

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

MYUNG CHUN

as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,

as Buyer

For the Purchase and Sale of

444 6th Street
Block 3759, Lot 045
San Francisco, California

November 20, 2020

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AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE
(444 6th Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this “**Agreement**”) dated for reference purposes only as of November 20, 2020, is by and between MYUNG CHUN, an individual (“**Seller**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Buyer**” or “**City**”).

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and the respective agreements contained herein below, Seller and City agree as follows:

1. PURCHASE AND SALE

1.1 Property Included in Sale

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of land, located in the City and County of San Francisco, commonly known as 444 6th Street and more particularly described in Exhibit A attached hereto (the “**Land**”);

(b) all improvements and fixtures located on the Land, including, without limitation, all buildings and structures located on the Land, all apparatus, equipment and appliances located in or on the Land, and together with all on-site parking, if any (collectively, the “**Improvements**”); and

(c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, all right, title, and interest of Seller in and to any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all right, title, and interest of Seller in and to transferable development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all appurtenant easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller’s right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the “**Appurtenances**”);

All of the items referred to in Subsections (a), (b) and (c) above are collectively referred to as the “**Property**.”

2. PURCHASE PRICE

2.1 Purchase Price

The total purchase price for the Property is Four Million Two Hundred Thousand Dollars (\$4,200,000) (the “**Purchase Price**”).

2.2 Payment

(a) At least one (1) business day prior to the Closing Date (as defined in Section 6.2 [Closing Date]), City shall pay the Purchase Price into Escrow together with any and all costs to be paid by City, adjusted pursuant to the provisions of Article 7 Expenses and Taxes, and reduced by any credits due City hereunder.

(b) Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under Sections 6.3(b) and 6.3(c) (Seller's Delivery of Documents), the Title Company may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "**Federal Tax Code**"), or Section 18662 of the California Revenue and Taxation Code (the "**State Tax Code**") and pay the withheld amount to the applicable governmental agency. Any amount properly so withheld by the Title Company, shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein shall not be excused or otherwise affected thereby.

2.3 Funds

All payments made by any party hereto shall be in legal tender of the United States of America, paid in cash or by wire transfer of immediately available funds to Title Company (as defined in Section 3.2), as escrow agent.

3. TITLE TO THE PROPERTY

3.1 Conveyance of Title to the Property

At the Closing Seller shall convey to City, or its nominee, fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit B (the "**Deed**"). As a condition for the benefit of City, but not as a covenant of Seller, title to the Property shall be subject to the Accepted Conditions of Title (as defined in Section 5.1(a)(ii) [Title Insurance]).

3.2 Title Insurance

As a condition for benefit of City, delivery of title in accordance with the preceding Section shall be evidenced by the commitment of Chicago Title Company (the "**Title Company**") to issue to City, or its nominee, an ALTA extended coverage owner's policy of title insurance (Form ALTA 2006 – updated 6/17/2006) (the "**Title Policy**") in the amount of the Purchase Price or, if applicable, in the total amount of the certificates of participation referred to in Section 5.4 below insuring fee simple title to the Land, the Appurtenances and the Improvements in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, rights of tenants or other occupants, and all other exceptions, liens and encumbrances except solely for the Accepted Conditions of Title as defined in Section 5.1(a) below. Notwithstanding the above provisions of this Section 3.2, in the event that the City elects not to obtain the Survey (as defined below) or otherwise fails to timely obtain the Survey, the Title Policy shall be a CLTA standard coverage owner's form of title insurance policy.

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 Property, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property 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.

4. BUYER'S DUE DILIGENCE INVESTIGATIONS

4.1 Due Diligence

City has been given or will be given before the end of the Due Diligence Period (as defined below), a full opportunity to investigate the Property, either independently or through Agents of City's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City's intended uses. City and its Agents may commence due diligence investigations on the Property on or after the date this Agreement is executed by both parties hereto. The period for completion of all such investigations shall commence as of the execution of this Agreement by both Seller and City and expire December 31, 2020 (the "**Due Diligence Period**"), subject to the terms and conditions provided herein below. The date on which the Due Diligence Period expires shall sometimes be referred to as the "**Due Diligence Date**". Seller agrees to deliver to City all of the items described in Exhibit E attached hereto prior to the Effective Date.

Notwithstanding anything in this Agreement to the contrary, City shall have the right to terminate this Agreement at any time during the Due Diligence Period upon written notice to Seller. Upon such termination, or termination by reason of the failure of the City to timely provide an Approval Notice (as defined below) as provided below, neither City nor Seller shall have any further rights or obligations hereunder, except as otherwise expressly provided herein and further except that the City, upon the request of Seller and without cost to Seller, shall deliver to Seller, without any representation or warranty, copies of all inspection reports obtained by the City with respect to the Property. In the event of any such termination, each party shall bear its own costs incurred hereunder. This Section is subject to, and shall not serve to modify or limit, any right or remedy of City arising under Section 5.1 [City's Conditions to Closing] of this Agreement. In the event City elects to approve of the matters as reviewed by the City during the Due Diligence Period the City shall give written notice of such approval ("**Approval Notice**") to Seller on or before the expiration of the Due Diligence Period. Such Approval Notice shall unequivocally indicate the approval of City with respect to its due diligence pursuant to this Section 4.1. If City fails to timely give the Approval Notice to Seller, City shall conclusively be deemed to have disapproved of the Property in which case this Agreement shall terminate as provided above. If Buyer terminates this Agreement by failing to timely deliver the Approval Notice, Buyer shall, thereafter, at the request of Seller give Seller written notice confirming termination of this Agreement.

