenance/Upgrade Other: Extension of Purchase

Option Agreement

1. EXEMPTION CLASS

Class 1: Existing Facilities

Class 2: Replacement or Reconstruction

Class 3: New Construction or Conversion of Small Structures

Class 6: Information Collection

Other: Class 12, Surplus Property Sales

2. CEQA Impacts

For any box checked below, refer to the attached Environmental Evaluation Application with supporting analysis and documentation.

Air Quality: Would the project affect sensitive receptors (specifically schools, colleges, universities, day care facilities, hospitals, residential dwellings, or senior-care facilities)?

Noise: Would the project conflict with the applicable local Noise Ordinance?

Hazardous Materials: Would the project be located on a site included on any list compiled pursuant to Section 65962.5 of the Government Code, or impact an area with known hazardous materials such as a former gas station, auto repair, dry cleaners, heavy manufacturing use, or site with underground storage tanks?

Soils Disturbance/Modification: Would the project result in soil disturbance greater than 2 feet below grade in archeological sensitive area or 8 feet in a non-archeological sensitive area?

Biology: Would the project have the potential to impact sensitive species, rare plants or designated critical habitat? Is the project consistent with the applicable tree protection ordinance?

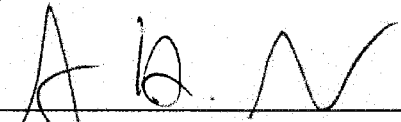
- Visual: Is the project located within or adjacent to a designated scenic roadway, or would the project have the potential to impact scenic resources that are visible from public locations?
- Transportation: Would project construction or operation have the potential to substantially interfere with existing traffic patterns or transit operations.
- Historical Resources: Is the project located on a site with a known or potential historical resource?
- Other: _____

3. CATEGORICAL EXEMPTION DETERMINATION

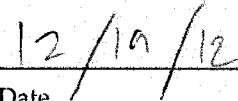
- Further Environmental Review Required.

Notes: _____


- No Further Environmental Review Required. Project is categorically exempt under CEQA.



Planner's Signature



Date



Print Name

Once signed and dated, the this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code



SAN FRANCISCO PLANNING DEPARTMENT

Date received:

Environmental Evaluation Application

The California Environmental Quality Act (CEQA) requires public agencies to review the environmental impacts of proposed projects. In San Francisco, environmental review under CEQA is administered by the Major Environmental Analysis (MEA) division of the Planning Department. The environmental review process begins with the submittal of a completed Environmental Evaluation (EE) Application to the Planning Department. Only the current EE Application form will be accepted. No appointment is required but staff is available to meet with applicants upon request.

The EE Application will not be processed unless it is completely filled out and the appropriate fees are paid in full. Checks should be made payable to the San Francisco Planning Department. See the current *Schedule of Application Fees* and contact the staff person listed below for verification of the appropriate fees. Fees are generally non-refundable. **Documents in italics are available online at sfgov.org/planning.**

The EE Application is comprised of four parts. Part 1 is a checklist to ensure that the EE Application is complete; Part 2 requests basic information about the site and the project; Part 3 is a series of questions to help determine if additional information is needed for the EE Application; and Part 4 is a project summary table.

The complete EE Application should be submitted to the Planning Department staff as follows: For projects greater than 10,000 square feet in size and where Part 3 Questions #3, #8, #10, or #11 are answered in the affirmative, or for projects that require mitigation measures, please send the application materials to the attention of Ms. Fordham or Ms. Pereira. For all other projects, please send the application materials to the attention of Mr. Bollinger.

Brett Bollinger
1650 Mission Street, Suite 400
San Francisco, CA 94103
(415) 575-9024, brett.bollinger@sfgov.org

Chelsea Fordham, or Monica Pereira
1650 Mission Street, Suite 400
San Francisco, CA 94103
(415) 575-9071, chelsea.fordham@sfgov.org
(415) 575-9107, monica.pereira@sfgov.org

PART 1 – EE APPLICATION CHECKLIST	Provided	Not Applicable
Two copies of this application with all blanks filled in	<input checked="" type="checkbox"/>	
Two sets of project drawings (see "Additional Information" at the end of page 4,)	<input checked="" type="checkbox"/>	
Photos of the project site and its immediate vicinity, with viewpoints labeled	<input type="checkbox"/>	
Fee	<input type="checkbox"/>	
<i>Supplemental Information Form for Historical Resource Evaluation</i> and/or <i>Historic Resource Evaluation Report</i> , as indicated in Part 3 Questions 1 and 2	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Geotechnical Report, as indicated in Part 3 Questions 3a and 3b	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Tree Disclosure Statement</i> , as indicated in Part 3 Question 4	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Phase I Environmental Site Assessment, as indicated in Part 3 Question 8	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Additional studies (list)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Applicant's Affidavit. I certify the accuracy of the following declarations:

- The undersigned is the owner or authorized agent of the owner(s) of this property.
- The information presented is true and correct to the best of my knowledge.
- I understand that other applications and information may be required.

Signed (owner or agent):

(For Staff Use Only) Case No.

2012.1508E

Date:

2/5/12

Address:

Block/Lot:

PART 2 - PROJECT INFORMATION

Property Owner	<u>S. F. Public Utilities Commission</u>	Telephone No.	<u>(415) 554-1600</u>
Address	<u>525 Golden Gate Avenue</u>	Fax No.	<u>(415) 554-3161</u>
	<u>San Francisco, CA 94103</u>	Email	<u>www.sfwater.org</u>
Project Contact	<u>Sally Morgan</u>	Telephone No.	<u>(415) 551-4573</u>
Company	<u>S. F. Public Utilities Commission</u>	Fax No.	<u>(415) 934-5750</u>
Address	<u>525 Golden Gate Avenue, Suite 600</u>	Email	<u>bpearl@sfwater.org</u>
	<u>San Francisco, CA 94102</u>		

Site Address(es):	<u>450 North Whisman Rd., Mountain View, CA</u>		
Nearest Cross Street(s)	<u>Walker Drive</u>		
Block(s)/Lot(s)	<u>Parcels 189-192, portions of lots</u>	Zoning District(s)	<u>n/a</u>
	<u>105-112</u>		
Site Square Footage	<u>6.4 acres</u>	Height/Bulk District	<u>n/a</u>
Present or previous site use	<u>SFPUC Bay Division Pipelines-- surplus, undeveloped land divided by pipeline</u>		
Community Plan Area (if any)	<u>ROW</u>		
	<u>N/A</u>		

<input type="checkbox"/> Addition	<input type="checkbox"/> Change of use	<input type="checkbox"/> Zoning change	<input type="checkbox"/> New construction
<input type="checkbox"/> Alteration	<input type="checkbox"/> Demolition	<input type="checkbox"/> Lot split/subdivision or lot line adjustment	
<input checked="" type="checkbox"/> Other (describe)	<u>proposed sale to private developer</u>	Estimated Cost	<u>N/A</u>
Describe proposed use	<u>residential development, subject to approval of City of Mtn View</u>		

Narrative project description. Please summarize and describe the purpose of the project.

The City and County of San Francisco owns a 6.46-acre parcel, located between Whisman Road and Tyrella Avenue in Mountain View, which includes a 2.87-acre right of way for SFPUC Bay Division Pipeline Numbers 3 and 4. On December 9, 2004 the San Francisco Planning Department issued an exemption determination under CEQA Guidelines Section 15312 (Surplus Government Property Sales) for the sale of the Whisman/Tyrella Property, and in 2005 the City and County of San Francisco entered into a sales option agreement with KMJ Urban Communities, LLC (KMJ) for the purchase of the Property. This agreement was extended several times, but expired in 2011 after the City of Mountain View denied without prejudice KMJ's entitlements for subdivision of the property. SFPUC now proposes to enter into a restated or amended sales option agreement with the new KMJ-SummerHill joint venture for a new 18-month term, and subsequently to sell the property consistent with the terms of that agreement. The right of access of SFPUC to Bay Division Pipelines would be retained.

KMJ has formed a joint venture with a local homebuilder SummerHill Homes, for the purpose of developing the property. KMJ proposes to develop 3.59 acres of the property a medium to low residential density, consistent with the City of Mountain View General Plan Housing Element. Potential future development of the site would be subject to environmental review by the City of Mountain View and would comply with applicable City of Mountain View Zoning Ordinance requirements. The property is surrounded by urban uses including two to three-level townhomes, duplexes and single family residences.

PART 3 – ADDITIONAL PROJECT INFORMATION	Yes	No
<p>1. Would the project involve a major alteration of a structure constructed 50 or more years ago or a structure in an historic district?</p> <p>If yes, submit a <i>Supplemental Information Form for Historical Resource Evaluation</i>. Instructions on how to fill out the form are outlined in the <i>San Francisco Preservation Bulletin No. 16</i> (see pages 28-34 in Appendix B).</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>2. Would the project involve demolition of a structure constructed 50 or more years ago or a structure located in an historic district?</p> <p>If yes, a Historic Resource Evaluation Report (HRER)* will be required. The scope of the HRER will be determined in consultation with the Department's Preservation Coordinator.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>3a. Would the project result in excavation or soil disturbance/modification greater than 10 feet below grade?</p> <p>If yes, how many feet below grade would be excavated? _____</p> <p>What type of foundation would be used (if known)? _____</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>3b. Is the project site located in an area of potential geotechnical hazard as identified in the San Francisco General Plan or on a steep slope or would the project be located on a site with an average slope of 20% or more?</p> <p>If yes to either Question 3a or 3b, please submit a Geotechnical Report.*</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>4. Would the project involve expansion of an existing building envelope, or new construction, or grading, or new curb cuts, or demolition?</p> <p>If yes, please submit a <i>Tree Disclosure Statement</i>.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>5. Would the project result in ground disturbance of 5,000 gross square feet or more?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>6. Would the project result in any construction over 40 feet in height?</p> <p>If yes, apply for a Section 295 (Proposition K) Shadow Study. This application is available on the Planning Department's website and should be submitted at the Planning Information Center, 1660 Mission Street, First Floor.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>7. Would the project result in a construction of a structure 80 feet or higher?</p> <p>If yes, an initial review by a wind expert, including a recommendation as to whether a wind analysis* is needed, may be required, as determined by Department staff.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>8. Would the project involve work on a site with an existing or former gas station, auto repair, dry cleaners, or heavy manufacturing use, or a site with underground storage tanks?</p> <p>If yes, please submit a Phase I Environmental Site Assessment (ESA).* A Phase II ESA (for example, soil testing) may be required, as determined by Department staff.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>9. Would the project require any variances, special authorizations, or changes to the Planning Code or Zoning Maps?</p> <p>If yes, please describe.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>10. Is the project related to a larger project, series of projects, or program?</p> <p>If yes, please describe.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>11. Is the project in Eastern Neighborhoods or Market & Octavia Community Plan Area?</p> <p>If yes, and the project would be over 55 feet tall or 10 feet taller than an adjacent building built before 1963, please submit an elevation or renderings showing the project with the adjacent buildings.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

* Report or study to be prepared by a qualified consultant who is contracted directly by the project sponsor.

PART 4 – PROJECT SUMMARY TABLE

If you are not sure of the eventual size of the project, provide the maximum estimates.

Gross Square Footage (GSF)	Existing Uses	Existing Uses to be Retained	Net New Construction and/or Addition	Project Totals
Residential	N/A	N/A	N/A	N/A
Retail	N/A	N/A	N/A	N/A
Office	N/A	N/A	N/A	N/A
Industrial	N/A	N/A	N/A	N/A
Parking	N/A	N/A	N/A	N/A
Other (specify use)	N/A	N/A	N/A	N/A
Total GSF	N/A	N/A	N/A	N/A
Dwelling units	N/A	N/A	N/A	N/A
Hotel rooms	N/A	N/A	N/A	N/A
Parking spaces	N/A	N/A	N/A	N/A
Loading spaces	N/A	N/A	N/A	N/A
Number of buildings	N/A	N/A	N/A	N/A
Height of building(s)	N/A	N/A	N/A	N/A
Number of stories	N/A	N/A	N/A	N/A
<p>Please describe any additional project features that are not included in this table: Sales option only, with potential subsequent sale. Any future development would be subject to approval of the City of Mountain View.</p>				
<p>Additional Information: Project drawings in 11x17 format should include existing and proposed site plans, floor plans, elevations, and sections, as well as all applicable dimensions and calculations for existing and proposed floor area and height. The plans should clearly show existing and proposed off-street parking and loading spaces; driveways and trash loading areas; vehicular and pedestrian access to the site, including access to off-street parking and parking configuration; and bus stops and curbside loading zones within 150 feet of the site. A transportation study may be required, depending on existing traffic conditions in the project area and the potential traffic generation of the proposed project, as determined by the Department's transportation planners. Neighborhood notification may also be required as part of the environmental review processes.</p>				



San Francisco
Water and Sewer
Services of the San Francisco Public Utilities Commission

Bureau of Environmental Management
525 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102
T (415).934-5700
F (415).934-5750

December 4, 2012

Steven H. Smith, Senior Environmental Planner
Environmental Planning Division
San Francisco Planning Department
1650 Mission Street, Fourth Floor
San Francisco, CA 94103

RE: CEQA Exemption Request for a Restated
Option Agreement for Disposal of SFPUC
Surplus Property at 450 North Whisman
Road, Mountain View
Index Code: 400484
Planning Department Case:

Dear Steve:

The San Francisco Public Utilities Commission ("SFPUC") requests review of the proposed Restated Option Agreement to be entered into between SFPUC and KMJ Urban Communities, LLC for sale of SFPUC's surplus property at 450 North Whisman Road, Mountain View, CA under the California Environmental Quality Act (CEQA). The purposes of this letter are to: 1) provide the Environmental Planning Division (EP) with information on the proposed Restated Option Agreement and the transactions contemplated thereby (the "Action"); and 2) request EP review and concurrence that the Action is categorically exempt under CEQA. CEQA Guidelines Section 15312 provides an exemption for sales of surplus government property that is not located in an area of statewide, regional, or area-wide concern.

The following description of the proposed Action demonstrates that it qualifies for exemption under Section 15312 and would not result in any adverse environmental effects, and provides support for our recommendation that the Action is categorically exempt under CEQA.

The Action would be conducted in compliance with applicable federal, State, and local regulations.

BACKGROUND

The City and County of San Francisco ("City") owns a 6.46-acre parcel on portions of Parcels 189, 190, 191, and 192, located between Whisman Road and Tyrella Avenue in Mountain View, California (the "Property"), which includes a 2.87-acre right-of-way for SFPUC Bay Division Pipeline Numbers 3 and 4, which constitute a portion of the City's potable water transmission system. On December 9, 2004, the San Francisco Planning Department issued an exemption determination under CEQA Guidelines Section 15312 (Surplus Government Property Sales) for the sale of the Whisman/Tyrella Property, and in 2005 the

Edwin M. Lee
Mayor

Art Torres
President

Vince Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Viotor
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



Steven H. Smith, Senior Environmental Planner
Environmental Planning Division
CEQA Exemption Request for Restated Option for Disposal of SFPUC Surplus
Property at 450 North Whisman Road, Mountain View

City and County of San Francisco entered into a sales option agreement for the property with KMJ Urban Communities, LLC (“KMJ”), approved by the Board of Supervisors, for the purchase of the Property. This agreement was extended several times, but expired in 2011 after the City of Mountain View denied without prejudice KMJ’s entitlements for subdivision of the property. The downturn in the economy have further delayed KMJ’s proposal to develop the property.

DESCRIPTION OF THE PROPOSED PROJECT

SFPUC now proposes that the City enter into a Restated Option Agreement with the new KMJ-SummerHill joint venture (described below) providing for a new 18-month term, with options to extend that agreement by an additional 6 months, and subsequently to sell the property consistent with the terms of that Restated Option Agreement. The Restated Option Agreement provides for the SFPUC’s retention of an easement across the Property to provide for SFPUC’s rights to (a) access its pipeline facilities and (b) install, inspect, use, maintain, construct, improve, alter, expand, operate, remove, and replace existing or future water pipelines, drainage pipelines, hatch covers, wells, and other surface and subsurface utility facilities, together with all related appurtenances.

KMJ has formed a joint venture with a local homebuilder SummerHill Homes, LLC, for the purpose of developing the Property. KMJ proposes a low- to medium-density residential development on 3.59 acres of the Property, consistent with the City of Mountain View General Plan Housing Element. The Property is surrounded by urban uses including two- to three-level townhomes, duplexes, and single-family residences. Potential future development of the site would be subject to environmental review by the City of Mountain View and would have to comply with applicable City of Mountain View Zoning Ordinance requirements.

ENVIRONMENTAL INFORMATION

The proposed action—granting of a sales option with respect to the Property—would not result in any environmental impacts. While it is possible that the Property may be developed as low-to-medium-density housing subsequent to its sale, the proposed Restated Option Agreement cannot constitute agency approval of a development project, does not vest the Property with any development rights, and does not preclude any alternatives or mitigation measures that might otherwise be required under CEQA. As the City of Mountain View will be the permit-granting authority and lead agency for CEQA compliance, the approval of the Restated Option Agreement by SFPUC cannot provide any commitment to a development project nor abrogate any part of permit review and CEQA compliance required by the City of Mountain View.

The Property is not located within any of the areas of statewide, regional, or area-wide concern identified in CEQA Section 15206 (b)(4) (that is, the site is not within the Lake Tahoe Basin, the Santa Monica Mountains Zone, the California Coastal Zone, within ¼ mile of a designated wild or scenic river, the

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Sacramento/San Joaquin delta, the Suisun Marsh, or SF Bay Conservation and
Development Commission jurisdiction).

Further, potential development of the site must be consistent with the applicable
City of Mountain View General Plan designation and applicable General Plan
policies, as well as applicable zoning designation and regulations. As
documented in the Initial Study prepared for the original project in 2008¹, the
Property has no value as habitat for endangered, rare, or threatened species;
construction noise and air emissions would be less than significant with the
implementation of City-required mitigation measures; and minor impacts to
traffic access would be less-than-significant with project-level mitigation.

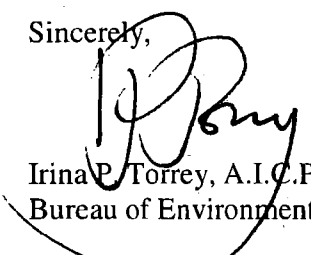
The City of Mountain View would be the Lead Agency for CEQA review of
any future development of the site, and any proposed development would be
subject to the approval of the Mountain View Planning Commission and City
Council. Therefore, while development of the Property subsequent to potential
future exercise of the sale option could occur, no development of the site may
be approved or may proceed without the future action and consent of the City of
Mountain View.

CEQA Compliance/Recommendation

Based on the above description, the SFPUC recommends that the Planning
Department determine the proposed Action is categorically exempt under
CEQA Guidelines Section 15312, as sale of surplus government property which
is not located in an area of statewide, regional or area-wide concern.

If you have any questions, please contact Sally Morgan, Environmental Project
Manager, Bureau of Environmental Management, at 934-3938. Thank you for
your cooperation.

Sincerely,

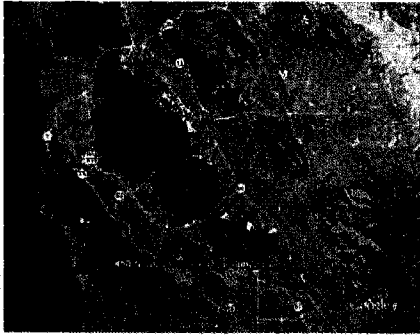


Irina P. Torrey, A.I.C.P., Manager
Bureau of Environmental Management

Attachments: Project location map

cc: Rosanna Russell, Director, Real Estate Services
Sally Morgan, Environmental Project Manager, BEM

¹ City of Mountain View Draft Initial Study, 450 North Whisman Road, Mountain View, CA.
March 2008. Available on line at Mountain View City Documents, Prior City Council Meetings
Documents, Meeting Packets, 2008, M04-April, 6) April 22, Item 5.02,
<http://laserfiche.mountainview.gov/WebLink/0/doc/41073/Page1.aspx>



Project Vicinity



450 North Whisman Road, Mountain View
(undeveloped elongate parcel in center of view)

RESTATED OPTION AGREEMENT

(MOUNTAIN VIEW WHISMAN/TYRELLA PROPERTY)

This Restated Option Agreement ("**Agreement**"), dated for reference purposes only as of _____, 2013, is made and entered into by and between MV URBAN VILLAGE HOMES, LLC, a California limited liability company ("**Optionee**") and THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through its Public Utilities Commission (the "**SFPUC**").

A. City currently owns certain real property, consisting of approximately 6.4 acres, located between Whisman Road and Tyrella Avenue in the City of Mountain View, Santa Clara County, California, as more particularly described in the attached **Exhibit A** and as shown generally on the map attached as **Exhibit A-1** (the "**Property**").

B. The SFPUC issued a Request for Qualifications and Proposals prepared by the SFPUC and dated February 13, 2004, as amended, by the First Second, Third, Fourth, Fifth, and Sixth Amendments (collectively the "**RFQ/P**"). Optionee's predecessor-in-interest, MasterDevCo, submitted proposals in response to the RFQ/P. Optionee covenants that it has read the RFQ/P and agrees to strictly abide by all of its terms and conditions which are incorporated herein by this reference; provided, in the event of any conflict between the terms of this RFQ/P and this Agreement, the terms of this Agreement shall prevail.

C. Pursuant to the RFQ/P and SFPUC Resolution No. _____, SFPUC and KMJ Urban Communities, LLC, a California limited liability company ("**KMJ**") entered into the Option Agreement dated November 15, 2005, approved by the Board of Supervisors, pursuant to Resolution No. _____, adopted on _____, as amended by the First Amendment to Option Agreement dated July 12, 2007, the Second Amendment to Option Agreement dated January 26, 2009, the Third Amendment to Option Agreement dated June 15, 2009, the Fourth Amendment to Option Agreement dated November 6, 2009, the Fifth Amendment to Option Agreement dated March 8, 2010, and the Sixth Amendment to Option Agreement dated May 15, 2010, (collectively, as amended, the "**Former Option Agreement**") providing for KMJ's option to purchase the Property (as more particularly described in the Former Option Agreement).

