

AGREEMENT FOR SALE OF REAL ESTATE

by and between

CITY AND COUNTY OF SAN FRANCISCO,  
as Seller

and

CHINESE HOSPITAL ASSOCIATION,  
as Buyer

For the sale and purchase of

The former public right of way known as James Alley,  
San Francisco, California

\_\_\_\_\_, 2016

**AGREEMENT FOR SALE OF REAL ESTATE**  
(James Alley, San Francisco)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this "Agreement") dated for reference purposes only as of \_\_\_\_\_ 2016, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Seller"), and CHINESE HOSPITAL ASSOCIATION, a California non-profit corporation ("Buyer").

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

**A.** City owns certain real property located in the City and County of San Francisco commonly known as James Alley, more particularly described on the attached Exhibit A and depicted on the attached Exhibit A-1 (the "Property).

**B.** Buyer owns certain real property located adjacent to the Property, having the street address of 835-845 Jackson Street, San Francisco, California, and as more particularly depicted in the attached Exhibit B ("Buyer's Adjoining Property"). Buyer's Adjoining Property is improved with a hospital. Buyer proposes to construct the new Chinese Hospital on a portion of the Buyer's Adjoining Property.

**C.** Buyer has requested that City vacate the Property and convey it to Buyer, subject to the terms, easements, covenants and conditions set forth in the Deed (as defined in Section 3.1(a) below) in the form attached hereto as Exhibit C, so that Buyer may use the Property as privately improved landscaped open space with public pedestrian access and to accommodate hospital uses for the new Chinese Hospital under construction by Buyer.

**D.** The Department of Public Works has recommended vacation and sale of the Property pursuant to DPW Order No. 184148, as amended and superceded by DPW Order No. 184660.

**E.** The Property is not independently developable, and Buyer is the practicable purchaser of the Property. The owners of the only other real property adjoining the Property, JACKSON CCHCA, LLC, GEORGE L. YEE AND ROSE YEE, as Trustees of the George and Rose Yee Family Trust dated July 31, 2001 and MAGIS GROUP CORPORATION, a California corporation have consented to the vacation of the Property and the sale of fee title to the Property to Buyer, by consent letters dated July 30, 2014 and September 8, 2014.

**F.** In their finding dated November 26, 2014, the City Planning Department determined that the vacation and sale of the Street Property is consistent with requirements of the City's Planning Code Section 101.1 and is in conformity with the City's General Plan (the "General Plan"), subject to certain conditions designed to ensure that the vacated Property will function as privately improved open space with nonexclusive public access for pedestrian use. .

**G.** On July 12, 2012, the Planning Commission certified by Motion No. 18660, the Final Environmental Impact Report for the 835-845 Jackson Street Chinese Hospital Replacement Project.

**H.** Buyer is the only potential purchaser of the Property and is willing to pay full appraised value.

**I.** Buyer desires to purchase the Property and City is willing to vacate and sell the Property to Buyer, subject to approval by City's Board of Supervisors and Mayor, on the terms and conditions set forth herein below.

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

## **1. SALE AND PURCHASE**

### **1.1 Property Included in Sale**

Subject to the terms, covenants and conditions set forth herein, City agrees to sell to Buyer, and Buyer agrees to purchase from City, City's interest in the Property.

## **2. PURCHASE PRICE**

The purchase price for the Property is One Hundred and Eighty Five Thousand Dollars (\$185,000) (the "Purchase Price"). Buyer shall pay the Purchase Price as follows:

(a) Within five (5) business days after the parties open escrow pursuant to Section 6.1 below, Buyer shall deposit in escrow with \_\_\_\_\_ (the "Title Company"), the sum of Five Thousand Dollars (\$5,000.00) as an earnest money deposit (the "Deposit"). The Deposit shall be held in an interest-bearing account, and all interest thereon shall be deemed a part of the Deposit. At the Closing (as defined below) the Deposit shall be paid to City and credited against the Purchase Price.

(b) Buyer shall pay the balance of the Purchase Price, which is One Hundred and Eighty Thousand Dollars (\$180,000), to City at the consummation of the purchase and sale contemplated hereunder (the "Closing"). All sums payable hereunder including, without limitation, the Deposit, shall be paid in immediately available funds of lawful money of the United States of America.