4.2 NHDS

Within ten (10) days following the date of the Agreement, Seller shall obtain and deliver to City a natural hazard disclosure report prepared by the Title Company or such other company selected by Seller (“**NHDS**”). The NHDS will indicate, if known, whether the Property is located in one or more of the following hazard areas (“**Hazard Areas**”); (i) a special flood Hazard Area designated by the Federal Emergency Management Agency (California Civil Code Section 1103(c)(1)); (ii) an area of potential flooding (California Government Code Section 8589.4); (iii) a very high fire hazard severity zone (California Government Code Section 51178 et seq.); (iv) a wild land area that may contain substantial forest fire risks and hazards (Public Resources Code Section 4135); (v) earthquake fault zone (Public Resources Code Section 2622); or (vi) a seismic hazard zone (Public Resources Code Section 2694). The cost of the NHDS shall be paid by Seller. City represents and warrants to Seller as follows: (i) City and its agents are sophisticated purchasers of real estate and possess the expertise to assess whether the Property is located in any of the Hazard Areas, (ii) prior to the last day of the Due Diligence Period, independent of the NHDS City shall have determined whether the Property is located in any of the Hazard Areas and will have assessed the impact on its use, operation, development and enjoyment of the Property if the Property is located in any of the Hazard Areas, and (iii) City is not relying on the NHDS in consummating the transactions contemplated hereby. City agrees that Seller shall have no liability to City for any errors or omissions in the NHDS. The provisions of this Section 4.2 shall survive the Closing.

5. ENTRY

Upon reasonable prior notice to Seller, during the Due Diligence Period and at all times prior to the Closing Date Seller shall afford City and its Agents reasonable access to the Property and to all books and records maintained by or in the possession or control of Seller with respect to the Property for the purposes of due diligence with respect to the Property, satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the City Conditions Precedent. In all events, in connection with any invasive testing with respect to the Property, City shall give Seller prior written notice describing the proposed testing and any and all such testing shall be subject to the prior written approval of Seller, which approval shall not be unreasonably withheld. Any invasive testing conducted by City with respect to the Property shall be at the sole cost and expense of City and shall be performed in accordance with all applicable laws including, without limitation, applicable Environmental Laws. Prior to any invasive testing with respect to the Property City shall obtain any required permits and authorizations and shall pay all applicable fees required by any governmental agency. City hereby agrees to indemnify and hold Seller harmless from any damage or injury to persons or property caused by the active negligence or willful misconduct of City or its Agents during any such entries onto the Property prior to the Closing, except to the extent such damage or injury is caused by the acts or omissions of Seller or any of its Agents. The foregoing Indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Property, including the Improvements. In the event this Agreement is terminated for any reason other than Seller’s default hereunder, City shall restore the Property to substantially the condition it was found subject to applicable laws. This indemnity shall survive the termination of this Agreement or the Closing, as applicable,

provided that Seller must give notice of any claim it may have against City under such indemnity (i) within twelve (12) months of such termination if the claim is brought by a third party against Seller or (ii) within three (3) months of such termination or the Closing Date, as applicable, if the claim involves damage to Seller's Property or any other claim not brought by a third party against the Seller.

5.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Property (collectively, "**City Conditions Precedent**"):

(a) City shall have reviewed and approved title to the Property, as follows:

(i) City acknowledges receipt of that certain Preliminary Title Report dated as of January 3, 2020 prepared by the Title Company ("**Preliminary Report**") together with copies of all documents referenced in the Preliminary Report.

(ii) City hereby approves the following Title Exceptions as shown on the Preliminary Report: Exception numbers 1 through 4 inclusive, number 6 and number 9. Such exceptions together with such other exceptions as may be approved by City shall be referred to as the "**Accepted Conditions of Title**". Except as specifically provided in this Agreement, Seller shall have no obligation to remove any title exceptions. Seller shall remove, as of the Closing, all liens evidencing any deed of trust (and related documents) securing financing, all delinquent tax and delinquent assessment liens, all mechanic's liens relating to work performed by or on behalf of Seller, any leases and all judgment liens against Seller.

(iii) City may at its option arrange for an "as-built" survey of the Real Property and Improvements prepared by a licensed surveyor (the "**Survey**"). Such Survey shall be acceptable to, and certified to, City and Title Company and in sufficient detail to provide the basis for an ALTA extended coverage owner's policy of title insurance. The Survey shall be obtained by City, if at all, prior to expiration of the Due Diligence Period and City shall promptly deliver a copy of the Survey to the Seller and the Title Company and request that the Title Company provide an update to the Preliminary Title Report ("**ALTA Supplement**") to the extent required to reflect any title exceptions not otherwise shown on the Preliminary Report. The ALTA Supplement shall be provided by the Title Company prior to expiration of the Due Diligence Period and a copy of the ALTA Supplement, if any, shall be promptly delivered to Seller.

(iv) City shall give written notice ("**Title Notice**") to Seller, prior to the end of the Due Diligence Period, setting forth those exceptions to title (including any additional exceptions shown on any ALTA Supplement), if any, City disapproves (collectively, "**Objection Exceptions**"). City's failure to timely give the Title Notice shall be deemed City's disapproval of title and election to terminate this Agreement. If City timely gives the Title Notice, Seller shall have ten (10) days after receipt of City's Title Notice of objections to title to give City: (A) evidence satisfactory to City of the removal of all Objection Exceptions from title or that such exceptions will be removed or cured on or before the Closing; or (B) notice that Seller elects not to cause such exceptions to be removed. In the event that Seller fails to timely give

notice to the City in response to the City's Title Notice, Seller shall be deemed to have given notice pursuant to clause (B) above. If Seller gives or is deemed to have given notice under clause (B), City shall have ten (10) days to elect to proceed with the purchase or terminate this Agreement by giving written notice to Seller. If City shall fail to give Seller notice of its election within such ten (10) days, City shall be deemed to have elected to terminate this Agreement. If Seller gives notice pursuant to clause (A) and fails to remove any such Objection Exceptions, or any of the liens described in the last sentence of Section 5.1(a)(ii), from title prior to the Closing Date, and City is unwilling to take title subject thereto, Seller shall be in default hereunder and the provisions of Section 6.7 below shall be applicable.