D. Pursuant to the Former Option Agreement, (i) KMJ agreed to pay City Eight Million One Hundred Thousand Dollars (\$8,100,000) as the purchase price for the Property, (ii) KMJ paid City the aggregate sum of Six Hundred Thousand Dollars (\$600,000) as a non-refundable deposit to be applied against the purchase price for the Property, and (iii) KMJ had until December 30, 2010 to (a) pay City the additional sum of One Hundred Fifty Thousand Dollars (\$150,000) due as a further non-refundable deposit to be applied against the purchase price for the Property and (b) to exercise its option to purchase the Property. Although, prior to December 30, 2010, City and KMJ engaged in negotiations regarding a further extension of the option exercise date and the date upon which Optionee was to pay City additional amounts as further non-refundable deposits against the total purchase price, City and KMJ reached no further agreement and, accordingly, the Former Option Agreement expired by its terms on December 30, 2010.

E. Since the termination of the Former Option Agreement, KMJ and Summerhill Homes, LLC, a California limited liability company, formed Optionee to demonstrate to City that KMJ has sufficient financial resources to satisfy Optionee's obligations arising under this Agreement, and such other purposes specified in agreement(s) to which the City is not a party. Accordingly, Optionee desires to enter into this Agreement to grant Optionee an option purchase the Property from City, and City is willing to grant Optionee such option, on the terms and conditions set forth herein.

1. Basic Terms.

Paragraph

(n/a)	Name of Optionee	MV Urban Village Homes, LLC, a California limited liability company with two members: KMJ Urban Communities, LLC, a California limited liability company and Summerhill Homes LLC, a California limited liability company.
(n/a)	Address	c/o Summerhill Homes LLC, Managing Member 3000 Executive Parkway, Suite 450 San Ramon, California 94583 Attn: Chris Neighbor and Lance Freed Telephone: (925) 244-7500 Facsimile: (925) 244- 7501 c/o KMJ Urban Communities, LLC 1924 Fourth Street San Rafael, California 94901 Attn: Bruce Burman Telephone: (415) 458-5400 ext. 16 Facsimile: (415) 458- 5401
(n/a)	Name of Two or More Individuals Authorized to Execute this Agreement	For KMJ: George Brewster and Bruce Burman For SummerHill Homes, LLC: Chris Neighbor, Doug McDonald, Jason Biggs

2	Option Consideration	Six Hundred Thousand Dollars (\$600,000) previously paid by KMJ pursuant to Former Option Agreement and an additional Three Hundred Thousand Dollars (\$300,000), which Optionee shall pay within thirty (30) days after the Approval Date.
2	Approval Date	The date upon which City executes and delivers this Agreement to Optionee after the approval of this Agreement and the Easement Agreement (as defined in Paragraph 18(a) below) by the San Francisco Board of Supervisors and the Mayor of San Francisco.
2	Execution Date	The date on which Optionee duly executes and delivers this Agreement to City for its approval as required by applicable law.
3.a	Purchase Price	Eight Million One Hundred Thousand Dollars (\$8,100,000) in cash at Closing (less such sums that Optionee or KMJ has paid as non-refundable deposits).
10	Title Company Address	Chicago Title Company 388 Market Street, 13 th Floor San Francisco, CA 94111 Order #945846 Attn: Anne Wirtanen Telephone: (415) 788-0871 Facsimile: (415) 399-0940
10	Release	Paragraph 9 to be initialed by parties
15	Liquidated Damages	Paragraph 14 to be initialed by parties
16	Corporate Form of Optionee	Limited liability company
16	State of Formation of Optionee (e.g., California)	California

2. Option.

(a) Property Included in Option. Subject to and in accordance with the terms, covenants, and conditions set forth herein, City hereby grants to Optionee, as of the Approval Date, and Optionee hereby accepts from City, an option to purchase the Property (the "Option"). Additionally, in accordance with the terms of the Easement Agreement, City shall

reserve an easement over the Property necessary to access the Easement Area (as defined in **Paragraph 18(a)** below) and shall reserve the right to install, inspect, use, maintain, construct, improve, alter, expand, operate, remove, and replace water pipelines, drainage pipelines, hatch covers, wells, and other surface and subsurface utility facilities, together with all appurtenances thereto (together, the “**SFPUC Facilities**”), in, under, on, or about the Easement Area for the transportation or distribution of water and other utilities.

(b) Option Consideration. Pursuant to the Former Option Agreement, Optionee has deposited with City the sum of Six Hundred Thousand Dollars (\$600,000) (the “**Former Deposit**”). Upon the occurrence of the Approval Date (defined below), Optionee shall be obligated to pay to City the additional sum of Three Hundred Thousand Dollars (\$300,000) (the “**Renewal Deposit**”), which shall be paid within thirty (30) days of the Approval Date. Upon receipt of the Renewal Deposit sum, City shall hold the total amount of Nine Hundred Thousand Dollars (\$900,000) as nonrefundable consideration for the Option (the “**Option Consideration**”). Upon the Closing Date, if any, the Option Consideration shall be applied to the Purchase Price, as defined in **Paragraph 3** below. Subject to the following sentence, if Optionee does not exercise the Option by the Option Exercise Deadline (as defined in **Paragraph 2(c)** below, then City shall keep the Option Consideration, and this Agreement shall terminate. City will refund the sum of One Hundred Fifty Thousand Dollars (\$150,000) of the Renewal Deposit only, however, plus any amounts due and owing to the Title Company relating to this transaction, in the event that (i) Optionee terminates this Agreement pursuant to the terms of **Paragraph 7** (in which case, notwithstanding anything to the contrary in this Agreement, if Optionee has not yet paid City the Renewal Deposit, Optionee may instead pay City the sum of One Hundred Fifty Thousand Dollars (\$150,000), with no obligation to pay the remainder of the Renewal Deposit to the City); or (ii) the Closing does not occur on or before the Closing Date because of City’s default under this Agreement. The date upon which City executes and delivers this Agreement to Optionee after the approval by the San Francisco Board of Supervisors and the Mayor of San Francisco of this Agreement and the Easement Agreement is hereby called the “**Approval Date.**” The “**Execution Date**” is the date on which Optionee duly executes and delivers this Agreement to City for its approval as required by applicable law.

(c) Exercise of Option. Optionee may exercise the Option, if at all, by giving written notice to City of the exercise of the Option (the “**Option Notice**”) no earlier than the Approval Date, and no later than 5:00 p.m. local time in San Francisco on the date that is eighteen (18) months after the Approval Date (the “**Option Exercise Deadline**”), unless otherwise extended pursuant to the terms hereof. The Option Consideration shall be applied to the Purchase Price at the Closing. If Optionee fails to exercise the Option before the Option Exercise Deadline, or if Optionee terminates this Agreement pursuant to the terms of **Paragraph 7** below, the Option shall terminate and be of no further force or effect. Time is of the essence with respect to the date of delivery for the Option Notice and all other dates relative to the Option, and failure to exercise by such date and time shall absolutely and finally terminate the Option.

(d) Extension of Exercise Right. Notwithstanding any other provisions hereof, Optionee may elect to extend the Option Exercise Deadline by an additional six (6) months (“**Extended Option Exercise Deadline**”) by delivering written notice of such election (the “**Extension Notice**”) to City and making an additional nonrefundable payment to City of

One Hundred Fifty Thousand Dollars (\$150,000) (the "**Option Extension Consideration**") not later than thirty (30) days prior to the originally scheduled Option Exercise Deadline. The Option Extension Consideration shall also be applied against the Purchase Price at the Closing.

(e) **Effectiveness of Option Notice.** The Option Notice shall only be effective if: (i) Optionee is not in breach of this Agreement at the time of the giving of such Option Notice and (ii) the Option Notice and, if applicable, the Extension Notice and the Option Extension Consideration, are delivered to the Real Estate Director of the SFPUC on or before the respective dates and times set forth above with respect to each such instrument or payment, at the address set forth below for the delivery of notices. Upon valid exercise of the Option, there shall be no conditions precedent to Optionee's obligation to purchase the Property pursuant to the terms set forth in this Agreement.

3. **Purchase Price.**

(a) The purchase price for the Property shall be the amount set forth in **Paragraph 1** above (the "**Purchase Price**"). The Purchase Price shall be payable by Optionee to City as follows:

(i) Optionee has submitted to City one (1) or more certified or cashiers checks, payable to City, in the aggregate total amount of the Renewal Deposit. Thereafter, City shall hold the Former Deposit and the Renewal Deposit as the Option Consideration for its own account. City shall have no obligation to invest the Option Consideration in any manner, and there shall be no interest accrued or payable with respect to the Option Consideration whether at Closing or upon any return of the Option Consideration pursuant to **Paragraph 2(b) (i) –(iii)** above. Upon Closing, if any, the Option Consideration, and the Option Extension Consideration, if any, without interest, shall be credited toward the portion of the Purchase Price payable at Closing.

(ii) Optionee shall deliver the balance of the Purchase Price, excluding the Option Consideration and the Option Extension Consideration, if any, payable to City at Closing into escrow with the title company identified in **Paragraph 1 [Basic Terms]** above (the "**Title Company**") on or before the Closing Date, as defined in **Paragraph 11 [Close of Escrow]** below.

4. **Condition Precedent.** It shall not be a condition precedent to the exercise of the Option or to the Closing that Optionee obtain any development rights for the Property. Optionee has entered into this Agreement with the understanding that it shall negotiate with the City of Mountain View and any other relevant governmental entity whose consent is necessary for Optionee to acquire any development rights that it desires, and that this negotiation may occur before or after the exercise of the Option and the Closing Date. During the term of the Option, to the extent that the current record owner of the Property is required to consent to a request or application for any entitlements for the Property sought by Optionee and within ten (10) days of Optionee's written request therefor, City shall provide written authorization on City's letterhead for Optionee to apply for and obtain such entitlements with respect to the Property that may be reasonably required by the City of Mountain View in connection therewith. Further, the parties acknowledge that the City of Mountain View may require its own environmental review of any

proposed plans to use or develop the Property. Notwithstanding the foregoing, City's obligation to authorize Optionee to apply for entitlements for the Property shall not require City to incur any risk, legal or other liabilities, or any costs or expenses of any kind, permit any work to commence on the Property (except as authorized pursuant to the Permit), or to agree to any mitigation measures that may affect other City property in connection therewith. City has no regulatory approval authority for any subsequent use of the Property and the Property shall be conveyed in its "AS-IS" condition without express or implied representation or warranty of any kind, provided however, nothing in this Paragraph 4 will affect or detract from, or diminish the reasonableness of Optionee's reliance on, the City's representations and warranties set forth in **Paragraph 16(b)** of this Agreement.

5. Title.

(a) Upon valid exercise of the Option, payment of the portion of the Purchase Price payable at Closing, and the performance of Optionee's other obligations according to the terms hereof, City shall convey its right, title, and interest in and to the Property to Optionee by quitclaim deed in the form attached hereto as **Exhibit B** (the "**Deed**"). Title to the Property shall be subject to (a) nondelinquent liens of local real estate taxes and assessments, (b) all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents discoverable or reviewed by Optionee, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property, (c) all items of which Optionee has actual or constructive notice or knowledge as of the Close of Escrow, (d) the reservation of easement described in **Section 18** [Use Agreements] attached hereto, and (e) the exceptions set forth in **Exhibit C** (the "**Permitted Title Exceptions**") attached hereto. City shall convey title to the Property to Optionee in the name of the entity identified in **Paragraph 1** [Basic Terms] above. Without limiting the foregoing, Optionee acknowledges that prior to the date of this Agreement, City has made available for inspection by Optionee, without warranty, and Optionee has had the opportunity to conduct an independent review of Chicago Title Company, preliminary title report number 12-98020330-MC dated March 18, 2012, together with all subsequent amendments thereto, including the report dated May 18, 2012 and the report dated February 13, 2013. Notwithstanding any provisions herein to the contrary, all of City's right, title, and interest in and to all SFPUC Facilities (as defined in the Easement Agreement) shall remain with City and are specifically excluded from the Option and any conveyance described herein or contemplated hereby.

(b) Optionee understands and agrees that the right, title, and interest in the Property to be transferred to Optionee shall not exceed that vested in City and that City is under no obligation to furnish any policy of title insurance in connection with this transaction. Optionee recognizes that any fence or other physical or natural monument of the Property's boundary lines may not correspond to the legal description of the Property. City shall not be responsible for any inaccuracies in the legal descriptions, any discrepancies in the parcel area or location of the property lines, or any other matters that an accurate survey or inspection might reveal. It is Optionee's sole responsibility to obtain a survey and policy of title insurance, if desired, and to record the Deed on the Closing Date in the official records of the County in which the Property is situated. Notwithstanding the foregoing,

(i) City represents that, to its actual knowledge, the Property is and, at Closing, will be free of the liens of any and all mechanics' and materialmen's liens, judgment liens, deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants, or other occupants (collectively, "**Monetary Liens**"); and

(ii) subject to the termination of this Agreement, and except as deemed necessary by City to protect its interest in the Property or to access, inspect, install, use, maintain, construct, improve, alter, expand, operate, remove, and replace City's SFPUC Facilities on the Property, City shall make no changes to the Property, including title thereto, from and after the expiration of the Due Diligence Period, to and through the Closing, without obtaining Optionee's prior written consent, and further, City covenants that it shall not without Optionee's prior written consent, voluntarily permit the recording of any liens or encumbrances on the Property that cannot reasonably be removed before the Closing (and in the event of such recording, shall cause such liens or encumbrances to be removed from title prior to the Closing). At Closing, City shall pay off and remove from title all Monetary Liens. Permitted Title Exceptions exclude Monetary Liens (save and except only for nondelinquent liens of real estate taxes and assessments).

(c) Within five (5) business days after the Execution Date, Optionee shall order a preliminary title report for City covering the Property, at Optionee's cost, and as a precondition to the Closing, must provide evidence to City of title insurance coverage for City's retained easement rights evidenced by the commitment of the Title Company to issue to City at Closing, and at the cost of Optionee, an ALTA Extended Coverage Owner's Form 2006 policy of title insurance in a form reasonably acceptable to City (the "**Title Policy**") in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000), insuring City's rights of access to and use of the Easement Area free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants, or other occupants, and all other exceptions, liens, and encumbrances except solely for (i) the lien of real property taxes, not yet due or payable, provided City shall be shown as exempt from such taxes in the Title Policy; (ii) the Easement Agreement; and (iii) any exceptions identified in the preliminary title report ordered for and delivered to City by Optionee after the Execution Date as described above approved by City on or before the end of the Due Diligence Period. The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Easement Area, shall not contain any exclusion from coverage for creditor's rights or bankruptcy, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Easement Area and such special endorsements as City may reasonably request. The Title Policy shall also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request.

(d) From and after the Closing, City's rights and title to use and enjoy the Easement Area pursuant to the Easement Agreement as stated in **Paragraph 18(a)** shall unconditionally be and remain at all times a servitude on the Property prior and superior in right and interest to all other liens, charges, or interests of any party that may be recorded by or on behalf of Optionee, including, without limitation, the lien of any deed of trust, mortgage, or other

lien or encumbrance of any kind (collectively, "**Junior Liens**") other than the Permitted Title Exceptions. In the event that any Junior Lien in favor of any lender of, investor in, or creditor or contractor of Optionee is recorded before the Easement Agreement is recorded, Optionee or its successor in interest shall either (i) immediately cause such Junior Lien to be discharged and removed from title with respect to the Property or (ii) cause the holder or beneficiary of such Junior Lien to promptly execute and deliver to City for recording an agreement reasonably acceptable to City and the holder or beneficiary of such Junior Lien and in a reasonably recordable form subordinating such Junior Lien to the Easement Agreement.

6. Reserved.

7. Due Diligence.

(a) Optionee shall have a period of thirty (30) days commencing on the effective date of the Permit (defined below) to be issued by City to Optionee and thirty (30) days following the Approval Date (the "**Due Diligence Period**") in which to investigate each and every aspect of the Property, including, without limitation, the physical condition of the Property, including the soils condition and the presence or absence of any Hazardous Materials in, on, under, or about the Property (the "**Environmental Condition**"). At his option, and at his sole and absolute discretion, the General Manager of the SFPUC may extend the Due Diligence Period upon Optionee's written request supported by evidence satisfactory to the General Manager of the SFPUC that such extension is warranted and is in City's best interest. Optionee expects to conduct a title survey during the Due Diligence Period. If such title survey discloses that (i) the location of easements identified in the existing preliminary report for the Property or in other Disclosure Material are significantly different than described in the preliminary report, underlying recorded documents, and in the other Disclosure Materials, and such difference; (ii) would not have been anticipated by a prudent developer; (iii) would prevent a commercially reasonable developer with experience developing real property in the Bay Area from developing the Property as proposed by Optionee; and (iv) causes Optionee to terminate this Agreement, then such discovery shall constitute a material undisclosed condition relative to the Property for purposes of this **Paragraph 7**. As used in this Agreement, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, and that may require remedial action by way of an abatement or clean-up order from an governmental or quasi-governmental entity with jurisdiction. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*), or under Section 25281 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

(b) In connection with any entry by Optionee or its Agents (as defined in **Paragraph 19(e)** [Parties and Their Agents] below) onto the Property, Optionee shall minimize, to the extent possible, interference with uses being made of the Property and otherwise in a manner and on terms and conditions acceptable to City. All entries by Optionee or its Agents

onto the Property to perform any investigations on the Property shall be made only pursuant to the terms and conditions of a permit to enter in the form of **Exhibit E** attached hereto (the "**Permit**"), which, if not previously granted, shall be executed and delivered by the parties on or promptly after the Execution Date.

(c) Without limiting the foregoing, prior to any entry to perform any on-site testing, Optionee shall give City written notice thereof, including the identity of the company or persons who will perform such testing, the precise time and location of the testing, and the proposed scope of the testing. City acknowledges that Optionee likely will seek to conduct a "Preliminary Environmental Assessment" of the Property and that Optionee may provide a single notice including all anticipated elements of such testing. City shall have the right, at its reasonable discretion, to limit or condition the proposed testing to that which is reasonable and customary by written notice to Optionee within ten (10) business days after City's receipt of Optionee's notice. If City does not approve, either with or without limitations or conditions, any request within such ten (10) business days after City's receipt of Optionee's notice, then the Due Diligence Period shall be extended, on a day-for-day basis, for each day of delay after such ten (10) business day period caused by City's delay in such approval. The approved scope of work will be attached as an exhibit to the Permit. If Optionee or its Agents take any sample from the Property in connection with any approved testing, Optionee shall, upon request, provide to City a portion of such sample being tested to allow City to perform its own testing. City or its representative may be present to observe any testing or other inspection performed on the Property. Optionee shall promptly deliver to City copies of any reports (including drafts) relating to any testing or other inspection on the Property performed by Optionee or its Agents, but shall not deliver copies of any such reports to any other person or entity, unless required by applicable law or court order, without Optionee's prior, written approval. Optionee shall keep all test results and information strictly confidential, and shall indemnify, reimburse, defend and hold City harmless from and against any loss, cost, expense, or damage resulting from Optionee's failure to keep any information obtained from an inspection or testing of the Property strictly confidential; provided, however, Optionee shall not be liable if and to the extent Optionee's disclosure of such information is required by applicable law or a court order.

(d) Notwithstanding anything in this Paragraph 7 to the contrary, Optionee can elect to terminate this Agreement, for any or no reason, at any time on or before expiration of the Due Diligence Period, by delivering a written termination notice to City. If Optionee elects to terminate this Agreement within the Due Diligence Period following its investigation, then Optionee shall, on or before the expiration of the Due Diligence Period, deliver to City a written notice that Optionee is terminating this Agreement (the "**Due Diligence Termination Notice**"). If at the end of the Due Diligence Period, Optionee fails to give City a written notice accepting the condition of the Property, including the Environmental Condition, then Optionee shall be deemed to have disapproved the condition of the Property, including the Environmental Condition, and this Agreement will terminate. No such termination or deemed termination by Optionee shall relieve Optionee of any obligations arising under this Agreement prior to such termination or deemed termination, including, without limitation, Optionee's obligation to pay City the Renewal Deposit in accordance with Section 2(b) above.

(e) Optionee acknowledges that in connection with the RFQ/P and the Optionee's execution of this Agreement, City has disclosed the documents and/or the matters

relating to the Property referred to in **Exhibit D** (Disclosure Materials) attached hereto (collectively, the "**Disclosure Materials**"). Optionee further agrees that no information contained or referred to, directly or indirectly, in the Disclosure Materials and delivered to Optionee in connection with the RFQ/P and on or before Optionee's execution of this Agreement is a "material undisclosed condition." Additionally, Optionee acknowledges and agrees that it has had sufficient opportunity to review all of the Disclosure Materials. Nothing contained in **Exhibit D** (Disclosure Matters) shall limit any of the provisions of this **Paragraph 7** or relieve Optionee of its obligations to conduct a diligent inquiry hereunder, nor shall any such matters limit any provisions of **Paragraph 8** [As is Condition] or **Paragraph 9** [Release of City] below.

(f) If this Agreement is terminated or deemed terminated before the end of the Due Diligence Period, neither party shall have any further rights or obligations hereunder except for any provisions which, by their express terms, survive termination or deemed termination of this Agreement and any obligations expressly set forth hereunder arising prior to such termination or deemed termination, including, without limitation, Optionee's obligation to pay City the Renewal Deposit pursuant to Section 2(b).

(g) The provisions of this **Paragraph 7** shall survive the termination or expiration of this Agreement.

8. As Is Condition.

(a) Optionee understands and agrees that City is selling and Optionee is purchasing the Property strictly on an "AS IS WITH ALL FAULTS" basis. Neither City, nor any of its Agents, have made any representations or warranties of any kind, express or implied, as to any matters concerning the Property, including, without limitation, the acreage or size of the Property, the condition of title, the zoning and land use regulations, development potential, the structural condition of any improvements on the Property, soil or groundwater conditions, Hazardous Materials or environmental conditions, suitability of the Property for Optionee's intended uses, or any other characteristics of the Property, provided, however, that nothing in this **Paragraph 8** will affect or detract from, or diminish the reasonableness of Optionee's reliance on, City's representations and warranties set forth in **Paragraph 16(b)** below. Without limiting the foregoing, City does not guarantee the legal, physical, geological, environmental, title, or other conditions of the Property, nor does City assume any responsibility for the compliance of the Property or its use with any statute, ordinance, or regulation. It is Optionee's sole responsibility to determine all building, planning, zoning, and other regulations relating to the Property and the uses to which it may be put. City has not obtained any consents or authorizations relative to the sale of the Property or the granting of the Easement Agreement, other than such consents or authorizations as have been disclosed to Optionee in writing from the date of the RFQ/P to the date of this Agreement.