## **3. TITLE**

### **3.1 Conditions of Title**

At the Closing City shall quitclaim all of its right, title and interest in and to the Property to Buyer (other than any interest under the City Easements (as defined in Section 5.2(d) below), if applicable) by quitclaim deed in the form of Exhibit C attached hereto (the "Deed"). Title to the Property shall be subject to (a) liens of local real estate taxes and assessments, (b) all existing exceptions and encumbrances as of the Closing of this Agreement, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Buyer pursuant to Section 5.1 hereof, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property or public records, (c) all items of which Buyer has actual or constructive notice or knowledge at the time of the Closing, and (d) the Reserved Utility Easements (as described in Section 3.3 below). All of the foregoing exceptions to title shall be referred to collectively as the "Conditions of Title."

### **3.2 Deed Restrictions**

Buyer acknowledges and agrees that City would not sell the Property unless Buyer agreed to restrict its use in perpetuity for use as landscaped open space accessible for nonexclusive public pedestrian access and use. Therefore, Buyer agrees that the Deed shall contain a binding restriction prohibiting Buyer, its successors and assigns, from using Property for any other purpose except as described in Quitclaim Deed.

### **3.3 Reservation of Easements**

Buyer acknowledges and agrees that City shall reserve from the vacation of the Property, the following easement rights (collectively, the "Reserved Utility Easements"):

(a) for the benefit of Pacific Bell Telephone Company (dba AT&T-California), its successors and assigns, the permanent non-exclusive easement and right at any time or from time to time to construct, maintain, operate, replace, remove, renew and enlarge lines of pipe, conduits, cable, wires, and other convenient structures, equipment and fixtures for the operation of telegraphic and telephone lines and other communication facilities, including access and the right to keep the property free from flammable materials and wood growth, and otherwise protect the same from all hazards, in, upon, over and across the Property; and

(b) for the benefit of the property at 821-823 Jackson Street, also known as Assessor's Block 0192 Lot 039, a permanent non-exclusive pedestrian access easement and right at any time or from time to time to construct, maintain, operate, replace, remove, renew, and other convenient structures, equipment and fixtures for the operation of PG&E gas meters, including access and the right to keep the property free from flammable materials and wood growth, and otherwise protect the same from all hazards, in, upon, over and across the Property, subject however, to any other mutually acceptable terms agreed to between Buyer and the owner of 821-823 Jackson Street.

### **3.4 Buyer's Responsibility for Title Insurance**

Buyer understands and agrees that the right, title and interest in the Property shall not exceed that vested in City, and City is under no obligation to furnish any policy of title insurance in connection with this transaction. Buyer recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Property. City shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Buyer's sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

## **4. "AS-IS" PURCHASE; RELEASE OF CITY**

### **4.1 Buyer's Independent Investigation**

As of the Effective Date, Buyer represents and warrants to City that Buyer has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Buyer's choosing, including, without limitation, the following matters (collectively, the "Property Conditions"):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of City's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes.

(c) The quality, nature, adequacy and physical condition of the Property, and all physical and functional aspects of the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter 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.

(e) The economics and development potential, if any, of the Property.

(f) All other matters of material significance affecting the Property.

#### **4.2 Property Disclosures**

California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Buyer 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, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, Buyer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

#### **4.3 Entry and Indemnity**

Upon request, City shall give Buyer a reasonable opportunity to enter and inspect the Property, and to perform due diligence, in accordance with a scope of work approved in advance and in writing by the City (which may include conditions and insurance requirements).

Buyer shall maintain, and shall require that its Agents maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its Agents, arising out of any entry or inspection of the Property in connection with the transaction contemplated hereby, and Buyer shall provide City with evidence of such insurance coverage upon request from City.

To the fullest extent permitted under law, Buyer shall indemnify, defend and hold harmless City, its Agents, and each of them, from and against any liabilities, costs, damages, losses, liens, claims and expenses (including, without limitation, reasonable fees of attorneys, experts and consultants and related costs) arising out of or relating to any entry on, under or about the Property by Buyer, its Agents, contractors and subcontractors in performing the inspections, testings or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any persons (including, without limitation, Buyer's Agents) and damage to any property, from any cause whatsoever. The foregoing indemnity shall survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement.