(b) City's review and approval, within the Due Diligence Period, of the physical and environmental conditions of the Property, including, without limitation, structural, mechanical, electrical and other physical conditions of the Property. Such review may include an examination for the presence or absence of any Hazardous Material (as defined in Section 8.2(g)(ii) below) subject to the provisions of Section 5. City shall be responsible for performing or arranging any such reviews at City's expense.

(c) City's review and approval, within the Due Diligence Period, of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(d) City's review and approval, within the Due Diligence Period, of the following documents, all to the extent such documents exist and are either in the possession or control of Seller, or any affiliate of Seller: brokerage and leasing commission agreements, management agreements, service contracts and any other agreements which may continue after Closing; insurance policies, insurance certificates of tenants, and reports of insurance carriers insuring the Property and each portion thereof respecting the claims history of the Property; environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; and any other contracts or documents of significance to the Property (collectively, the "**Documents**").

(e) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement, and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing Date. At the Closing Seller shall deliver to City a certificate certifying that in all material respects each of Seller's representations and warranties contained in Section 8.2 [Representations and Warranties of Seller] below are true and correct as of the Closing Date subject to such modifications as may have been made pursuant to the provisions of Section 11.3.

(f) The physical condition of the Property shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 [Risk of Loss]), and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use.

(g) Title Company shall be committed at the Closing to issue to City, or its nominee, (i) the Title Policy as provided in Section 3.2 [Title Insurance] and (ii) an ALTA extended coverage policy of leasehold title insurance in the amount of the Purchase Price insuring City's leasehold estate under the facilities lease with the Nominee (as defined below), if applicable, in the total amount of the certificates of participation, subject only to the Accepted Conditions of Title (excluding the facilities lease) together with the same endorsements as the Title Policy.

(h) The City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions described in this Agreement, including if applicable the issuance, delivery and sale of the Certificates of Participation described in Section 5.4 to finance the transaction, on or before February 28, 2021. Notwithstanding the above provisions of this Section 5.1(h) the issuance of Certificates of Participation shall not constitute a City Conditions Precedent and the obligations of City shall not be conditioned upon such issuance.

(i) Seller shall have delivered the items described in Section 6.3 below [Seller's Delivery of Documents] on or before the Closing.

(j) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 6.6 below).

The City Conditions Precedent contained in the foregoing Subsections (a) through (j) are solely for the benefit of City. The City Conditions Precedents contained in Subsections (b) through (d) inclusive, shall be considered to have been satisfied if City timely gives an Approval Notice. If any City Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the Condition Precedent described in item (h) above may not be waived. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. If City shall not have approved or waived in writing all of the Conditions Precedent in items (b) – (d) by the end of the Due Diligence Period as evidenced by an Approval Notice, then this Agreement shall automatically terminate. If, as of the Closing, all of the Conditions Precedent in items (e) - (j) have not been satisfied or waived with the exception of the condition set forth in Section 5.1(h) which cannot be waived, then this Agreement shall automatically terminate.

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of Seller the provisions of Section 6.7(b) shall be applicable.

5.2 Cooperation with City

Seller shall reasonably cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity,

including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

5.3 Seller's Conditions to Closing

The following are conditions precedent to Seller's obligation to sell the Property pursuant to this Agreement (collectively, "**Seller Conditions Precedent**").

(a) Delivery and execution by City of all monies, items and instruments required to be delivered by City pursuant to this Agreement;

(b) City's warranties and representations set forth herein shall be true and correct in all material respects as of the Closing Date;

(c) City shall not be in default in the performance of any covenant or agreement to be performed by City pursuant to this Agreement;

(d) City shall have timely given the Approval Notice in accordance with the provisions of Section 4.1; and

(e) The Effective Date shall have occurred on or before January 31, 2021.

The Seller Conditions Precedent set forth in the foregoing subsections (a) through (d) are solely for the benefit of Seller. The Seller Conditions Precedent contained in Section 5.3(d) shall be considered satisfied if City timely gives an Approval Notice. If any Seller Condition Precedent is not satisfied, Seller shall have the right in its sole discretion to either waive in writing the condition precedent in question and proceed with the transaction, or, in the alternative, terminate this Agreement.

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of City, the provisions of Section 6.7(a) shall be applicable.

5.4 City Financing

Under City's current plans, City may finance the acquisition of the Property with proceeds from the issuance, sale and delivery of certificates of participation, a financing mechanism that will require fee simple title to be taken in the name of a nominee of City (the "**Nominee**") which, as landlord, will lease the Property to City. The Nominee, which will be a bank or other fiduciary, will act as trustee for holders of the Certificates of Participation. Seller hereby consents to the use of a nominee to take title, and further consents to City's assignment to the Nominee of City's rights under this Agreement; provided in connection with such assignment City shall not be released from any of its obligations pursuant to this Agreement. City makes no representation, warranty or assurance that such certificates will be issued, delivered or sold. Seller agrees to execute and deliver to City upon request any and all certificates, agreements, authorizations or other documents as City may reasonably deem necessary or appropriate in connection with the issuance, delivery and sale of the certificates of participation. Subject to the foregoing and the other terms and conditions hereof, City may, at its option, initiate a validation proceeding in superior court with respect to such certificates, in which case the issuance of the

certificates of participation is conditioned upon a judgment in favor of City, without challenge and without notice of appeal having been filed, on or before the Closing Date. The availability or completion of the financing as described above in this Section 5.4 shall not constitute a City Condition Precedent and the obligations of City pursuant to this Agreement shall not be conditioned upon such financing.