(b) Optionee is entering into this Agreement based upon its own willingness to negotiate with the City of Mountain View and others for development rights for the Property. It shall not be a condition precedent to the exercise of the Option or to the Closing that Optionee obtain any development rights for the Property. Optionee has entered into this Agreement with the understanding that it shall negotiate with the City of Mountain View or any other governmental entity for any development rights that it desires, and that this negotiation may

occur before or after the exercise of the Option and the Closing Date. The Property shall be conveyed in its "AS-IS" condition without express or implied representation or warranty of any kind; provided, however, that nothing in this **Paragraph 8** will affect or detract from, or diminish the reasonableness of Optionee's reliance on, City's representations and warranties set forth in **Paragraph 16(b)** below.

(c) City believes that its sale of the Property to Optionee is exempt from the Subdivision Map Act pursuant to the California Government Code §66428(a)(2), and that the preparation or recordation of a parcel map is not required in connection with City's conveyance to Optionee. City makes no representations or warranties as to the truth or accuracy of these beliefs, and Optionee acknowledges and agrees that it has made and is relying upon its own investigation into these matters, and releases City from any liability relating to the Subdivision Map Act or the failure to record a parcel map. City further notes that an exemption with respect to a City conveyance may not affect or limit Optionee's existing or future compliance obligations.

(d) **Reserved.**

(e) California law requires owners of nonresidential real property to disclose to purchasers the presence or potential presence of certain hazardous materials. Accordingly, Optionee is hereby advised that occupation of the Property may lead to exposure to hazardous materials such as, but not limited to, gasoline, diesel, and other vehicle fluids, vehicle exhaust, tobacco smoke, methane, and building materials containing chemicals, such as formaldehyde. Optionee acknowledges that closed and operational groundwater monitoring wells were previously located on the Property in connection with the discovery by the Environmental Protection Agency of certain tetrachloroethylene (TCEs) on industrial property across Whisman Road from the Property. City does not know whether the groundwater on the Property has been affected by the TCEs discovered near the Property; however, the groundwater on the Property may have been affected by such TCEs. By execution of this Agreement, Optionee acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

9. **Release of City.**

(a) As part of Optionee's agreement to purchase the Option and to accept the Property on an "AS IS WITH ALL FAULTS" basis as set forth in **Paragraph 8**, and without limiting such agreement, Optionee, on behalf of itself and its successors and assigns, waives its right to recover from, and forever irrevocably releases and discharges, City, its Agents, and their respective heirs, successors, legal representatives, and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs, and expenses (including, without limitation, attorneys' fees), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the RFQ/P, the Property, or City's or its Agents' past use of the Property, including, without limitation, the environmental condition of the Property, the presence of any Hazardous Material on, in, or about the Property, and any law, rule, regulation, order, or requirement related thereto. This release specifically includes any claim of indemnification, reimbursement, contribution, or other compensation arising under any federal, state, or local

statute, ordinance, regulation, rule, or law now or hereafter existing relating to environmental matters, industrial hygiene, or Hazardous Materials. Nothing in this **Paragraph 9**, however, shall serve to release City from any claims based on City's breach of its obligations under this Agreement or under the Easement Agreement. Additionally, nothing in this **Paragraph 9** will affect or detract from, or diminish the reasonableness of Optionee's reliance on, City's representations and warranties set forth in **Paragraph 16(b)** below. This release shall survive the expiration or termination of this Agreement.

(b) In connection with the foregoing release, Optionee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Initials: Optionee: _____

10. Close of Escrow.

(a) Upon the receipt of a valid Option Notice, City shall deposit an executed copy of this Agreement with the Title Company. This Agreement shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. City and Optionee shall execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement. The Title Company shall be the Reporting Person, as that term is used in Section 6045(e) of the United States Internal Revenue Code and the regulations promulgated thereunder.

(b) The closing of the sale of the Property (the "**Closing**") shall be any time after the Approval Date selected by Optionee; provided that the selected date is no earlier than sixty (60) days after the date of the Option Notice, unless otherwise agreed to in writing by the parties, and no later than twenty (20) months following the Approval Date, unless extended pursuant to the terms of **Paragraph 2(d)** above, in which case the Closing shall occur no later than the date that is twenty-six (26) months after the Approval Date. If the Closing does not occur on or before the time designated herein for any reason other than a default by City, then this Agreement shall terminate and City shall retain the Option Consideration, and the Option Extension Consideration, if any, pursuant to **Paragraph 14** [Liquidated Damages] below.

(c) At or before the Closing, City shall deposit into escrow the following items: (i) the duly executed and acknowledged Deed conveying City's interest in the Property to Optionee as provided herein; and (ii) the duly executed and acknowledged Easement Agreement. At or before the Closing, Optionee shall deposit into escrow the following items: (a) the funds necessary to close this transaction, including but not limited to the sums required to pay to City the portion of the Purchase Price payable at Closing; (b) the closing certificate in the form attached hereto as **Exhibit F** (the "**Closing Certificate**"), and (c) the duly executed and

acknowledged Easement Agreement. City and Optionee shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

11. Prorations, Costs, and Expenses.

(a) Any real property taxes and assessments; annual permits and/or inspection fees (calculated on the basis of the period covered); and any other expenses normal to the operation and maintenance of the Property, shall all be prorated as of 12:01 a.m. on the date the Deed is recorded, on the basis of a three hundred sixty-five (365)-day year. Any delinquent rents or permit fees collected after the Closing shall be paid immediately to City. Optionee shall use commercially reasonable efforts to collect such delinquent rents and permit fees; provided, however, City reserves its right to sue a tenant or permittee for damages suffered by City as a result of the failure to pay such rent or fees to City which were payable prior to the Closing Date.

(b) Optionee shall pay any and all escrow fees, recording costs, documentary transfer taxes, title premiums, and other costs and expenses in connection with the close of escrow and the purchase contemplated hereby.

12. Loss.

(a) Optionee accepts the risk that all or any portion of the Property may be damaged, injured, or destroyed, in whole or in part, by fire, earthquake, or other casualty prior to the Closing. Optionee shall have no right to reduce the Purchase Price or terminate this Agreement as a result of any such damage, injury, or destruction to the Property that occurs between the date of this Agreement and the Closing.

(b) Optionee accepts the risk that a portion of the Property may be temporarily or permanently condemned or taken, or threatened to be condemned or taken, prior to the Closing. Optionee shall have no right to terminate this Agreement as a result of any such actual or threatened condemnation or taking that occurs between the date of this Agreement and the Closing; provided, however, if a taking or condemnation occurs between the date of this Agreement and the Closing, Optionee shall receive a credit against the portion of the Purchase Price payable at Closing hereunder equal to the amount of any condemnation award actually collected by City as a result of any such condemnation. If the condemnation award has not been collected as of the Closing, then City shall assign the right to receive such award to Optionee, and Optionee shall not receive any credit against the Purchase Price.

13. Confirmation of Sale by City's Board of Supervisors and Mayor.

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, OPTIONEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THE SALE OF THE OPTION UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND THE EASEMENT AGREEMENT, AND AUTHORIZING THE TRANSACTION CONTEMPLATED HEREBY, AND CITY'S MAYOR APPROVES OF

SAME. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER, EXCEPT FOR THE OBLIGATIONS SET FORTH IN **PARAGRAPH 13(b)** BELOW, ARE CONTINGENT UPON THE DUE ENACTMENT AND APPROVAL OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE AUTOMATICALLY TERMINATED IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT AND THE EASEMENT AGREEMENT AT THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTION CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED OR APPROVED, NOR WILL ANY SUCH DEPARTMENT, COMMISSION, OR AGENCY APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY OTHER THAN AS SET FORTH IN **PARAGRAPH 13(b)** BELOW.

(b) The SFPUC shall submit a resolution to the Board of Supervisors and Mayor requesting approval of the transaction contemplated hereby and approval of this Agreement and the Easement Agreement and it shall remove the Property from the market and shall not directly negotiate with any other party for the sale of the Property pending the outcome of such request for approval. Nothing in the foregoing, however, shall eliminate or lessen the absolute and sole discretion of the Board of Supervisors and Mayor to reject, condition, or otherwise refuse to approve the proposed resolution or to sell or not sell the Option on any conditions, at any time, and in any manner that the Board of Supervisors and Mayor deem appropriate.

(c) City has determined that this Option is exempt from the California Environmental Quality Act ("CEQA") as a categorical exemption Class XX for the reasons set forth in a Planning Department memorandum dated December 19, 2012. Such determination is not binding upon the City of Mountain View, nor has City determined any relevance to, the proposed use of the Property, which shall be subject to any environmental review to be conducted by the City of Mountain View.

(d) **The General Manager of the SFPUC, in consultation with, and subject to approval as to form by, the City Attorney's Office, shall have the right to grant approvals or make determinations under this Agreement and to make nonmaterial modifications or nonmaterial amendments to this Agreement, subject to applicable law, without obtaining the prior approval of City's Board of Supervisors, including by way of example amendments that insert or nonmaterially alter the legal descriptions for the Real Property. Material amendments, however, including, without limitation, amendments that modify the amount or timing of consideration to be received by City, extend the Closing Date or waive, modify, or extend any time periods for performance of other conditions shall require SFPUC approval, and may be subject to Board of Supervisor's approval by duly enacted Resolution.**

14. Liquidated Damages.

(a) **If Optionee fails to perform any of its obligations hereunder, including, without limitation, its obligation to pay the balance of the portion of the Purchase Price payable at Closing as and when required hereunder, then City shall be**

entitled to retain the Option Consideration, and the Option Extension Consideration, if any, (including any interest thereon) as liquidated damages as City's sole and exclusive remedy if the Closing is not consummated because of Optionee's failure to perform its obligations under this Agreement. In such instance all right, title, and interest shall continue to remain vested in City free of any claim of Optionee or those claiming through Optionee. Optionee and City agree that City's actual damages, in the event of failure to consummate this sale due to Optionee's failure to perform, would be extremely difficult or impracticable to determine and considering the circumstances existing on the date hereof, the amount of the Option Consideration, plus the Option Extension Consideration, if any, (including any interest thereon), is a reasonable estimate of the damages that City would incur in such event.

Initials: Optionee: _____ City: _____

(b) In the event Optionee fails to satisfy any post-closing obligation, then City shall have all rights and remedies available at law or in equity.

(c) In no event shall Optionee be entitled to, and City shall not be liable for, any special, consequential, indirect, or incidental damages arising out of or in connection with this Agreement or the Property, regardless of whether any claim is based on contract or tort. Subject to **Paragraph 17** [Brokers] below, if City defaults under or breaches this Agreement and fails to sell the Property in accordance herewith, Optionee shall have the right, as its sole remedy, either (i) to terminate this Agreement by giving written notice to City and receiving the full return of the Option Extension Consideration, if any, which return shall operate to release City from any and all liability hereunder, or (ii) to enforce specific performance of City's obligation to sell the Property to Optionee in accordance with this Agreement.

15. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed to the parties as follows:

To City:

San Francisco Public Utilities Commission
Real Estate Services
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94103
Attn: Real Estate Director
Reference: Mountain View Development Opportunity

with a copy to:

Office of the City Attorney
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Richard Handel
Facsimile: (415) 554-4747

To Optionee:

MV Urban Village Homes, LLC
c/o Summerhill Homes LLC, Managing Member
3000 Executive Parkway, Suite 450
San Ramon, CA 94583
Attn: Chris Neighbor, Senior Vice President, Land Acquisitions
Facsimile: (925) 244-7501

with copies to:

MV Urban Village Homes, LLC
c/o Summerhill Homes LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel
Facsimile: (650) 213-8183

and

KMJ Urban Communities, LLC
1924 Fourth Street
San Rafael, California 94901
Attn: Bruce Burman
Facsimile: (415) 458- 5401

or such other address as either party may from time to time specify in writing to the other party. A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any fax numbers are provided for convenience of communication only; neither party may give official or binding notice by fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed copy of a notice.

16. Representations and Warranties.

(a) Optionee makes the following representations and warranties as of the date of this Agreement and at all times throughout the term of this Agreement:

(i) Optionee represents and warrants to City that Optionee is the type of legal identity identified in **Paragraph 1** [Basic Terms] above, duly organized and validly existing under the laws of the State identified in **Paragraph 1** [Basic Terms] above, and is in good standing under the laws of, and qualified to do business in, the State of California.

(ii) Optionee represents and warrants to City that this Agreement and any and all documents executed by Optionee which are to be delivered to City at Closing: (i) are and at the time of Closing will be duly authorized, executed, and delivered by Optionee; (ii) are and at the time of Closing will be legal, valid, and binding obligations of Optionee, enforceable against Optionee in accordance with the terms hereof; and (iii) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Optionee is a party or to which Optionee is subject.

(iii) Optionee represents and warrants to City that it has not been suspended, disciplined, or disbarred by, or prohibited from contracting with, any federal, state, or local government agency. In the event Optionee has been so suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it shall immediately notify City of same and the reasons therefor, together with any relevant facts or information requested by City. Any suspension, debarment, discipline, or prohibition may result in the termination or suspension of this Agreement.

(iv) Optionee represents and warrants to City that no document or instrument furnished or to be furnished by Optionee to City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(v) Optionee represents and warrants to City that the persons signing on behalf of Optionee below have been fully authorized to do so on behalf of Optionee. The foregoing representations and warranties and any other representations and warranties of Optionee contained herein or in other agreements or documents executed by Optionee in connection herewith, shall survive the Closing Date.

(b) City makes the following representations and warranties as of the date of this Agreement:

(i) To City's actual knowledge, there is no litigation pending or threatened against City with respect to the Property or any basis therefore.

(ii) City does not have actual knowledge of any condemnation, either instituted or planned to be instituted, by any governmental or quasi-governmental agency that could detrimentally affect the use, operation, or value of the Property.

(iii) To City's actual knowledge, this Agreement and all documents executed by City that are to be delivered to Optionee at the Closing are, or at the Closing will be, duly executed and delivered by City and do not, and at the Closing will not, violate

any provision of any agreement or judicial order to which City is a party or to which the Property is subject.

(c) For the purposes of this Agreement (including, without limitation, the representations or disclosures made by City in **Exhibit D, Paragraph 5(b)(i), Paragraph 13(c), Paragraph 16(b)**, or elsewhere in this Agreement) the phrase "City's actual knowledge" shall mean, at the time of the applicable representation, the actual knowledge of City's Director of Real Estate John Updike.

17. Brokers. The parties represent and warrant to each other that no broker or finder was involved in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Optionee or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the other party from, and hold harmless the indemnified party against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this **Paragraph 17** shall survive the Closing.

18. Use Agreements.

(a) **Easement Agreement.** City currently maintains underground pipelines and appurtenances in an eighty (80)-foot wide area of land traversing the entire Property (the "**Easement Area**"). Concurrently with the recordation of the Deed, the parties shall execute and record a reservation of easement in the form attached hereto as **Exhibit G** (the "**Easement Agreement**"). Pursuant to the terms of the Easement Agreement, City will reserve the right to access the Easement Area as necessary and an exclusive right to, among other things, install, inspect, use, maintain, construct, improve, alter, expand, operate, remove, and replace water pipelines, drainage pipelines, hatch covers, wells, and other surface and subsurface utility facilities in, under, on, and about the Easement Area. Optionee shall be required to limit its use of the Easement Area as stated in the Easement Agreement, including, without limitation, restrictions relating to the placement of utilities only along and within the northern edge of the easement as specifically indicated on the site plan attached as **Exhibit J**, and for pedestrian and bike trails, street, and open space usage and other uses that do not interfere with, restrict access to, or endanger the SFPUC Facilities in, under, on, or about the Easement Area, all pursuant to the terms of the Easement Agreement. Any and all of Optionee's activities in, on, under, or about the Easement Area shall be subject and subordinate at all times to City's use of City's Easement Area for its water delivery system and in compliance with the restrictions on such use as stated in the Easement Agreement. City and Optionee agree that Exhibit B to the Easement Agreement as attached to this Agreement depicts the anticipated, approximate location of the Easement Area and that the Easement Area will constitute an eighty-foot (80') wide area that crosses the Property commencing from the eastern border of Tyrella Avenue and ending on the western border of Whisman Drive. Once the subdivision map process is complete, Exhibit B and Exhibit B-1 to the Easement Agreement will be updated and replaced with a formal plat and legal description of the Easement Area (providing for an eighty-foot (80') width across its entire length across the Property from the eastern border of Tyrella Avenue to the western border of

Whisman Drive) to be generated by Buyer's engineer and approved by the City prior to the Closing and recordation of the Easement Agreement. The provisions of this **Paragraph 18(a)** shall survive the Closing Date.

(b) **Bicycle/Pedestrian Trail.** As disclosed to KMJ in the RFQ/P, the City of Mountain View, California requested that City provide the City of Mountain View with the right to use portions of the Property and the Easement Area for the construction of and use as a trail for pedestrians and bikes and for use as open space. Because City will transfer the entire Property to Optionee and reserve certain rights in the Easement Area, Optionee acknowledges that, at its sole discretion, the City of Mountain View may ask Optionee to provide the City of Mountain View with similar use rights requested of City. Optionee also acknowledges that the City of Mountain View may request Optionee to construct certain improvements on the Easement Area such as the trail for pedestrians and bikes and certain open space improvements. Optionee agrees that City's review and approval of all plans and specifications for any utilities and improvements on the Easement Area shall be required prior to constructing or installing any such improvements, and any agreements made with any person or entity, including, without limitation the City of Mountain View, regarding any use of the Easement Area shall be subject to the terms of the Easement Agreement and City's approval rights set forth therein. To the extent City's approval of such improvements is required under the terms and conditions of the Easement Agreement, City will consider potential environmental impacts and may conduct additional review or rely upon the City of Mountain View's environmental review, if any. Optionee also acknowledges that City's review and approval requirements for the use of the bicycle/pedestrian trail as set forth in the Easement Agreement shall be in addition to any other fees or requirements imposed by the City of Mountain View in conjunction with any approval of Optionee's proposed project. The provisions of this **Paragraph 18(b)** shall survive the Closing Date.

19. Miscellaneous.

(a) **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, legal representatives, administrators, and assigns. Optionee's rights and obligations hereunder shall not be assignable without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event shall Optionee be released of any of its obligations hereunder.

(b) **Amendments.** This Agreement may be amended or modified only by a written instrument signed by the Optionee and City.

(c) **Governing Law.** This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

(d) **Merger of Prior Agreements.** This Agreement, together with the attached exhibits and the Certificate by Optionee submitted herewith, contain any and all representations, warranties, and covenants made by Optionee and City and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior

correspondence, memoranda, or agreements, including the Former Option Agreement and any instruments, agreements, or understandings reached in connection therewith, are replaced in total by this Agreement together with the Exhibits hereto.

(e) **Parties and Their Agents.** The term “**Optionee**” as used herein shall include the plural as well as the singular. If Optionee consists of more than one individual or entity, then the obligations under this Agreement imposed on Optionee shall be joint and several. As used herein, the term “**Agents**” when used with respect to either party shall include the agents, officers, members, directors, partners, employees, commissioners, contractors, subcontractors, and representatives of such party.

(f) **Interpretation of Agreement.** The article, section, paragraph, and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been executed between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties.

(g) **Attorneys’ Fees.** If either party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys’ fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of City’s Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney’s services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney’s Office.

(h) **Time of Essence.** Time is of the essence with respect to the performance of the parties’ respective obligations contained herein and with respect to all dates set forth herein, including but not limited to Option Notice and the Closing Date.

(i) **No Merger.** The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

(j) **No Liability of City Officials, Employees, and Agents.** Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, or agent of City shall be personally liable to Optionee, its successors,

and assigns, in the event of any default or breach by City or for any amount which may become due to Optionee, its successors, and assigns, or for any obligation of City under this Agreement.

(k) Conflicts of Interest. Through its execution of this Agreement, Optionee acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Optionee shall immediately notify City.

(l) Sunshine Ordinance. Optionee understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Government Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City hereunder are public records subject to public disclosure. Optionee hereby acknowledges that City may disclose any records, information, and materials submitted to City in connection with this Agreement.

(m) Tropical Hardwoods and Virgin Redwoods. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environmental Code.

(n) Recording. Following the Approval Date and provided that this Agreement remains in effect, Optionee may record a memorandum of this Agreement (and City agrees to execute such memorandum) in the form of **Exhibit H** attached hereto; provided that Optionee shall concurrently deliver to City a recordable termination of option quitclaim deed in substantially the form of **Exhibit I** attached hereto which City shall be authorized to unilaterally record in the event (but only in the event) that this Agreement is terminated and Optionee no longer has any rights with respect to the Property pursuant to the terms hereof.

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

(p) MacBride Principles - Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.5, et seq. City also urges companies to do business with corporations that abide by the MacBride Principles. Optionee acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

(q) No Joint Venture. The Optionee is not a state or governmental actor with respect to any activity conducted by the Optionee hereunder. This Agreement does not constitute authorization or approval by City of any activity conducted by the Optionee. This Agreement does not create a partnership or joint venture between City and the Optionee as to any activity conducted by the Optionee relating to this Agreement or otherwise.

(r) **Severability.** If any provision of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, unless enforcement of this Agreement as so modified would be unreasonable or grossly inequitable under all of the circumstances as would frustrate the fundamental purposes of this Agreement.

(s) **Waiver.** No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative of the waiving party, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement.

(t) **Contribution Limits; Contractors Doing Business with City.** Through its execution of this Agreement, Optionee acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City, for the rendition of personal services, for the furnishing of any material, supplies or equipment to City, or for selling or leasing any land or building to or from City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until (1) the termination of negotiations for such contract; or (2) three months have elapsed from the date the contract is approved by a City elective officer, or the board on which that City elective officer serves.

(u) **RFQ/P.** Except as specifically modified or superseded by the terms of this Agreement, all terms and provisions of the RFQ/P, as amended, shall remain unmodified and in full force and effect.

(v) **Regulatory Approvals.** Optionee acknowledges and agrees that City is entering into this Agreement in its capacity as a property owner and not as a regulatory agency with police powers. Nothing in this Agreement shall limit in any way Optionee's obligation to obtain any applicable regulatory approvals from governmental departments, boards, or commissions that have now or will have jurisdiction related to Optionee's proposed project on the Property ("**Regulatory Approvals**"). Optionee shall be solely responsible for obtaining any and all such Regulatory Approvals, which may include, without limitation, the following entitlements that Optionee intends to or may seek: a Planned Development Permit, Tentative Map, Development Review Committee, Parks Commission Review, permits or approvals issued in compliance or in connection with the California Environmental Quality Act, Grading and Improvement Plans, Final Map, Demolition and Grading Permit, and Building House Permits

(w) **Assignment.** The parties acknowledge and agree that City is entering into this Agreement based on the selection of KMJ under the RFQ/P because of KMJ's special skills, experience, and capabilities, as enhanced by its combination with Summerhill to form Optionee.