#### **4.4 "As-Is" Purchase**

**BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING CITY'S INTEREST IN THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR**

WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR BUYER'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS BUYER'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.

#### **4.5 Release of City**

As part of its agreement to purchase the Property in its "As-Is With All Faults" condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors and representatives, 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 or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) Buyer's and its Agents and customer's past, present and future use of the Property, (ii) the physical, geological or environmental condition of the Property, including, without limitation, any Hazardous Material in, on, under, above or about the Property, and (iii) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "RCRA") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "Clean Water Act") (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act ("TSCA") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "Business Plan Law") (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Buyer 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 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT

BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: BUYER:\_\_\_\_\_

## **5. CONDITIONS PRECEDENT**

### **5.1 Buyer's Conditions Precedent**

Buyer's obligation to purchase the Property is conditioned upon the following:

(a) Buyer's review and approval of an updated preliminary title report for the Property, and the physical condition of the Property.

(b) The City's Board of Supervisors shall have adopted, and the Mayor shall have approved, in their respective role and absolute discretion, an ordinance or ordinances (and taken such other action as may be required by law) vacating the public street and public easements over the Property, approving and authorizing the transactions contemplated hereby, and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Property, and such ordinance or ordinances shall have become effective and the period for any challenge thereto shall have passed without any pending or threatened. This item (c) of Section 5.1 is referred to as the "Vacation Ordinance Condition."

(c) Buyer's review and approval of all zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the Property.

(d) Buyer's review and approval of soils reports and other documents of significance to the Property, if any, in City's possession. City shall make available to Buyer at City's Real Estate Division's offices, without representation or warranty of any kind whatsoever, all non-privileged items in its files relating to the Property for Buyer's review and inspection, at Buyer's sole cost, during normal business hours. Notwithstanding the foregoing, Buyer's review shall not include a review of any of City's internal memoranda or reports, any privileged or confidential information, or City's appraisals of the Property, if any.

### **5.2 Contingency Period**

Buyer shall have until 5:00 p.m. San Francisco Time on the date that is ten (10) business days after the Effective Date to review and approve or waive Buyer's Conditions (such period being referred to herein as the "Contingency Period"). If Buyer elects to proceed with the purchase of the Property, then Buyer shall, before the expiration of the Contingency Period, notify City in writing that Buyer has approved all such matters. If before the end of the Contingency Period Buyer fails to give City such written notice and fails to object to any of Buyer's Conditions, then Buyer shall be deemed to have waived Buyer's Conditions. Notwithstanding the foregoing, if Buyer objects to any of the matters contained within Section 5.1 within the Contingency Period, then City may, but shall have no obligation to remove or remedy any objectionable matter. If City agrees to remove or remedy the objectionable matter, it shall notify Buyer within ten (10) days following Buyer's notice of objection, and the Closing Date shall be delayed for so long as City diligently pursues such removal or remedy. If and when City elects not to remove or remedy the objectionable matter, which City may do at any time including following an initial election to pursue remedial or corrective actions, this Agreement shall automatically terminate, the Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder except as provided

in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or 9.4 [Authority of Buyer] or as otherwise expressly provided herein.

### **5.3 City's Condition Precedent**

The following are conditions precedent to City's obligation to sell the Property to Buyer ("City's Conditions Precedent"):

(a) Buyer shall have performed all of its obligations hereunder and all of Buyer's representations and warranties shall be true and correct.

(b) The Vacation Ordinance Condition shall have been satisfied.

(c) An ordinance approving and authorizing the transactions contemplated hereby and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Property, shall have been adopted by the City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted on or before \_\_\_\_\_, 20\_\_\_\_.

### **5.4 Failure of City's Conditions Precedent**

Each of City's Conditions Precedent are intended solely for the benefit of City. If any of City's Conditions Precedent are not satisfied as provided above, City may, at its option, terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or 9.4 [Authority of Buyer] or as otherwise expressly provided herein.