5.5 Failure of Conditions.

If any of the conditions set forth in Sections 5.1 or 5.3 is not timely satisfied or waived by the applicable party, for any reason other than the default of City or Seller under this Agreement, then this Agreement and the rights and obligations of City and Seller shall terminate and be of no further force or effect except as to those matters as specifically stated in this Agreement to survive termination, in which case the Title Company is hereby instructed to return promptly to the party which placed such items into Escrow all funds and documents which are held by the Title Company on the date of termination.

6. ESCROW AND CLOSING

6.1 Opening of Escrow

Prior to the Effective Date (as defined in Article 12 [General Provisions]), the parties shall open escrow (“**Escrow**”) with Title Company. Upon execution of this Agreement the parties shall deposit into Escrow a fully executed counterpart of this Agreement, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

6.2 Closing Date

The consummation of the purchase and sale contemplated hereby (the “**Closing**”) shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Title Company located at One Embarcadero Center, Suite 250, San Francisco, California 94111, on February 28, 2021, or on such earlier date as City and Seller may mutually agree in writing (the “**Closing Date**”), subject to the provisions of Article 5 [Conditions Precedent]. The Closing shall occur no later than 10:00 A.M. on the Closing Date. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. Except in the event of a default by either Seller or City in which event the provisions of Section 6.7 shall be applicable, in the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the intended Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close. Notwithstanding the above provisions to the contrary Seller, upon giving prior written notice (“**Extension Notice**”) to City, at least ten

(10) days prior to the date then scheduled for Closing shall be entitled to extend the date for closing for up to sixty (60) days. The date to which the Closing shall be extended shall be set forth by Seller in the Extension Notice.

6.3 Seller's Delivery of Documents

At or before the Closing, Seller shall deliver to City, or the Nominee, through Escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit C, and on which City is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (c) a properly executed California Franchise Tax Board Form 590 certifying that Seller is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;
- (d) such resolutions, authorizations, trust certifications or agreements relating to Seller the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby;
- (e) closing statement in form and content satisfactory to City and Seller; and
- (f) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.1(e) hereof.

6.4 City's Delivery of Documents and Funds

At or before the Closing, City, or the Nominee, shall deliver to Seller through Escrow the following:

- (a) an acceptance of the Deed executed by City's Director of Property;
- (b) a closing statement in form and content satisfactory to City and Seller; and
- (c) the Purchase Price, as provided in Article 2 hereof.

6.5 Other Documents

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

6.6 Title Company as Real Estate Reporting Person


Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the “**Reporting Requirements**”) require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Closing. Seller and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Seller and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

6.7 Default

(a) FROM AND AFTER THE LATER OF THE EFFECTIVE DATE OR EXPIRATION OF THE DUE DILIGENCE PERIOD, IN THE EVENT THE SALE OF THE PROPERTY AS CONTEMPLATED HEREUNDER IS NOT CONSUMMATED DUE TO A MATERIAL DEFAULT OF CITY, THE SUM OF EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) (“**LIQUIDATED SUM**”) SHALL BE PAID BY CITY TO SELLER AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT THAT THE SALE IS NOT CONSUMMATED WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY SEPARATELY EXECUTING THIS SECTION 6.7(a) BELOW, THE PARTIES ACKNOWLEDGE THAT THE LIQUIDATED SUM HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S EXCLUSIVE REMEDY AGAINST CITY IN THE EVENT THE CLOSING DOES NOT OCCUR DUE TO CITY'S DEFAULT AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST CITY ARISING FROM SUCH FAILURE OF THE SALE TO CLOSE. SELLER'S RETENTION OF THE LIQUIDATED SUM AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389 WITH RESPECT TO ANY DEFAULT BY CITY OF ITS OBLIGATIONS TO CLOSE THE TRANSACTION. SELLER HEREBY WAIVES THE RIGHT OF SPECIFIC PERFORMANCE WITH RESPECT TO ANY BREACH OR DEFAULT BY CITY UNDER THIS AGREEMENT. IN NO EVENT SHALL THIS SECTION 6.7(a) LIMIT THE DAMAGES RECOVERABLE BY EITHER PARTY AGAINST THE OTHER PARTY DUE TO (A) THE OTHER PARTY'S OBLIGATION TO INDEMNIFY SUCH PARTY IN ACCORDANCE WITH THIS AGREEMENT FOR INDEMNIFIED MATTERS NOT ARISING DIRECTLY FROM A PARTY'S DEFAULT UNDER THIS AGREEMENT, OR (B) THIRD PARTY CLAIMS NOT ARISING DIRECTLY IN CONNECTION WITH CITY'S DEFAULT AS REFERENCED ABOVE IN THIS SECTION 6.7(a). BY EACH SEPARATELY

EXECUTING THIS SECTION 6.7(a) BELOW, CITY AND SELLER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTOOD THE ABOVE PROVISION COVERING LIQUIDATED DAMAGES, AND THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS EXECUTED.