Optionee may not assign or transfer any of its rights or obligations under this Agreement without City's prior written consent, which consent may be withheld at City's sole discretion.

(x) **Risk of Entitlements.** Optionee acknowledges and agrees that it is proceeding at its own risk and expense to obtain the Regulatory Approvals and without any assurance that the Regulatory Approvals will be obtained by Optionee.

(y) **Indemnity.** Optionee shall indemnify, protect, defend, and hold harmless City and City's officers, agents, and employees, from and against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits, and other proceedings, judgments, and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs through appeal ("**Losses**"), arising out of or related to any activity of Optionee, its members, or its agents, employees, or contractors, under this Agreement, except to the extent such Losses are caused solely by the negligence or willful misconduct of City.

(z) **Ownership of Materials.** In the event this Agreement is terminated, all entitlement applications, studies, environmental reports, and other development documents and materials, and all interim reports and investigations prepared by or on behalf of the Optionee in connection with the Property, the Regulatory Approvals or the project Optionee is proposing other than Optionee's architectural plans and financial documentation (the "**Materials**"), will automatically and immediately become the property of City. City shall not be required to return any of Optionee's architectural plans to Optionee, but City shall not be authorized to use the architectural plans for any purposes. In furtherance and not in limitation of the foregoing, Optionee shall assign, in a writing satisfactory to City, and deliver to City, any and all copies of Materials within fifteen (15) days after written demand from City following the termination of this Agreement. City may use the Materials for any purpose whatsoever relating to the Property, without cost or liability therefor to the Optionee or any other person or entity. Optionee shall include in all contracts and authorizations for services pertaining to the Materials an express agreement by the person or entity performing such services that City shall own such Materials and may use such Materials without compensation or payment from City. Optionee makes no representations or warranty with respect to the accuracy or completeness of the Materials.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

OPTIONEE:

Date: _____

MV URBAN VILLAGE HOMES, LLC, a
California limited liability company

By: Summerhill Homes LLC, a
California limited liability company,
Its Managing member

By: _____

Title: _____

By: _____

Title: _____

By: KMJ Urban Communities, LLC, a
California limited liability company

By: _____

Title: _____

By: _____

Title: _____

ACCEPTANCE: City, acting through its Public Utilities Commission, accepts and agrees to the terms of this Agreement, subject to the conditions set forth herein, including without limitation, the right of the Board of Supervisors and Mayor to approve this Agreement and the Easement Agreement in their sole and absolute discretion as provided herein.

Date: _____, 2013

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

Harlan L. Kelly, Jr. , General Manager

APPROVED BY

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION PURSUANT TO
RESOLUTION NO. 12-0104

ADOPTED JUNE 12, 2012

Secretary

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Richard Handel, Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

City Engineer

EXHIBITS:

- | | | |
|--------------------|----------|---|
| Exhibit A | - | Legal Description of Property |
| Exhibit A-1 | - | Map of Property |
| Exhibit B | - | Form of Deed |
| Exhibit C | - | Permitted Title Exceptions |
| Exhibit D | - | Disclosure Materials |
| Exhibit E | - | Form of Permit |
| Exhibit F | - | Form of Closing Certificate |
| Exhibit G | - | Easement Agreement |
| Exhibit H | - | Form of Memorandum of Option |
| Exhibit I | - | Form of Termination of Option – Quitclaim Deed |
| Exhibit J | - | Site Plan |

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain Real Property in the City of Mountain View, County of San Clara, State of California, described as follows:

PARCEL ONE:

A portion of that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn et ux, by Joint Tenancy Deed dated February 17, 1947 and recorded March 13, 1947 in Volume 1430 at Page 252, Official Records, Santa Clara County, hereinafter referred to as the Reyburn Parcel; said portion being a portion of Lot 115, "Map of Hamwood" which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on February 23, 1912 in Book "N" of Maps, at Page 86, being more particularly described as follows:

Commencing at a point in the Easterly boundary of the existing Tyrella Avenue as delineated and so designated on the above mentioned "Map of Hamwood" where the same is intersected by the Northerly line of the above mentioned Reyburn Parcel; thence from said point of commencement and running along the common boundary between the above mentioned Reyburn Parcel and that certain parcel of land conveyed by Clara F. Gann to John Sciascia et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 at Page 88, Official Records, Santa Clara County South 73° 34' 30" East 405.00 feet to the most Easterly corner of the above mentioned Reyburn Parcel; thence, along the common boundary between the above mentioned Reyburn Parcel, and that certain parcel of land conveyed by M. Paganini et al, to Joe A. Silva et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558 Official Records, Santa Clara County, South 16° 26' West 28.32 feet to a point distant along said common boundary North 16° 26' East 182.28 feet from its intersection with the Northerly boundary of the existing Sherland Avenue; thence, from said point North 79° 55' 15" West 407.50 feet to a point in the above mentioned Easterly boundary of Tyrella Avenue; thence, along said Easterly boundary North 16° 26' East 73.30 feet to the point of commencement.

PARCEL TWO:

A portion of that certain parcel of land conveyed by Clara F. Gann to John Sciascia, et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 of Official Records at Page 88, Santa Clara County Records, hereinafter referred to as the Sciascia Parcel, being a portion of Lot 114, "Map of Hamwood", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 23, 1912 in Book "N" of Maps, page 86, being more particularly described as follows:

Commencing at the most Southerly corner of the above mentioned Sciascia Parcel and running thence along the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn, et ux, by Joint Tenancy deed dated February 17, 1947 and recorded March 13, 1947 in Vol. 1430 of Official Records, page 252 Santa Clara County Records, N. 73° 34' 30" W. 405.00 feet to the Easterly

boundary of Tyrella Avenue, thence along said Easterly boundary N. 16° 26' E. 7.20 feet to a point being distant along said Easterly boundary S. 16° 26' W. 95.30 feet from the Northerly line of the above mentioned Sciascia Parcel; thence from said point, S. 79° 55' 15" E. 407.50 feet to a point in the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Vol. 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel; thence along the above mentioned common boundary between the Sciascia and Silva Parcels, 16° 26' W. 52.18 feet to the point of commencement.

PARCEL THREE:

Portion of Lots One Hundred Two and One Hundred Three as said lots are delineated and so designated upon that certain map entitled "Map of Hamwood, Santa Clara County, Cal.," which said map was duly recorded in the Office of the County Recorder of Santa Clara County, State of California, on February 23, 1912, in Book "N" of Maps at Page 86 thereof, same being known as the Cardoza property, and being more specifically described as follows:

Commencing at a point in the Westerly boundary of the existing Whisman Road, said point being the most Easterly corner of Lot 102 as said lot is shown on the above mentioned Map, thence along the Westerly boundary of Whisman Road, South 16° 25' 30" West 111,000 feet, thence leaving said Westerly boundary of Whisman Road, North 76° 51' 00" West 122.03 feet and North 79° 55' 15" West 237.86 feet to a point in the common boundary between the above mentioned Cardoza parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et al, by Joint Tenancy Deed dated February 28, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel, said point being distant North 16° 25' 30" East 115.66 feet from the Southwesterly corner of Lot 103 as shown and delineated on the above mentioned map, thence continuing along said common boundary between the Cardoza & Silva parcels North 16° 25' 30" East 144.34 feet to a point being the Northwesterly corner of the above mentioned Lot 102, thence along the Northerly boundary of Lot 102, thence along the Northerly boundary of Lot 102, South 73° 34' 30" East 358.24 feet to the point of commencement.

PARCEL FOUR:

Commencing at a point on a Southeasterly line of Lot No. 105 as per "Map of Hamwood" recorded in Book "N" of Maps at Page 86, Official Records of the County of Santa Clara, State of California, distant thereon Northeasterly 182.27 feet from the Northerly line of the existing Sherland Avenue; running thence Northeasterly along said Southeasterly line of Lot No. 105 a distance 253.33 feet to the northeast corner of said Lot No. 105; thence Northwesterly along the Northeasterly end lines of Lots Nos. 105 to 112, inclusive, as per said "Map of Hamwood" a distance of 800 feet to the northwest corner of said Lot No. 112; thence Southwesterly along the Northwesterly line of said Lot No. 112 a distance of 253.33 feet to a point distant Northeasterly thereon 182.27 feet from the Northeasterly line of the existing Sherland Avenue; thence Southeasterly parallel with the said Northeasterly line of the existing Sherland Avenue a distance

of 800 feet to the point of commencement, and being portions of said Lots Nos. 105 to 112, inclusive.

APN: 160-16-044

EXHIBIT A-1
MAP OF PROPERTY
[Attached]

EXHIBIT B
FORM OF DEED

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

Summerhill Homes LLC
777 California Avenue
Palo Alto, CA 94304
Attn: Controller

Documentary Transfer Tax not shown pursuant to Section 11932 of the California Revenue and Taxation Code

(Space above this line reserved for Recorder's use only)

QUITCLAIM DEED

(Assessor's Parcel No. 16016044, Blocks 189-A, 190, 191 and 192)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), pursuant to Ordinance No. _____, adopted by the Board of Supervisors on _____, and approved by the Mayor on _____, hereby RELEASES, REMISES, AND QUITCLAIMS TO MV URBAN VILLAGE HOMES, LLC, a California limited liability company ("**Grantee**") any and all right, title, and interest City may have in and to the real property located in the City of Mountain View, in the County of Santa Clara, State of California, described on Exhibit A attached hereto and made a part hereof, together with all right, title and interest of City in and to those portions of Tyrella Avenue and Whisman Road adjoining the property described in the attached Exhibit A; EXCEPTING THEREFROM, (i) those easement rights reserved by and granted to City pursuant to the terms of that certain Declaration of Covenants, Conditions and Restrictions and Grant of Easement of even date herewith by and between Grantee and City, and recorded concurrently herewith in the Official Records of Santa Clara County (the "**Easement Agreement**"); and (ii) all water pipelines, drainage pipelines, hatch covers, wells, and other surface and subsurface utility facilities in, under, on or about the Easement Area described in the Easement Agreement for the transportation or distribution of water and other utilities, together with all appurtenances thereto.

[Signatures on Following Page]

Executed as of this _____ day of _____, 201_.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike
Director of Property

RECOMMENDED:

Harlan L. Kelly, Jr.
General Manager, Public Utilities
Commission

APPROVED BY
PUBLIC UTILITIES COMMISSION

PURSUANT TO RESOLUTION NO. _____

ADOPTED: _____

Secretary

APPROVED BY
SAN FRANCISCO BOARD OF
SUPERVISORS PURSUANT TO
RESOLUTION NO. _____
ADOPTED: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel
Deputy City Attorney

EXHIBIT A TO QUITCLAIM DEED

All that certain Real Property in the City of Mountain View, County of San Clara, State of California, described as follows:

PARCEL ONE:

A portion of that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn et ux, by Joint Tenancy Deed dated February 17, 1947 and recorded March 13, 1947 in Volume 1430 at Page 252, Official Records, Santa Clara County, hereinafter referred to as the Reyburn Parcel; said portion being a portion of Lot 115, "Map of Hamwood" which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on February 23, 1912 in Book "N" of Maps, at Page 86, being more particularly described as follows:

Commencing at a point in the Easterly boundary of the existing Tyrella Avenue as delineated and so designated on the above mentioned "Map of Hamwood" where the same is intersected by the Northerly line of the above mentioned Reyburn Parcel; thence from said point of commencement and running along the common boundary between the above mentioned Reyburn Parcel and that certain parcel of land conveyed by Clara F. Gann to John Sciascia et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 at Page 88, Official Records, Santa Clara County South 73° 34' 30" East 405.00 feet to the most Easterly corner of the above mentioned Reyburn Parcel; thence, along the common boundary between the above mentioned Reyburn Parcel, and that certain parcel of land conveyed by M. Paganini et al, to Joe A. Silva et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558 Official Records, Santa Clara County, South 16° 26' West 28.32 feet to a point distant along said common boundary North 16° 26' East 182.28 feet from its intersection with the Northerly boundary of the existing Sherland Avenue; thence, from said point North 79° 55' 15" West 407.50 feet to a point in the above mentioned Easterly boundary of Tyrella Avenue; thence, along said Easterly boundary North 16° 26' East 73.30 feet to the point of commencement.

PARCEL TWO:

A portion of that certain parcel of land conveyed by Clara F. Gann to John Sciascia, et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 of Official Records at Page 88, Santa Clara County Records, hereinafter referred to as the Sciascia Parcel, being a portion of Lot 114, "Map of Hamwood", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 23, 1912 in Book "N" of Maps, page 86, being more particularly described as follows:

Commencing at the most Southerly corner of the above mentioned Sciascia Parcel and running thence along the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn, et ux, by Joint Tenancy deed dated February 17, 1947 and recorded March 13, 1947 in Vol. 1430 of Official Records, page 252 Santa Clara County Records, N. 73° 34' 30" W. 405.00 feet to the Easterly boundary of Tyrella Avenue, thence along said Easterly boundary N. 16° 26' E. 7.20 feet to a point being distant along said Easterly boundary S. 16° 26' W. 95.30 feet from the Northerly line of the above mentioned Sciascia Parcel; thence from said point, S. 79° 55' 15" E. 407.50 feet to a point in the common boundary between the above mentioned Sciascia Parcel and that

certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Vol. 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel; thence along the above mentioned common boundary between the Sciascia and Silva Parcels, 16° 26' W. 52.18 feet to the point of commencement.

PARCEL THREE:

Portion of Lots One Hundred Two and One Hundred Three as said lots are delineated and so designated upon that certain map entitled "Map of Hamwood, Santa Clara County, Cal.", which said map was duly recorded in the Office of the County Recorder of Santa Clara County, State of California, on February 23, 1912, in Book "N" of Maps at Page 86 thereof, same being known as the Cardoza property, and being more specifically described as follows:

Commencing at a point in the Westerly boundary of the existing Whisman Road, said point being the most Easterly corner of Lot 102 as said lot is shown on the above mentioned Map, thence along the Westerly boundary of Whisman Road, South 16° 25' 30" West 111.00 feet, thence leaving said Westerly boundary of Whisman Road, North 76° 51' 00" West 122.03 feet and North 79° 55' 15" West 237.86 feet to a point in the common boundary between the above mentioned Cardoza parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et al, by Joint Tenancy Deed dated February 28, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel, said point being distant North 16° 25' 30" East 115.66 feet from the Southwesterly corner of Lot 103 as shown and delineated on the above mentioned map, thence continuing along said common boundary between the Cardoza & Silva parcels North 16° 25' 30" East 144.34 feet to a point being the Northwesterly corner of the above mentioned Lot 102, thence along the Northerly boundary of Lot 102, thence along the Northerly boundary of Lot 102, South 73° 34' 30" East 358.24 feet to the point of commencement.

PARCEL FOUR:

Commencing at a point on a Southeasterly line of Lot No. 105 as per "Map of Hamwood" recorded in Book "N" of Maps at Page 86, Official Records of the County of Santa Clara, State of California, distant thereon Northeasterly 182.27 feet from the Northerly line of the existing Sherland Avenue; running thence Northeasterly along said Southeasterly line of Lot No. 105 a distance 253.33 feet to the northeast corner of said Lot No. 105; thence Northwesterly along the Northeasterly end lines of Lots Nos. 105 to 112, inclusive, as per said "Map of Hamwood" a distance of 800 feet to the northwest corner of said Lot No. 112; thence Southwesterly along the Northwesterly line of said Lot No. 112 a distance of 253.33 feet to a point distant Northeasterly thereon 182.27 feet from the Northeasterly line of the existing Sherland Avenue; thence Southeasterly parallel with the said Northeasterly line of the existing Sherland Avenue a distance of 800 feet to the point of commencement, and being portions of said Lots Nos. 105 to 112, inclusive.

APN: 160-16-044

County Recorder, Santa Clara County

STATEMENT OF DOCUMENTARY TRANSFER TAX
DUE AND REQUEST THAT AMOUNT OF TAX NOT BE
MADE A PART OF THE PERMANENT RECORD IN THE
OFFICE OF THE COUNTY RECORDER

To Santa Clara County Recorder:

In accordance with California Revenue and Taxation Code Section 11932, it is requested that this statement of documentary transfer tax due not be recorded with the attached deed but be affixed to the deed after recordation and before return as directed on the deed.

The deed names THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, as "Grantor" and MV URBAN VILLAGE HOMES, LLC, a California limited liability company, as "Grantee." The property being transferred is located in the County of Santa Clara.

The amount of County documentary transfer tax due on the attached deed is \$ _____ computed on the full value of the property conveyed.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:

John Updike
Director of Property

EXHIBIT C

PERMITTED TITLE EXCEPTIONS

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2013-2014.
2. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
3. **Rights of the public** as to any portion of the land lying within the area commonly known as Tyrella Avenue and North Whisman Road.

Affects: Parcels One and Two (Tyrella Avenue) and Parcel Three (North Whisman Road).

4. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Pacific Gas and Electric Company, a California corporation

Purpose: Gas pipe line or lines

Recorded: June 27, 1945, Book 1266, Page 329, of Official Records

Affects: As follows:

A strip of land of the uniform width of 15 feet extending entirely across said premises and lying equally on each side of that certain line which is parallel with and distant 22.0 feet Southwesterly from (measured perpendicularly to) the Northeasterly boundary line of said premises.

Affects: Parcel Four

5. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Pacific Gas and Electric Company, a California corporation

Purpose: Gas pipe line or lines

Recorded: September 15, 1944, Instrument No. 321526, Book 1220, Page 252, of Official Records

Affects: As follows:

Lot 102, as said lot is delineated and so designated on the Map of Hamwood, recorded in Book N of Maps at Page 86, records of said Santa Clara County. Said strip of said premises is described as follows, viz:

A strip of land of the uniform width of 15 feet extending from the Northwesterly boundary line of Whisman Road Northwesterly to the Northwesterly boundary line of said premises and lying equally on each side of that certain line which is parallel with and distant 22.0 feet Southwesterly from (measured perpendicularly to) the Northeasterly boundary line of said premises.

Affects: Parcel Three

6. Recitals contained in the following document or instrument of record,

Instrument: Deed

Executed By: Fred F. Reyburn and Annie B. Reyburn, his wife

Dated: January 9, 1950

Recorded: February 14, 1950 in Book 1926 at Page 424 as Instrument No. 61

As follows: Also the right to cut and all existing fences and to install gates therein at such points as may be necessary for the convenience of the City in the use of said parcel of real property, and the right to protect pipes and other structures or improvements of the City by means of fences or otherwise; provided, however, that the City shall not construct any other fences upon or with respect to said parcel of real property without the consent of the Grantors. If the City should damage the Grantors' roads or fences, the City shall, at its own expense, repair such damage.

The subject Deed is made subject to the foregoing and the following covenants:

1. The Grantors are permitted the right to plant, cultivate, irrigate, harvest and retain crops from the parcel of land herein described, and to use said land for pasturage, until such time as the City required said land for construction purposes, and thereafter to cultivate, plant, irrigate, harvest and retain crops from, and to use for pasturage, such parts of said parcel of land as are not actually needed by the City for the construction, maintenance, repair, operation, renewal and replacement of its aqueduct pipe lines and other structures or improvements, appurtenances and appliances; provided, that the Grantors shall not plant any trees on said above described parcel of real property.

2. The Grantors are permitted the right to construct, maintain, use, repair, replace, and renew, over and across said parcel of land, (but not along in

the direction of the City's pipe line or lines), fences, roads, streets, earth fills, sewers, water pipes, gas pipes, electric power lines, telephone lines, telegraph lines; provided, however, that the locations and grades of such improvements and structures of the Grantors, and the amount of any earth fill, proposed to be placed on said parcel of real property by the Grantors, shall first be approved by the City's Public Utilities Commission; provided further, that the Grantors shall not use said parcel of land, or permit the same to be used, for any purpose or in any manner which will interfere with, damage, or endanger in any way any aqueduct pipe lines, and other structures and improvements, appurtenances or appliances, of the City. The Grantors shall install gates in any additional fences which he may construct across said parcel of real property sufficient in width to allow passage of trucks and other equipment.

3. After installation of the City's first pipe line, the City's Public Utilities Commission shall give the Grantors at least six months' written notice before commencing construction of any additional aqueduct pipe lines, utilities, and other structures or improvements on said parcel of real property.

4. All notices to be given between the parties hereto shall be in writing and served personally or by depositing the same in the United States mail, postage prepaid and addressed to City at the office of its Manager of Utilities, City Hall, San Francisco, California; and to Grantors at Route 1, Box 487-A, Mountain View, California, and the said notice shall be binding upon any successor in interest of the Grantors unless the City is notified in writing of the address of said successor in interest, in which case said notice of the City is to be sent thereto.

5. The tops of all of City's pipe lines and conduits shall be laid below the surface of the ground and covered to a depth of not less than 18 inches, excepting pipe line appurtenances which may be constructed flush with or above the surface of the ground.

6. The covenants herein set forth shall inure to the benefit of, and bind, the heirs, successors and assigns of the respective parties hereto.

Reference is made to said document for full particulars.

Affects: Parcel One

7. Recitals contained in the following document or instrument of record,

Instrument: Deed

Executed By: Joseph T. Monteleone, Ignatius Monteleone and Maurice D. Monteleone

Dated: January 8, 1950

Recorded: April 11, 1950 in Book 1960 at Page 27 as Instrument No. 631378

As follows:

Also the right to cut and all existing fences and to install gates therein at such points as may be necessary for the convenience of the City in the use of said parcel of real property, and the right to protect pipes and other structures or improvements of the City by means of fences or otherwise; provided, however, that the City shall not construct any other fences upon or with respect to said parcel of real property without the consent of the Grantors. If the City should damage the Grantors' roads or fences, the City shall, at its own expense, repair such damage.

The subject Deed is made subject to the foregoing and the following covenants:

1. The Grantors are permitted the right to plant, cultivate, irrigate, harvest and retain crops from the parcel of land herein described, and to use said land for pasturage, until such time as the City required said land for construction purposes, and thereafter to cultivate, plant, irrigate, harvest and retain crops from, and to use for pasturage, such parts of said parcel of land as are not actually needed by the City for the construction, maintenance, repair, operation, renewal and replacement of its aqueduct pipe lines and other structures or improvements, appurtenances and appliances; provided, that the Grantors shall not plant any trees on said above described parcel of real property.