## **6. ESCROW AND CLOSING**

### **6.1 Escrow**

On the date within ten (10) days after the parties hereto execute this Agreement, Buyer and City shall deposit an executed counterpart of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. City and Buyer agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control. There are no rents received by City or any property taxes paid by City, and therefore there are no prorations through escrow.

### **6.2 Closing Date**

The Closing hereunder 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 the Title Company on the date which is forty-five (45) days after the Effective Date, or if such date is not a business day, then upon the next ensuing business day, before 1:00 p.m. San Francisco time or (ii) such later date and time as Buyer and City may mutually agree upon in writing (the "Closing Date"). Such date and time may not be extended without the prior written approval of both City and Buyer.

### **6.3 Deposit of Documents**

(a) At or before the Closing, City shall deposit into escrow the following items:

(i) the duly executed and acknowledged Deed conveying the Property to Buyer subject to the Conditions of Title;

(ii) a copy of the ordinance of the City's Board of Supervisors approving the vacation of the Property, this Agreement and the conveyance of the Property pursuant hereto (which copy shall be recorded in the official records of the City and County of San Francisco (the "Official Records") unless and until any conditions to the effectiveness of the vacation set forth in such ordinance shall be have been satisfied);

(b) At or before the Closing, Buyer shall deposit into escrow the following items:

(i) the funds necessary to close this transaction; and

(ii) the duly executed and acknowledged counterpart of the Deed conveying the Property to Buyer subject to the Conditions of Title;

(c) City and Buyer 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.

## **7. RISK OF LOSS**

### **7.1 Loss**

City shall give Buyer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Buyer may, at its option to be exercised within ten (10) days of City's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or consummate the purchase for the full Purchase Price as required by the terms hereof. If Buyer elects to terminate this Agreement or fails to give City notice within such ten (10)-day period that Buyer will proceed with the purchase, then this Agreement shall terminate at the end of such ten (10)-day period, the Title Company shall return the Deposit to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or otherwise expressly provided herein. If Buyer elects to proceed with the purchase of the Property, then upon the Closing, Buyer shall receive a credit against the Purchase Price payable hereunder equal to the amount of any condemnation awards actually collected by City as a result of any such condemnation (the City has no insurance, therefore there are no insurance proceeds), less any sums expended by City toward the restoration or repair of the Property or the collection of the condemnation proceeds. If the proceeds or awards have not been collected as of the Closing, then City shall assign such proceeds or awards to Buyer, except to the extent needed to reimburse City for sums expended to collect such proceeds or repair or restore the Property, and Buyer shall not receive any credit against the Purchase Price with respect to such proceeds or awards.

### **7.2 Self-Insurance**

Notwithstanding anything to the contrary above, Buyer acknowledges that City self-insures and shall not be obligated to purchase any third-party commercial liability insurance or property insurance.

## 8. EXPENSES

### 8.1 Expenses

Buyer shall pay any transfer taxes applicable to the sale, personal property taxes, escrow fees and recording charges and any other costs and charges of the escrow for the sale.

### 8.2 Brokers

The parties represent and warrant to each other that no broker or finder was instrumental 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 Buyer or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold 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 Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

## 9. LIQUIDATED DAMAGES

**IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED DUE TO THE FAILURE OF ANY CONDITION PRECEDENT OR CITY'S DEFAULT HEREUNDER AND BUYER IS NOT THEN IN DEFAULT, THEN THE TITLE COMPANY SHALL RETURN THE DEPOSIT TOGETHER WITH ACCRUED INTEREST THEREON TO BUYER. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER AND CITY IS NOT THEN IN DEFAULT, THEN THE TITLE COMPANY SHALL DELIVER THE DEPOSIT TOGETHER WITH ACCRUED INTEREST THEREON TO CITY, AND CITY SHALL BE ENTITLED TO RETAIN SUCH SUM AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT TOGETHER WITH ACCRUED INTEREST THEREON IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.**

INITIALS: CITY: \_\_\_\_\_ BUYER: \_\_\_\_\_

## 10. GENERAL PROVISIONS

### 10.1 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 as follows:

CITY:

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

BUYER:

Chinese Hospital Association  
845 Jackson Street  
San Francisco, CA 94133  
Attn: \_\_\_\_\_  
\_\_\_\_\_

with a copy to:

Charles Sullivan  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Re: James Alley Street Vacation

with a copy to:

Haas Najarian LLP  
58 Maiden Lane, 2nd Floor  
San Francisco, CA 94108  
Attn: \_Gary Hein  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

**10.2 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. Buyer'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 Buyer be released of any of its obligations hereunder.