City Initials


Seller's Initials

(b) In the event the sale of the Property as contemplated hereunder is not consummated due to Seller's default hereunder, City shall be entitled, as its sole remedies, either (a) to terminate this Agreement, or (b) to enforce specific performance of Seller's obligation to convey the Property to City in accordance with the terms of this Agreement including, without limitation, the obligation of Seller to deliver the documents required of Seller to be delivered at the Closing pursuant to the provisions of Section 6.3, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of Seller hereunder. If City elects to terminate this Agreement, (i) Seller shall reimburse City for the documented out-of-pocket expenses incurred by City in connection with this transaction, including, but not limited to, attorneys' and environmental consultants' fees and costs subject, however, to a maximum aggregate amount of Twenty Thousand Dollars (\$20,000), and (ii) Seller shall be released from any and all further liability for Seller's default hereunder, except as to those matters specifically stated in this Agreement to survive termination. City shall be deemed to have elected to terminate this Agreement and receive its out-of-pocket expenses if City fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located, on or before one hundred twenty (120) days following the date upon which Closing was to have occurred.

7. EXPENSES AND TAXES

7.1 Apportionments

The following are to be apportioned through Escrow as of the Closing Date:

(a) Utility Charges

Seller shall cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. All utility deposits paid by Seller shall remain the property of Seller and City shall reasonably cooperate to cause such deposits to be returned to Seller to the extent Seller is entitled thereto.

(b) Other Apportionments

Amounts payable under any contracts assumed pursuant hereto, annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for

other normal Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

7.2 Closing Costs

City shall pay the cost of the Survey, the premium for the Title Policy and the cost of the endorsements thereto, and escrow and recording fees. It is acknowledged and agreed that no transfer tax is payable with respect to the subject transaction and notwithstanding any assignment by City to a Nominee or other assignee Seller shall have no obligation to pay any transfer tax and in the event that any such tax is payable with respect to the Closing City or Nominee or applicable assignee shall be obligated to pay the transfer tax. Seller shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be allocated in accordance with the closing customs for San Francisco County, as determined by Title Company.

7.3 Real Estate Taxes and Special Assessments

General real estate taxes payable for the tax year prior to the year of Closing and all prior years shall be paid by Seller at or before the Closing. General real estate taxes payable for the tax year of the Closing shall be prorated through escrow by Seller and City as of the Closing Date. At or before the Closing, Seller shall pay the full amount of any special assessments against the Property, including, without limitation, interest payable thereon, applicable to the period prior the Closing Date provided that the obligation of Seller with respect to assessments on the Property shall be limited to any delinquent and current installments, which current installments shall be prorated through Escrow and Seller shall have no obligation to pay any amount with respect to any such assessments other than the delinquent and prorated current installments. Any refund in connection with real estate taxes related to the Property attributable to the period prior to the Closing Date shall be paid to Seller.

7.4 Preliminary Closing Adjustment

Seller and City shall jointly prepare a preliminary Closing adjustment on the basis of the sources of income and expenses, and shall deliver such computation to Title Company prior to Closing.

7.5 Post-Closing Reconciliation

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party.

7.6 Survival

The provisions of this Section 7 shall survive the Closing.

8. REPRESENTATIONS AND WARRANTIES

8.1 No Representations or Warranties by Seller.

Except as expressly set forth in this Agreement, Seller has not made any warranty or representations, expressed or implied, written or oral, concerning the Property.

8.2 Representations and Warranties of Seller

Seller represents and warrants to and covenants with City as follows:

(a) To the best of Seller's knowledge, there are no material violations of any laws, rules or regulations applicable to the Property, except such violations that would be cured by the discontinuation of all business operations at the Property and the demolition of all remaining Improvements on the Land, or as disclosed by the documents listed on Exhibit F.

(b) Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(c) To Seller's best knowledge, there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property. There are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

(d) There is no litigation pending or, after due and diligent inquiry, to the best of Seller's knowledge, threatened, against Seller or any basis therefor that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

(e) Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

(f) Seller 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 governmental agency. In the event Seller has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(g) Except with respect to matters disclosed in any environmental report(s) and other information obtained by City during the Due Diligence Period or previously (collectively, the “**Environmental Reports**”), to Seller’s knowledge, (i) Seller has not received any written notice from any governmental authority of any current violation of any Environmental Law (as hereinafter defined) relating to the Property; (ii) during Seller’s ownership, there has been no release of any Hazardous Material in, on or under the Property; and (iii) no claim, investigation, administrative order, consent order and agreement, litigation, or settlement with respect to release or threatened release of any Hazardous Material is to the best of Seller’s knowledge pending or threatened in writing with respect to the Property, and there is no inquiry by any governmental agency other than the City (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on or under, the Property, or the migration of Hazardous Material from or to other property. Notwithstanding any provisions of this Agreement to the contrary including without limitation, the provisions of this Section 8.2(g) City acknowledges the investigation by City and the proceedings and governmental action that occurred or may have occurred with respect to such matters. As used herein, the following terms shall have the meanings below:

(i) “**Environmental Laws**” shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

(ii) “**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. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”, also commonly known as the “**Superfund**” law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “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 structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

(iii) “**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 into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, “release” as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(h) There are now, and at the time of Closing will be, no leases or other occupancy agreements affecting any of the Property. At the time of Closing there will be no outstanding written or oral contracts made by Seller for any of the Improvements that have not been fully paid for and Seller shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property at the request of Seller prior to the time of Closing. There are no obligations of Seller which will be binding upon City after Closing pursuant to any lease or service contract or other like contract.

(i) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

8.3 Representations of City

City represents and warrants to and covenants with Seller that City is in possession and/or otherwise in receipt of the documents listed on Exhibit F attached hereto and that City shall be deemed to be aware of and otherwise know, for purposes of this Agreement, the information and disclosures with respect to the Property contained in any of such documents.