2. The Grantors are permitted the right to construct, maintain, use, repair, replace, and renew, over and across said parcel of land, (but not along in the direction of the City's pipe line or lines), fences, roads, streets, earth fills, sewers, water pipes, gas pipes, electric power lines, telephone lines, telegraph lines; provided, however, that the locations and grades of such improvements and structures of the Grantors, and the amount of any earth fill, proposed to be placed on said parcel of real property by the Grantors, shall first be approved by the City's Public Utilities Commission; provided further, that the Grantors shall not use said parcel of land, or permit the same to be used, for any purpose or in any manner which will interfere with, damage, or endanger in any way any aqueduct pipe lines, and other structures and improvements, appurtenances or appliances, of the City.

The Grantors shall install gates in any additional fences which he may construct across said parcel of real property sufficient in width to allow passage of trucks and other equipment.

3. After installation of the City's first pipe line, the City's Public Utilities Commission shall give the Grantors at least six months' written notice before commencing construction of any additional aqueduct pipe lines, utilities, and other structures or improvements on said parcel of real property.

4. All notices to be given between the parties hereto shall be in writing and served personally or by depositing the same in the United States mail, postage prepaid and addressed to City at the office of its Manager of Utilities, City Hall, San Francisco, California; and to Grantors at Route 1, Box 487-A, Mountain View, California, and the said notice shall be binding upon any successor in interest of the Grantors unless the City is notified in writing of the address of said successor in interest, in which case said notice of the City is to be sent thereto.

5. The tops of all of City's pipe lines and conduits shall be laid below the surface of the ground and covered to a depth of not less than 18 inches, excepting pipe line appurtenances which may be constructed flush with or above the surface of the ground.

6. The Grantors are permitted to allow their existing house to partially encroach on said land, in its present location; provided that such encroachment right shall terminate when said house is destroyed or removed from said land by the Grantors.

7. The covenants herein set forth shall inure to the benefit of, and bind, the heirs, successors and assigns of the respective parties hereto.

Reference is made to said document for full particulars.

Affects: Parcel Two

8. Recitals contained in the following document or instrument of record,

Instrument: Deed of Executrix

Executed By: Marian Patron, as Executrix of the Last Will and Testament of Mary Cardoza, also known as Marie Cardoza, deceased

Dated: September 6, 1950

Recorded: March 28, 1952 in Book 2391 at Page 433 as Instrument No. 786953

As follows:

Reference is hereby made to the orders rendered by the Superior Court of the State of California, in and for the County of Santa Clara, the notices given, and the proceedings had, in the Matter of the Estate of Mary Cardoza, also known as Marie Cardoza, deceased, No. 35421, and particularly to the Order Authorizing Executrix to Compromise Claim, directing conveyance of the above described real property, dated August 31, 1950, a certified copy of which Order is now on file and of record in the Office of the County Recorder of Santa Clara county, California, Recorder's File no. 660653, reference is hereby made to said order and the recognition thereof, and this deed is given pursuant to said proceedings and order.

Reference is made to said document for full particulars.

Affects: Parcel Three

9. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as condemned by Final Decree of Condemnation,

Superior Court of: Santa Clara

County Case No.: P 14320

In favor of: City of Mountain View, A Municipal Corporation

Purpose: Street or roadway

Recorded: November 21, 1968, Book 8343, Page 266, of Official Records

Affects: As follows:

Beginning at the point of intersection of the Northwesterly line of Whisman Road with the Northeasterly line of said Lot 102, thence, along said Northeasterly line of said lot 102, North 73 degrees 40' West 15.00 feet; thence, parallel with said Northwesterly line of Whisman Road, South 16 degrees 19' West 111.90 feet to the Southwesterly line of that certain 1.032 acre tract described in deed to City and County of San Francisco, recorded in Book 2396, Page 37, Official Records of Santa Clara County; thence, along last mentioned line, South 76 degrees 57' 10" East 16.02 feet to a point in said Northwesterly line of Whisman Road, North 16 degrees 19' East 111.00 feet to the Point of Beginning.

Affects: Parcel Three

10. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: City of Mountain View, A Municipal Corporation
Purpose: Roadway and public utilities
Recorded: April 28, 1982, Instrument No. 7349434, Book G751, Page 45, of Official Records
Affects: As follows:

BEGINNING at the intersection of the center line of Tyrella Avenue as said Avenue is shown on that certain Map entitled "Map of Hamwood" which Map was filed for record in Book "N" of Maps at Page 86, Santa Clara County Records, with the Northerly line of that certain Parcel of land described in the Deed from City and County of San Francisco, A Municipal Corporation, to Arthur Walker, et ux, recorded November 24, 1958 in Book 4239 of Official Records at Page 150, Santa Clara County Records; thence leaving said POINT OF BEGINNING and said center line along said Northerly line North 79°55'15" West 25.15 feet to a point on a line parallel with and distant 25.00 feet Westerly measured at right angles from said center line; thence leaving said Northerly line along said parallel line North 16°26' East 80.50 feet more or less to a point on the Northerly line of that certain Parcel of land described in the Deed from Rosa Martin Nimenes and Emmaline Maciel to City and County of San Francisco, A Municipal Corporation, recorded June 27, 1950 in Book 2004 of Official Records at Page 480, Santa Clara County Records; thence leaving said parallel line along last described Northerly line South 79°55'15" East 25.15 feet to a point on said center line of Tyrella Avenue; thence leaving said Northerly line along said center line South 16°26' West 80.50 feet more or less to the POINT OF BEGINNING.

11. An option to purchase said land with certain terms, covenants, conditions and provisions as set forth therein

Disclosed By: Memorandum of Option
Optionor: City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission (the "SFPUC")
Optionee: KMJ Urban Communities, LLC, a California limited liability company
Recorded: May 22, 2006, Instrument No. 18943577, of Official Records

EXHIBIT D

DISCLOSURE MATERIALS

Disclosure Materials

1. All materials and information related to the Property (a) contained in the RFQ/P issued on February 13, 2004, in the Former Option Agreement and in the subsequent six (6) amendments thereto; (b) disclosed to Optionee, KMJ, or any of their respective affiliates, constituent members, or Agents, during any of the bidders' due diligence conferences; (c) contained in the files or records of the City of Mountain View with respect or relating to any application by Optionee, KMJ, or their respective affiliates, constituent members, or Agents in connection with the condition, development, or use of the Property, including the draft Initial Study and draft preliminary Negative Declaration dated March 2008 prepared by or on behalf of the City of Mountain View, and any reports or studies related thereto, (d) contained in any environmental assessment of the Property conducted by or on behalf of KMJ or Optionee, including, without limitation, the Phase I Environmental Site Assessment dated January 8, 2007 with respect to the Property conducted and prepared by Treadwell & Rollo, Inc. and the Phase II Environmental Site Assessment dated January 8, 2006 with respect to the Property conducted and prepared by Treadwell & Rollo, Inc., (e) regarding the presence of active, destroyed, or abandoned groundwater monitoring wells on or about the Property (including all information contained in the written materials regarding such groundwater monitoring wells sent to City on or about December 27, 2012 by Barbara Murray of the Santa Clara Valley Water District (the "**Groundwater Wells Summary**"), and (f) otherwise disclosed in writing to Optionee by City (including the matters referenced in this Exhibit D).

2. With respect to any disclosures that may be required pursuant to applicable federal, state, or local laws (including California Government Code Sections 8589.3, 8589.5 and 51183.5, California Public Resources Code Sections 2621.9, 2694 (Natural Hazards Disclosure), and California Health and Safety Code Section 25359.7 (Hazardous Substance Disclosure)) in connection with the transfer of the Property by City to Optionee pursuant to this Agreement, City's Director of Property has no actual knowledge of any material facts relating to the physical condition of the Property with respect to the presence of any natural hazard on, about, or associated with the Property, the Property's classification as being in a "Special Flood Hazard Area," a "Dam Inundation Area," a "Fire Hazard Severity Zone," a "Wildland Fire Area," or an "Earthquake Fault Zone," or regarding the presence of hazardous substances on, under, or about the Property, except as follows:

a. Special Flood Hazard Areas. Based on the California Commercial Disclosure Report prepared on or about July 12, 2012, by Fidelity National Disclosure Source, LLC dba Disclosure Source (the "**Disclosure Report**"), a copy of which has been provided to Optionee, City's Director of Property is informed and believes that the Property is not located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency.

- b. Dam Inundation Areas. Based on the Disclosure Report, City's Director of Property is informed and believes that the Property is not located within an area of potential flooding shown on an inundation map designated pursuant to California Government Code Section 8589.
- c. Fire Hazard Severity Zone. Based on the Disclosure Report, City's Director of Property is informed and believes that the Property is not located within an area designated as a very high fire hazard severity zone pursuant to California Government Code Section 51179.
- d. Wildland Fire Areas. Based on the Disclosure Report, City's Director of Property is informed and believes that the Property is not located within an area designated as a wildland fire area by the Director of Forestry and Fire Protection for the State of California.
- e. Earthquake Fault Zones. Based on the Disclosure Report, the City's Director of Property is informed and believes that the Property is in a Seismic Hazard Zone as so designated under the Seismic Hazards Mapping Act, Sections 2690 et seq. of the California Public Resources Code.
- f. Seismic Hazard Zones. Same as (e) above.
- g. Hazardous Materials. The City's Director of Property is informed and believes that at least eight (8) groundwater monitoring wells were previously located on the Property in connection with the discovery by the Environmental Protection Agency of certain tetrachloroethylene (TCEs) on industrial property across or along Whisman Road in the vicinity of the Property (*see*, copy of Groundwater Wells Summary, a copy of which has been provided by City to Optionee). The City's Director of Property is informed and believes that those eight (8) wells were or are located on or about the Property at the approximate locations indicated on the diagram attached as Exhibit D-1. The City's Director of Property is informed and believes that approximately four (4) of those eight (8) wells are still active. City's Director of Property has no actual knowledge regarding whether the groundwater on the Property is affected or has been affected by the TCEs discovered near the Property but is informed and believes that information relating to any such possible contamination may be found in: (i) the draft Initial Study and draft preliminary Negative Declaration dated March 2008 prepared by or on behalf of the City of Mountain View, and any reports or studies related thereto, (ii) the Phase I Environmental Site Assessment dated January 8, 2007 with respect to the Property conducted and prepared by Treadwell & Rollo, Inc., (iii) the Phase II Environmental Site Assessment dated January 8, 2006 with respect to the Property conducted and prepared by Treadwell & Rollo, Inc., and (iv) such other documents, reports, or records contained in the files or records of the City of Mountain View with respect or relating to any application by Optionee, KMJ, or their respective affiliates, constituent members, or Agents in connection with the condition, development, or use of the Property.

EXHIBIT D-1

**Diagram of Groundwater Monitoring Wells on or About the Property
Provided by Santa Clara Valley Water District**

[Attach Diagram Exhibit D-1]

EXHIBIT E
FORM OF PERMIT

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
REVOCABLE PERMIT**

(Permit # _____)

THIS REVOCABLE PERMIT (this "**Permit**") dated for reference purposes only as of _____, is made by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), acting by and through its Public Utilities Commission ("**PUC**"), and **MV URBAN VILLAGE HOMES, LLC**, a California limited liability company ("**Permittee**").

City and Permittee agree as follows:

Recitals

1. **License.** For the limited purposes and subject to the terms, conditions and restrictions set forth below. City confers to Permittee a revocable personal, non-exclusive, and non-possessory privilege ("**Permit**") to enter upon and use that certain real property owned by City situated in the City of Mountain View, County of Santa Clara, State of California, more particularly described in the attached **Exhibit A** (the "**Permit Area**"). The Permit Area is generally shown on the attached **Exhibit B**. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement, or other property interest or estate whatsoever in the Permit Area, or any portion thereof. Nothing in this Permit shall be construed as granting or creating any franchise rights pursuant to any federal, state, or local laws.

THE PRIVILEGE GIVEN TO PERMITTEE UNDER THIS PERMIT IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF CITY IN THE PERMIT AREA ARE CONCERNED, AND PERMITTEE SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE PERMIT AREA. WITHOUT LIMITING THE FOREGOING, THIS PERMIT IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL EXISTING AND FUTURE DOCUMENTS AND INSTRUMENTS OF RECORD AFFECTING THE PERMIT AREA (COLLECTIVELY, THE "**RECORDED DOCUMENTS**"). PERMITTEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS, AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING WORK IN THE PERMIT AREA, INCLUDING ANY APPROVALS, PERMITS, CONSENTS, OR NOTICES REQUIRED FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS. PERMITTEE COVENANTS AND AGREES, FOR THE BENEFIT OF CITY, THAT PERMITTEE SHALL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THE RECORDED DOCUMENTS AND ANY OTHER RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY PERMITTEE ON THE PERMIT AREA PURSUANT TO THIS PERMIT, AND CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. PERMITTEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS

AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE PERMIT AREA FOR PERMITTEE'S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON PERMITTEE'S RIGHTS UNDER THIS PERMIT, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, PERMITS, CONSENTS, OR NOTICES FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS PERMIT.

2. Use of Permit Area.

(a) **Permit Approval.** Notwithstanding the fact that the initial permitted acts described below in clause (b) must occur within the Due Diligence Period (as defined in that certain Restated Option Agreement that has been executed and delivered by Permittee and is being considered for approval by City's Board of Supervisors and the Mayor (the form of which is attached hereto, the "**Option Agreement**"), Permittee is aware that any permit to enter issued by the General Manager of the PUC without prior approval of the PUC cannot exceed a term of ninety (90) days. If (i) the Option Agreement, is not approved by the City's Board of Supervisors and Mayor within ninety (90) days of the date of this Permit at 5:00pm; or (ii) this Permit is not approved by the PUC by 5:00pm within such ninety (90) day period, then this Permit shall automatically revoke. Upon such revocation, all rights of Permittee to enter the Permit Area shall immediately cease. Subsequent reinstatement of this Permit or the issuance of a new permit substantially the same as this Permit, as applicable, shall occur only upon the earlier of (1) the Approval Date (as defined in the Option Agreement); and (2) the date the PUC either approves this Permit or approves the issuance of a new permit substantially the same as this Permit. All rights of Permittee to use the Permit Area are subject to the foregoing.

(b) **Initial Permitted Acts.** Permittee, commencing on the date that this Permit is mutually executed and delivered by the parties (the "**Effective Date**") and continuing for a period of thirty (30) days thereafter, then commencing again on the Approval Date (as defined in the Option Agreement) and continuing for sixty (60) days thereafter, subject to the permitted extensions of the Due Diligence Period (as defined in the Option Agreement) described herein and in the Option Agreement, may enter and use the Permit Area for the sole purpose of conducting all necessary environmental and due diligence activities in the Permit Area in connection with its rights under the terms of Paragraph 7 of the Option Agreement. Notwithstanding the foregoing, prior to any entry to perform any on-site testing, excavation work, environmental testing, any invasive testing, or to disturb the surface of the Permit Area, Permittee (i) shall give the PUC's General Manager written notice thereof (provided that Permittee may include in a single notice information regarding multiple testing of the Permit Area), which notice shall include the identity of the company or persons who will perform such testing and the description of their roles; the precise time and location of the testing, including the depths of any disturbance of the soil; the proposed scope of the testing, including, the extraction of soil, groundwater, or other materials; the description of any on-site sampling and method of extraction of samples, a description of what the soil sampling and/or drilling is based on (i.e., Preliminary Environmental Assessment, etc.); the storage methodology, location, and timeframe for removal of investigation derived waste; a list of any screening that does not involve obtaining samples; the health and safety plan for employees; and (ii) must receive

written approval from the PUC's General Manager for such proposal prior to entering the Permit Area to conduct such work. The PUC's General Manager shall have the right, at his reasonable discretion, to limit or condition the proposed testing to that which is reasonable and customary by written notice to Permittee within ten (10) business days after the PUC's General Manger's receipt of Permittee's notice. If any time after the commencement of the Due Diligence Period, the City does not approve, either with or without limitations or conditions, any such request within such ten (10) business days after the City's receipt of such notice, then the Due Diligence Period shall be extended, on a day-for-day basis, for each day of delay after such ten (10) business day period caused by the City's delay of such approval. If there is any dispute with regard to the proposed testing, the parties shall meet and confer to resolve any differences.

(c) **Subsequent Permitted Acts.** Upon the expiration of the Due Diligence Period, in the event that Permittee has not terminated, or is not deemed to have terminated, the Option (as defined in the Option Agreement) on or prior to the expiration of the Due Diligence Period, Permittee may enter and use the Permit Area for the sole purpose of its activities associated with Permittee's pursuit of entitlements relating to its proposed use of the Property, provided that the license granted under this subsection 2(b)(c) shall require that, as a precondition to entering the Permit Area, Permittee must give the PUC's General Manager written notice thereof stating the identity of the company or persons who will enter the Permit Area, the dates and times such company or persons will be in the Permit Area, and the specific activities that will take place in the Permit Area, (ii) is subject to written approval from the PUC's General Manager prior to entering the Permit Area; and (iii) shall not include the right to conduct any invasive testing.

(d) **Permitted Work.** The information specified in the notices given by Permittee regarding the acts permitted hereunder as stated in subsections (b) and (c) above shall be attached to the Permit as **Exhibit C** and **Exhibit D** respectively once approved, and individually and collectively are referred to as the "**Permitted Work**". The Permitted Work must be performed in strict accordance with the terms of this Permit and Permittee may not use the Permit Area for any other purpose whatsoever. If Permittee or its Agents (as defined below) take any sample from the Permit Area in connection with any approved testing, Permittee shall, upon request, provide to City a portion of such sample being tested to allow City to perform its own testing. City or its representative may be present to observe any testing or other inspection performed on the Permit Area. Permittee shall promptly deliver to City copies of any reports (including drafts) relating to any testing or other inspection on the Permit Area performed by Permittee or its Agents, but shall not deliver copies of any such reports to any other person or entity without Permittee's prior, written approval. Permittee shall keep all test results and information strictly confidential, and shall indemnify, reimburse, defend, and hold City harmless from and against any loss, cost, expense, or damage resulting from Permittee's failure to keep any information obtained from an inspection or testing of the Permit Area strictly confidential; provided, however, Permittee shall not be liable if and to the extent Permittee's disclosure of such information is required by applicable law or a court order.

(e) **Subject to City Uses.** Permittee is aware that the Permit Area constitutes a portion of City's water pipeline delivery system. Notwithstanding anything to the contrary in this Permit, any and all of Permittee's activities hereunder shall be subject and subordinate at all times to City's existing and future use of the Permit Area for municipal and other purposes. Permittee shall, at City's request, immediately remove any property or improvements on the Permit Area to allow City access to the pipelines. In the event City deems it necessary, in City's

sole discretion, City shall have the right to remove any such property or improvements and City shall not be responsible for restoring or returning same to its prior condition.

(f) Permits and Approvals. Before beginning any work in the Permit Area, Permittee shall obtain any and all permits, licenses, and approvals (collectively, "approvals") of all regulatory agencies and other third parties that are required to commence, complete, and maintain the Permitted Work. Promptly upon receipt of such approvals, Permittee shall deliver copies of them to PUC. Permittee recognizes and agrees that no approval by PUC for purposes of Permittee's work hereunder shall be deemed to constitute the approval of any federal, state, or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals, at Permittee's sole cost.

(g) Exercise of Due Care. Permittee shall use, and shall cause its Agents to use, due care at all times to avoid any damage or harm to the City's water pipelines or other property or the Permit Area, including but not limited to the native vegetation and natural attributes of the Permit Area and to minimize slope erosion. Under no circumstances shall Permittee damage, harm, or take any rare, threatened or endangered species on or about the Permit Area. Permittee shall not disturb the surface of the Permit Area or perform any excavation work without the prior, written approval of City, which City may withhold in its sole discretion. City shall have the right to condition and/or oversee any permitted excavation work. Permittee shall mark, at its own expense, the location of the City's water transmission mains within the Permit Area and shall not use any pick, plow or other sharp tool to remove the two feet of soil around the transmission mains, provided that Permittee may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this Permit. Permittee shall immediately inform City of any actual or potential damage to the coating of the pipeline, and any such damage shall be promptly repaired by Permittee, at its own expense, to the satisfaction of City prior to backfilling; provided, City may elect, in its sole discretion, to make any necessary repairs itself, at Permittee's sole cost, by notifying Permittee of such fact. Upon completion of the repairs, City shall send to Permittee a bill therefor which Permittee shall pay within thirty (30) days following receipt.

(h) Heavy Equipment. Permittee shall not use any heavy construction equipment over or about City's pipelines.

(i) Restoration of Permit Area. Immediately following completion of any work permitted hereunder, Permittee shall remove all debris and any excess dirt and shall restore the Permit Area to a condition satisfactory to City in its sole discretion. Permittee shall restore excavated areas with new vegetation (including irrigation and maintenance until established) and erosion control netting, all as requested by City.

(j) Revocability. Permittee acknowledges and agrees that the license granted hereunder, regardless of any costs incurred by Permittee in the exercise of such license, shall not in any way whatsoever limit City's right to revoke this Permit pursuant to the terms hereof or any of City's other rights hereunder; provided, however, that except in cases where revocation is required because of City's determination, at its sole discretion, that City requires exclusive use and access to the Property because of any damage or perceived threat of damage to City's water pipelines or associated appurtenances on or about the Property or any other emergency situation (whether or not caused by Permittee or its Agents), City will not revoke this Permit because of any breach or nonperformance of Permittee of its obligations pursuant to this Permit without

giving Permittee at least ten (10) days' prior written notice of any such breach that specifies such breach and provides Permittee with an opportunity to cure such breach prior to the expiration of such ten (10)-day period.

(i) **Potholing.** Any potholing proposed by Permittee and approved by the PUC's General Manager pursuant to this Permit shall be subject to the direction of the City's inspector. Potholing using the soft dig method (vacuum soil extraction system) is preferred. The use of other mechanical methods such as digging with a backhoe must be approved by PUC at least five (5) days prior to commencing such work. Notwithstanding the foregoing, the last two (2) feet above the top of the pipe must be dug manually, without the use of any machines.]

3. **Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) **Improvements.** Permittee shall not construct or place any temporary or permanent structures or improvements in, on, under, or about the Permit Area, nor shall Permittee make any alterations or additions to any of existing structures or improvements on the Permit Area. For purposes hereof, asphalt, concrete, and cementitious concrete driveways, sidewalks, and parking areas, shacks and storage facilities, and fences shall be deemed "improvements."