**10.3 Amendments**

This Agreement may be amended or modified only by a written instrument signed by the Buyer and City.

**10.4 Authority of Buyer**

Buyer represents and warrants to City that Buyer is a California nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of California. Buyer further represents and warrants to City that this Agreement and all documents executed by Buyer which are to be delivered to City at Closing: (a) are or at the time of Closing will be duly authorized, executed and delivered by Buyer; (b) are or at the time of Closing will be legal, valid and binding obligations of Buyer; and (c) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Buyer contained herein or in other agreements or documents executed by Buyer in connection herewith, shall survive the Closing Date.

## **10.5 Buyer's Representations and Warranties**

Buyer makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

(a) Buyer is a California nonprofit corporation duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Buyer has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Buyer has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

(b) Buyer 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 Buyer 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.

(c) No document or instrument furnished or to be furnished by the Buyer to the 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.

## **10.6 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.

## **10.7 Merger of Prior Agreements**

This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Buyer and City and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits hereto.

## **10.8 Parties and Their Agents**

The term "Buyer" as used herein shall include the plural as well as the singular. If Buyer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Buyer 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.

## **10.9 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.

#### **10.10 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 the Office of the City Attorney of the City and County of San Francisco 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.

#### **10.11 Time of Essence**

Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

#### **10.12 No Merger**

The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

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

#### **10.14 Conflicts of Interest**

Through its execution of this Agreement, Buyer acknowledges that it is familiar with the provisions of Section 15.103 or City's Charter, 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 constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Buyer shall immediately notify the City.

#### **10.15 Notification of Limitations on Contributions**

Through its execution of this Agreement, Buyer 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. Buyer 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. Buyer further acknowledges that the prohibition on contributions applies to each Buyer; each member of Buyer's board of directors, and Buyer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer. Additionally, Buyer acknowledges that Buyer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Buyer further agrees to provide to City the names of each person, entity or committee described above.

#### **10.16 Sunshine Ordinance**

Buyer 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. Buyer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

#### **10.17 Tropical Hardwood and Virgin Redwood Ban**

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.

#### **10.18 MacBride Principles - Northern Ireland**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

#### **10.19 No Recording**

Neither this Agreement nor any memorandum or short form thereof may be recorded by Buyer.

#### **10.20 Effective Date**

As used herein, the term "Effective Date" shall mean the thirty-first (31st) day after the date on which the Mayor approves an ordinance duly adopted by the City's Board of Supervisors approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

#### **10.21 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.

**10.22 [Intentionally Deleted]**

**10.23 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.

**10.24 [Intentionally Omitted]**

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

*[SIGNATURES ON FOLLOWING PAGE]*

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

CITY:

CITY AND COUNTY OF  
SAN FRANCISCO, a municipal corporation

BUYER:

CHINESE HOSPITAL ASSOCIATION  
a California nonprofit corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Sullivan  
Deputy City Attorney

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

**EXHIBIT B**

Buyers Adjoining Property

**EXHIBIT C**

**QUITCLAIM DEED [NOTE: WILL NEED TO CONFIRM THAT QUITCLAIM DEED IS  
ACCEPTABLE TO THE TITLE COMPANY]**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

MAIL TAX STATEMENTS TO:

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

Attn: \_\_\_\_\_

Documentary Transfer Tax of \$ \_\_\_\_\_,  
based on full value of the property conveyed

---

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

**QUITCLAIM DEED WITH PROPERTY RESTRICTION**  
**(Assessor's Parcel No. \_\_\_\_\_)**

**RECITALS**

A. The City and County of San Francisco, a municipal corporation (the "City") is the record owner of that certain property located in San Francisco and described in Exhibit A attached hereto and incorporated herein (the "Property").