8.4 Indemnity

Seller, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from any material misrepresentation or breach of any representation or warranty made by Seller pursuant to the provisions of Section 8.2, or any third party liability incurred by City relating to a material breach of any covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to the Closing. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material, excluding any consequential or punitive damages. The indemnification provisions of this Section shall survive beyond the Closing, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement.

8.5 Knowledge.

References to the "knowledge" of Seller and phrases of similar import shall refer only to the current actual (not constructive) knowledge of Seller, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any affiliate of Seller, to any property manager, or to any other officer, agent, manager, representative or employee of Seller or any affiliate thereof or to impose upon such person any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. Seller represents that Seller is the person primarily responsible for the management and operation of the Property.

9. RISK OF LOSS AND POSSESSION

9.1 Risk of Loss

If any of the Land or Improvements is damaged or destroyed prior to the Closing Date, or if condemnation proceedings are commenced against any of the Property, then the rights and obligations of Seller and City hereunder shall be as follows:

(a) If the cost of such damage or destruction would equal or exceed One Million Dollars (\$1,000,000) or if condemnation proceedings are commenced against any of the Property, then, City shall have the right, at its election, to terminate this Agreement in its entirety, or to not terminate this Agreement and purchase the Property. City shall have thirty (30) days after Seller notifies City that an event described in this Subsection (a) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety pursuant to this Subsection (a) by City's delivery of notice of termination to Seller, then City and Seller shall each be released from all obligations hereunder. If City elects not to terminate this Agreement, this Agreement shall remain in full force and effect, the Purchase Price shall remain unmodified and in the event of a condemnation Seller shall assign to City and the City shall be entitled to receive and keep all awards for the taking by eminent domain which accrue to Seller.

9.2 Insurance

Through the Closing Date, Seller shall maintain or cause to be maintained, at no cost or expense to City the insurance summarized on the Insurance Certificates attached hereto as Exhibit E.

9.3 Possession

Possession of the Property shall be delivered to City on the Closing Date.

10. MAINTENANCE; CONSENT TO NEW CONTRACTS

10.1 Maintenance of the Property by Seller

Between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain the Property in good order, condition and repair, reasonable wear and tear excepted, and shall make all repairs, maintenance and replacements of the Improvements and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property. It is acknowledged and agreed that significant deferred maintenance and condition issues exist with respect to the Improvements and notwithstanding any provision to the contrary, Seller shall have no obligation to make any replacements with respect to the Improvements or otherwise improve the condition of the Improvements.

10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts

After the execution of this Agreement by City and Seller, Seller shall not enter into any lease or contract pertaining to the Property without in each instance obtaining City's prior written consent thereto in City's sole and absolute discretion. Seller shall terminate prior to the Closing, at no cost or expense to City, any and all management agreements affecting the Property that City does not agree in writing prior to the Closing to assume.

11. LIMITATIONS ON REPRESENTATIONS AND WARRANTIES.

11.1 No Reliance on Documents

Except as expressly stated herein, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller or its agents to City in connection with the transaction contemplated hereby. City acknowledges and agrees that, except as may be expressly stated herein, all materials, data, and information delivered by Seller to City in connection with the transaction contemplated hereby are provided to City as a convenience only and that any reliance on or use of such materials, data, or information by City shall be at the sole risk of City. Neither Seller nor any affiliate of Seller shall have any liability to City for any inaccuracies in or omission from any third party reports delivered by Seller to City.

11.2 As-Is Sale

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND ANY CLOSING DOCUMENTS, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

CITY ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO CITY AND CITY SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR ANY CLOSING DOCUMENT. CITY HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, OFFERING PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, OR ANY AGENTS REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. CITY ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS-IS."

CITY REPRESENTS TO SELLER THAT CITY HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS CITY DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OF CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON, UNDER OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY CLOSING DOCUMENT. UPON CLOSING, CITY SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY CITY'S INVESTIGATIONS, AND CITY, UPON CLOSING (EXCEPT WITH RESPECT TO THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THIS AGREEMENT), SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, TRUSTEES, MANAGERS, SHAREHOLDERS, MEMBERS, EMPLOYEES, AGENTS, ATTORNEYS, PREDECESSORS, SUCCESSORS, AND TRANSFEREES, AND EACH OF THEIR AFFILIATES, AGENTS AND RELATED PARTIES) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT, SPECIFICALLY EXCLUDING FRAUD), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH CITY MIGHT HAVE ASSERTED OR ALLEGED OR WHICH CITY MAY IN THE FUTURE ASSERT OR ALLEGE AGAINST SELLER (AND SELLER'S OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, SHAREHOLDERS, MEMBERS, EMPLOYEES, AGENTS, ATTORNEYS, PREDECESSORS, SUCCESSORS, AND TRANSFEREES AND EACH OF THEIR AFFILIATES, AGENTS AND RELATED PARTIES) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY INCLUDING, WITHOUT LIMITATION, ANY MATTERS ARISING OUT OF OR RELATING IN ANY FASHION TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY AS REFERENCED IN SECTION 8.2(g) ABOVE.

IN CONNECTION WITH THE ABOVE WAIVERS AND RELEASE, CITY HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 WHICH PROVIDES THAT:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

[Redacted Box]

City's Initials

11.3 Material Change

Seller shall promptly notify City of any change in any condition with respect to the Property or any event or circumstance which makes any representation or warranty of Seller as set forth in Section 8.2 of this Agreement materially untrue or misleading or any covenant of Seller under this Agreement incapable of being performed. In no event shall Seller be liable to City for, or be deemed to be in default pursuant to this Agreement by reason of any inaccuracy of representation or warranty which results from any change that occurs between the date of this Agreement and the Closing Date which is (i) expressly permitted under the terms of this Agreement, or (ii) is beyond the reasonable control of Seller to prevent; provided, however, that the occurrence of a material change which is not permitted hereunder shall constitute the non-fulfillment of the condition set forth in Section 5.1(e) hereof. If, in spite of such nonfulfillment of the condition set forth in such Section 5.1(e), the Closing occurs, Seller's representatives and warranties as set forth in this Agreement shall be deemed to have been modified by all statements made in a notice or notices of modification as given by Seller to City pursuant to this Section 11.3.