(b) **Dumping.** Permittee shall not cause or permit the dumping or other disposal in, on, under, or about the Permit Area of landfill, refuse, Hazardous Material (as defined below), or any other materials, including but not limited to materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(c) **Hazardous Material.** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, released, or disposed of in, on, under, or about the Permit Area, or transported to, from, or over the Permit Area. Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under or about the Permit Area. Permittee shall further comply with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts and the like (collectively, "Laws") requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to City and in accordance with all Laws and using the highest and best technology available, promptly return the Permit Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford City a full opportunity to negotiate and participate in any discussion with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise proceeding involving Hazardous Material, and any other abatement or clean-up plan, strategy, and procedure. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, the following: any material or

substance defined as a "hazardous substance, pollutant, or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area; and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas, or natural gas liquids, provided, the foregoing shall not prohibit Permittee from traversing to, from, and across the Permit Area in standard motor vehicles that do not exceed the effects of the "AASHO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying 8-tons (16,000 lbs.). Permittee shall be responsible to provide PUC adequate evidence that its equipment and vehicles meet the foregoing requirements. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the Permit Area.

(d) Nuisances. Permittee shall not conduct any activities in, on, under, or about the Permit Area that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(e) Damage. Permittee shall not do anything in, on, under, or about the Permit Area that could cause damage or interference to any pipelines or other property located in, on, under, or about the Permit Area.

(f) Use of Adjoining Land. Permittee acknowledges that the privilege given under this Permit shall be limited strictly to the Permit Area. Permittee shall not traverse over or otherwise use any adjoining lands of City.

(g) Ponding; Water Courses. Permittee shall not cause any ponding on the Permit Area or any flooding on adjacent land. Permittee shall not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the Permit Area, nor shall Permittee engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

4. Term. The term of this Permit shall commence on the Effective Date and, with respect to the Permitted Work described in subsection 2(b) above, shall expire concurrently with the expiration of the Due Diligence Period (as defined in the Option Agreement). The term of this Permit with respect to the Permitted Work described in subsection 2(c) above shall commence on the expiration of the Due Diligence Period, provided that the Option has not previously terminated, and shall expire concurrently with the earlier to occur of (i) the expiration of the Option if not exercised by Permittee, or (ii) the Closing. Upon expiration of the term of this Permit, Permittee shall have no further obligations under this Permit, except for any obligations of Permittee which expressly survive the termination of this Permit.

5. Insurance.

(a) Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, and cause its contractors and subcontractors to maintain at all times during any construction activities on the Permit Area insurance the following or such lesser standards of insurance that Permittee may request that are approved in writing by City in City's reasonable discretion: (i) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, independent contractors, explosion, collapse and underground (XCU), Broadform Property Damage, Products Liability and Completed Operations; (ii) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned and hired automobiles, as applicable, if Permittee uses or causes to be used any vehicles in connection with its use of the Permit Area, and (iii) Workers' Compensation Insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its Public Utilities Commission, and their respective officers, agents, and employees; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability, and (iii) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(c) All policies shall be endorsed to provide thirty (30) days' prior written notice to City of cancellation, intended non-renewal, or material reduction in coverage.

(d) Prior to the commencement date of this Permit, Permittee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

(e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(f) Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration or termination, to the effect that should any occurrences during the Permit term give rise to claims made after

expiration or termination of the Permit, such claims shall be covered by such claims-made policies.

(g) Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

(h) Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's property.

6. Compliance with Laws. Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and reasonable manner and in compliance with all Laws of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) and all covenants, restrictions, and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by City for purposes of this Permit shall be deemed to constitute approval of any federal, state, City, or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost or limit in any way City's exercise of its police powers.

7. Covenant to Maintain Permit Area. In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary, and sightly condition, so far as the Permit Area may be affected by Permittee's activities hereunder.

8. Removal or Alteration of Facilities. Without limiting City's rights hereunder, Permittee shall promptly, at City's written request, alter or remove at its sole expense any and all facilities, improvements, plantings, or other property installed or placed in, on, under or about the Permit Area by Permittee, as may be necessary to avoid any actual or potential interference with any of City's pipelines, power lines, facilities, or other structures now or later constructed, or with the maintenance thereof or with any other operations or land uses by City. In the request, City shall have the right to specify reasonable time limits for completion of the work. If after such written notice Permittee fails to complete the requested work within the prescribed time limits, City shall have the right to perform the requested work and charge Permittee all costs and expenses incurred by City in performing the work. Such amount shall be due and payable upon City's demand. In the event of an emergency City may, at its sole option and without notice, alter,

remove or protect at Permittee's sole expense, any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the Permit Area by Permittee. The owner of such utility facilities shall, upon written or oral notice by City that an emergency exists, take immediate action at its sole expense to protect, remove or relocate such facilities as required by City to meet the emergency.

9. Signs. Permittee shall not place, erect, or maintain any sign, advertisement, banner, or similar object in, on, or about the Permit Area without PUC's prior written consent, which PUC may withhold at its sole discretion.

10. Surrender. Upon the expiration of this Permit or within ten (10) days after any sooner revocation or other termination of this Permit, Permittee shall surrender the Permit Area in the same condition as received, free from hazards and clear of all debris. At such time, Permittee shall remove all of its property from the Permit Area and any signs.

11. Repair of Damage. If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged or threatened by any of the activities conducted by Permittee or anyone acting by or through Permittee hereunder, Permittee shall immediately, at its sole cost, notify City by facsimile of such damage or threat. City may, but shall not be obligated, to remedy such damage or threat at Permittee's sole cost, or City may elect to witness Permittee's repair work. In the event City elects not to remedy such damage or threat, Permittee shall repair any and all such damage and restore the Permit Area or property to its previous condition subject to City's inspection, review and approval. City has no responsibility or liability of any kind with respect to any utilities that may be on, in, or under the Permit Area. Permittee has the sole responsibility to locate such utilities and other existing facilities and protect them from damage. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder; provided, Permittee shall obtain City's prior, written approval to the provision of such services or utilities in, on, under, or through the Permit Area.

12. City's Right to Cure Defaults by Permittee. If Permittee fails to perform any of its obligations under this Permit to restore the Permit Area, remove or alter facilities, or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' experts' and consultants' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

13. No Costs to City. Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

14. Indemnity. Permittee shall indemnify, defend, reimburse, and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("**Claims**"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on, or about the Permit Area, or any part thereof, whether such injury, death, damage, or destruction is caused by the person or property of Permittee, its officers, directors, members, employees, agents, consultants, contractors or subcontractors (collectively, "**Agents**"), its invitees, guests or business visitors (collectively, "**Invitees**") relating to any use or activity under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants, or conditions of this Permit, (c) the use of the Permit Area or any activities conducted thereon by Permittee, its Agents, or Invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents, or Invitees, on, in, under, or about the Permit Area, any improvements, or into the environment; except solely to the extent of Claims resulting directly from the negligence or willful misconduct of City or City's authorized representatives. Permittee's obligations under this Section 14 shall also exclude any Claims to the extent resulting from (w) the City's breach or default under this Permit, (x) any failure or malfunction of the City's pipeline facilities to the extent not caused by Permittee or its Agents or Invitees, (y) any Hazardous Materials on or about the Permit Area that pre-existed Permittee's or its Agents' or Invitees' entry onto the Permit Area or (z) any other pre-existing conditions which are discovered by Permittee. In addition to Permittee's obligation to indemnify City, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

15. Waiver of Claims.

(a) Neither City nor any of its commissions, departments, boards, officers, agents, or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors, or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area, its use by Permittee, or resulting from any pipeline break or from any pipeline repair or maintenance activities.

(b) Permittee acknowledges that this Permit is freely revocable by City (subject to the terms and provisions of Section 2(j) of this Permit) and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each

of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that City exercises its right to terminate this Permit consistent with the terms of Section 2(j) hereof.

(c) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations relating to displacement, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) City would not be willing to give this Permit in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages and covenants not to sue for such damages, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the negligence and willful misconduct of City or its Agent.

(e) As part of Permittee's agreement to accept the Permit Area in its "As Is" condition as provided below, and without limiting such agreement, Permittee on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its Agents, and their respective heirs, successors, administrators, personal representatives, and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Permit Area and any related improvements or any law or regulation applicable thereto, or the suitability of the Permit Area for Permittee's intended use.

(f) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code

Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

Initial: Permittee _____

16. As Is Condition of Permit Area; Disclaimer of Representations. For purposes of this Permit, Permittee accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents, or employees, and subject to all applicable laws, rules and ordinances governing the use of the Permit Area. Without limiting the foregoing, this Permit is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances, and other title matters affecting the Permit Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

17. No Assignment. This Permit is personal to Permittee and shall not be assigned, conveyed, or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey, or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

18. No Joint Ventures or Partnership; No Authorization. This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in, or relating to the Permit Area. Permittee is not a state actor with respect to any activity conducted by Permittee on, in, under or around the Permit Area. The giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in, around or relating to the Permit Area.

19. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.5 *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

20. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Permit, Permittee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Permittee, in any of Permittee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Permittee.

(b) **Other Subcontracts.** Permittee shall include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above.

21. Notification of Limitations on Contributions. Through its execution of this Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

22. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

23. Notices. Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefor, with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

City or PUC: Real Estate Services
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director

Permittee: MV Urban Village Homes, LLC
c/o Summerhill Homes LLC, Managing Member
3000 Executive Parkway, Suite 450
San Ramon, CA 94583
Attn: Chris Neighbor, Senior Vice President, Land
Acquisitions
Facsimile: (925) 244-7501

with copies to:

MV Urban Village Homes, LLC
c/o Summerhill Homes LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel
Facsimile: (650) 213-8183

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed copy of a notice.

24. No Tobacco Advertising. Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property that is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

25. Pesticide Prohibition. Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Permittee to submit to the PUC an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Premises during the term of this Permit, (b) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address, and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with Sections 303(a) and 303(b) of the Pesticide Ordinance.

26. Conflict of Interest. Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Sections 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

27. Disclosure. Permittee understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Government Code Section 6250 *et seq.*), apply to this Permit and any and all records, information, and materials submitted to the City in connection with this Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Permittee hereby authorizes the City to

disclose any records, information and materials submitted to the City in connection with this Permit.

28. General Provisions. (a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Permit. (c) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by City hereunder may be made in the sole and absolute discretion of City. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence in all matters relating to this Permit. (g) This Permit shall be governed by California law and City's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the City's use of its own attorneys. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Permittee may not record this Permit or any memorandum hereof. (k) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (l) Any sale or conveyance of the property burdened by this Permit by City shall automatically revoke this Permit. Notwithstanding anything to the contrary contained in this Permit, Permittee acknowledges and agrees that no officer or employee of City has authority to commit City to this Permit unless and until a resolution of City's PUC shall have been duly adopted approving this Permit and authorizing the transaction contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon enactment of such a resolution, and this Permit shall be null and void if City's PUC does not approve this Permit, in its sole discretion. (m) The Recitals set forth above are true and correct and are incorporated into this Permit. The attached exhibits referred to herein are incorporated into and made a part of this Permit.

PERMITTEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS PERMIT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

[Signatures on following pages]

PERMITTEE:

MV URBAN VILLAGE HOMES, LLC,
a California limited liability company

By: Summerhill Homes, LLC,
a California limited liability company
Its Managing Member

By: _____

Title: _____

By: _____

Title: _____

By: KMJ Urban Communities, LLC,
a California limited liability company

By: _____

Title: _____

By: _____

Title: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Harlan L. Kelly, Jr. , General Manager
Public Utilities Commission

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel, Deputy City Attorney

Authorized by
Public Utilities Commission

Resolution No. _____
Adopted: _____

Attested: _____
Secretary
Public Utilities Commission

EXHIBIT A TO PERMIT

Description of Permit Area

All that certain Real Property in the City of Mountain View, County of San Clara, State of California, described as follows:

PARCEL ONE:

A portion of that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn et ux, by Joint Tenancy Deed dated February 17, 1947 and recorded March 13, 1947 in Volume 1430 at Page 252, Official Records, Santa Clara County, hereinafter referred to as the Reyburn Parcel; said portion being a portion of Lot 115, "Map of Hamwood" which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on February 23, 1912 in Book "N" of Maps, at Page 86, being more particularly described as follows:

Commencing at a point in the Easterly boundary of the existing Tyrella Avenue as delineated and so designated on the above mentioned "Map of Hamwood" where the same is intersected by the Northerly line of the above mentioned Reyburn Parcel; thence from said point of commencement and running along the common boundary between the above mentioned Reyburn Parcel and that certain parcel of land conveyed by Clara F. Gann to John Sciascia et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 at Page 88, Official Records, Santa Clara County South 73° 34' 30" East 405.00 feet to the most Easterly corner of the above mentioned Reyburn Parcel; thence, along the common boundary between the above mentioned Reyburn Parcel, and that certain parcel of land conveyed by M. Paganini et al, to Joe A. Silva et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558 Official Records, Santa Clara County, South 16° 26' West 28.32 feet to a point distant along said common boundary North 16° 26' East 182.28 feet from its intersection with the Northerly boundary of the existing Sherland Avenue; thence, from said point North 79° 55' 15" West 407.50 feet to a point in the above mentioned Easterly boundary of Tyrella Avenue; thence, along said Easterly boundary North 16° 26' East 73.30 feet to the point of commencement.

PARCEL TWO:

A portion of that certain parcel of land conveyed by Clara F. Gann to John Sciascia, et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 of Official Records at Page 88, Santa Clara County Records, hereinafter referred to as the Sciascia Parcel, being a portion of Lot 114, "Map of Hamwood", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 23, 1912 in Book "N" of Maps, page 86, being more particularly described as follows:

Commencing at the most Southerly corner of the above mentioned Sciascia Parcel and running thence along the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn, et ux, by Joint Tenancy deed dated February 17, 1947 and recorded March 13, 1947 in Vol. 1430 of Official Records, page 252 Santa Clara County Records, N. 73° 34' 30" W. 405.00 feet to the Easterly boundary of Tyrella Avenue, thence along said Easterly boundary N. 16° 26' E. 7.20 feet to a

point being distant along said Easterly boundary S. 16° 26' W. 95.30 feet from the Northerly line of the above mentioned Sciascia Parcel; thence from said point, S. 79° 55' 15" E. 407.50 feet to a point in the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Vol. 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel; thence along the above mentioned common boundary between the Sciascia and Silva Parcels, 16° 26' W. 52.18 feet to the point of commencement.

PARCEL THREE:

Portion of Lots One Hundred Two and One Hundred Three as said lots are delineated and so designated upon that certain map entitled "Map of Hamwood, Santa Clara County, Cal.", which said map was duly recorded in the Office of the County Recorder of Santa Clara County, State of California, on February 23, 1912, in Book "N" of Maps at Page 86 thereof, same being known as the Cardoza property, and being more specifically described as follows:

Commencing at a point in the Westerly boundary of the existing Whisman Road, said point being the most Easterly corner of Lot 102 as said lot is shown on the above mentioned Map, thence along the Westerly boundary of Whisman Road, South 16° 25' 30" West 111,000 feet, thence leaving said Westerly boundary of Whisman Road, North 76° 51' 00" West 122.03 feet and North 79° 55' 15" West 237.86 feet to a point in the common boundary between the above mentioned Cardoza parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et al, by Joint Tenancy Deed dated February 28, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel, said point being distant North 16° 25' 30" East 115.66 feet from the Southwesterly corner of Lot 103 as shown and delineated on the above mentioned map, thence continuing along said common boundary between the Cardoza & Silva parcels North 16° 25' 30" East 144.34 feet to a point being the Northwesterly corner of the above mentioned Lot 102, thence along the Northerly boundary of Lot 102, thence along the Northerly boundary of Lot 102, South 73° 34' 30" East 358.24 feet to the point of commencement.

PARCEL FOUR:

Commencing at a point on a Southeasterly line of Lot No. 105 as per "Map of Hamwood" recorded in Book "N" of Maps at Page 86, Official Records of the County of Santa Clara, State of California, distant thereon Northeasterly 182.27 feet from the Northerly line of the existing Sherland Avenue; running thence Northeasterly along said Southeasterly line of Lot No. 105 a distance 253.33 feet to the northeast corner of said Lot No. 105; thence Northwesterly along the Northeasterly end lines of Lots Nos. 105 to 112, inclusive, as per said "Map of Hamwood" a distance of 800 feet to the northwest corner of said Lot No. 112; thence Southwesterly along the Northwesterly line of said Lot No. 112 a distance of 253.33 feet to a point distant Northeasterly thereon 182.27 feet from the Northeasterly line of the existing Sherland Avenue; thence Southeasterly parallel with the said Northeasterly line of the existing Sherland Avenue a distance of 800 feet to the point of commencement, and being portions of said Lots Nos. 105 to 112, inclusive.

APN: 160-16-044

EXHIBIT B TO PERMIT

Depiction of Permit Area

[Attached]

EXHIBIT C TO PERMIT

Initial Permitted Acts

[To be attached after City approval.]

EXHIBIT D TO PERMIT

Subsequent Permitted Acts

[To be attached after City approval.]

EXHIBIT F

FORM OF CLOSING CERTIFICATE

Closing Certificate

The undersigned (“**Optionee**”) hereby represents, warrants, and certifies to the City and County of San Francisco (the “**City**”) as follows:

(i) All of Optionee’s representations and warranties in that certain Restated Option Agreement between the City and the undersigned and dated as of _____, 2013 (the “**Option Agreement**”), are true and correct as of the date hereof;

(ii) Optionee has been given a full and fair opportunity to review everything in the Disclosure Matters (as defined in the Option Agreement), and Optionee understands and agrees that the City has made no representations or warranties with respect to the truth, accuracy or completeness of the materials in the Disclosure Materials;

(iii) Optionee is purchasing the Property based upon its own independent review of all matters relating to the Property, including but not limited to matters and information not contained in the Disclosure Materials, and not based upon any representation, warranty, or statement, express or implied, oral or in writing, of any City employee, agent, representative, commissioner, or contractor;

(iv) Optionee has not agreed to pay now or in the future, and has not in fact paid, directly or indirectly, any fee, commission, or other thing of value to any City employee, agent, representative, commissioner, or contractor of City in an effort to influence the City’s disposition of the Property; and

(v) As part of Optionee's "AS IS" purchase of the Property, Optionee, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, the City, its Agents, and their respective heirs, successors, legal representatives, and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs, and expenses (including, without limitation, attorneys’ fees), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the Property or City’s or its Agents’ past use of the Property, including, without limitation, the environmental condition of the Property, the presence of any Hazardous Material on, in, or about the Property, and any law, rule, regulation, order, or requirement related thereto. This release specifically includes any claim of indemnification, reimbursement, contribution, or other compensation arising under any federal, state, or local statute, ordinance, regulation, rule, or law now or hereafter existing relating to environmental matters, industrial hygiene, or hazardous material. This release shall survive the Closing. In connection with the foregoing release, Optionee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT

THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM
MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE
DEBTOR.

Optionee's Initials: _____

Dated as of _____

MV URBAN VILLAGE HOMES, LLC, a
California limited liability company

By: Summerhill Homes, LLC, a
California limited liability company
Its Managing Member

By: _____

Title: _____

By: _____

Title: _____

By: KMJ Urban Communities, LLC, a
California limited liability company

By: _____

Title: _____

By: _____

Title: _____

EXHIBIT G

EASEMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

San Francisco Public Utilities Commission
Real Estate Services
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director

(Space above this line reserved for Recorder's use only)

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
AND GRANT OF EASEMENT**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND GRANT OF EASEMENT (this "**Agreement**") dated for reference purposes only as of _____, is made by and between MV URBAN VILLAGE HOMES, LLC, a California limited liability company ("**Buyer**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through its Public Utilities Commission ("**SFPUC**").

RECITALS

WHEREAS, concurrently herewith, City is selling to Buyer that certain property situated in the County of Santa Clara, State of California, described on **Exhibit A** hereto (the "**Property**"), in order for Buyer to develop the Property as a residential development;

WHEREAS, City maintains certain underground water pipelines and certain related facilities on the Property, which facilities shall remain on the Property and limit the acceptable uses of the surface of the Property;

WHEREAS, City's Public Utilities Commission passed Resolution No. 12-0104, and City's Board of Supervisors passed Resolution No. _____, each approving the sale of the Property to Buyer provided that City reserves for itself an access easement to and an easement to among other things, access, inspect, install, use, maintain, construct, improve, alter, expand, operate, remove, and replace the water pipelines and related facilities used and maintained by City and provided further that Buyer's use of the Property is restricted so as to prevent any interference with City's facilities; and

WHEREAS, City and Buyer desire to sell and purchase the Property with the easement reservation, on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer hereby agree as follows:

1. Reservation of Easement. Subject to Buyer's uses as permitted pursuant to paragraph 3 below, City hereby reserves for itself, its successors and assigns, an exclusive, perpetual easement (the "**Easement**") for pedestrians and vehicles (i) over and across an eighty (80) foot wide area of the Property that traverses the entire Property as shown in **Exhibit B** and described in **Exhibit B-1** (the "**Easement Area**") to access, inspect, install, use, maintain, construct, improve, alter, expand, operate, remove, and replace water pipelines, drainage pipelines, hatch covers, wells, and other surface and subsurface utility facilities in, under, on, or about the Easement Area for the transportation or distribution of water and other utilities, together with all appurtenances thereto (together, the "**SFPUC Facilities**"), and (ii) over and across the areas of the Property required by the City for ingress to and egress from the Easement Area and to use as a staging area during the installation, maintenance, construction, improvement, or alteration of the SFPUC Facilities. For the purposes of clause (ii) of the immediately preceding sentence, City's rights of ingress and egress shall be limited to the driveway entrance to the Easement Area abutting on Tyrella Avenue on the westerly side of the Easement Area and the driveway entrance to the Easement Area abutting on Whisman Drive Avenue on the easterly side of the Easement Area (collectively, the "**Driveways**") so long as the Driveways remain open and accessible for City's use as provided in paragraph 2 below. The Easement includes the right to enlarge, modify, expand, replace, and reconstruct the SFPUC Facilities, along with the right to enter onto the Easement Area in order to perform such activities. This right shall include the right to add additional underground pipelines and related facilities in and along the Easement Area. Buyer is aware that the Easement Area constitutes a portion of City's water pipeline delivery system. Notwithstanding anything to the contrary in this Agreement, any and all of Buyer's activities on the Easement Area shall be subject and subordinate at all times to City's use of the Easement Area for its water delivery system. Any pipelines or utilities installed by City shall be located underground, and only necessary appurtenances (such as hatch covers and other facilities that do not unreasonably interfere with Buyer's surface use of the Property) shall be located at or above the surface.