B. \_\_\_\_\_ ("Buyer") is the owner of certain adjacent property in San Francisco and described in Exhibit B attached hereto and incorporated herein (the "Adjacent Property").

C. Buyer wishes to acquire the Property. City is willing to vacate the Property and quitclaim City's interest in the Property to Buyer provided Buyer agrees to restrict the use of the merged property as described herein. City would not be willing to quitclaim City's interest in the Property to Buyer without the above conditions.

## AGREEMENT

**FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, the City and Buyer agree as follows:**

1. Quitclaim. The City, pursuant to Ordinance No. \_\_\_\_\_, adopted by the Board of Supervisors on \_\_\_\_\_, 200\_ and approved by the Mayor, hereby RELEASES, REMISES AND QUITCLAIMS to Buyer, any and all right, title and interest the City may have in and to the Property, subject to any and all easements, covenants, conditions, restrictions and agreements of record relating to the Property.

2. Deed Restrictions. As a material part of the consideration for the quitclaim of the Property and pursuant to the laws of the State of California (including, without limitation, Section 1460 et seq. of the Civil Code), Buyer, on behalf of itself and its successors and assigns, its and their tenants and licensees, and all persons claiming by and through them (the "Buyer Parties"), agrees and covenants with the City, its successors and assigns, and for the benefit of the City, that the Property shall be restricted in perpetuity for landscaped open space with public pedestrian access, and any structure, building or permanent improvement on the property will be subject to the prior approval of the City's Director of Property.

3. Reserved Utility Easements. Buyer, on behalf of itself and the Buyer Parties, further acknowledges and agrees that the Property shall be subject to the following reserved easement rights (collectively, the "Reserved Utility Easements"):

(i) for the benefit of Pacific Bell Telephone Company (dba AT&T-California), its successors and assigns, the permanent non-exclusive easement and right at any time or from time to time to construct, maintain, operate, replace, remove, renew and enlarge lines of pipe, conduits, cable, wires, and other convenient structures, equipment and fixtures for the operation of telegraphic and telephone lines and other communication facilities, including access and the right to keep the property free from flammable materials and wood growth, and otherwise protect the same from all hazards, in, upon, over and across the Property; and

(ii) for the benefit of the property at 821-823 Jackson Street, also known as Assessor's Block 0192 Lot 039, a permanent non-exclusive pedestrian access easement and right at any time or from time to time to construct, maintain, operate, replace, remove, renew, and other convenient structures, equipment and fixtures for the operation of PG&E gas meters, including access and the right to keep the property free from flammable materials and wood growth, and otherwise protect the same from all hazards, in, upon, over and across the Property.

4. Breach of Restriction; Breach of Reserved Utility Easements. The City, but not the general public, shall have all rights and remedies available at law or in equity in order to enforce the above restrictions. In the event of any breach of the restrictions, the City shall be entitled to recover all attorneys' fees and costs. The parties benefitted by the Reserved Utility Easements, and their successors and assigns shall have all rights and remedies available at law or in equity in order to enforce the above Reserved Utility Easements.

5. Runs with the Land. The restrictions and Reserved Utility Easements set forth in this instrument shall run with the land, and shall bind and burden any and all successors and assigns of the Buyer Parties and the parties benefitted by the Reserved Utility Easements.

6. General Provisions. (a) This instrument may be amended or modified only by a writing signed by the City and by the Buyer Parties. (b) No waiver by any party of any of the provisions set forth herein 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. Any waiver by the City must be signed by the City's Director of Property and include reference to this instrument. (c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the City's Director of Property or his or her designee unless otherwise indicated or required by the City's Charter. (d) This instrument shall be governed by California law. (e) If the Buyer Parties consist of more than one person then the obligations of each person shall be joint and several. (f) All of the exhibits hereto are incorporated herein.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016\_.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

\_\_\_\_\_  
John Updike  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

DESCRIPTIONS CHECKED/APPROVED:

\_\_\_\_\_  
City Engineer

BUYER: CHINESE HOSPITAL  
ASSOCIATION

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

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)