11.4 Survival of Seller's Representations and Warranties

The representations and warranties of Seller set forth in Section 8.2 (as such may have been updated as of the Closing in accordance with Section 11.3) of this Agreement shall survive the Closing for a period of six (6) months (the “**Limitation Period**”). No post-Closing claim for a breach of any representation or warranty of Seller shall be actionable or payable if the breach in question results from or is based on a condition, state of fact or other matter which was actually known to City prior to Closing. In addition, Seller shall have no liability for a breach of any representation unless the valid claims for all such breaches collectively aggregate more than Fifty Thousand Dollars (\$50,000), in which event the full amount of such valid claims shall be actionable up to the Maximum (as defined below). City shall provide written notice to Seller containing a description of the specific nature of such breach prior to the expiration of the Limitation Period and any action must be commenced by City against Seller within ninety (90) days following the expiration of the Limitation Period. As used herein the term “**Maximum**” should mean the total aggregate amount of One Hundred Thousand Dollars (\$100,000).

11.5 Survival of Limitations

The provisions of this Section 11 shall survive Closing or any termination of this Agreement.

12. GENERAL PROVISIONS

12.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and given by email to the applicable email addresses listed below, or such other email address as may be provided from time to time. Any notice given by email shall be effective if transmitted on a business day before 5:00 p.m. California time with a copy of the electronic mail notice together with evidence of a successful transmission indicating the date and time of transmission (which may be a copy of the electronic mail) available for review on the request of the recipient. Any notice given by the attorney for either Seller or Buyer, as the case may be, shall constitute an effective notice as given by the applicable party and addressed as follows:

City:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Re: **444 6th Street**
Email: Andrico.Penich@sfgov.org

with copy to:

Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Re: **444 6th Street**
Email: Heidi.Gewertz@sfcityatty.org

Seller:

Myung Chun
2380 Rosewood Drive
San Bruno, CA 94066
Re: **444 6th Street**
Email: joyceechun@gmail.com

With a copy to:

Walter Merkle, Esq.
Arent Fox LLP
55 Second Street, 21st Floor
San Francisco, CA 94105
Email: Walter.Merkle@arentfox.com

12.2 Brokers and Finders

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed

real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

12.3 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. City shall have the right, upon notice to Seller, to assign its right, title and interest in and to this Agreement to the Nominee or one (1) or more assignees at any time before the Closing Date.

12.4 Amendments

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

12.5 Continuation and Survival of Representations and Warranties

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement.

12.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12.7 Merger of Prior Agreements

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

12.8 Parties and Their Agents; Approvals

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

12.9 Interpretation of Agreement

The article, section 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 negotiated at arm's length and 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 and this Agreement.

12.10 Attorneys' Fees

In the event that either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the 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 Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

12.11 Sunshine Ordinance

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

12.12 Conflicts of Interest

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 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 Seller becomes aware of any such fact during the term of this Agreement, Seller shall immediately notify the City.

12.13 Notification of Limitations on Contributions

Through its execution of this Agreement, Seller 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 the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Seller further acknowledges that the prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller. Additionally, Seller acknowledges that Seller must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Seller further agrees to provide to City the names of each person, entity or committee described above.

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

12.15 Counterparts

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

12.16 Effective Date

As used herein, the term “**Effective Date**” shall mean the later of (i) the date on which the City’s Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, and (ii) the date on which this Agreement is executed by both parties.

12.17 Severability

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall 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, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

12.18 Agreement Not to Market Prior to Effective Date

Seller agrees that unless and until this Agreement terminates pursuant to its terms, Seller shall not negotiate with any other parties pertaining to the sale of the Property and shall not market the Property to third parties.

12.19 Acceptance of Agreement by Seller

This Agreement shall be null and void unless Seller accepts it and returns to City four (4) fully executed counterparts hereof on or before 5:00 p.m. San Francisco Time on November 24, 2020.

12.20 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY’S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT

AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

12.21 1031 Exchange

Seller may, at its option, elect to have the Property transferred as part of a tax-deferred exchange pursuant to U.S. Internal Revenue Code Section 1031 (the "Code"). The completion of the exchange is not a condition to the Closing. In order to facilitate the exchange, each party shall cooperate with the other, at Seller's sole cost and expense, and shall execute, acknowledge and deliver any and all documents that Seller may reasonably request to any intermediary that Seller may direct; provided, however, that City shall not have any obligation whatsoever to (a) incur any escrow, title, brokerage or any other costs, expenses or any liability whatsoever, directly or indirectly, in connection with or arising out of Seller's exchange, or (b) take title to any property, other than the Property. Seller shall indemnify, defend and hold City harmless from any and all costs, expenses, liability and all other claims, whatever the nature thereof, that City may incur or be subject to as a result of participating in Seller's exchange, which indemnity shall survive the execution and delivery of this Agreement and the Closing, or if the context requires, beyond any termination of this Agreement. In no event shall the Closing be delayed as a result of the exchange. It shall be Seller's sole responsibility to determine whether the property exchanged qualifies as "like-kind" within the meaning of the Code. Seller shall be solely responsible for the tax consequences of its exchange and City shall not have any obligation or liability to Seller in connection with Seller's exchange.