2. Access and Repair by City.

(a) Access to Property by City. City hereby reserves for itself and its designated agents, the right to enter the Easement Area and any portion thereof through the Property at all reasonable times to inspect the Easement Area and the SFPUC Facilities and/or to do any maintenance, repairs, or installations to the Easement Area or the SFPUC Facilities. In the event of any emergency, as determined by City, City may, at its sole option, enter the Property and alter or remove any improvements or personal property on or about the Easement Area. So long as the Driveways remain City remain open and accessible for City's uses as provided and contemplated by this Agreement, City's rights of access shall be limited to the Driveways; provided, however, that if the Driveways are ever made inaccessible for such City uses, City shall have the right to use any and all

means City considers appropriate to gain access to any portion of the Easement Area. Any such entry shall not be deemed to be a forcible or unlawful entry onto the Property.

(b) **Repair, Installation, and Inspection.** City shall have the right at all times, to gain access to, inspect, install, use, maintain, construct, improve, alter, expand, operate, repair, and remove SFPUC Facilities and utility facilities on and in the Easement Area (together, the “**SFPUC Maintenance Activities**”). Buyer shall not engage in or permit any use of the Easement Area that would restrict City’s access to the Easement Area at any time by SFPUC staff, construction equipment, or vehicles. City shall bear the expense of any such SFPUC Maintenance Activities, unless the need is occasioned by the acts, omissions, or negligence of Buyer, its officers, employees, agents, contractors, or subcontractors (collectively, “**Agents**”), or its invitees, lessees of all or any portion of the Property, guests, or business visitors (collectively, “**Invitees**”). Without limiting City’s rights hereunder, Buyer shall promptly, at City’s written request, alter or remove at its sole expense any and all of its improvements and remove any parked vehicles as may be necessary to avoid any actual or potential interference with the SFPUC Facilities or SFPUC Maintenance Activities. In any such request, City shall have the right to specify reasonable time limits for completion of the work. If after such written notice Buyer fails to complete the requested work within the prescribed time limits, City shall have the right to perform the requested work and charge Buyer all costs and expenses incurred by City in performing the work. Such amount shall be due and payable upon City’s demand. City shall use its reasonable good faith efforts to conduct any activities on the Property allowed under this paragraph 2 in a manner that, to the extent practicable, will minimize any disruption to Buyer’s use and Buyer’s improvements hereunder. In addition, City shall not require the removal of any of Buyer’s permitted improvements hereunder unless such removal is necessary to perform any SFPUC Maintenance Activities, including, without limitation, SFPUC’s ability to gain access to the pipelines or to perform the installation or repair work permitted hereunder. City shall not be liable in any manner, and Buyer hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City’s entry onto or use of the Property, except to the extent resulting directly from the negligence or willful misconduct of City or its agents. In the event that City removes any pavement, landscaping, or other improvements in the exercise of its rights hereunder, City shall have no obligation to replace such pavement, landscaping, or other improvements.

3. **Buyer’s Use of Property.** Buyer shall limit its use of the Easement Area to (a) pedestrian and bike trails, (b) linear curb-side street parking, emergency vehicle access and open space usage, and (c) construction and maintenance of certain improvements on the surface of the Easement Area including, without limitation, street lighting and associated conduits, decorative entry monuments, roadways, curbs, gutters, sidewalks, walkways, landscaped areas (including irrigation), playing fields, and minor and incidental structures such as arbors or trellises, so long as such improvements do not interfere with or restrict access to, or endanger the existing or anticipated SFPUC Facilities (collectively, “**Permitted Uses**”). Except as specifically stated in this Agreement, Buyer shall not construct or place any temporary or permanent structure or improvement in, on, under or about the Easement Area. Further, City’s review and approval of all plans and specifications for any utilities and improvements on the Easement Area, which City will give or withhold in the exercise of its reasonable discretion, shall be required prior to the construction or installation of any such improvements. For purposes hereof, asphalt, concrete, and cementitious concrete driveways, sidewalks, and parking areas, sheds and storage facilities, and fences shall be deemed

"improvements." Any agreements made with any person or entity, including, without limitation, the City of Mountain View, regarding any use of the Easement Area shall be subject to the terms of this Easement Agreement, including City's approval rights. Buyer shall not plant any trees, shrubs, or other plants in the Easement Area except in a manner consistent with Section 13 (including specifically subsection 13.005 and 13.006) of the SFPUC Right-of-Way Integrated Vegetation Management Policy, as it may be amended from time to time, or such replacement policy for vegetation and other improvements on City's pipeline property. Buyer shall restore promptly any excavated areas with new vegetation (including irrigation and maintenance until established) and erosion control netting, all as may be requested by City. Buyer shall not cause or permit the dumping or other disposal on or about the Easement Area of refuse, hazardous materials, or other materials that are unsightly or could pose a danger to human health or safety or to the environment. Buyer shall, at all times and at its sole cost, maintain the Easement Area in a good, clean, safe, and secure condition and maintain and repair the Driveways so they are open and accessible at all times for City's use and access as contemplated herein. Buyer and its Agents shall work closely with City personnel to avoid disruption (even if temporary) of SFPUC Facilities, in, under, on, or about the Easement Area. In no event will Buyer be required to pay City rent or any other financial consideration to the City in order to use the Easement Area, or in order to install and maintain any pipelines pursuant to the terms of Section 4(d) below, or otherwise.

4. Covenants Regarding Use. As a material inducement to City to enter into the sale of the Property and this Agreement, Buyer covenants with City as follows:

(a) Authorization. Before beginning any work in the Easement Area, Buyer shall obtain any and all permits, licenses, and approvals of all regulatory agencies and other third parties that are required by any applicable law to commence, complete, and maintain the permitted work.

(b) Restrictions on Heavy Equipment and Vehicles. To prevent damage to City's underground pipelines, Buyer shall strictly adhere to the following restrictions when using vehicles and equipment within twenty (20) feet of City's pipelines; provided, however, that Buyer may seek variances from the following requirements in connection with the Permitted Uses from the SFPUC General Manager and the SFPUC General Manager's approval of such requests shall be subject to the sole and absolute discretion of the SFPUC General Manager.

(i) It shall be Buyer's sole responsibility to ensure that the depth of soil cover over the tops of City's pipelines is, at all times, at least three (3) feet for steel cylinder pipe and four (4) feet for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in item (ii). If any equipment with axle loading exceeds the weight stated in item (ii) below or if the depth of soil cover is less than stated above, Buyer shall submit to SFPUC, for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of the pipelines showing that City's pipelines will not be adversely affected.

(ii) The effects of vehicle and equipment loads to the pipelines must not exceed the effects of the "AASHO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten (10) tons (20,000 lbs.), axles fourteen (14) feet apart, and rear axle carrying eight (8) tons (16,000 lbs.). Buyer shall be responsible to provide SFPUC adequate evidence that Buyer's equipment and vehicles meet the foregoing requirements.

(iii) Buyer shall not use vibrating compaction equipment unless it first obtains SFPUC's written approval.

(iv) If the depth of the soil cover over City's pipelines (determined by potholing or other proof procedure) is less than the minimum stated in (i) above, unless an alternate method is approved by SFPUC, all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty (20) feet on each side of the centerline of the pipelines (measured on the surface), Buyer shall submit a written proposal together with all supporting calculations and data to SFPUC for review and approval. In any case, the two (2) feet of soil around each pipeline shall be removed manually or by other methods approved by SFPUC with due care as provided below.

(c) Exercise of Due Care. Buyer shall use, and shall cause its Agents to use due care at all times to avoid any damage or harm to City's water pipelines or other property. City shall have the right to approve and oversee any excavation work. When conducting any excavation work on the Easement Area, Buyer shall mark, at its own expense, the location of City's water transmission mains within the Easement Area and shall not use any pick, plow, or other sharp tool to remove the two feet of soil around the transmission mains, provided that Buyer may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this Agreement. Any damage to the coating of either pipeline shall be repaired by Buyer, at its own expense, prior to backfilling.

(d) Covenant to Protect SFPUC Facilities. Buyer shall protect the SFPUC Facilities from any damage, injury, or disturbance arising out of the use of the Property by Buyer, its Agents or Invitees. If Buyer or any of its Agents or Invitees damages, injures, or disturbs any of the SFPUC Facilities, or any portion of the SFPUC Facilities (including monuments), Buyer shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all actions it deems proper to repair such SFPUC Facilities (including relocation of monuments) at Buyer's sole expense.

(e) Installation of Pipes by Buyer. Buyer shall obtain City's prior, written approval prior to installing any pipelines in, on, or under the Easement Area, including, without limitation approval of the plans and specifications for such pipelines and the method and timing of the installations. If Buyer installs any new underground pipes in the Easement Area, Buyer shall use, or cause to have used, steel, ductile iron or cast iron pipe for the entire crossing. The clear distance between the bottom of any pipes installed by Buyer and the top of City's existing and any proposed future water lines shall not be less than twelve inches (12"). Buyer shall not install, maintain, or operate within the Easement Area any pipelines, electrical or gas conduits, or other utilities that run alongside or parallel to City's existing or future water lines or utilities in the Easement Area nor shall Buyer erect, maintain, or operate on or under the Easement Area any above-ground or underground structures. Buyer shall install above-ground markers identifying the location of any underground facilities installed pursuant to this Agreement. City may adopt from time to time such rules and regulations as may be necessary or appropriate to safeguard against corrosion of City's pipelines and related facilities. Buyer shall comply with all such rules and regulations upon receipt of a copy thereof. Buyer shall not permit any other entity or person to install any pipelines for such

entity's or person's benefit in, on, or under the Easement Area without first obtaining City's prior, written approval.

5. Improvements. In no event shall the construction or installation of any improvements or the making of any alterations impair the use or operation of the SFPUC Facilities, or any portion thereof, or City's access thereto. Buyer shall provide to City not less than thirty (30) days' advance written notice of any contemplated improvements or alterations, together with a copy of the applicable plans and specifications. City shall have the right to object to any improvements or alterations described in subparagraph 3(c) above that it reasonably believes will interfere with the existing or anticipated SFPUC Facilities or SFPUC Maintenance Activities; provided, Buyer may use the Easement Area for pedestrian and bike trail, street, and open space usage as set forth in paragraph 3 above.

6. Repairs and Maintenance. Buyer hereby assumes full and sole responsibility for the condition, operation, repair, maintenance, and management of the Property and any improvements thereon (excluding the SFPUC Facilities). In the case of damage to or destruction of the improvements, Buyer shall, at its sole cost and with reasonable promptness and diligence, either restore the improvements or demolish and remove them (including all debris) from the Property, except to the extent such damage or destruction was caused by the negligence or willful misconduct of City or its agents in which case City shall restore, repair, or rebuild the improvements.

7. Monuments. Buyer acknowledges that the City's existing monuments on the Property are in good condition. During the installation of any permitted facilities hereunder and at all times during Buyer's use of the Property, Buyer shall protect and safeguard City's monuments. If Buyer damages a monument necessitating resurvey, repair, or replacement, Buyer shall, at Buyer's expense, (i) perform such work and, if appropriate, file a land surveyor's map in the County of Santa Clara, (ii) furnish a recorded surveyor's map to the SFPUC for its records, (iii) install any such new monuments, which shall be of the same type and quality as used by City, at the locations selected by City, and (iv) install a "marker post" next to the monuments. All monuments and markers to be installed pursuant to this paragraph 7 shall be subject to City's reasonable approval. City may, at any time, replace missing monuments or install new monuments on the Property.

8. Indemnity. Buyer shall indemnify, defend, and hold harmless City, its officers, agents, employees, and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind ("**Claims**") arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on, or about the Property, (b) any failure by Buyer to faithfully observe or perform any of the terms, covenants, or conditions of this Agreement, or (c) any release or discharge of any hazardous material on or about the Property; except solely to the extent of Claims resulting directly from (x) the negligence or willful misconduct of City or City's authorized representatives, (y) the malfunction of the SFPUC Facilities to the extent not caused by Buyer or its Agents or Invitees, or (z) City's breach of its obligations pursuant to this Agreement. In addition to Buyer's obligation to indemnify City, Buyer specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered

to Buyer by City and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties.

9. Waiver of Claims.

(a) Waiver. Buyer covenants and agrees that City shall not be responsible for or liable to Buyer for, and, to the fullest extent allowed by Law, Buyer hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Claims relating to any injury, accident, or death of any person or loss or damage to any property, in, or about the Property, from any cause whatsoever. Nothing herein shall relieve City from liability to the extent caused by (a) the negligence or willful misconduct of City or its Agents, (b) the malfunction of the SFPUC Facilities to the extent not caused by Buyer or its Agents or Invitees, or (C) City's breach of its obligations pursuant to this Agreement, but City shall not be liable under any circumstances for any consequential, incidental, or punitive damages. City would not be willing to enter into this Agreement or sell the Property to Buyer in the absence of a waiver of liability for consequential or incidental damages resulting from the acts or omissions of City or its Agents, and Buyer expressly assumes the risk with respect thereto. Accordingly, as a material part of the consideration for this Agreement, Buyer fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action, and covenants not to sue, City and its Agents, for any matters arising out of this Agreement or the Easement, except to the extent such claims result from the negligence and willful misconduct of City or its Agents, the malfunction of the SFPUC Facilities to the extent not caused by Buyer or its Agents or Invitees, or City's breach of its obligations pursuant to this Agreement.

(b) Release of all Claims. In connection with the foregoing releases, Buyer acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Buyer acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Buyer realizes and acknowledges that it has agreed upon this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

Initials: Buyer: _____

10. City's Right to Cure Buyer's Defaults. If Buyer defaults in the performance of any of its obligations under this Agreement, then City may, at its sole option and at the discretion of the General Manager, remedy such failure on behalf of Buyer and at Buyer's expense at any time thereafter with ten (10) days' prior written notice of City's intention to cure such default (except that no such notice shall be required in the event of an emergency as determined by City). Such action

by City shall not be construed as a waiver of any rights or remedies of City under this Agreement. Nothing herein shall imply any duty of City to do any act that Buyer is obligated to perform under any provision of this Agreement. Buyer shall pay to City, promptly upon demand, all sums reasonably expended by City, or other costs, damages, expenses, or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. The remedy herein is in addition to any other remedy available to City at law or in equity as a result of any such default.

11. No Joint Venture. This Agreement does not create a partnership or joint venture between City and Buyer as to any activity. Buyer is not a state actor with respect to any activity conducted by Buyer on, in, or under the Property. The execution of this Agreement by City does not constitute authorization or approval by City of any activity conducted by Buyer on, in or relating to the Property.

12. Notices. Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City or SFPUC: San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director

Buyer: MV Urban Village Homes, LLC
c/o Summerhill Homes LLC, Managing Member
3000 Executive Parkway, Suite 450
San Ramon, CA 94583
Attn: Chris Neighbor, Senior Vice President, Land
Acquisitions
Facsimile: (925) 244-7501

with copies to:

MV Urban Village Homes, LLC
c/o Summerhill Homes LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel
Facsimile: (650) 213-8183

and/or: The address(es) set forth in the County of Santa Clara's tax
rolls for the Property

The foregoing addresses may be changed by written notice. A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any fax numbers are provided for convenience of communication only; neither party may give official or binding notice by fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed copy of a notice.

13. Run With the Land. The provisions, covenants, conditions, and easement provided in this Agreement (including but not limited to the indemnities and waivers set forth herein) shall be covenants running with the land pursuant to California Civil Code Sections 1468 and 1471, and shall burden and benefit every person having an interest in the Property and the City's water delivery system. Any reference to Buyer herein shall include successor owners of all or any part of the Property and all rights and obligations of Buyer shall accrue to and be imposed upon any and all successor owners of the Property, provided that Buyer and each successor owner who transfers all of his, her, or its entire ownership interest in the Property or any lot or parcel within the Property shall have no further obligation under this Agreement to the extent such obligation is based upon or results from facts, circumstances, actions, or inactions that occur or arise after the effective date of any such transfer, or that occurred or arose before such owner owned any portion of the Property. Any reference to City herein shall include successor owners of all or any part of the City's water delivery system, and all rights and obligations of City shall be accrued to and be imposed upon any and all successor owners of such water delivery system. Additionally, City acknowledges that Buyer shall have the right to assign all of its rights and obligations under this Easement, including, without limitation, under Section 8 hereof, to the homeowner's association (the "**Association**") to be formed by Buyer in connection with Buyer's development of the Property. The timing of such assignment shall be chosen by Buyer, but shall not occur before the Association has been formed, has obtained commercial general liability insurance, and has commenced its operations. From and after the assignment of Buyer's rights and obligations under this Agreement to the Association, Buyer and Buyer's individual homebuyers and their respective successors and assigns shall have no further obligations under this Agreement, including, without limitation, under Section 8 hereof. Notwithstanding the foregoing, the then owners of the Property will be obligated to perform any and all of the obligations of the Buyer under this Agreement, including under Section 8 hereof, but only if the Association has been dissolved or is no longer in existence, or if the Association or its insurers have not promptly responded to any claim that falls within the scope of the indemnity in Section 8 hereof, or if the Association or its insurers fail to perform the obligations of the Buyer under Section 8 hereof.

14. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Buyer. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required, or permitted hereunder may be made by the General Manager of the SFPUC. (d) This instrument (including the exhibits hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings, and agreements are merged herein. (e) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (f) Time is of the essence. (g) This Agreement shall be governed by California law and City's Charter and

Administrative Code. (h) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (i) If Buyer consists of more than one person then the obligations of each person shall be joint and several. (j) Notwithstanding anything to the contrary contained in this Agreement, Buyer acknowledges and agrees that no officer or employee of City has authority to commit City to this Agreement unless and until a resolution of City's PUC and Board of Supervisors approving this Agreement shall have been duly adopted and approved by City's Mayor. Therefore, any obligations or liabilities of City hereunder are contingent upon enactment of such a resolution and ordinance, and this Agreement shall be null and void if City's PUC, Board of Supervisors, and Mayor do not approve this Agreement, at their respective sole discretion.

15. Compliance with Laws. Buyer shall, at its expense, comply with all laws, regulations, ordinances, and orders of any governmental or other regulatory entity and all covenants, restrictions, and provisions of record, whether presently in effect or subsequently adopted and whether or not in contemplation of the parties in its use of the Easement Area.

BUYER REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS AGREEMENT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS

[Signatures on following page]

MV URBAN VILLAGE HOMES, LLC, a
California limited liability company

APPROVED:

By: Summerhill Homes, LLC, a
California limited liability company
Its Managing Member

Harlan L. Kelly, Jr.
General Manager of Public Utilities
Commission

By: _____

APPROVED BY
PUBLIC UTILITIES COMMISSION

Title: _____

PURSUANT TO RESOLUTION NO. _____
ADOPTED: _____

By: _____

Secretary

Title: _____

APPROVED BY
SAN FRANCISCO BOARD OF
SUPERVISORS PURSUANT TO
RESOLUTION NO. _____
ADOPTED: _____

By: KMJ Urban Communities, LLC, a
California limited liability company

By: _____

Title: _____

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

Title: _____

By: _____
Richard Handel, Deputy City Attorney

State of California)
) ss
County of San Francisco)

On _____ before me, _____, personally
appeared _____ and
_____, personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
) ss
County of San Francisco)

On _____ before me, _____, personally
appeared _____ and
_____, personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
) ss
County of San Francisco)

On _____ before me, _____, personally
appeared _____ and
_____, personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A TO DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS AND GRANT OF EASEMENT

DESCRIPTION OF PROPERTY

All that certain Real Property in the City of Mountain View, County of San Clara, State of California, described as follows:

PARCEL ONE:

A portion of that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn et ux, by Joint Tenancy Deed dated February 17, 1947 and recorded March 13, 1947 in Volume 1430 at Page 252, Official Records, Santa Clara County, hereinafter referred to as the Reyburn Parcel; said portion being a portion of Lot 115, "Map of Hamwood" which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on February 23, 1912 in Book "N" of Maps, at Page 86, being more particularly described as follows:

Commencing at a point in the Easterly boundary of the existing Tyrella Avenue as delineated and so designated on the above mentioned "Map of Hamwood" where the same is intersected by the Northerly line of the above mentioned Reyburn Parcel; thence from said point of commencement and running along the common boundary between the above mentioned Reyburn Parcel and that certain parcel of land conveyed by Clara F. Gann to John Sciascia et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 at Page 88, Official Records, Santa Clara County South 73° 34' 30" East 405.00 feet to the most Easterly corner of the above mentioned Reyburn Parcel; thence, along the common boundary between the above mentioned Reyburn Parcel, and that certain parcel of land conveyed by M. Paganini et al, to Joe A. Silva et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558 Official Records, Santa Clara County, South 16° 26' West 28.32 feet to a point distant along said common boundary North 16° 26' East 182.28 feet from its intersection with the Northerly boundary of the existing Sherland Avenue; thence, from said point North 79° 55' 15" West 407.50 feet to a point in the above mentioned Easterly boundary of Tyrella Avenue; thence, along said Easterly boundary North 16° 26' East 73.30 feet to the point of commencement.

PARCEL TWO:

A portion of that certain parcel of land conveyed by Clara F. Gann to John Sciascia, et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 of Official Records at Page 88, Santa Clara County Records, hereinafter referred to as the Sciascia Parcel, being a portion of Lot 114, "Map of Hamwood", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 23, 1912 in Book "N" of Maps, page 86, being more particularly described as follows:

Commencing at the most Southerly corner of the above mentioned Sciascia Parcel and running thence along the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn, et ux, by Joint Tenancy deed dated February 17, 1947 and recorded March 13, 1947 in Vol. 1430 of Official Records, page 252 Santa Clara County Records, N. 73° 34' 30" W. 405.00 feet to the Easterly boundary of Tyrella Avenue, thence along said Easterly boundary N. 16° 26' E. 7.20 feet to a point being distant along said Easterly boundary S. 16° 26' W. 95.30 feet from the Northerly

line of the above mentioned Sciascia Parcel; thence from said point, S. 79° 55' 15" E. 407.50 feet to a point in the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Vol. 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel; thence along the above mentioned common boundary between the Sciascia and Silva Parcels, 16° 26' W. 52.18 feet to the point of commencement.