13. Definitions.

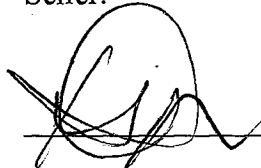
Accepted Conditions of Title has the meaning set forth in Section 5.1(a)(ii) 5
Agents has the meaning set forth in Section 12.8 23
Agreement has the meaning set forth in the Opening Paragraph 1
ALTA Supplement has the meaning set forth in Section 5.1(a)(iii) 6
Approval Notice has the meaning set forth in Section 4.1 4
Appurtenances has the meaning set forth in Section 1.1(c)..... 1
Buyer has the meaning set forth in the Opening Paragraph..... 1
CERCLA has the meaning set forth in Section 8.2(g)(ii)..... 15
City Conditions Precedent has the meaning set forth in Section 5.1 5
City has the meaning set forth in the Opening Paragraph 1
Closing Date has the meaning set forth in Section 6.2 10
Closing has the meaning set forth in Section 6.2 9
Deed has the meaning set forth in Section 3.1..... 2
Documents has the meaning set forth in Section 5.1(d) 6

Due Diligence Date has the meaning set forth in Section 4.1.....	3
Due Diligence Period has the meaning set forth in Section 4.1	3
Effective Date has the meaning set forth in Section 12.16	25
Environmental Laws has the meaning set forth in Section 8.2(g)(i).....	15
Environmental Reports has the meaning set forth in Section 8.2(g)	15
Escrow has the meaning set forth in Section 6.1.....	9
Extension Notice shall have the meaning ascribed in Section 6.2.....	10
Federal Tax Code has the meaning set forth in Section 2.2(c)	2
Hazard Areas has the meaning set forth in Section 4.2	4
Hazardous Material has the meaning set forth in Section 8.2(g)(ii)	15
Improvements has the meaning set forth in Section 1.1(b).....	1
Land has the meaning set forth in Section 1.1(a).....	1
Limitation Period has the meaning set forth in Section 11.4.....	20
Liquidated Sum has the meaning set forth in Section 6.7.....	15
NHDS has the meaning set forth in Section 4.2	4
Nominee has the meaning set forth in Section 5.4	9
Objection Exceptions has the meaning set forth in Section 5.1(a)(iv)	6
Preliminary Report has the meaning set forth in Section 5.1(a)(i)	5
Property has the meaning set forth in Section 1.1(c)	1
Purchase Price has the meaning set forth in Section 2.1.....	1
Release shall have the meaning set forth in Section (iii).....	16
Reporting Requirements has the meaning set forth in Section 6.6.....	11
Seller Conditions Precedent has the meaning set forth in Section 5.3.....	8
Seller has the meaning set forth in the Opening Paragraph.....	1
State Tax Code has the meaning set forth in Section 2.2(c).....	2
Survey has the meaning set forth in Section 5.1(a)(iii).....	5
Title Company has the meaning set forth in Section 3.2.....	3
Title Notice shall have the meaning ascribed in Section 5.1(a)(iv)	6
Title Policy has the meaning set forth in Section 3.2.....	3

[SIGNATURES ON FOLLOWING PAGES]

The parties have duly executed this Agreement as of the respective dates written below.

Seller:



Myung Chun

City:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

ANDRICO Q. PENICK
Director of Property

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Heidi Gewertz
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Beginning at a point on the Southerly line of Sixth Street, distant thereon 268.75 feet Southeasterly from the Southeasterly line of Harrison Street, and thence running Southeasterly along said line of Sixth Street 31.25 feet; thence at a right angle Southwesterly 165 feet to the Northwesterly line of Harriet Street; thence at a right angle Northwesterly along said line of Harriet Street 31.25 feet; thence at a right angle Northeasterly 165 to the point of beginning.

APN: Lot 045, Block 3759

EXHIBIT B

GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
and Documentary Transfer Tax (CA Rev. & Tax Code
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

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

GRANT DEED

(Assessor's Parcel No. _____)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
_____, a _____, hereby grants to
the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property
located in the City and County of San Francisco, State of California, described on Exhibit A
attached hereto and made a part hereof (the "Property").

TOGETHER WITH any and all rights, privileges and easements incidental or
appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other
hydrocarbon substances on and under the Property, as well as any and all development rights, air
rights, water, water rights, riparian rights and water stock relating to the Property, and any and all
easements, rights-of-way or other appurtenances used in connection with the beneficial use and
enjoyment of the Land and all of Grantor's right, title and interest in and to any and all roads and
alleys adjoining or servicing the Property.

[SIGNATURES ON FOLLOWING PAGE]

Executed as of this _____ day of _____, 20__.

_____, a _____

_____,
NAME By: _____

Its: _____

_____,
NAME By: _____

Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)



CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Andrico Q. Penick
Director of Property

EXHIBIT C

**CERTIFICATE OF TRANSFEROR
(FIRPTA AFFIDAVIT)**

CERTIFICATE OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Insurance Services Office, Inc. (the "**Transferee**") that withholding of tax is not required upon the disposition of a U.S. real property interest by _____ ("**Transferor**") the undersigned hereby certifies the following:

1. Transferor is not a nonresident alien for purposes of U.S. income taxation;
2. Transferor's U.S. taxpayer identification number is _____; and
3. Transferor's home address is:

[]

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

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete.

Dated: _____

Name:

EXHIBIT D

DELIVERED DOCUMENTS

1. Preliminary Title Report
2. Insurance Certificates

Exhibit E

INSURANCE CERTIFICATE

Exhibit F

CITY ACKNOWLEDGED DOCUMENTS

1. Preliminary Mitigated Negative Declaration (“PMND”) which includes Environmental disclosures.
2. Preliminary Title Report dated January 20, 2020