PARCEL THREE:

Portion of Lots One Hundred Two and One Hundred Three as said lots are delineated and so designated upon that certain map entitled "Map of Hamwood, Santa Clara County, Cal.," which said map was duly recorded in the Office of the County Recorder of Santa Clara County, State of California, on February 23, 1912, in Book "N" of Maps at Page 86 thereof, same being known as the Cardoza property, and being more specifically described as follows:

Commencing at a point in the Westerly boundary of the existing Whisman Road, said point being the most Easterly corner of Lot 102 as said lot is shown on the above mentioned Map, thence along the Westerly boundary of Whisman Road, South 16° 25' 30" West 111,000 feet, thence leaving said Westerly boundary of Whisman Road, North 76° 51' 00" West 122.03 feet and North 79° 55' 15" West 237.86 feet to a point in the common boundary between the above mentioned Cardoza parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et al, by Joint Tenancy Deed dated February 28, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel, said point being distant North 16° 25' 30" East 115.66 feet from the Southwesterly corner of Lot 103 as shown and delineated on the above mentioned map, thence continuing along said common boundary between the Cardoza & Silva parcels North 16° 25' 30" East 144.34 feet to a point being the Northwesterly corner of the above mentioned Lot 102, thence along the Northerly boundary of Lot 102, thence along the Northerly boundary of Lot 102, South 73° 34' 30" East 358.24 feet to the point of commencement.

PARCEL FOUR:

Commencing at a point on a Southeasterly line of Lot No. 105 as per "Map of Hamwood" recorded in Book "N" of Maps at Page 86, Official Records of the County of Santa Clara, State of California, distant thereon Northeasterly 182.27 feet from the Northerly line of the existing Sherland Avenue; running thence Northeasterly along said Southeasterly line of Lot No. 105 a distance 253.33 feet to the northeast corner of said Lot No. 105; thence Northwesterly along the Northeasterly end lines of Lots Nos. 105 to 112, inclusive, as per said "Map of Hamwood" a distance of 800 feet to the northwest corner of said Lot No. 112; thence Southwesterly along the Northwesterly line of said Lot No. 112 a distance of 253.33 feet to a point distant Northeasterly thereon 182.27 feet from the Northeasterly line of the existing Sherland Avenue; thence Southeasterly parallel with the said Northeasterly line of the existing Sherland Avenue a distance of 800 feet to the point of commencement, and being portions of said Lots Nos. 105 to 112, inclusive.

APN: 160-16-044

EXHIBIT B TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
AND GRANT OF EASEMENT

DEPICTION OF EASEMENT AREA

EXHIBIT B-1 TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
AND GRANT OF EASEMENT

LEGAL DESCRIPTION OF EASEMENT AREA

[TO BE ATTACHED AFTER PREPARED BY BUYER AND APPROVED BY CITY.]

EXHIBIT H

FORM OF MEMORANDUM OF OPTION

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

MV URBAN VILLAGE HOMES, LLC
Summerhill Homes LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION ("**Memorandum**") is entered into as of _____, 2013, by and between MV URBAN VILLAGE HOMES, LLC, a California limited liability company ("**Optionee**") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through its Public Utilities Commission (the "**SFPUC**").

1. The City currently owns certain real property, consisting of approximately 6.4 acres, located between Whisman Road and Tyrella Avenue in the City of Mountain View, Santa Clara County, California, as more particularly described in the attached Exhibit A and as shown generally on the map attached hereto as Exhibit A-1 (the "**Property**").

2. Optionee and the City have entered into that certain Restated Option Agreement dated for reference purposes only as of _____, 2013 (the "**Option Agreement**"), pursuant to which the City has granted to Optionee the option to purchase the Property ("**Option**") in accordance with the terms and conditions of the Option Agreement. The term of the Option commenced on the Approval Date, as defined in the Option Agreement, and as evidenced by the Resolution of the Board of Supervisors approved by the Mayor and shall expire eighteen (18) months from the Approval Date, as defined subject to Optionee's right to extend the Option by an additional six (6) months pursuant to the terms of the Option Agreement, unless mutually extended by the parties.

3. The purpose of this Memorandum is to put third parties on notice of Optionee's rights under the Option Agreement with respect to the Property. This Memorandum is given subject to the terms of the Option Agreement and any amendments thereto. If there should be any conflict between this Memorandum and the Option Agreement, the terms of the Option

Agreement shall govern. All of the terms of the Option Agreement are incorporated herein by this reference.

MV URBAN VILLAGE HOMES, LLC, a
California limited liability company

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

By: Summerhill Homes, LLC, a
California limited liability company
Its Managing Member

Harlan L. Kelly, Jr. , General Manager

By: _____

APPROVED AS TO FORM:

Title: _____

DENNIS J. HERRERA
City Attorney

By: KMJ Urban Communities, LLC, a
California limited liability company

By: _____
Richard Handel, Deputy City Attorney

By: _____

Title: _____

By: _____

Title: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 2005 before me,
_____, a Notary Public in and for said State, personally
appeared _____

_____ personally
known to me (or 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.

WITNESS my hand and official seal.

(Signature)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 2005 before me,
_____, a Notary Public in and for said State, personally
appeared _____

_____ personally
known to me (or 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.

WITNESS my hand and official seal.

(Signature)

EXHIBIT A
To Memorandum of Option

Legal Description

All that certain Real Property in the City of Mountain View, County of San Clara, State of California, described as follows:

PARCEL ONE:

A portion of that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn et ux, by Joint Tenancy Deed dated February 17, 1947 and recorded March 13, 1947 in Volume 1430 at Page 252, Official Records, Santa Clara County, hereinafter referred to as the Reyburn Parcel; said portion being a portion of Lot 115, "Map of Hamwood" which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on February 23, 1912 in Book "N" of Maps, at Page 86, being more particularly described as follows:

Commencing at a point in the Easterly boundary of the existing Tyrella Avenue as delineated and so designated on the above mentioned "Map of Hamwood" where the same is intersected by the Northerly line of the above mentioned Reyburn Parcel; thence from said point of commencement and running along the common boundary between the above mentioned Reyburn Parcel and that certain parcel of land conveyed by Clara F. Gann to John Sciascia et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 at Page 88, Official Records, Santa Clara County South 73° 34' 30" East 405.00 feet to the most Easterly corner of the above mentioned Reyburn Parcel; thence, along the common boundary between the above mentioned Reyburn Parcel, and that certain parcel of land conveyed by M. Paganini et al, to Joe A. Silva et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558 Official Records, Santa Clara County, South 16° 26' West 28.32 feet to a point distant along said common boundary North 16° 26' East 182.28 feet from its intersection with the Northerly boundary of the existing Sherland Avenue; thence, from said point North 79° 55' 15" West 407.50 feet to a point in the above mentioned Easterly boundary of Tyrella Avenue; thence, along said Easterly boundary North 16° 26' East 73.30 feet to the point of commencement.

PARCEL TWO:

A portion of that certain parcel of land conveyed by Clara F. Gann to John Sciascia, et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 of Official Records at Page 88, Santa Clara County Records, hereinafter referred to as the Sciascia Parcel, being a portion of Lot 114, "Map of Hamwood", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 23, 1912 in Book "N" of Maps, page 86, being more particularly described as follows:

Commencing at the most Southerly corner of the above mentioned Sciascia Parcel and running thence along the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn, et ux, by Joint Tenancy deed dated February 17, 1947 and recorded March 13, 1947 in Vol. 1430 of Official Records, page 252 Santa Clara County Records, N. 73° 34' 30" W. 405.00 feet to the Easterly boundary of Tyrella Avenue, thence along said Easterly boundary N. 16° 26' E. 7.20 feet to a point being distant along said Easterly boundary S. 16° 26' W. 95.30 feet from the Northerly line of the above mentioned Sciascia Parcel; thence from said point, S. 79° 55' 15" E. 407.50

feet to a point in the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Vol. 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel; thence along the above mentioned common boundary between the Sciascia and Silva Parcels, 16 \square 26' W. 52.18 feet to the point of commencement.

PARCEL THREE:

Portion of Lots One Hundred Two and One Hundred Three as said lots are delineated and so designated upon that certain map entitled "Map of Hamwood, Santa Clara County, Cal.", which said map was duly recorded in the Office of the County Recorder of Santa Clara County, State of California, on February 23, 1912, in Book "N" of Maps at Page 86 thereof, same being known as the Cardoza property, and being more specifically described as follows:

Commencing at a point in the Westerly boundary of the existing Whisman Road, said point being the most Easterly corner of Lot 102 as said lot is shown on the above mentioned Map, thence along the Westerly boundary of Whisman Road, South 16 \square 25' 30" West 111,000 feet, thence leaving said Westerly boundary of Whisman Road, North 76 \square 51' 00" West 122.03 feet and North 79 \square 55' 15" West 237.86 feet to a point in the common boundary between the above mentioned Cardoza parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et al, by Joint Tenancy Deed dated February 28, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel, said point being distant North 16 \square 25' 30" East 115.66 feet from the Southwesterly corner of Lot 103 as shown and delineated on the above mentioned map, thence continuing along said common boundary between the Cardoza & Silva parcels North 16 \square 25' 30" East 144.34 feet to a point being the Northwesterly corner of the above mentioned Lot 102, thence along the Northerly boundary of Lot 102, thence along the Northerly boundary of Lot 102, South 73 \square 34' 30" East 358.24 feet to the point of commencement.

PARCEL FOUR:

Commencing at a point on a Southeasterly line of Lot No. 105 as per "Map of Hamwood" recorded in Book "N" of Maps at Page 86, Official Records of the County of Santa Clara, State of California, distant thereon Northeasterly 182.27 feet from the Northerly line of the existing Sherland Avenue; running thence Northeasterly along said Southeasterly line of Lot No. 105 a distance 253.33 feet to the northeast corner of said Lot No. 105; thence Northwesterly along the Northeasterly end lines of Lots Nos. 105 to 112, inclusive, as per said "Map of Hamwood" a distance of 800 feet to the northwest corner of said Lot No. 112; thence Southwesterly along the Northwesterly line of said Lot No. 112 a distance of 253.33 feet to a point distant Northeasterly thereon 182.27 feet from the Northeasterly line of the existing Sherland Avenue; thence Southeasterly parallel with the said Northeasterly line of the existing Sherland Avenue a distance of 800 feet to the point of commencement, and being portions of said Lots Nos. 105 to 112, inclusive.

APN: 160-16-044

**EXHIBIT A-1
To Memorandum of Option**

Map of Property

EXHIBIT I

FORM OF TERMINATION OF OPTION-QUITCLAIM DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Real Estate Services
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director

Documentary Transfer Tax is \$0 (Recorded to remove Memorandum of Option)

TERMINATION OF OPTION-QUITCLAIM DEED

THIS TERMINATION OF OPTION-QUITCLAIM DEED ("**Termination**") is entered into as of _____, 20__, by and between MV URBAN VILLAGE HOMES, LLC, a California limited liability company ("**Optionee**") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through its Public Utilities Commission (the "**SFPUC**").

1. The parties previously executed and recorded that certain Memorandum of Option dated _____, 20__, and recorded on _____, 20__, as Instrument Number _____ in the Official Records of the City and County of San Francisco ("**Memorandum**"), which provides notice to third parties of that certain Restated Option Agreement dated for reference purposes only as of _____, 2013 (the "**Option Agreement**"), pursuant to which the City granted to Optionee the option to purchase ("**Option**") certain real property, consisting of approximately 6.4 acres, located between Whisman Road and Tyrella Avenue in the City of Mountain View, Santa Clara County, California, as more particularly described in the attached Exhibit A and as shown generally on the map attached as Exhibit A-1 (the "**Property**").

2. This Termination will become effective when recorded by the City in the official records of the Santa Clara County. The purpose of this Termination is to remove the Memorandum from the chain of title to the Property.

[Signatures on following page]

MV URBAN VILLAGE HOMES, LLC, a
California limited liability company

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

By: Summerhill Homes, LLC, a
California limited liability company
Its Managing Member

Harlan L. Kelly, Jr.
General Manager

By: _____

APPROVED AS TO FORM:

Title: _____

DENNIS J. HERRERA
City Attorney

By: KMJ Urban Communities, LLC, a
California limited liability company

By: _____
Richard Handel, Deputy City Attorney

By: _____

Title: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me,
_____, a Notary Public in and for said State, personally
appeared _____

_____ personally
known to me (or 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.

WITNESS my hand and official seal.

(Signature)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me,
_____, a Notary Public in and for said State, personally
appeared _____

_____ personally
known to me (or 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.

WITNESS my hand and official seal.

(Signature)

EXHIBIT A
To Termination of Option Quitclaim Deed

LEGAL DESCRIPTION

All that certain Real Property in the City of Mountain View, County of San Clara, State of California, described as follows:

PARCEL ONE:

A portion of that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn et ux, by Joint Tenancy Deed dated February 17, 1947 and recorded March 13, 1947 in Volume 1430 at Page 252, Official Records, Santa Clara County, hereinafter referred to as the Reyburn Parcel; said portion being a portion of Lot 115, "Map of Hamwood" which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on February 23, 1912 in Book "N" of Maps, at Page 86, being more particularly described as follows:

Commencing at a point in the Easterly boundary of the existing Tyrella Avenue as delineated and so designated on the above mentioned "Map of Hamwood" where the same is intersected by the Northerly line of the above mentioned Reyburn Parcel; thence from said point of commencement and running along the common boundary between the above mentioned Reyburn Parcel and that certain parcel of land conveyed by Clara F. Gann to John Sciascia et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 at Page 88, Official Records, Santa Clara County South 73° 34' 30" East 405.00 feet to the most Easterly corner of the above mentioned Reyburn Parcel; thence, along the common boundary between the above mentioned Reyburn Parcel, and that certain parcel of land conveyed by M. Paganini et al, to Joe A. Silva et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558 Official Records, Santa Clara County, South 16° 26' West 28.32 feet to a point distant along said common boundary North 16° 26' East 182.28 feet from its intersection with the Northerly boundary of the existing Sherland Avenue; thence, from said point North 79° 55' 15" West 407.50 feet to a point in the above mentioned Easterly boundary of Tyrella Avenue; thence, along said Easterly boundary North 16° 26' East 73.30 feet to the point of commencement.

PARCEL TWO:

A portion of that certain parcel of land conveyed by Clara F. Gann to John Sciascia, et ux, by Joint Tenancy Deed dated September 10, 1946 and recorded September 12, 1946 in Volume 1395 of Official Records at Page 88, Santa Clara County Records, hereinafter referred to as the Sciascia Parcel, being a portion of Lot 114, "Map of Hamwood", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 23, 1912 in Book "N" of Maps, page 86, being more particularly described as follows:

Commencing at the most Southerly corner of the above mentioned Sciascia Parcel and running thence along the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by Helen A. McKown to Fred F. Reyburn, et ux, by Joint Tenancy deed dated February 17, 1947 and recorded March 13, 1947 in Vol. 1430 of Official Records, page 252 Santa Clara County Records, N. 73° 34' 30" W. 405.00 feet to the Easterly boundary of Tyrella Avenue, thence along said Easterly boundary N. 16° 26' E. 7.20 feet to a point being distant along said Easterly boundary S. 16° 26' W. 95.30 feet from the Northerly line of the above mentioned Sciascia Parcel; thence from said point, S. 79° 55' 15" E. 407.50

feet to a point in the common boundary between the above mentioned Sciascia Parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et ux, by Joint Tenancy Deed dated February 21, 1946 and recorded March 1, 1946 in Vol. 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel; thence along the above mentioned common boundary between the Sciascia and Silva Parcels, 16□ 26' W. 52.18 feet to the point of commencement.

PARCEL THREE:

Portion of Lots One Hundred Two and One Hundred Three as said lots are delineated and so designated upon that certain map entitled "Map of Hamwood, Santa Clara County, Cal.", which said map was duly recorded in the Office of the County Recorder of Santa Clara County, State of California, on February 23, 1912, in Book "N" of Maps at Page 86 thereof, same being known as the Cardoza property, and being more specifically described as follows:

Commencing at a point in the Westerly boundary of the existing Whisman Road, said point being the most Easterly corner of Lot 102 as said lot is shown on the above mentioned Map, thence along the Westerly boundary of Whisman Road, South 16□ 25' 30" West 111,000 feet, thence leaving said Westerly boundary of Whisman Road, North 76□ 51' 00" West 122.03 feet and North 79□ 55' 15" West 237.86 feet to a point in the common boundary between the above mentioned Cardoza parcel and that certain parcel of land conveyed by M. Paganini, et al, to Joe A. Silva, et al, by Joint Tenancy Deed dated February 28, 1946 and recorded March 1, 1946 in Volume 1325 at Page 558, Official Records, Santa Clara County, hereinafter referred to as the Silva Parcel, said point being distant North 16□ 25' 30" East 115.66 feet from the Southwesterly corner of Lot 103 as shown and delineated on the above mentioned map, thence continuing along said common boundary between the Cardoza & Silva parcels North 16□ 25' 30" East 144.34 feet to a point being the Northwesterly corner of the above mentioned Lot 102, thence along the Northerly boundary of Lot 102, thence along the Northerly boundary of Lot 102, South 73□ 34' 30" East 358.24 feet to the point of commencement.

PARCEL FOUR:

Commencing at a point on a Southeasterly line of Lot No. 105 as per "Map of Hamwood" recorded in Book "N" of Maps at Page 86, Official Records of the County of Santa Clara, State of California, distant thereon Northeasterly 182.27 feet from the Northerly line of the existing Sherland Avenue; running thence Northeasterly along said Southeasterly line of Lot No. 105 a distance 253.33 feet to the northeast corner of said Lot No. 105; thence Northwesterly along the Northeasterly end lines of Lots Nos. 105 to 112, inclusive, as per said "Map of Hamwood" a distance of 800 feet to the northwest corner of said Lot No. 112; thence Southwesterly along the Northwesterly line of said Lot No. 112 a distance of 253.33 feet to a point distant Northeasterly thereon 182.27 feet from the Northeasterly line of the existing Sherland Avenue; thence Southeasterly parallel with the said Northeasterly line of the existing Sherland Avenue a distance of 800 feet to the point of commencement, and being portions of said Lots Nos. 105 to 112, inclusive.

APN: 160-16-044

EXHIBIT A-1
To Termination of Option Quitclaim Deed

MAP OF PROPERTY

EXHIBIT J
SITE PLAN
[Attach Site Plan]

**RESTATED OPTION AGREEMENT
(MOUNTAIN VIEW WHISMAN/TYRELLA PROPERTY)**

by and between

MV URBAN VILLAGE HOMES, LLC, a California limited liability company,
as Optionee,

and

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

with respect to premises located between
Whisman Road and Tyrella Avenue in
the City of Mountain View, Santa Clara County, California

March __, 2013

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EXHIBITS

A	Legal Description of Property
A-1	Map of Property
B	Deed
C	Permitted Title Exceptions
D	Disclosure Materials
E	Permit
F	Closing Certificate
G	Easement Agreement
H	Form of Memorandum of Option
I	Form of Termination of Option-Quitclaim Deed
J	Site Plan

INDEX OF DEFINITIONS OF CERTAIN CAPITALIZED TERMS

Defined Term	Paragraph No.
Agreement	Introductory Paragraph
Agents	Paragraph 19(e)
Approval Date	Paragraph 2(b)
City	Introductory Paragraph
CERCLA	Paragraph 7(a)
CEQA	Paragraph 13(c)
Closing	Paragraph 10(b)
Closing Certificate	Paragraph 10(c)
Deed	Paragraph 5(a)
Disclosure Materials	Paragraph 7(e)
Due Diligence Period	Paragraph 7(a)
Due Diligence Termination Notice	Paragraph 7(d)
Easement Agreement	Paragraph 18(a)
Easement Area	Paragraph 18(a)
Environmental Condition	Paragraph 7(a)
Execution Date	Paragraph 2(b)
Extended Option Exercise Deadline	Paragraph 2(d)
Extension Notice	Paragraph 2(d)
Former Deposit	Paragraph 2(b)
Former Option Agreement	Recital C
Hazardous Material	Paragraph 7(a)
Junior Liens	Paragraph 5(d)

KMJ	Recital C
Materials	Paragraph 19(z)
Option	Paragraph 2(a)
Option Consideration	Paragraph 2(b)
Option Exercise Deadline	Paragraph 2(c)
Option Extension Consideration	Paragraph 2(d)
Option Notice	Paragraph 2(c)
Optionee	Introductory Paragraph
Permit	Paragraph 7(b)
Permitted Title Exceptions	Paragraph 5(a)
Property	Recital A
Purchase Price	Paragraph 3(a)
Regulatory Approvals	Paragraph 19(v)
Renewal Deposit	Paragraph 2(b)
RFQ/P	Recital B
Title Company	Paragraph 3(a)(ii)
Title Policy	Paragraph 5(b)

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *re* Mayor Edwin M. Lee *re*
RE: Restated Option Agreement - Sale of Surplus Real Property in Mountain View, California to MV Urban Village Homes, LLC - San Francisco Public Utilities Commission Jurisdiction - \$8,100,000
DATE: June 18, 2013

Attached for introduction to the Board of Supervisors is the resolution (1) approving a Restated Option Agreement for the sale of surplus lands under the jurisdiction of the San Francisco Public Utilities Commission ("SFPUC") located in Mountain View, Santa Clara County, California near the intersection of Whisman and Tyrella Avenues, to MV Urban Village Homes, LLC, a California limited liability company ("Optionee"), a joint venture between KMJ Urban Communities, LLC ("KMJ"), and SummerHill Homes, LLC ("SummerHill") and reserving an easement to the SFPUC; (2) authorizing the Director of Property or the SFPUC's General Manager to execute documents, make modifications, and take actions in furtherance of this resolution; and (3) adopting findings that the transactions contemplated by the Restated Option Agreement are consistent with the City's General Plan and with the Eight Priority Policies of City Planning Code Section 101.1.

I request that this item be calendared in Land Use and Economic Development Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 JUN 18 PM 2:45
EL

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
MV Urban Village Homes, LLC	
The sole Members of MV Urban Village Homes, LLC are KMJ Urban Communities, LLC, a California limited liability company, and SummerHill Homes LLC, a California limited liability company. SummerHill Homes also functions as the manager of MV Urban Village Homes, LLC. Robert Freed is the Chief Executive Office of SummerHill Homes LLC and Doug McDonald is the Chief Financial Officer of SummerHill Homes LLC. There is no Chief Operating Officer for SummerHill Homes. KMJ Urban Communities, LLC managing members are Bruce Burman, George Brewster, Ted Pugh and Kim Feldman.	
Contractor address: 3000 Executive Parkway, Suite 450, San Ramon, CA 94583	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$8,100,000
Describe the nature of the contract that was approved: Option Agreement	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed