

PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS

by and between

SI 5, LLC

as “Seller”

the

CITY OF SAN JOSE

as “Buyer”

and the

PENINSULA OPEN SPACE TRUST

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PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND IRREVOCABLE ESCROW INSTRUCTIONS (“**Agreement**”) is dated as of November __, 2019 (“**Effective Date**”), and is entered into by and between SI 5, LLC, a California limited liability company (“**Seller**”), the CITY OF SAN JOSE, a California municipal corporation (“**City**”) (“**Buyer**”), and PENINSULA OPEN SPACE TRUST, a California public benefit corporation (“**POST**”). Seller, Buyer and POST are sometimes hereinafter referred to individually as “**Party**” and collectively as “**Parties**”.

RECITALS

A. Seller is the owner of certain real property, located in the City of San Jose, County of Santa Clara, State of California, particularly described in *Exhibit “A”* attached to and by this reference made a part of this Agreement (“**Land**”).

B. Seller desires to sell to Buyer and Buyer desires to acquire the Property (defined below), and Buyer desires to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. As used herein, the “**Property**” shall mean and refer to: (i) the Land; and (ii) all of Seller’s right, title and interest, if any, in any easements, rights-of-way, rights to any streets or alleys abutting or adjoining the Land, and mineral rights, water rights or air rights appurtenant to the Land (“**Appurtenances**” and, together with the Land, the “**Real Property**”); and (iv) to the extent assignable, all of Seller’s right, title and interest, if any, in any privileges, permits, licenses, entitlements, maps, development rights and privileges, exaction fee credits or other credits, reimbursements, prepaid fees or deposits, warranties, guarantees, governmental approvals, and other tangible and intangible property related to the Land or the development thereof (more specifically defined in Section 1.1(j) as “**Personal Property**”). Buyer desires to acquire the Property for the purposes of preventing flooding and water quality contamination as specified in “**Measure T**,” approved by the voters of San José at the election held on November 6, 2018, which authorized the City to issue general obligation bonds for these purposes (“**Measure T**”) and conservation purposes, and not for purposes of exercising any existing development rights or other entitlements. It is specifically understood that Buyer, as of the Closing Date, will have conducted its own due diligence to satisfy itself with respect to the condition of title of the Property, the physical and environmental condition of the Property, the current and future entitlements applicable to the Real Property, as well as all other conditions of the Property and all other matters relevant to its decision to purchase the Property.

C. The purchase price for the Property has been established by the Parties at Twenty-One Million Five Hundred Thousand Dollars (\$21,500,000).

OPERATIVE PROVISIONS

NOW, THEREFORE, incorporating the foregoing Recitals and in consideration of the mutual covenants and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. Certain Definitions

Although most terms which are specifically defined in this Agreement are so defined in the recitals or operative Sections in which such terms appear, certain other terms shall, for the purposes of this Agreement, have the meanings ascribed to such terms in this Section 1.1. Capitalized terms used in this Agreement and not defined in this Section 1.1 shall have the meanings ascribed to such terms elsewhere in this Agreement, and an index to the page locations of such definitions follows the Table of Contents above.

(a) **“Assigned Agreements”** shall mean collectively, all of those certain agreements relating to the Property set forth in *Exhibit “D”*.

(b) Intentionally Omitted.

(c) **“Environmental Law”** means any federal, state, or local statute, ordinance, rule, regulation, order, consent decree, judgment, or common-law doctrine, and provisions and conditions of permits, licenses, and other operating authorizations relating to: pollution or protection of the environment, including natural resources; exposure of persons, including employees, or the environment to Hazardous Materials; exposure of persons, including employees, or the environment to Pathogens; protection of the public health or welfare from the adverse effects of by-products, wastes, emissions, discharges, or releases of chemical substances from industrial or commercial activities; or regulation of the manufacture, use, or introduction into commerce of chemical substances which present a possible material adverse effect to humans or the environment, including their manufacture, formulation, labeling, distribution, transportation, handling, storage, and disposal of such substances; air emissions, water discharges, noise emissions and any other environmental, health or safety matter; the existence of any underground storage tanks that contained or contain Hazardous Materials; or the existence of PCB containing electrical equipment.

(d) **“Hazardous Material”** is defined to include any hazardous or toxic chemical or substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes any material or substance which is (references to statutes, codes or regulations below, in each case, as amended): petroleum or oil or gas or any direct or derivative product or byproduct thereof; defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); “used oil” as defined under Section 25250.1 of the California Health and Safety Code; defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(p) and (q) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials

Release Response Plans and Inventory); asbestos; polychlorinated biphenyls, paint or other materials containing lead, urea formaldehyde foam insulation and radon; Pathogens; listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; defined as “Hazardous Material” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; defined as such or regulated by any “Superfund” or “Superlien” law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect; and/or substances known by the State of California to cause cancer and/or reproductive toxicity.

(e) Intentionally Omitted.

(f) Intentionally Omitted.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) **“Pathogen”** shall mean any pathogen, toxin or other biological agent or condition, including any fungus, mold, mycotoxin or microbial volatile organic compound.

(j) **“Personal Property”** shall mean the aggregate of the following:

(1) Seller’s right, title and interest, if any, in all licenses, permits and warranties, guaranties, indemnities, and bonds, which (A) relate to the Real Property and (B) are assignable by Seller to Buyer;

(2) All equipment, appliances, tools, machinery, supplies, building materials and other similar personal property, if any, which is (A) owned by Seller as of the date of this Agreement and (B) attached to, appurtenant to or located in the Improvements and used in the day-to-day operation or maintenance of the Improvements, but expressly excluding fixtures and any and all personal property owned by any property manager, tenants in possession, public or private utilities licensees or contractors;

(3) Seller’s right, title and interest, if any, in and to the Project Entitlements;

(4) Seller’s right, title and interest, if any, in and to all zoning documents relating to the Property;

(5) Seller's right, title and interest in and to all intangible property relating to the Property (other than funds), including: (A) claims, causes of action, construction warranties, guaranties and indemnities from, by or against any contractors, subcontractors, laborers or suppliers of materials, labor or other services performed with respect to, or equipment installed in, the Property; (B) any transferable development rights and other entitlements related to the Property; (C) any project name used by Seller; (D) intentionally omitted; and (E) sewer and water capacity, trip generation rights, density allocations (including excess development density), other water credits (including water and wastewater system development fee credits), water wells, water and sewer taps, rebates, refunds and development rights (including any available fee credits), rights to recoupment for any costs, all to the extent pertaining to the Property; and

(6) any assignable claims against governmental entities, present and former owners of the real property adjacent to the Real Property, if any, and all rights, claims and causes of action, if any, Seller may have against neighboring property owners or third parties (other than Buyer and its affiliates, subsidiaries, successors and assigns), including for design and construction improvements on the Property.

Notwithstanding the foregoing, "**Personal Property**" expressly excludes, and Seller shall not be required to convey any rights to the logo of Seller or any of Seller's affiliates, any computer programs, software and documentation thereof, electronic data processing systems, program specifications, source codes, logs, input data and report layouts and forms, record file layouts, diagrams, functional specifications and variable descriptions, flow charts and other related materials, and (iii) all plans and pro-formas relating to the Property, including but not limited to development plans, site plans, architectural plans, pro-formas or any other drawings or diagrams regarding proposed improvements to the Property.

(k) "**Project Entitlements**" shall mean any and all (i) development, subdivision improvement, and other agreements relating to the Property; and (ii) governmental licenses, zoning, use, occupancy, operating and utility permits, and all other intangible rights, permits, entitlements, development rights, licenses, approvals, franchises, certificates, utility will-serve letters, development allocations and other records, documents, maps, prepaid tap fees and fee credits relating to the Property or any part thereof, to the extent now in effect.

(l) "**Title Insurer**" shall mean Chicago Title Insurance Company.

ARTICLE 2 PURCHASE AND SALE

Section 2.1. Agreement of Purchase and Sale

(a) Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase from Seller the Property on the terms and conditions set forth herein.

(b) It is specifically understood that Buyer, as of the Closing Date, will have conducted its own due diligence to satisfy itself with respect to the condition of title of the Property, the physical and environmental condition of the Property, the current and future entitlements to

the Property, as well as all other conditions of the Property. During Buyer's due diligence of the Property, Buyer shall not rely on any representations or warranties of Seller regarding the Property made during Buyer's due diligence, except as expressly set forth in this Agreement.

(c) An escrow account ("**Escrow**") for the purpose of consummating the transactions contemplated by this Agreement shall be established at Chicago Title Company ("**Escrow Agent**"), at its office at 675 North First Street, Suite 300, San Jose, California 95112 Attn: Sherri Keller.

Section 2.2. Purchase Price

(a) The purchase price for the Property and the Weyhe Option Rights (the "**Purchase Price**") is Twenty-One Million Five Hundred Thousand Dollars (\$21,500,000). The Purchase Price shall be paid as follows:

(1) One Million Seventy-Five Thousand Dollars (\$1,075,000) (the "**Deposit**"), within five (5) business days after the full execution of this Agreement, to Escrow Agent by wire transfer of immediately available funds, to be held, released and applied by Escrow Agent pursuant to and in accordance with the provisions of Article 5. Except as provided in this Agreement, including Section 2.5(a)(2), Section 4.1, Section 6.2, Section 7.8 and Section 9.2, the Deposit shall be non-refundable to Buyer.

(2) Twenty Million Four Hundred Twenty-Five Thousand Dollars (\$20,425,000) (the "**Balance in Cash**") (subject to the proration and other credits provided for in this Agreement), paid at Closing (as hereinafter defined) to Seller by cashier's check or wire transfer of immediately available funds to an account designated by Seller.

(b) Any interest earned on the Deposit shall be paid to the party (i.e., Buyer or Seller) who receives the Deposit pursuant to this Agreement. At Closing, the interest shall be credited to the Balance in Cash to be paid to Seller by Buyer.

Section 2.3. Certain Other Consideration.

As further consideration for the sale of the Property by Seller to Buyer: Buyer shall assume at the Closing all of the obligations of Seller related to the Annual Special Tax and/or the City Advance Specific Tax ("**City Advance**"); Buyer shall assume at the Closing all of the obligations of Seller related to Community Facilities District No. 5A ("**CFD 5A**"), Community Facilities District No. 5B ("**CFD 5B**") and City of San Jose Community Facilities District No. 9 ("**CFD 9**"); indemnify, defend and hold harmless Seller from all obligations related to the City Advance or to CFD 5A, CFD 5B and CFD 9 (subject to the provisions of Section 5.13(b)) and the City shall release Seller of all obligations pertaining to the Property (save and except for obligations arising under this Agreement or any document to be delivered by Seller at the Closing). The foregoing notwithstanding, the special taxes imposed on the Property for CFD 9 for the tax year in which the Closing occurs shall be prorated as between Buyer and Seller at the Closing in the same manner as the proration of real property taxes.

Section 2.4. Deposit as Liquidated Damages

THE DEPOSIT SHALL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES IN THE EVENT THE SALE OF THE PROPERTY AS CONTEMPLATED HEREUNDER IS NOT CONSUMMATED DUE TO BUYER'S BREACH OR DEFAULT. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT THAT THE SALE IS NOT SO CONSUMMATED WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY SEPARATELY INITIALING THIS Section 2.4, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES, AND AS SELLER'S EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT THE CLOSING DOES NOT OCCUR DUE TO BUYER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER ARISING FROM SUCH BUYER'S BREACH. SELLER HEREBY WAIVES ANY RIGHTS TO SEEK SPECIFIC PERFORMANCE AGAINST BUYER IN THE EVENT THE CLOSING DOES NOT OCCUR DUE TO A BUYER DEFAULT HEREUNDER. BY THEIR SEPARATE INITIALING OF THIS Section 2.4, BUYER 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. THE FOREGOING IS NOT INTENDED TO LIMIT BUYER'S OBLIGATIONS UNDER SECTIONS 6.3, 11.2 AND 12.19.

Buyer's Initials: _____

Seller's Initials: _____

Section 2.5. Holding of Deposit.

(a) The Deposit shall be held in escrow by Escrow Agent, upon the following terms and conditions:

(1) Escrow Agent shall deposit the Deposit in an interest-bearing account or accounts or invest the Deposit in a money market fund so long as the accounts are covered by FDIC Insurance. Escrow Agent shall deliver to Seller the Deposit (together with all interest thereon, if any) at and upon the Closing;

(2) If the Escrow does not close on the Closing Date because of any default by Seller or a failure of any condition precedent for the benefit of Buyer (including any such conditions that are also conditions precedent for the benefit of Seller) and Buyer has elected to terminate the Agreement rather than seek specific performance as provided in Section 8.3, or if there is a termination of the Agreement for any reason other than a default of Buyer, Escrow Agent shall promptly return the Deposit (together with all interest thereon, if any) to Buyer;

(3) In circumstances where a provision of this Agreement requires that the Deposit be returned to Buyer, Escrow Agent shall promptly return the Deposit (together with all interest thereon, if any) to Buyer, to the extent the Deposit or any portion thereof is then held by Escrow Agent; and

(4) If this Agreement is terminated in accordance with the terms hereof, or if the Closing does not take place under this Agreement by reason of the failure of either party to comply with such party's obligations hereunder, Escrow Agent shall pay the Deposit (together with all interest thereon, if any), to the extent the Deposit or any portion thereof is then held by Escrow Agent, to Seller and/or Buyer, as the case may be, in accordance with the provisions of this Agreement.

(b) Escrow Agent is acting as a stakeholder only with respect to the Deposit. Escrow Agent, except in the event of the Closing, shall not deliver the Deposit except on seven (7) days' prior written notice to the parties and only if neither party shall object within such seven (7) day period. If there is any dispute as to whether Escrow Agent is obligated to deliver all or any portion of the Deposit or as to whom the Deposit is to be delivered, Escrow Agent shall not be required to make any delivery, but in such event Escrow Agent may hold the same until receipt by Escrow Agent of an authorization in writing, signed by all of the parties having any interest in such dispute, directing the disposition of the Deposit (together with all interest thereon, if any), or in the absence of such authorization Escrow Agent may hold the Deposit (together with all interest thereon, if any), until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceedings for such determination are not begun within thirty (30) days after the date Escrow Agent shall have received written notice of such dispute, and thereafter diligently continued, Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit the Deposit (together with all interest thereon, if any), in court pending such determination. Escrow Agent shall be reimbursed for all costs and expenses of such action or proceeding including reasonable attorneys' fees and disbursements, by the party determined not to be entitled to the Deposit, or if the Deposit is split between the parties hereto, such costs of Escrow Agent shall be split, pro rata, between Seller and Buyer, in inverse proportion to the amount of the Deposit received by each. Upon making delivery of the Deposit (together with interest thereon, if any), in the manner provided in this Agreement, Escrow Agent shall have no further obligation or liability hereunder.

Section 2.6. Independent Consideration

In addition to the Purchase Price, upon execution of this Agreement by Seller, Buyer is paying to Seller the sum of One Thousand Dollars (\$1,000.00), the receipt and adequacy of which are hereby acknowledged, confessed and accepted by Seller as consideration for Seller's execution and delivery of this Agreement (including the provisions granting Buyer the right to inspect the Property and termination right associated therewith provided in this Agreement), and which consideration is in addition to and independent of any other consideration provided for in this Agreement, is earned and is nonrefundable in all events as of the Effective Date.

**ARTICLE 3
INTENTIONALLY OMITTED**

**ARTICLE 4
TITLE**

Section 4.1. Title

Seller shall not voluntarily further encumber the Property, except as otherwise provided in this Agreement. Buyer hereby acknowledges receipt of that certain Preliminary Title Report dated September 19, 2019 at 7:30 a.m. and issued by Chicago Title Company under Order Number 98202302-982-SK-KC for the Land (“**Preliminary Report**”). “**Permitted Exceptions**” shall mean the exceptions listed on **Exhibit “J”**. No other exceptions to title shall be a Permitted Exception, expressly including, without limitation: the documents listed in **Exhibit “D”** (“**Redemption Agreement Documents**”); and any lien on the Property not described in **Exhibit “J”** (other than a lien arising from work performed by, or the acts or omissions of, Buyer or Buyer’s employees, contractors, subcontractors or material suppliers).

Section 4.2. Intentionally Omitted

ARTICLE 5
ESCROW AND CLOSING

Section 5.1. Opening of Escrow

This Agreement, together with any written supplemental instructions agreed to by the Parties, shall serve as escrow instructions to the Escrow Agent and the Title Company and a fully executed copy of this Agreement shall be deposited with the Escrow Agent. For purposes of this Agreement, the “opening” of Escrow shall be the date on which such executed copy of this Agreement is deposited with Escrow Agent. Escrow Agent shall confirm the opening of Escrow in writing to both Parties.

Section 5.2. Seller’s Deposits

Not later than the business day immediately preceding the Closing Date, Seller shall deliver to Escrow Agent each of the following:

- (a) A duly executed and notarized grant deed (“**Deed**”) in the form attached as **Exhibit “B”** conveying the Real Property;
- (b) Such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller, as may be customarily and reasonably required by the Title Company;
- (c) An executed closing statement prepared by the Title Company and reasonably acceptable to Seller;
- (d) Such affidavits as may be customarily and reasonably required by the Title Company;
- (e) A Certification of Non Foreign Status certifying, pursuant to Internal Revenue Code Section 1445, that Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as these terms are defined in the Internal Revenue Code and United States Department of Treasury Regulations);

(f) A California Real Estate Withholding Exemption Certificate, signed by Seller pursuant to Revenue and Taxation Code Section 18662;

(g) A duly executed bill of sale and general assignment, properly signed by Seller, and in the form and content of attached **Exhibit “C”**, conveying (to the extent assignable) Seller’s interest (if any) in the Personal Property (“**Bill of Sale**”);

(h) A duly executed counterpart of an assignment and assumption of all of Seller’s right, title and interest in and to the Assigned Agreements, in each case to the extent assignable without the consent of third parties (or to the extent any required consent of third parties has been obtained), in the form attached hereto as **Exhibit “F”** (the “**Assignment and Assumption Agreement**”), duly executed by Seller;

(i) Intentionally Omitted;

(j) Intentionally Omitted;

(k) All transfer tax forms and any other filings, forms or documents required in order to record the Deed in the applicable jurisdiction;

(l) To the extent in Seller’s possession (a) those transferable licenses and permits, authorizations and approvals pertaining to the Property which are not posted at the Property and (b) all transferable guarantees and warranties which Seller has received in connection with any work or services performed or equipment installed in and improvements erected on the Property;

(m) A duly executed counterpart of an assignment and assumption of intangible property in the form of **Exhibit “H”** (the “**Assignment of Intangibles**”) (the assignment agreements attached hereto as **Exhibit “F”**, and **Exhibit “H”** are sometimes referred to herein as the “**Assignment Agreements**”);

(n) Counterparts of the Redemption Agreement Terminations, duly executed and, where applicable, notarized, in accordance with Section 6.4(b);

(o) A duly executed and acknowledged original of the Buyer Remediation Covenant in the form of **Exhibit “I”**.

(p) A duly executed counterpart of a letter terminating the Settlement Agreement, dated as of September 11, 2001, by and among CVRP, the City of San Jose, and the City of Salinas (“**Settlement Agreement**”), in the form of **Exhibit “N”**.

(q) A duly executed counterpart of a letter terminating the Agreement for Establishment of the Conservation Partnership for the Preservation of Open Space and The Promotion of Smart Growth-Oriented Housing in San Jose, Santa Clara County and Adjoining Communities, by and among CVRP, the Greenbelt Alliance and the Santa Clara County Open Space Authority dated October 18, 2000 (“**Conservation Partnership Agreement**”), in the form of **Exhibit “O”**;

(r) A duly executed and notarized quitclaim deed in the form of **Exhibit “P”** (**“Quitclaim Deed”**), quitclaiming to Buyer any right, title or interest of Seller in the property identified as “Arroyo de Fuego Court” on that certain parcel map recorded in the Official Records of Santa Clara County on October 28, 2004 in Book 777 of Maps, Pages 20-22;

(s) Such other instruments or documents which by the terms of this Agreement, or of any supplemental written agreement that may be entered into between Buyer and Seller after the Effective Date to resolve title or other matters, are to be delivered by Seller at the Closing;

(t) Such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement; and

(u) Intentionally Omitted.

Section 5.3. Buyer’s Deposits

Not later than the Closing Date, Buyer shall deliver to Escrow Agent the following:

(a) The full amount of the Balance in Cash, less interest on the Deposit, and subject to the adjustments and prorations described in this Agreement;

(b) A duly executed and acknowledged original of the Buyer Remediation Covenant in the form of Exhibit I.

(c) An executed preliminary change of ownership report in the form prescribed by the Santa Clara County Recorder (**“PCOR”**);

(d) Such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Buyer;

(e) Such affidavits, as may be customarily and reasonably required by the Title Company;

(f) An executed closing statement prepared by the Title Company reasonably acceptable to Buyer;

(g) A duly executed counterpart of the Assignment and Assumption Agreement;

(h) Certificates of Acceptance duly executed by the City and acknowledged, to be attached to and recorded with the Deed, the Quitclaim Deed and such other instruments or documents which by the terms of this Agreement (or of any supplemental written agreement that may be entered into between Buyer and Seller after the Effective date to resolve title or other matters) are to be delivered by Buyer at Closing, including any and all transfer tax forms and any other filings, forms or documents required by the Title Insurer;

(i) Intentionally Omitted;

(j) All transfer tax forms and any other filings, forms or documents required in order to record the Deed in the applicable jurisdiction;

(k) A duly executed counterpart of the Assignment of Intangibles;

(l) A written statement of the warranties and representations set forth in Section 7.5(b);

(m) A duly executed letter in the form attached hereto as **Exhibit “M”**, executed by the City Manager of Buyer (“1033 Letter”); and

(n) Such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

Section 5.4. Intentionally Omitted

Section 5.5. Concurrent Conditions

The obligations set forth in Section 5.2 shall be a condition for Buyer and the obligations set forth in Section 5.3 shall be a condition for Seller to close the transaction contemplated by this Agreement.

Section 5.6. Closing

The closing of the transaction contemplated by this Agreement (“**Closing**”) shall occur on or before November 26, 2019 (“**Closing Date**”), and the Parties shall use their best efforts to close on November 21, 2019. If the Closing has not occurred by Closing Date, then Seller may terminate this Agreement by written notice to Buyer and if the failure of the Closing to occur is caused by a default of Buyer that is not cured within the cure period in Section 8.1, Seller may retain the Deposit and interest thereon.

Section 5.7. Closing Procedure

When each of the items described in Section 5.2 and Section 5.3 have been deposited into Escrow and Title Company is prepared to issue the “Title Policy” (as defined hereinafter), Escrow Agent shall on the Closing Date perform the following tasks in the following order:

(a) Assemble each document which has been delivered to the Escrow Agent in counterparts (including without limitation the Redemption Agreement Terminations) into a single, integrated document containing all signatures thereto and notarizations thereof;

(b) Deliver the PCOR to the Santa Clara County Recorder;

(c) Record or deliver to Buyer and Seller, as applicable, the fully executed originals of the Redemption Agreement Terminations;

(d) Intentionally Omitted;

(e) Record the Deed and the Quitclaim Deed (each with Certificate of Acceptance) in the Office of the Santa Clara County Recorder in the order described in Section 5.8;

(f) Record the Buyer Remediation Covenant in the Office of the Santa Clara County Recorder.

(g) Deliver to Buyer the fully executed originals of the letter terminating the Settlement Agreement and the letter terminating the Conservation Partnership Agreement;

(h) Intentionally Omitted;

(i) Deliver to Seller all amounts deposited by Buyer (including the Deposit) in payment of the Purchase Price, less any credits against the Purchase Price and Seller's share of closing costs and prorations as provided herein;

(j) Deliver to each of Buyer and Seller a fully executed original of each of the Assignment Agreements;

(k) Deliver to Buyer the original Bill of Sale;

(l) Deliver to Seller the original of the 1033 Letter; and

(m) Cause the Title Insurer to issue and deliver to Buyer an American Land Title Association (“ALTA”) standard coverage owner’s policy of title insurance (with regional exceptions) with liability in the amount of the Purchase Price (“Title Policy”) insuring title to the Real Property subject only to the Permitted Exceptions. Buyer may elect to obtain an ALTA extended coverage owner’s policy and/or any endorsements to the Title Policy provided that Buyer shall pay the additional premium for the extended coverage, the cost of any required survey, and the cost of any endorsements related to such extended coverage. The ability or willingness of the Title Company to issue such extended coverage policy and/or any endorsements (unless such endorsement is being provided by Seller to cure a title or survey objection which Seller has elected to cure and as to which Buyer has approved a cure by way of endorsement) shall not be a condition to Buyer’s obligation to close Escrow. At Buyer’s election, the Title Policy may be in the form of two or more policies each covering a portion of the Real Property, provided that (i) the combined liability of the policies does not exceed the Purchase Price, (ii) any increase in the cost of the title premiums above the cost of a single policy is borne by Buyer, and (iii) if Title Company refuses to issue multiple policies, Buyer agrees to accept a single policy, and the refusal will not postpone the Closing Date or be deemed a failure of a closing condition.

Section 5.8. Distribution of Documents

All documents delivered for recordation by Escrow Agent shall provide that they are to be returned after recordation to Escrow Agent. When originals of such recorded documents are returned to Escrow Agent, Escrow Agent shall deliver: (i) the original recorded Redemption Agreement Terminations, deeds of reconveyance, Deed, and Quitclaim Deed to Buyer with a copy (showing all recording information) to Seller; (ii) the Buyer Remediation Covenant to Seller; and

(iii) any deeds of trust to be recorded through Escrow at Buyer's instruction to the beneficiaries under such documents, with copies (showing all recording information) to Buyer.

Section 5.9. Consent to Assignment of Assigned Agreements; Notices to Counterparties

For any assignment of an Assigned Agreement to Buyer for which the consent of City as a counterparty is required, the City's execution of the Assignment and Assumption Agreement shall be deemed to give such consent. Promptly following Closing, Seller shall deliver to each of the counterparties (excepting the City) to any Assigned Agreement that is a Permitted Exception, is still in effect as of Closing, and requires such notice thereunder, notice that the same have been assigned to Buyer, which notice shall include a statement to the effect of the forgoing and will include Buyer's address and telephone number.

Section 5.10. Effect of Acceptance of the Deed by Buyer

The acceptance of the Deed by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, excepting the representations of Seller set forth in Section 7.1 and any other obligations of Seller that are specified in this Agreement to survive the Closing or any documents executed at Closing that survives Closing. The provisions of this Section 5.10 shall survive the Closing.

Section 5.11. Conditions Precedent to Obligation of Buyer

The obligation of Buyer to consummate the transaction under this Agreement shall be subject to the fulfillment on or before the Closing Date of all of the following conditions (collectively, the "**Buyer Conditions Precedent**"), any or all of which are for the benefit of Buyer and may be waived by Buyer in its sole and absolute discretion:

(a) On the Closing Date, the Title Company shall be prepared and committed to issue to Buyer a Title Policy with coverage in the amount of the Purchase Price, showing fee title vested in Buyer, subject only to the Permitted Exceptions, and provided, that at Buyer's election and at its sole expense (unless such endorsement is being provided by Seller to cure (and as to which Buyer has approved a cure by way of endorsement) a title or survey objection which Seller has elected to cure), Buyer may elect to obtain any endorsements to the Title Policy; provided that the availability of any such endorsements shall not constitute a condition to Buyer's obligation to proceed with the Closing (unless such endorsement is being provided by Seller to cure a title or survey objection which Seller has elected to cure);

(b) Seller shall have delivered to Escrow Agent all of the items required to be delivered to Escrow Agent pursuant to the terms of this Agreement, including those provided for in Section 5.2;

(c) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date;

(d) Seller shall have performed and observed all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date, or shall have timely cured any breach thereof;

(e) Seller shall have disclosed all material facts relating to the condition of the Property as and to the extent such disclosure is required under California law;

(f) There shall not have been any material adverse change in the condition of the Property between the Effective Date and the Closing;

(g) Seller shall have vacated the Real Property and removed all personal property to be retained by Seller (but not the Improvements) of any kind from the Real Property;

(h) All necessary counterparts to the Redemption Agreement Terminations shall have been duly executed and (where applicable) notarized by Seller (and/or Seller's affiliates, as applicable) and the appropriate counterparties and deposited into Escrow;

(i) All contracts and other agreements (other than the Permitted Exceptions) affecting the Real Property shall have been terminated by Seller at or before the Closing at Seller's sole cost and expense;

(j) A sale by Brandenburg Properties of Florida, LLC, a Florida Limited liability company, as to an undivided 43.86% interest; William Brandenburg, as trustee of the William Brandenburg Revocable Trust dated January 31, 2006, as to an undivided 10.00% interest; Diane M. Brandenburg, Trustee of the Lee Brandenburg Non-exempt QTIP Trust UAD September 19, 1993, as to an undivided 8.34% interest; Diane M. Brandenburg, Trustee of the Jackson Lee Brandenburg Separate Property Trust UAD Dated August 14, 2001, as to an undivided 18.9% interest; and Diane M. Brandenburg, Trustee of the Taylor Ann Brandenburg Separate Property Trust UAD Dated August 14, 2001, as to an undivided 18.9% interest (collectively, "**Brandenburg**") to the City of those certain parcels of land in the City of San Jose, County of Santa Clara, California, identified by APNs 708-25-2, 708-26-1, 708-26-2, 708-27-1, 708-27-2, 708-27-7, 708-27-14, 708-28-2, 708-30-8, 708-30-16, 708-30-17, 708-30-18 ("**Brandenburg Land**") shall have closed (which may occur concurrently with the close of Escrow for the sale of the Property); and

(k) SI 70, LLC, a California limited liability company and POST shall have entered into a binding agreement for the purchase and sale of those certain vacant parcels of land in the City of San Jose, County of Santa Clara, California, identified by APNs 712-03-111 and 712-03-112 ("**SI 70 Land**"), the due diligence period under that agreement (if any) shall have been completed without termination of the agreement, SI 70 shall not be in breach of the agreement and SI 70 shall have deposited into the escrow established for the closing of such purchase and sale all documents which such agreement requires be deposited by SI 70 in such escrow prior to the closing thereof, and all other conditions to the closing of such escrow to be performed or satisfied by POST and SI 70, other than POST's deposit of the purchase price and other funds, shall have been performed or satisfied, provided, however, that the actual closing of such escrow shall not be a Buyer Condition Precedent.

- (l) Intentionally Omitted;
- (m) Intentionally Omitted;
- (n) Intentionally Omitted;
- (o) Intentionally Omitted;

Section 5.12. Conditions Precedent to Obligation of Seller

The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions (collectively, the “**Seller Conditions Precedent**”), any or all of which are for Seller’s benefit and may be waived by Seller in its sole and absolute discretion:

- (a) Buyer shall have deposited to Escrow all funds required by Section 5.3;
- (b) Buyer shall have delivered to Escrow Agent all of the items required to be delivered to Escrow Agent pursuant to the terms of this Agreement;
- (c) All of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the Closing Date; and
- (d) City shall have delivered the 1033 Letter to Seller;
- (e) A sale by Brandenburg to City of the Brandenburg Land shall have closed (which may occur concurrently with the close of Escrow for the sale of the Property); and
- (f) SI 70 and POST shall have entered into a binding agreement for the purchase and sale of the SI 70 Land, the due diligence period under that agreement (if any) shall have been completed without termination of the agreement, POST shall not be in breach of the agreement and POST shall have deposited into the escrow established for the closing of such purchase and sale all documents required for the closing of such escrow, provided, however, that the actual closing of such escrow shall not be a Seller Condition Precedent;
- (g) Brandenburg shall have executed counterpart originals of the Redemption Agreement Terminations and delivered such documents in Escrow or into the escrow for its sale of the Brandenburg Land to Buyer and authorized them to be released to Seller at the Closing;
- (h) The beneficiary of that certain Deed of Trust, Security Agreement with Assignment of Rents, Security Agreement and Fixture Filing, dated November 16, 2004, under which the trustor was Cisco Technology, Inc., a California corporation, the trustee was First American Title Guaranty Company, and the beneficiary was Coyote Valley Research Park, LLC, a Delaware limited liability company, as recorded on November 16, 2004 as Instrument No. 18101220 of Official Records, shall have reconveyed the lien of such deed of trust;
- (i) Intentionally Omitted;

(j) Buyer shall have performed and observed all covenants and agreements of this Agreement to be performed and observed by Buyer as of the Closing Date, or shall have timely cured any breach thereof.

Section 5.13. Credits and Prorations

(a) Intentionally Omitted.

(b) The following shall be apportioned between Seller and Buyer at the Closing with respect to the Property as of 11:59 p.m. (Pacific Time) of the day immediately preceding the Closing Date, and the net amount thereof either shall be paid by Buyer to Seller or credited to Buyer, as the case may be, at the Closing:

(1) Real property taxes and assessments (or installments thereof) (as used in this Section 5.13, the terms “taxes and assessments” or “real property taxes and assessments” include any special taxes levied for a Mello-Roos community facilities district), provided that Buyer shall not be apportioned any real property taxes or assessments for which Buyer is exempt, but only if and to the extent that Seller is entitled by reason of the conveyance of the Real Property to Buyer to a refund of such taxes previously paid by Seller;

(2) Water rates and charges;

(3) Sewer taxes and rents;

(4) Deposits in Seller’s name that are on account with any utility company servicing the Property to the extent transferred to Buyer shall not be apportioned, but Seller shall receive a credit in the full amount thereof (including accrued interest thereon, if any);

(5) To the extent not otherwise apportioned pursuant to this Article 5, charges and fees due under contracts for the supply to the Property of heat, steam, electric power, gas and light and telephone, if any, in respect of the billing period of the related service provider in which the Closing occurs (the “**Current Billing Period**”) on a per diem basis based upon the number of days in the Current Billing Period prior to the Closing (which shall be allocated to Seller) and the number of days in the Current Billing Period on and after the Closing (which shall be allocated to Buyer) and assuming that all charges are incurred uniformly during the Current Billing Period (it being agreed that all deposits, if any, made by Seller as security under any such public service contracts shall be credited to Seller if such amounts remain on deposit after the Closing for the benefit of Buyer; provided, however, that Seller shall be entitled in its sole discretion to receive a refund of such security deposits directly from any such service provider without credit to Buyer). Calculations hereunder shall be based upon the most recent invoice rendered to Seller by the applicable service provider and, after an actual bill covering the period ending on the Closing is received, the apportionment of such charges hereunder shall be recomputed; and

(6) All other items customarily apportioned in connection with the sale of similar properties similarly located.

(c) Notwithstanding anything contained in Section 5.13(b), any taxes or assessments paid at or before Closing shall be prorated based upon the amounts actually paid. If taxes and assessments due and payable during the year of Closing have not been paid before Closing, Seller shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing (as well as any taxes and assessments for any year before the year of the Closing), and Buyer shall pay such taxes and assessments before their becoming delinquent subsequent to the Closing Date. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation for the prior fiscal year. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at Closing, the Parties shall make all necessary adjustments by appropriate payments between themselves within thirty (30) days after such amounts are determined following Closing. Seller shall have no obligation to pay any supplemental taxes resulting from the change in ownership and reassessment occurring as of and after the Closing Date.

(d) If any refund of real property taxes is made after the Closing Date covering a period prior to the Closing Date, the same shall be applied first to the reasonable out-of-pocket costs incurred in obtaining same and the balance, if any, of such refund shall, to the extent received by Buyer, be paid to Seller (for the period prior to the Closing Date) and to the extent received by Seller, be paid to Buyer (for the period commencing with the Closing Date).

(e) Intentionally Omitted;

(f) The provisions of this Section 5.13 shall survive Closing.

Section 5.14. Transaction Taxes and Closing Costs

(a) Buyer shall execute a PCOR form at the Closing.

(b) Except as otherwise provided in this Agreement, Seller shall pay the fees of any counsel representing Seller in connection with this transaction. Seller shall also pay the following costs and expenses:

(1) The escrow fee, if any, which may be charged by the Escrow Agent or Title Company;

(2) The premium for the ALTA Standard Coverage Owner's Policy of Title Insurance to be issued to Buyer by the Title Company at Closing and the fee for any endorsements obtained at Seller's direction to insure against any title matters which are not Permitted Exceptions and which Seller has agreed to remove, and as to which Buyer has agreed to accept the removal, by way of endorsement;

(3) The fees for recording the Deed;

(4) Any county transfer taxes and one-half of any city transfer taxes which are payable by reason of the transfer of the Property; and

(5) Such other closing costs, if any, not expressly provided for herein that are customarily charged to sellers of real property for Santa Clara County, California.

(c) Except as otherwise provided in this Agreement, Buyer shall pay the fees of any counsel representing Buyer in connection with this transaction. Buyer shall also pay the following costs and expenses:

(1) One-half of any city transfer taxes;

(2) That portion of the premium for the ALTA Extended Coverage Owner's Policy of Title Insurance to be issued to Buyer by the Title Company at Closing which is in excess of the premium for an ALTA Standard Coverage Owner's Policy of Title Insurance, provided that Buyer has elected to purchase such coverage, and the fee for all endorsements thereto (except for such endorsements obtained by Seller to remove any title exceptions that are not Permitted Exceptions (if approved by Buyer) or to cure or remove a title objection and as to which Buyer has approved a cure by way of endorsement); and

(3) Such other closing costs, if any, not expressly provided for herein, that are customarily charged to buyers of real property for the county in which the Real Property is located.

(d) All costs and expenses incident to this transaction and the Closing hereof, and not specifically described above, shall be paid by the Party incurring same.

(e) The provisions of this Section 5.14 shall survive the Closing.

Section 5.15. Assignment

Buyer shall not assign its rights under this Agreement unless such assignment is approved in advance and in writing by Seller, which approval shall be in its sole and absolute discretion.

Section 5.16. Possession

The delivery of possession of the Real Property to Buyer shall occur immediately upon Closing.

**ARTICLE 6
DUE DILIGENCE**

Section 6.1. Due Diligence

Buyer has conducted its investigation and other due diligence in connection with the Property prior to the Effective Date.

Section 6.2. Inspection of Seller's Documents

Prior to the Effective Date (and commencing on or about July 26, 2019), Seller has made available to Buyer at the offices of Seller or via electronic mail or other means, and Buyer shall

hereafter continue to have reasonable access to, the documents described in that certain Access License and Due Diligence Agreement between Buyer, Seller, Sobrato Interest 3, a California limited partnership, and POST dated July 17, 2019 (“**Right of Entry Agreement**”) (such documents being referred to collectively as the “**Seller’s Documents**”). Seller makes no representation or warranty regarding the accuracy or completeness of any information contained in Seller’s Documents, all such information being made available on an “**AS-IS,” “WHERE-IS,” “WITH ALL FAULTS**” basis. Except to the extent expressly provided in this Agreement (including, without limitation) the express representations and warranties in Section 7.1(a)(11) and Section 7.1(a)(13)), Seller makes no representation or warranty regarding its knowledge of third party consultants that may have knowledge of the Property and Seller shall have no liability for failure to disclose any third party that may have knowledge of the Property, it being understood that Buyer has conducted its own independent due diligence of the Property prior to the Effective Date to determine the suitability of the Property for Buyer’s intended purposes and whether the Seller’s Documents are acceptable to Buyer, in Buyer’s sole and absolute discretion. If this Agreement is terminated for any reason other than a Seller default, Buyer shall, within five (5) business days following such termination, deliver to Seller all information, surveys, studies, documents, reports and data obtained by Buyer relating to the Property and return to Seller all of Seller’s Documents, and Buyer shall thereafter continue to keep and hold all such information respecting the Property in strict confidence in accordance with the Right of Entry Agreement (and Buyer’s obligation to keep all such information confidential shall survive such termination), subject to applicable law, including without limitation, the California Public Records Act.

Section 6.3. Physical Inspection. Seller shall permit Buyer to carry out inspections of the Property until the Closing Date, in accordance with the terms and conditions of the Right of Entry Agreement, for the purpose of determining whether Buyer’s closing conditions pertinent to the condition of the Property have been satisfied. Seller shall give Buyer written notice if Seller obtains actual knowledge that the condition of the Property is altered since August 6, 2019. Ordinary and customary maintenance of the Property such as the cutting of weeds, the trimming of trees and the harvesting of crops shall not constitute and alteration of the Property.

Section 6.4. Redemption Agreement Documents; Releases and Terminations.

(a) Redemption Agreement Document Waivers and Releases

(1) EFFECTIVE UPON THE CLOSING, SELLER IRREVOCABLY WAIVES ANY AND ALL OF ITS RIGHTS AND REMEDIES UNDER EACH OF THE REDEMPTION AGREEMENT DOCUMENTS, INCLUDING ANY RIGHTS TO FORECLOSURE, SPECIFIC PERFORMANCE (EXCEPT AS TO ANY COVENANTS OF INDEMNITY OR OBLIGATIONS WITH RESPECT TO THE CONDITION OF THE PROPERTY AFTER THE CLOSING), OR MONETARY DAMAGES OR REIMBURSEMENT, AND RELEASES BUYER AND ITS RESPECTIVE PRINCIPALS, AFFILIATES, OFFICERS, DIRECTORS, MEMBERS MANAGERS, PARTNERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL CLAIMS, COUNTERCLAIMS AND CAUSES OF ACTION WHICH SELLER (OR ANY OF THE PERSONS AND ENTITIES CONSTITUTING SELLER) MAY NOW OR IN THE FUTURE HAVE AGAINST BUYER OR THE BRANDENBURG LAND ARISING FROM THE REDEMPTION AGREEMENT

DOCUMENTS. THIS WAIVER AND RELEASE SHALL BURDEN AND RUN WITH THE PROPERTY, AND SHALL RUN FOR THE BENEFIT OF BUYER AND ANY SUCCESSOR OWNER OF THE BRANDENBURG LAND.

SELLER, AND EACH OF THE PERSONS AND ENTITIES CONSTITUTING SELLER, HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“SECTION 1542”), WHICH IS SET FORTH BELOW:

“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.”

BY INITIALING BELOW, SELLER, AND EACH OF PERSONS AND ENTITIES CONSTITUTING SELLER, HEREBY WAIVES THE PROVISIONS OF SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES. SELLER FURTHER AGREES AND ACKNOWLEDGES THAT, IN GIVING THE FOREGOING WAIVER AND RELEASE, IT HAS WITH ITS LEGAL COUNSEL, CONSIDERED ANY STATUTE OR OTHER LAW THAT MIGHT APPLY TO AND LIMIT THE EFFECT OF SELLER'S WAIVER AND RELEASE HEREIN AND HEREBY KNOWINGLY WAIVES THE BENEFITS OF ANY SUCH LAW AND INTENDS THAT IT NOT BE APPLICABLE HERE.

Seller's Initials: _____

This Section 6.4(a)(1) shall survive Closing or any termination of this Agreement.

(2) EFFECTIVE UPON THE CLOSING, BUYER IRREVOCABLY WAIVES ANY AND ALL OF ITS RIGHTS AND REMEDIES UNDER EACH OF THE REDEMPTION AGREEMENT DOCUMENTS, INCLUDING ANY RIGHTS TO FORECLOSURE, SPECIFIC PERFORMANCE, OR MONETARY DAMAGES OR REIMBURSEMENT, AND RELEASES SELLER AND ITS RESPECTIVE PRINCIPALS, AFFILIATES, OFFICERS, DIRECTORS, MEMBERS MANAGERS, PARTNERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL CLAIMS, COUNTERCLAIMS AND CAUSES OF ACTION WHICH BUYER (OR ANY OF THE PERSONS AND ENTITIES CONSTITUTING BUYER) MAY NOW OR IN THE FUTURE HAVE AGAINST SELLER OR THE PROPERTY ARISING FROM THE REDEMPTION AGREEMENT DOCUMENTS; PROVIDED, HOWEVER, THAT THIS RELEASE AND WAIVER SHALL NOT APPLY TO THE EXTENT OF ANY BREACH OF SELLER’S EXPRESS REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT. THIS WAIVER AND RELEASE SHALL BURDEN AND RUN WITH THE BRANDENBURG LAND, AND SHALL RUN FOR THE BENEFIT OF SELLER AND ANY SUCCESSOR OWNER OF THE PROPERTY.

BUYER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF SECTION 1542, WHICH IS SET FORTH BELOW:

“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.”

BY INITIALING BELOW, BUYER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES. BUYER FURTHER AGREES AND ACKNOWLEDGES THAT, IN GIVING THE FOREGOING WAIVER AND RELEASE, IT HAS WITH ITS LEGAL COUNSEL, CONSIDERED ANY STATUTE OR OTHER LAW THAT MIGHT APPLY TO AND LIMIT THE EFFECT OF BUYER'S WAIVER AND RELEASE HEREIN AND HEREBY KNOWINGLY WAIVES THE BENEFITS OF ANY SUCH LAW AND INTENDS THAT IT NOT BE APPLICABLE HERE.

Buyer's Initials: _____

This Section 6.4(a)(2) shall survive Closing or any termination of this Agreement.

(b) Redemption Agreement Terminations. On or before Closing, Seller shall cause to be prepared, and shall deposit into Escrow, the agreements and instruments in the form attached as Exhibit “R” (collectively, the **“Redemption Agreement Terminations”**), duly executed by Seller and/or any affiliates of Seller as may be necessary to effectuate such agreements and instruments, and duly notarized where applicable. At Closing, the Escrow Agent shall assemble the Redemption Agreement Terminations with their counterparts executed by the then-current successors-in-interest of the original counterparties to each agreement or instrument being terminated to produce final, fully executed versions of the Redemption Agreement Terminations, the originals of which shall be recorded (where applicable) prior to the recordation of the Deed, and otherwise returned to Buyer. Conformed copies of any of the Redemption Agreement Terminations which were recorded shall be provided to Buyer, POST, Seller and the other signatories to the documents.

Section 6.5. Disclosures

Concurrent with the execution of this Agreement, Buyer shall receive from Seller a standard California Natural Hazard Disclosure Report which includes a certificate (**“Natural Hazard Certificate”**) as to whether the Real Property lies within: a special flood hazard area as governed under California Government Code (**“GC”**) §8589.3; an earthquake fault zone as governed under California Public Resources Code (**“RC”**) §§ 2621-2630 et al; a dam failure inundation area as governed under GC §8589.5; a high fire severity zone as governed under GC §51183.5; and a wildland fire area as governed under RC §4136. For the purposes of this Agreement the Natural Hazard Certificate shall be deemed one of the Seller's Documents, and

Buyer's approval or disapproval of the Natural Hazard Certificate shall be in accordance with the terms and conditions of Section 6.1. Seller hereby discloses to Buyer that: (i) the Land was formerly ranch or farm land where pesticides and other Hazardous Materials may have been used; (ii) intentionally omitted; and (iii) grading spoils from on-site or off-site grading were deposited on the Real Property.

Section 6.6. Environmental Matters

(a) Without limiting the generality of this Article 6 or Section 7.2, Buyer acknowledges that it has had an opportunity to conduct its own investigation of the Property with regard to Hazardous Materials and compliance of the Property with Environmental Laws. Buyer agrees to take title to the Property subject to all costs and liabilities arising out of or in any way connected to the condition of the Property, including those arising out of Hazardous Materials and Environmental Laws, as it existed on the date of the Closing, but excepting from the foregoing any costs and liabilities arising from the following (collectively, "**Seller Retained Obligations**"): (i) any third party claims by surrounding property owners to the Real Property relating to Seller's release of Hazardous Materials on the Real Property during Seller's ownership of the Real Property which Hazardous Materials have migrated onto the property of such owners; (ii) Seller's breach of Seller's Express Representations, (iii) Seller's failure to disclose any material facts relating to the condition of the Property as and to the extent such disclosure is required under California law, which failure first comes to the attention of Buyer following the Closing; and (iv) those matters against which Seller has agreed to indemnify Buyer pursuant to this Agreement. BUYER HEREBY RELEASES (AND AGREES NOT TO SUE) THE PERSONS AND ENTITIES CONSTITUTING SELLER, AND THEIR RESPECTIVE PRINCIPALS AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, MANAGERS, PARTNERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST AND WITH RESPECT TO ANY AND ALL CLAIMS, COUNTERCLAIMS AND CAUSES OF ACTION WHICH BUYER OR ITS SUCCESSORS OR ASSIGNS MAY NOW OR IN THE FUTURE HAVE AGAINST ANY OF THE FOREGOING PARTIES ARISING OUT OF HAZARDOUS MATERIALS EXISTING ON THE PROPERTY AS OF THE EFFECTIVE DATE, EXCEPTING ANY CLAIMS ARISING FROM SELLER RETAINED OBLIGATIONS.

BUYER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH IS SET FORTH BELOW:

"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."

BY INITIALING BELOW, BUYER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES. BUYER FURTHER AGREES AND

ACKNOWLEDGES THAT, IN GIVING THE FOREGOING WAIVER AND RELEASE, IT HAS WITH ITS LEGAL COUNSEL, CONSIDERED ANY STATUTE OR OTHER LAW THAT MIGHT APPLY TO AND LIMIT THE EFFECT OF BUYER'S WAIVER AND RELEASE HEREIN AND HEREBY KNOWINGLY WAIVES THE BENEFITS OF ANY SUCH LAW AND INTENDS THAT IT NOT BE APPLICABLE HERE.

Buyer's Initials: _____

As used in this Section 6.6(a) and in Section 5.11(e), Section 7.3, Section 7.7(a) and Section 8.3(b), the phrase "Seller's failure to disclose any material facts relating to the condition of the Property as and to the extent such disclosure is required under California law" shall include corollary concepts under California law regarding the duty to disclose. By way of example, but without serving as an admission or acknowledgment on the part of any Party as to the state of the law, such corollary concepts may include the absence of a duty to disclose where the other party has knowledge of such undisclosed material facts or could reasonably discover such material facts.

(b) At the Closing, Buyer and Seller shall execute and acknowledge a covenant running with the land and binding on Buyer and its successors and assigns pertaining to certain obligations of those parties for the benefit of Seller (and each of the persons and entities constituting Seller) to investigate, test for, remediate, remove, encapsulate, take (or cause to be taken) any action or otherwise respond in connection with certain Hazardous Material on the Real Property. Said covenant shall be in the form attached hereto as Exhibit I (the "**Buyer Remediation Covenant**").

(c) On behalf of themselves and their respective successors, assigns and successors in interest in and to the Property or any part thereof or interest therein, Buyer covenants and agrees, in connection with the obligations set forth in the Buyer Remediation Covenant, to defend, indemnify and hold Seller harmless against any claim or action arising out or in connection with any failure (during the term of the Buyer Covenant) by Buyer or its successors and assigns to perform those obligations. Said covenant shall survive the Closing and the recording of the Deed.

Section 6.7. Survival

The provisions of this Article 6 shall survive the Closing.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

Section 7.1. Representations of Seller

(a) As used in this Agreement, the phrases "actually known by Seller" or "to Seller's actual knowledge" shall mean the actual knowledge (but excluding constructive or imputed knowledge) of Chase Lyman and Tim Steele, whom Seller represents are the persons most knowledgeable about the Property that presently work at The Sobrato Organization, LLC and the matters set forth in this Section 7.1, without any duty to make investigation. As used in this Agreement, the term "Seller" includes each and all of the entities constituting Seller. Seller hereby makes the following representations to Buyer as of the Effective Date, which representations and

warranties shall continue to be true and correct as of the Closing, as a condition to the Closing for the benefit of Buyer:

(1) Seller is a California limited liability company and is organized and validly existing and in good standing under the laws of the State of California. Seller has the full right and authority to enter into this Agreement and to transfer its interest in the Property and to consummate or cause to be consummated the transaction contemplated by this Agreement. The person signing this Agreement on behalf of Seller is authorized to do so by Seller.

(2) Intentionally Omitted.

(3) Intentionally Omitted.

(4) Intentionally Omitted.

(5) Intentionally Omitted.

(6) This Agreement has been, duly authorized, executed and delivered by Seller, and constitutes the legal, valid and binding obligations of Seller enforceable against it in accordance with its terms, except as such enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles whether or not sought, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California.

(7) The execution and delivery of this Agreement, and all other documents to be executed by Seller hereunder, will not, to Seller's knowledge, result in: a breach or violation of (A) any governmental requirement applicable to Seller or the Real Property now in effect; (B) the organizational documents of the entities constituting Seller; (C) any judgment, order or decree of any governmental authority binding upon Seller; or (D) any agreement or instrument to which Seller is a party or by which it is bound (except to the extent the consent of a counterparty to any Assigned Agreement must be obtained under the terms thereof and is not so obtained); the acceleration of any obligation of Seller; or the creation of any lien, encumbrance, or other matter affecting title (other than the Permitted Exceptions) to the Real Property.

(8) Seller and the persons and entities constituting Seller have not made a general assignment for the benefit of creditors; filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors; suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets; suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets; admitted in writing its inability to pay their respective debts as they come due; or made an offer of settlement, extension or composition to their respective creditors generally.

(9) To Seller's actual knowledge, the Redemption Agreement Documents and the Assigned Agreements constitute all of the leases, licenses or other occupancy agreements which are currently in force with respect to the Property and which may continue in effect following the Closing if not terminated. Seller has made copies of each of the Redemption

Agreement Documents and the Assigned Agreements available to Buyer, all of which copies are true, complete and correct copies of such documents. Seller has not received written notice that it is in default of the Assigned Agreements or the Redemption Agreement Documents and has no knowledge that it is in default thereunder (except to the extent the consent of a counterparty to any Assigned Agreement was required to be obtained under the terms thereof in connection with the assignment of any of the Assigned Agreements to Seller and was not so obtained). No party to the Assigned Agreements or the Redemption Agreement Documents has asserted a claim, offset, or counterclaim against Seller, and Seller has no knowledge that Seller is in breach of the Assigned Agreements or the Redemption Agreement Documents. Seller received an assignment of the Assigned Agreements and the Redemption Agreement Documents when Seller acquired title to the Property, and Seller has not assigned any of its rights or obligations under any of the Assigned Agreements or the Redemption Agreement Documents. The Assigned Agreements and the Redemption Agreement Documents do not prohibit Seller from granting Buyer the right to access and inspect the Property for purposes of conducting the Investigations prior to Closing as provided in Section 6.3. To Seller's actual knowledge, no lessee or licensee of the Property has any claim, offset, or counterclaim against Seller under any lease or license to use the Property (excepting any amounts due to lessee or licensee that will be paid in full by Seller prior to Closing).

(10) Intentionally Omitted.

(11) To Seller's actual knowledge, Seller has not received written notice of any pending or threatened condemnation with respect to the Property or any part thereof, except as otherwise provided in the 1033 Letter.

(12) To Seller's actual knowledge, there are no actions, suits or proceedings pending against Seller relating to the Property or otherwise relating to the Property, in any court of law or in equity or before any governmental instrumentality, except as otherwise provided in Recital E of this Agreement.

(13) Except as provided for within the Seller's Documents or revealed during Buyers' investigations of the Property, Seller has not received any written notice from any governmental authority or public utility with respect to, nor to Seller's knowledge are there any, conditions on, in, under or concerning the Property (including any Hazardous Materials) which have been expressly alleged to violate any law, regulation or ordinance (including Environmental Laws).

(14) There are no judgments, and to Seller's knowledge, no actions, suits, or legal proceedings pending or threatened in writing against the Real Property, except by an affiliate of Brandenburg, which has threatened litigation if any attempt were made to pursue a trustee's sale under the any deed of trust in which Brandenburg is the beneficiary, and as otherwise provided in the 1033 Letter and the email message that Seller provided to Buyer from Kristina Yoshida, PhD of the San Francisco Bay Regional Water Quality Control Board requesting access to the Property for the purposes of conducting a study throughout the Coyote Creek Watershed to assess water and sediment quality in the streams.

(15) Seller has not entered into any agreement granting any party an option, contract or other right to purchase the Property which is still in force.

(16) To Seller's knowledge, as of the Closing Date, the Seller's Documents constitute all material environmental reports, surveys, maps, tests, studies, and other materials related to the Real Property that are in Seller's actual possession, excluding plans relating to the Property including but not limited to development plans, site plans, architectural plans, proformas or any other drawings or diagrams regarding proposed improvements to the Property.

(17) Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

(18) Seller is not and will not become a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 23, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

Section 7.2. Disclaimer of Any Additional Representations and Warranties

(a) Buyer acknowledges that as of the Closing Date, it will have had an adequate opportunity to inspect the Property, and all aspects thereof, and to investigate the Property's physical characteristics and conditions and all other matters related or relevant to the Property. Upon the Closing, and except as for the representations, warranties and covenants expressly set forth in this Agreement or set forth in any document delivered by Seller to Buyer at the Closing (the "**Seller Closing Documents**") (such representations, warranties and covenants being referred to herein as the "**Seller's Express Representations**"), Buyer shall be deemed to have waived any and all objections to the physical characteristics and conditions of the Real Property and all other matters related or relevant to the Property, including:

(1) The habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Real Property, including Buyer's intended use of the Property;

(2) The nature, quality, or condition of the Real Property, including with respect to water conditions, soil, geological, or geotechnical condition (including the presence or absence of Hazardous Materials, soil expansiveness, corrosivity, or stability or seismic, hydrological, geological, and topographical conditions and configurations, including any opinions or conclusions of any soils engineer(s) retained to perform geotechnical and/or soils studies or to oversee any soils engineering aspects of developing the Real Property);

(3) The fact that all or a portion of the Real Property may be located on or near an earthquake fault line or in or near an earthquake or seismic hazard zone;

(4) Climate, air, water rights, utilities, present and future zoning, the state of current entitlements or the ability to obtain future entitlements, soil, subsoil, grading, compaction or the size, configuration, and location of the Real Property, any applicable parcel maps or any conditions or obligations imposed in connection therewith, the purpose to which the Real Property is suited, drainage, the existence or effect of any governmentally regulated or

protected wetlands, endangered species, flora, fauna, or other natural habitat and the effect of same upon the development of the Real Property (including the need to obtain any governmental permits or approvals for development of the Real Property based upon the existence of such wetlands, habitat or other natural conditions);

(5) Any opinions or conclusions of any civil engineer retained by or on behalf of Seller in connection with the Real Property;

(6) Any opinions or conclusions of any environmental engineer or consultant retained to perform environmental or Hazardous Materials studies or to oversee any environmental related aspects of developing the Real Property;

(7) Zoning or land use requirements, or the availability of any land use entitlements, including sewer, water, or building permits for the Real Property;

(8) The existence of any historical, paleontological, or archeological deposits on the Real Property;

(9) Any assurance, opinion, or conclusion of the availability of any zoning, development, construction or other land use variances, including any variance from side, rear or front of lot setback requirements;

(10) The compliance of the Property or its operation with any codes, laws, rules, ordinances, or regulations of any applicable governmental authority or body, including compliance with any environmental protection, pollution, or land use laws, rules, regulations, orders, codes, or requirements, including the Americans with Disabilities Act of 1990, California Health & Safety Codes, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, the U.S. Environmental Protection Agency regulations at 40 CFR, Part 261, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.A. §9613), as the same may be further amended or replaced by any similar law, rule, or regulation, the Resource Conservation and Recovery Act of 1976, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, and regulations promulgated under any of the foregoing;

(11) Any other matter relating to the Property or to the development or operation of the Real Property, including legal requirements, valuations, feasibility, cost, governmental permissions or entitlements, claims and obligations, license and other use rights and claims, any matters that would be disclosed or apparent by a survey of the Real Property, and the future use and operation of the Property. Seller and its agents, contractors, consultants, attorneys, and representatives shall not be liable for any relief, including damages, rescission, reformation, allowance, or adjustments based on the failure of the Property, including amount of acreage, square footage, zoning, and environmental condition, to conform to any specific standard or expectation or any third party documents or information except to the extent arising out of the inaccuracy or breach of any of the Seller’s Express Representations.

(b) Buyer further acknowledges that Seller shall have no obligation to undertake the construction or completion of any on-site or off-site improvements of any kind or nature.

(c) Buyer further acknowledges and agrees that, except to the extent of Seller's Express Representations:

(1) The Property is to be purchased, conveyed, and accepted by Buyer in its present condition, **“AS-IS,” “WHERE-IS”, “WITH ALL FAULTS,”** and that Buyer accepts the Property subject to all patent and/or latent physical conditions of the Property, whether or not known or discovered.

(2) Seller shall have no obligations whatsoever to undertake, repair or construct any improvements or facilities to, upon, or about the Real Property, or any portion thereof, or on any adjacent or other property, or to process any entitlements in any way affecting the Real Property, or any other property, after the Closing.

(3) Buyer's acquisition of title to the Property hereunder will be deemed to be Buyer's acknowledgment and agreement that it has investigated and has knowledge of all operative or imposed Laws and Regulations (including zoning and Environmental Laws, the regulations of the Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service, the California Department of Fish & Game, and the California Regional Water Quality Control Board, and all applicable land use Laws and Regulations) to which the Property may be subject, and is acquiring the Property on the basis of its review and determination of the application and effect of such Laws and Regulations.

(4) Buyer acknowledges that, after the Closing, it is Buyer's responsibility as the owner of the Property to comply with any such Laws and Regulations, including any environmental and/or biological mitigation requirements.

(d) Except for Seller's Express Representations, Buyer has neither received nor relied upon any representations concerning such Laws and Regulations made by Seller, Seller's employees, Seller's agents, or any other person acting on behalf of Seller. Any agreements, warranties, or representations not expressly contained in this Agreement or the Seller Closing Documents shall in no way bind Seller.

(e) Without limiting the generality of the foregoing, Buyer understands and agrees that it takes the Property without any representations or warranties by Seller (except for Seller's Express Representations), or by any member, official, employee, or agent of Seller, regarding the existence, use, generation, manufacture, storage, transportation, release, or disposal of Hazardous Material and/or oil wells and/or underground storage tanks and/or pipelines on, under, or about the Real Property, or that the Real Property is or may be in violation of any federal, state, or local law, ordinance or regulation relating to Hazardous Material and/or oil wells and/or underground storage tanks and/or pipelines on, under, or about the Real Property including soil and ground water conditions. Buyer acknowledges and understands that it must perform its own "due diligence" with respect to all environmental matters relating to the Real Property, inclusive of any environmental audits or assessments, and that Buyer is not relying on any environmental

audits or assessments performed by or on behalf of Seller and under no circumstances shall Buyer look to Seller for any liability, contribution, or indemnification with respect to any such matters.

(f) Buyer further understands and agrees that in the event it acquires the Property or any portion thereof pursuant to this Agreement, such acquisition will be done without any representations or warranties by Seller (except to the extent of the Seller's Express Representations) regarding the use, generation, manufacture, storage, transportation, release, or disposal of any Hazardous Material and/or oil wells and/or underground storage tanks and/or pipelines and/or other conditions relative to the Property or as to responsibility for any of the foregoing.

(g) Notwithstanding anything in this Agreement to the contrary, the foregoing shall not be construed as a waiver by Buyer of any claims that arise from Seller Retained Obligations.

Section 7.3. Release

At such time as it takes title to the Property and at all times thereafter, except as set forth below, Buyer releases Seller from all liability relating to the Property, including any claims, losses, or damages that Buyer may have against Seller with respect to the Property. Buyer expressly agrees to waive any and all rights which it may have under Section 1542 of the California Civil Code which provides as follows:

“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.”

BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT THE FOREGOING PROVISIONS OF SECTION 7.2 AND SECTION 7.3 HAVE BEEN FREELY BARGAINED FOR BY THE PARTIES AND CONSTITUTE A MATERIAL CONSIDERATION TO SELLER FOR THE SALE OF THE PROPERTY AND BUT FOR THIS PROVISION SELLER WOULD NOT SELL THE PROPERTY TO BUYER.

BUYER'S INITIALS: _____ **SELLER'S INITIALS:** _____

Notwithstanding anything herein to the contrary, the release set forth in this Section 7.3 shall not apply to any claims which Buyer may have arising from: Seller's breach of Seller's Express Representations; Seller's fraudulent or willful misconduct; Seller's failure to disclose any material facts relating to the condition of the Property as and to the extent required under California law which failure first comes to the attention of Buyer following the Closing; Seller Retained Obligations; or Seller's alleged breach of the Assigned Agreements, or other agreements pertaining to the Property to the extent such claims arise prior to the Closing.

Section 7.4. Representations of Buyer

(a) Representations of City. City hereby makes the following representations and warranties to Seller as of the Effective Date, which representations and warranties shall continue to be true and correct as of the Closing, as a condition to closing:

(1) City is a municipal corporation organized and validly existing as a charter city pursuant to its Charter and the Constitution of the State of California, and City has the full right and authority to enter into this Agreement and to consummate or cause to be consummated the transaction contemplated by this Agreement. The person signing this Agreement on behalf of City is authorized to do so.

(2) The execution and delivery of this Agreement by City does not, and the performance by City of its obligations under this Agreement will not, with or without the giving of notice, lapse of time or both, to the knowledge of City's Manager or the City Attorney, conflict with any provision of any law or regulation to which City is subject or conflict with or result in a material breach of or constitute a material default under any of the terms, conditions, or provisions of any enforceable agreement or instrument to which City is a party or by which it is bound (including any judgment, decree, order, statute, injunction, rule, regulation or the like of a governmental unit which is applicable to City), require the approval or waiver of or filing with any person (including any governmental unit, agency or instrumentality), or result in the creation or imposition of any lien on any of its assets or property which could materially and adversely affect the ability of City to discharge its obligations hereunder and complete the transactions contemplated by this Agreement.

(3) This Agreement has been, duly authorized, executed, and delivered by City, and constitutes the legal, valid and binding obligation of City enforceable against it in accordance with its terms, except as such enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles whether or not sought, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California.

(4) City's offer and decision to purchase the Property is and will be based upon its own independent expert evaluation of the Property and any other matters deemed relevant by City and its agents and advisors. Except for Seller's Express Representations, City has not relied upon any oral or written information from Seller, or any of Seller's employees, affiliates, brokers, agents, legal counselors, or other representatives. City further acknowledges that no employee, agent, broker, legal counsel, or other representative of Seller has been authorized to make, and that City has not relied upon, any statements or representations other than Seller's Express Representations.

(5) City is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

(6) Neither City nor any beneficial owner of City is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business

under regulations of the OFAC of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 23, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

(7) City is exempt from taxation.

(b) Representations of POST. POST hereby makes the following representations and warranties to Seller as of the Effective Date, which representations and warranties shall continue to be true and correct as of the Closing, as a condition to closing:

(1) POST is a California public benefit corporation organized and validly existing as such under the laws of the State of California, and POST has the full right and authority to enter into this Agreement and to consummate or cause to be consummated the transaction contemplated by this Agreement. The person signing this Agreement on behalf of POST is authorized to do so.

(2) The execution and delivery of this Agreement by POST does not, and the performance by POST of its obligations under this Agreement will not, with or without the giving of notice, lapse of time or both, to the knowledge of Walter T. Moore, (i) conflict with any provision of any law or regulation to which POST is subject or conflict with or result in a material breach of or constitute a material default under any of the terms, conditions, or provisions of any enforceable agreement or instrument to which POST is a party or by which it is bound (including any judgment, decree, order, statute, injunction, rule, regulation or the like of a governmental unit which is applicable to POST), (ii) require the approval or waiver of or filing with any person (including any governmental unit, agency or instrumentality), or (iii) result in the creation or imposition of any lien on any of its assets or property which could materially and adversely affect the ability of POST to discharge its obligations hereunder and complete the transactions contemplated by this Agreement.

(3) This Agreement has been, duly authorized, executed, and delivered by POST, and constitutes the legal, valid and binding obligation of POST enforceable against it in accordance with its terms, except as such enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles whether or not sought, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California.

(4) Except for Seller's Express Representations, POST has not relied upon any oral or written information from Seller, or any of Seller's employees, affiliates, brokers, agents, legal counselors, or other representatives. POST further acknowledges that no employee, agent, broker, legal counsel, or other representative of Seller has been authorized to make, and that POST has not relied upon, any statements or representations other than Seller's Express Representations.

(5) POST is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

(6) Neither POST nor any beneficial owner of POST is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the OFAC of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 23, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

Section 7.5. Buyer's Investigations

(a) By entering into this Agreement, Buyer certifies that it has performed its own thorough and independent investigation and evaluation of the Property and all other aspects of the transactions contemplated by this Agreement, and Buyer agrees that Buyer shall be charged with knowledge of all information which was acquired or reasonably could have been acquired through the use of all due diligence by Buyer as a result of such an investigation and evaluation. Buyer has determined, solely in reliance upon Buyer's independent investigation and evaluation of the Property and Seller's Express Representations (which will include the representation described in Section 7.5(b) as of the Closing), that the physical condition of the Property is acceptable to Buyer, including all soil and geological conditions of the Property and the presence or absence of any Hazardous Material in, on, under, or around the Property. Buyer has satisfied itself as to all present and future entitlements, zoning regulations, and other governmental requirements, site and physical conditions, title matters, and all other matters affecting the use, occupancy, value, and condition of the Property. Buyer specifically acknowledges that Buyer was not and is not relying on Seller to indicate the relative importance or materiality of any of the instruments, records, documents, and other information made available to Buyer for review, that Buyer shall make its own determination as to the level of scrutiny it applies to such instruments, records, and documents made available to Buyer, and that Buyer will act solely in reliance upon its own investigation and evaluation of such matters.

(b) At the Closing, Buyer shall warrant and represent to Seller that: Buyer has then satisfied itself as to all present and future entitlements, zoning regulations, and other governmental requirements, site and physical conditions, title matters, the presence or absence of Hazardous Materials on the Property and all other matters affecting the use, occupancy, value, and condition of the Property; Buyer has not relied, and is not then relying, on Seller to indicate the relative importance or materiality of any of the instruments, records, documents, and other information made available to Buyer for review; Buyer has independently made its own determination as to the level of scrutiny it applies to such instruments, records, and documents made available to Buyer; and except to the extent of Seller's Express Representations, Buyer has acted and is then acting solely in reliance upon its own investigation and evaluation of such matters.

Section 7.6. Survival of Representations and Warranties

Notwithstanding anything in this Agreement that may be interpreted to the contrary, the representations and warranties of the Parties set forth in this Agreement shall survive the Closing for a period of one (1) calendar year (“**Survival Period**”). No claim for a breach of any representation or warranty shall be actionable or payable unless written notice containing a description of the specific nature of such breach shall have been given to the other Party before the expiration of the Survival Period. For the avoidance of doubt, the provisions of this Section 7.6 do not apply to covenants of indemnity or defense or to covenants pertaining in any way to the condition of the Property following the Closing.

Section 7.7. Indemnities

(a) Buyer’s Indemnity. In addition to and without limitation of Buyer’s obligations set forth herein or in the Right of Entry Agreement, Buyer hereby agrees to indemnify, defend, and hold Seller and Seller’s directors, officers, shareholders, employees, affiliates, members, representatives, heirs, successors, beneficiaries and assigns harmless from and against any liability, cause of action, loss, cost, expense, claim or damages, including attorneys’ fees, which arise from events related to the Property occurring after the Closing Date, excluding any liabilities arising out of the Seller Retained Obligations, but including any liabilities arising from any construction, marketing, sale or use of any of the Property by or on behalf of Buyer, including improvements located on the Property. The foregoing indemnity includes: bodily injury and/or property damage, including diminutions in value, including claims from third parties pertaining in any way to the condition of the Property or any part or parts thereof (no matter how caused), and including design or construction defects, whether such condition arose or first occurred before or after the Closing Date, where the injury or damage first occurred after the Closing Date; errors and omissions by Buyer and/or its contractors or subcontractors, and/or its professional soils, civil, geological, surveying, and engineering firms; and soils-related issues (including the presence of Hazardous Materials) caused by activities or releases occurring after the Closing Date; subsidence, slope failures, sinking, slippage, drainage, mudslide, landslide, over-watering, floods, changes to underground water resources or aquifers, or damages as a result of earthquakes or other acts of God after the Closing Date; and/or any environmental health issues caused by such events or activities after the Closing Date. The Buyer’s indemnification hereunder shall fully apply, without limitation, to any liability for Hazardous Materials placed on the Property after the Closing to the extent such placement is not caused by Seller. The Buyer’s indemnification hereunder shall not apply, however, to any liability, cause of action, loss, cost, expense, claim or damages to the extent arising from: the active negligence or willful misconduct of Seller and/or Seller’s principals, members, or affiliate entities; Seller’s breach of Seller’s Express Representations; or Seller’s failure to disclose any material facts relating to the condition of the Property as and to the extent required under California law which failure first comes to the attention of Buyer following the Closing.

(b) Seller’s Indemnity. Seller hereby agrees to indemnify, defend, and hold Buyer and Buyer’s directors, officers, employees, affiliates, members, representatives, heirs, successors, beneficiaries and assigns harmless from and against any liability, cause of action, loss, cost, expense, claim or damages (regardless of when asserted or filed), including attorneys’ fees, which arises from any injury, loss or damage to person or property to the extent such injury, loss or damage occurred at the Property, arose from the negligence or willful misconduct of Seller and/or Seller’s principals, members, or affiliate entities, and was actually incurred during Seller’s

ownership of the Property; provided, however, that in the case of injury, loss or damage involving Hazardous Materials, Seller's obligations under this Section 7.7(b) shall only apply to the extent the claims are the result of: (x) the Seller Retained Obligations set forth in clauses (i) through (iii) of Section 6.6(a); or (y) any third party claims relating to Seller's release of Hazardous Materials on the Real Property during Seller's ownership of the Real Property. For the purposes of this Agreement, personal injury or property damage shall not be deemed "actually incurred prior to the Closing", except to the extent of any material harm sustained prior to the Closing, and shall not be deemed to mean exposure to the extent harm later occurs. Seller's indemnification hereunder shall not apply to any claims for which Buyer has indemnified Seller under the Right of Entry Agreement or pursuant to Section 7.7(a) above, or to any claims arising from the active negligence or willful misconduct of Buyer.

(c) The indemnity obligations under this Section 7.7 shall survive the Closing and the recording of the Deed in perpetuity.

Section 7.8. Changes in Representations

If Buyer discovers prior to Closing that any of Seller's warranties and representations, though true in all material respects when made, have become untrue in any material respect through no fault of Seller, then Buyer, as its sole remedy, may either accept a qualification to Seller's representations and warranties as of the Closing Date and complete the transaction contemplated by this Agreement hereof and thereby waive any rights to recover for breach of the representation and warranty; or elect to terminate this Agreement by delivering written notice thereof to Seller on or before the Closing Date, in which event this Agreement and the rights and obligations of Seller and Buyer shall terminate (except for any indemnity obligations of Buyer pursuant to the other provisions of this Agreement and except for any escrow fee owed to Escrow Agent which shall be paid by Seller, which obligations shall survive the termination of this Agreement), the Deposit and any interest earned thereon shall be returned to Buyer, and Seller shall pay Buyer liquidated damages as provided in Section 8.3. In the case where a representation is discovered to be untrue when made, or becomes untrue or incorrect due to the acts of Seller, then Buyer shall have the full range of Buyer remedies, as provided in Section 8.3.

Section 7.9. Procedure for Indemnification Claims. In the case of any claim asserted by a third party against one Party for which the other Party has an indemnification obligation under Section 7.7, written notice shall be given by the indemnified Party to the indemnifying party promptly after the indemnified party has actual knowledge of any such claim, and the indemnified party shall permit the indemnifying party (at the expense of the indemnifying party) to assume the defense of any claim or any litigation resulting therefrom; provided, that the indemnifying party acknowledges its obligation to indemnify the indemnified party in writing; the counsel for the indemnifying party who shall conduct the defense of such claim or litigation shall be reasonably satisfactory to the indemnified party; and the indemnified party may participate in such defense at the indemnified party's expense. Except with the prior written notice to the indemnified party, in the defense of any such claim or litigation, the indemnifying party shall not consent to entry of any judgment or enter into any settlement that provides for injunctive or other nonmonetary relief affecting the indemnified party or that does not include as an unconditional term thereof, the giving by each claimant or plaintiff to the indemnified party a release from all liability with respect to such claim or litigation. In the event that the indemnifying party intends to consent to entry of

such judgment or settlement, or if the indemnified party shall in good faith determine that (a) the conduct of the defense of any claim subject to indemnification hereunder or any proposed settlement of any such claim by the indemnifying party might be expected to affect adversely the indemnified party's tax liability or (b) that the indemnified party may have available to it one or more defenses or counterclaims that are inconsistent with one or more of those that may be available to the indemnifying party in respect of such claim or any litigation relating thereto, the indemnified party shall have the right at all times to take over and assume control over the defense, settlement, negotiations or litigation relating to any such claim, the reasonable costs of which shall be borne by the indemnifying party. In the event that the indemnifying party does not accept the defense of any matter as above provided, the indemnified party shall have the full right to defend, at the indemnifying party's cost (so long as such costs are reasonable), against any such claim or demand and shall be entitled to settle or agree to pay in full such claim or demand. In any event, the indemnifying party and the indemnified party shall reasonably cooperate in the defense of any claim or litigation subject to this Section 7.9.

Section 7.10. Seller Covenants

In consideration of Buyer's entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller hereby covenants that until the earlier of the termination of this Agreement or the Closing, Seller will:

- (a) maintain the Land substantially in its current condition, ordinary wear and tear excepted;
- (b) keep in full force and effect the policy of casualty insurance it currently maintains with respect to the Real Property;
- (c) give Buyer prompt notice of the institution of any litigation, arbitration or administrative proceeding involving Seller or the Property of which it obtains knowledge prior to the Closing Date;
- (d) not enter into any new lease, or amend any existing lease or any Assigned Agreement, without the prior written consent of Buyer, which shall not be unreasonably withheld or delayed, although Seller, with prior written notice to Buyer, may in its sole discretion renew any existing lease for which such renewal is authorized by the terms of the existing lease;
- (e) not enter into any agreement to convey the Property or any portion thereof after the Effective Date, and Seller will not voluntarily create or suffer any additional liens, encumbrances, covenants, conditions, obligations, burdens, easements, rights of way or similar matters affecting the Real Property, after the Effective Date which will not be eliminated prior to the Closing;
- (f) not enter into any contract or agreement for the provision of goods or services to or with respect to the Real Property or the operation thereof unless such contracts or agreements can be terminated upon thirty (30) days' notice without penalty, or unless Buyer otherwise approves such contract in writing; and

(g) not seek from any public entity approval of any development, building, improvement, subdivision, entitlement, zoning or land use designation, or other matter affecting the use and development of the Property.

ARTICLE 8 DEFAULT

Section 8.1. Default

A Party shall be deemed to be in default under this Agreement if it fails to meet, comply with, or perform any covenant, agreement, or obligation on its part required under this Agreement, within ten (10) days after delivery of notice of the breach by the other Party. If notice is given prior to the Closing Date, the Closing Date shall be extended the date on which the cure period expires.

Section 8.2. Default by Buyer; Seller Remedies

If, after Seller has fully performed or is fully prepared to tender performance as and when required, the sale of the Property as contemplated hereunder is not consummated due to Buyer's default hereunder, Seller shall be entitled, as its sole remedy, to terminate this Agreement and receive liquidated damages pursuant to Section 2.4.

Section 8.3. Default by Seller; Buyer Remedies

(a) Default by Seller Prior to Closing. If the sale of the Property as contemplated hereunder is not consummated due to Seller's failure to deliver to Escrow any of the documents listed in Section 5.2, or due to any other default by Seller, Buyer's sole remedy shall be either (i) to terminate this Agreement and receive a refund of the Deposit plus the sum of One Hundred Thousand Dollars (\$100,000.000) as full reimbursement of all out-of-pocket third-party costs, expenses and losses incurred in connection with the negotiation, documentation or implementation of this Agreement, or (ii) seek specific performance of Seller's obligations under this Agreement on the terms and conditions set forth herein without an adjustment in the Purchase Price (except as described in the next sentence of this Section) and any other equitable rights and remedies, so long as such action by Buyer against Seller shall be filed and served within thirty (30) days after the scheduled Closing Date. Notwithstanding the provisions of the immediately preceding sentence, if Buyer brings an action for specific performance in accordance with this Section 8.3 and such remedy is not available as to the entire Property because Seller has transferred title to a portion of the Property to a third party, Buyer shall be entitled to an equitable abatement in the Purchase Price to reflect its purchase of less than all of the Property. Buyer hereby waives all other damages for Seller's default prior to the Closing, including without limitation, any claim against Seller for damages of any type or kind, including without limitation, consequential or punitive damages but excluding (i) attorney's fees and court costs recoverable by Buyer or POST pursuant to the provisions of this Agreement, and (ii) the recovery by Buyer or POST of any sums which an express term of this Agreement provides Buyer or POST is entitled to recover. Seller acknowledges and agrees that the Property is unique, that Buyer's remedy at law for Seller's default (including Buyer's option to seek the remedy described in this Section 8.3, if Buyer declines to seek that option, notwithstanding the acknowledgment below) is inadequate, that

Seller's obligations under this Agreement are sufficiently clear and specifically enforceable, that there is adequate consideration for specific performance, and that the terms of the Agreement are just and reasonable. Accordingly, Seller agrees that Buyer may seek specific performance (without abatement except, and only to the extent, provided above in this Section 8.3(a)), without the necessity of proving the foregoing. IF ELECTED BY BUYER, THE REMEDY DESCRIBED IN CLAUSE (i) OF THIS SECTION 8.3 SHALL BE PAID BY SELLER TO BUYER AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT BUYER'S ACTUAL DAMAGES IN THE EVENT THAT THE SALE IS NOT CONSUMMATED DUE TO SELLER'S DEFAULT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY SEPARATELY INITIALING THIS SECTION 8.3, THE PARTIES ACKNOWLEDGE THAT THE REMEDY DESCRIBED IN CLAUSE (a), IF AND ONLY IF ELECTED BY BUYER, HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF BUYER'S DAMAGES. BY THEIR SEPARATE INITIALING OF THIS SECTION 8.3, BUYER 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.

Buyer's Initials: _____

Seller's Initials: _____

(b) Default by Seller After Closing. Notwithstanding anything to the contrary contained herein, after the Closing: (i) the maximum aggregate liability of Seller, and the maximum aggregate amount which may be awarded to and collected by Buyer for any breach of any representation or warranty under this Agreement or any documents executed pursuant hereto or in connection herewith, including, without limitation, the Seller Closing Documents (collectively, the "**Other Documents**"), shall not exceed two percent (2.0%) of the Purchase Price paid by Buyer at the Closing for the Property (provided that, such 2% cap shall not apply to any liability that arises as the result of (A) any breach of any of Seller's representations and warranties set forth in Section 7.1 above which breach first comes to the attention of Buyer following the Closing, but only to the extent that such breach was intentional or the result of gross negligence; and (B) Seller's failure to disclose any material facts relating to the condition of the Property as and to the extent required under California law, which failure first comes to the attention of Buyer following the Closing, but only to the extent the true facts were actually known by Seller, or such failure to disclose was intentional or the result of gross negligence); and (ii) no claim by Buyer alleging a breach by Seller of any representation and/or warranty of Seller contained herein or in any of the Seller Closing Documents may be made, and Seller shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or together with any other claims by Buyer alleging a breach by Seller of any such representation and/or warranty is for an aggregate amount in excess of Fifty Thousand Dollars (\$50,000) (the "**Floor Amount**"), in which event Seller's liability respecting any final judgment concerning such claim or claims shall be for the entire amount thereof, subject to the limitation set forth in clause (a) above; provided, however, that if any such final judgment is for an amount that is less than or equal to the Floor Amount, then Seller shall have no liability with respect thereto. Any claim by Buyer against Seller for a breach of Seller's representations or warranties must be brought within the Survival Period following the Closing.

(c) Prior to Closing, POST may bring an action for specific performance to enforce the rights of Buyer and the obligations of Seller, provided that (i) POST must have the prior written consent of Buyer to do so, (ii) POST and Buyer may not bring separate actions to enforce Seller's obligations and POST's and Buyer's respective rights; and (iii) in no event shall POST's exercise of its enforcement rights under this Section expand the scope of Seller's obligations or Buyer's rights hereunder or require Seller to convey the Property to any party other than Buyer.

(d) If the Closing occurs and subject to the terms and conditions in Section 8.3(b), Buyer and POST may each bring a separate action to enforce the obligations of Seller hereunder, provided that both Buyer and POST acknowledge and agree that if they bring separate actions and such actions are concurrently pending in the trial court, consolidation of such separate actions is appropriate and they will both take such actions (including, without limitation, executing stipulations) as may be required for Seller to have such separate actions consolidated (provided, however, that a court's denial of consolidation shall not affect the right of POST or Buyer to maintain its action).

Section 8.4. Non Liability

None of the trustees, members, managers, directors, officers, employees, shareholders, partners or agents of the persons and entities constituting Buyer, Seller, or entities constituting Seller, whether disclosed or undisclosed, shall have any personal obligation or liability hereunder, and neither Buyer nor Seller shall seek to assert any claim or enforce any of its rights hereunder against such party. The provisions of Article 8 shall survive the Closing or earlier termination of this Agreement.

ARTICLE 9 CONDEMNATION

Section 9.1. Definition of Terms

The following terms used in this Article 9 shall have the meanings ascribed to them below:

(a) **“Condemnation”** or **“Condemned”** shall mean the exercise of, or intent to exercise, the power of eminent domain expressed in writing, or the filing of any action or proceeding for such purpose by any person, entity, body, agency or authority having the right or power of eminent domain (**“Condemning Authority”**), and shall include a voluntary sale by Seller to any such Condemning Authority, either under the threat of condemnation or while condemnation proceedings are pending, and the Condemnation shall be deemed to occur upon the actual physical taking of possession pursuant to the exercise of said power of eminent domain.

(b) **“Minor Taking”** shall mean that only a portion of the Land is Condemned and that such taking does not materially adversely affect the Buyer's plan for the Land, all as determined by Buyer in its reasonable discretion. In the event of a Minor Taking (as determined in Buyer's reasonable discretion), this Agreement shall continue in full force and effect as to the remainder of the Land, the Condemnation proceeds shall be paid to Seller, and the amount of

Buyer's contribution towards the Purchase Price shall be reduced by an amount equal to such proceeds.

Section 9.2. Distribution of Award

If the Land or any portion thereof is Condemned (other than through a Minor Taking) before the Closing, Buyer shall have the right to terminate this Agreement by written notice to Seller for a period of ten (10) days following receipt of written notice from Seller of such Condemnation. Failure of Buyer to give such notice of termination before the expiration of the ten (10) day period referenced in the prior sentence shall be deemed an election by Buyer not to terminate this Agreement. If Buyer does not terminate this Agreement, the award from the Condemning Authority shall be paid to Seller, the amount of Buyer's contribution towards the Purchase Price shall be reduced by the amount so paid to Seller, and Buyer shall acquire the remaining portions of the Property at the Closing as set forth herein. If all of the Property is taken through Condemnation before the Closing, this Agreement shall terminate, the Deposit and any interest earned thereon shall be returned to Buyer, and neither Party shall have any further obligation hereunder (except for any indemnity obligations of Buyer pursuant to the other provisions of this Agreement and except for any escrow fee owed to Escrow Agent which shall be divided equally between the Parties, which obligations shall survive the termination of this Agreement).

ARTICLE 10
BROKERAGE COMMISSIONS

Section 10.1. No Brokers Representing Seller

Seller has not dealt with any broker, finder or like agent in connection with this transaction. Seller hereby indemnifies and holds Buyer harmless from and against any and all claims for any commission, fee or other compensation by any person or entity who shall claim to have dealt with Seller in connection with this transaction and for any and all costs incurred by Buyer in connection with any such claims including reasonable attorneys' fees and disbursements.

Section 10.2. No Brokers Representing Buyer

Buyer has not dealt with any broker, finder or like agent in connection with this transaction. Buyer hereby indemnifies and holds Seller harmless from and against any and all claims for any commission, fee or other compensation by any person or entity who shall claim to have dealt with Buyer in connection with this transaction and for any and all costs incurred by Seller in connection with any such claims including reasonable attorneys' fees and disbursements.

Section 10.3. Survival of Brokerage Provisions

The provisions of this Article 10 shall survive the Closing or any early termination of this Agreement.

**ARTICLE 11
MISCELLANEOUS**

Section 11.1. Intentionally Omitted

Section 11.2. Successors and Assigns

The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the Parties, subject to Section 5.15.

Section 11.3. Notices

Any notice pursuant to this Agreement shall be given in writing by: reputable overnight delivery service with proof of delivery; United States Mail, postage prepaid, registered or certified mail, return receipt requested; or electronic mail transmission, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as a Party may designate by written notice sent in accordance with this Section 11.3. Notices sent in accordance with this Section 11.3 shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of electronic mail transmission, as of the date of the electronic mail transmission provided that an original of such electronic mail is also sent to the intended addressee by means described in clauses (i) or (ii) above on the same day as such electronic transmission. Unless changed, the addresses for notices given pursuant to this Agreement are as follows:

If to Seller: The Sobrato Organization, LLC
599 Castro Street, Fourth Floor
Mountain View, CA 94041
Attention: Chase Lyman
Telephone: (408) 446-0700
Email: clyman@sobrato.com

With a copy to: The Sobrato Organization, LLC
599 Castro Street, Fourth Floor
Mountain View, CA 94041
Attention: Rob Hollister
Telephone: (408) 446-0700
Email: rhollister@sobrato.com

With a copy to: DLA Piper LLP (US)
2000 University Avenue
East Palo Alto, CA 94303
Attention: Jim Anderson
Telephone: (650) 833-2078
Email: Jim.Anderson@dlapiper.com

If to City: City of San Jose
200 East Santa Clara Street
San Jose, CA 95112-1905
Attn: Nanci Klein
Electronic Mail Address: Nanci.Klein@sanjoseca.gov

City of San Jose
200 East Santa Clara Street
San Jose, CA 95112-1905
Attn: Danielle Kenealey, Chief Deputy City Attorney
Electronic Mail Address: Danielle.Kenealey@sanjoseca.gov

If to POST: Peninsula Open Space Trust
222 High Street
Palo Alto, California 94301
Attn: Director of Transactions
Telephone No. 650-854-7696
Electronic Mail Address: info@openspacetrust.org

With a copy to: Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102
Attn: William J. White
Telephone No. (415) 552-7272
Electronic Mail Address: white@smwlaw.com

Section 11.4. Modifications

This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify, or discharge it in whole or in part unless such executory agreement is in writing and is signed by the Parties against whom enforcement of any waiver, change, modification, or discharge is sought.

Section 11.5. Entire Agreement

This Agreement, including the exhibits hereto, contains the entire agreement between the Parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the Parties (excepting the Right of Entry Agreement) pertaining to such subject matter.

Section 11.6. Further Assurances

Each Party agrees that it will execute and deliver such other reasonable documents and take such other action, whether before or after Closing, as may be reasonably requested by the other Party to consummate the transaction contemplated by this Agreement.

Section 11.7. Counterparts

This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. This Agreement shall not be binding until signed and delivered by all Parties. Signatures and initials to this Agreement created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind such signing party. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature and initials to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own electronically created and/or telecopied or electronically transmitted signature and initials and shall accept the electronically created and/or telecopied or electronically transmitted signature and initials of the other party to this Agreement.

Section 11.8. Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any Party.

Section 11.9. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State in California. The exclusive venue for any legal action arising out of this Agreement shall be in Santa Clara County, California.

Section 11.10. No Third-Party Beneficiary

The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller Buyer and POST only and are not for the benefit of any third party; and, accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

Section 11.11. Captions

The Section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Section or any subsection of this Agreement.

Section 11.12. Construction

The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to take effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

Section 11.13. Interpretation of Certain Terms

The terms “include” and “including” as used in this Agreement shall be construed as terms of illustration and not terms of exclusion, as if followed by the phrase “without limitation” or its equivalent, and Seller and Buyer hereby agree that the provisions of Section 3534 of the California Civil Code shall not apply to this Agreement, to the extent such provisions are inconsistent with that principle. The term “month,” when not specified to be a calendar month, shall mean a period commencing as of a particular date and continuing to and including the day immediately preceding the same day of the next calendar month (or, if the next calendar month does not contain such a same date due to it being shorter in duration, then continuing to and including the last day of such next calendar month).

Section 11.14. Incorporation of Recitals and Exhibits

The Recitals set forth above and all exhibits attached to this Agreement are incorporated herein by reference.

Section 11.15. Date of Performance

If the date on which any performance required hereunder is other than a business day, then such performance shall be required as of the next following business day.

Section 11.16. Time of Essence

Time is of the essence of each and every term, condition, obligation and provision of this Agreement.

Section 11.17. Certain as to Tax Benefits

Seller may seek to obtain tax deductions or other tax benefits in connection with the sale of the Property. Buyer makes no representation as to the tax consequences of the transaction(s) contemplated by this Agreement. Seller will obtain independent tax counsel and be solely responsible for compliance with any gift value substantiation requirements or other requirements of the Internal Revenue Code. Seller’s obligation to transfer the Property to Buyer shall not be conditioned upon the receipt by Seller of any tax benefit.

Section 11.18. Survival of Miscellaneous Provisions.

The provisions of this Article 11 shall survive the Closing or any early termination of this Agreement.

[Signatures begin on next page.]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

SELLER:

SI 5, LLC,
a California limited liability company

By: Sobrato Interests 3,
a California limited partnership

Its: Sole Member

By: Sobrato Development Companies, LLC,
a California limited liability company

Its: General Partner

By: _____
Matthew W. Sonsini

Its: Manager

[Signatures continued on next page.]

BUYER:

CITY OF SAN JOSE,
a municipal corporation

By: _____
Toni J. Taber, CMC,
City Clerk

APPROVED AS TO FORM:

POST:

PENINSULA OPEN SPACE TRUST,
a California nonprofit public benefit corporation

By: _____
Name: _____
Its: _____

ACKNOWLEDGED:

Escrow Agent executes this Agreement below for the purpose of acknowledging that it agrees to be bound by the provisions hereof.

ESCROW AGENT:

CHICAGO TITLE COMPANY

By: _____
Sherri Keller,
Escrow Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

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

Parcel One:

Parcels 1 and 2 as shown on that certain Parcel Map entitled "Being a portion of Parcels 2 and 3 as shown on that certain Parcel Map filed for record in Book 518 of Maps, Pages 20 through 22, Santa Clara County Records" which map was filed for record in the office of the Recorder of the County of Santa Clara on October 28, 2004 in Book 777 of Maps, Pages 20, 21 and 22.

Parcel Two:

Rights and easements as granted in that certain Declaration of Covenants, Conditions, Construction Obligations and Restrictions and Reservation of Reciprocal Easements for Coyote Valley Research Park Executed by Coyote Valley Research Park, LLC, a Delaware limited liability company, recorded November 16, 2004 as Instrument No. 18101214, Official Records.

APN: 708-30-014, 708-30-015

EXHIBIT "B"

FORM OF DEED

**Recording Requested By and
When Recorded Mail To:**

|

APN: _____

DOCUMENTARY TRANSFER TAX IS: \$ _____

- ___ Unincorporated area City of San Jose
- ___ Computed on the full value of the interest or property conveyed, or is
- ___ Computed on the full value less the value of liens or encumbrances remaining at time of sale.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, SI 5, LLC, a California limited liability company does hereby GRANT to the City of San Jose, a municipal corporation ("**Grantee**"), the following described real property located in the City of City of San Jose County of Santa Clara, State of California, together with all improvements (if any) thereon, and all other rights and interests appurtenant thereto, including all of Grantor's right, title, and interest in and to adjacent streets, alleys, easements, rights-of-way and any adjacent strips or gores of real estate adjacent to and/or related to the real property (the "**Property**"):

See **Exhibit A**

SAID PROPERTY IS CONVEYED SUBJECT TO all liens, encumbrances, easements, covenants, conditions and restrictions of record or otherwise existing, all laws, ordinances and regulations and all matters that would be disclosed or apparent by a survey and/or an inspection of the Property.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the ____ day of November, 2019.

GRANTOR:

SI 5, LLC,
a California limited liability company

By: Sobrato Interests 3,
a California limited partnership
Its: Sole Member

By: Sobrato Development
Companies, LLC, a California
limited liability company
Its: General Partner

By: _____
Matthew W. Sonsini
Its: Manager

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed to the City of San Jose by that certain Grant Deed dated _____, 2019, executed by _____, and the City, is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by action of the City Council on _____, 2019, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2019

Print Name: _____
Title: _____

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)

County of _____)

On _____, before me, _____
Notary Public, 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)

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)
County of _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person 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)

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)
County of _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person 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)

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)
County of _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person 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)

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)
County of _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A" TO GRANT DEED

LEGAL PROPERTY DESCRIPTION

[Insert the legal description attached to the Agreement as Exhibit A.]

EXHIBIT “C”

FORM OF BILL OF SALE

BILL OF SALE AND GENERAL ASSIGNMENT

This Bill of Sale and General Assignment (“**Bill of Sale**”) is made on _____, 2019, by SI 5, LLC, a California limited liability company (“**Transferor**”) in favor of the City of San Jose, a municipal corporation, its successors and assignees (“**Transferee**”), in connection with delivery of the Grant Deed transferring certain property (the “**Property**”) from Transferor to Transferee of equal date hereto (“**Deed**”).

For value received, receipt and sufficiency of which are hereby acknowledged, to the extent transferable and on an as-is, where-is basis with all faults and with no representations whatsoever, excepting Seller’s Express Representations as defined in the Purchase and Sale Agreement between Transferor and Transferee dated _____, 2019, Transferor hereby sells, assigns, transfers, conveys and delivers to Transferee, all of its present and future right, title and interest in and to the following personal property as of the date the Deed is recorded in the Office of the Santa Clara County Recorder (collectively, “**Personal Property**”): all of Transferor’s right, title and interest, if any, in any privileges, permits, licenses, entitlements, maps, development rights and privileges, exaction fee credits or other credits, reimbursements, prepaid fees or deposits, warranties, guarantees, governmental approvals, and other tangible and intangible property related to the real property described on **Exhibit A** attached hereto or to any improvements located thereon, or the development thereof.

Transferor will, upon request from Transferee, without further consideration, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered all such further documents reasonably necessary or proper to effect the sale, assignment, transfer, conveyance and delivery of the Personal Property to Transferee.

[Signatures begin on Next Page]

IN WITNESS WHEREOF, Transferor has executed this Bill of Sale as of the date first written above.

TRANSFEROR:

SI 5, LLC,
a California limited liability company

By: Sobrato Interests 3,
a California limited partnership

Its: Sole Member

By: Sobrato Development
Companies, LLC, a California
limited liability company

Its: General Partner

By: _____
Matthew W. Sonsini

Its: Manager

EXHIBIT A TO BILL OF SALE
LEGAL DESCRIPTION OF PROPERTY

[Insert the legal description attached to the Agreement as Exhibit A.]

EXHIBIT “D”

REDEMPTION AGREEMENT DOCUMENTS

1. Redemption Agreement, dated as of September 30, 2004, by and among Coyote Valley Research Park LLC (“CVRP”) Cisco Technology, Inc. (“Cisco”), Coyote Valley Properties, LLC, Coyote Valley Properties, LLC, and CVP Holdings, LLC, as amended by that certain First Amendment to Redemption Agreement, dated as of November 16, 2004.

2. Declaration of Covenants, Conditions, Construction Obligations and Restrictions and Reservation of Reciprocal Easements for Coyote Valley Research Park, dated as of September 30, 2004, by and between CVRP and Cisco, and recorded as Instrument No. 18101214 of Official Records, as amended by First Amendment to Declaration of Covenants, Conditions, Construction Obligations and Restrictions and Reservation of Reciprocal Easements for Coyote Valley Research Park, dated as of November 16, 2004 and recorded as Instrument No. 18101215 of Official Records.

3. Deed of Trust, Security Agreement with Assignment of Rents, and Fixture Filing, dated as of November 16, 2004, by Cisco in favor of CVRP and recorded as Instrument No. 18101220 of Official Records.

4. Second Amended and Restated Deed of Trust, Security Agreement with Assignment of Rents and Fixture Filing, dated as of November 16, 2004, by CVRP in favor of Cisco and recorded as Instrument No. 18101216 of Official Records.

Exhibit “D”

Page 1

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EXHIBIT “E”

LIST OF ASSIGNED AGREEMENTS

[NOTE: SELLER STILL REVIEWING THIS LIST TO SEE IF ALL ARE APPLICABLE]

1. First Amended and Restated Bailey Extension Cooperation Agreement, dated as of July 17, 2003, by and among the City of San Jose (the “City”), Coyote Valley Research Park, LLC (“CVRP”) and the Santa Clara County Transportation Authority.

2. Master Cooperation Agreement dated as of April 19, 2001 by and between the City and CVRP.

3. Development Agreement by and between the City of San Jose and CVRP Relative to the Development of Property in North Coyote Valley dated October 24, 2000, recorded as Instrument No. 15529779 of Official Records.

4. Land Transfer and Maintenance Agreement, dated as of February 20, 2001 by and among the City, CVRP and the Santa Clara Valley Water District.

5. Agreement for Bailey Avenue Overcrossing Easements, dated as of July 9, 2001 by and among CVRP, the City and the County of Santa Clara, as amended December 18, 2002 and December 10, 2004.

6. Construction Agreement No. 3-14785 – Flood Control/Mass Grading.

7. Construction Agreement No. 3-14770 – Coyote Valley Parkway, Calle de Cisco & Storm Drain Outfall Improvements.

8. Construction Agreement No. 3-14771 – Santa Teresa Boulevard Improvements.

9. Construction Agreement No. 3-14771A – Santa Teresa Boulevard Water System Improvements.

10. Construction Agreement No. 3-14772 – Bailey Avenue Improvements.

11. Construction Agreement No. 3-14773 – Bailey Avenue and Fire Station Access Road Improvements.

12. Construction Agreement No. 3-14774 – Fisher Creek Boulevard Improvements.

13. Construction Agreement No. 3-14775 – Calle de Cisco Grade Separation.

14. Construction Agreement No. 3-14776 – Coyote Valley Parkway/Valentine Court Improvements.

15. Construction Agreement No. 3-14777 – Water Tank and Access Road Improvements.
16. Construction Agreement No. 3-14778 – Water Pump Station Facilities.
17. Construction Agreement No. 3-14779 – Bailey Road Safety Improvements & Traffic Mitigations.
18. Construction Agreement No. 3-14780 – Santa Teresa Boulevard Traffic Mitigations.
19. Construction Agreement No. 3-14781 – San Jose Traffic Mitigations.
20. Construction Agreement No. 3-14782 – Santa Teresa Soundwall.
21. Construction Agreement No. 03-109196 IP (3-13970) Fills on Bailey Avenue and Monterey Road.

EXHIBIT “F”

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is made this ____ day of _____, 2019 (the “Effective Date”) by and between SI 5, LLC, a California limited liability company (the “Assignor”), to the City of San Jose, a municipal corporation (“Assignee” or “City”).

RECITALS:

A. Assignor is the owner of certain real property (the “Land”) particularly described on **Exhibit “A”** attached hereto, and certain improvements thereon, if any (the “Improvements”) and other rights, privileges and appurtenances thereto (collectively, the “Property”).

B. Assignor has entered into (or is the current assignee of a party that entered into) those certain other agreements relating to the ownership and operation of the Property, as set forth on the list attached hereto as **Exhibit “B”** (collectively, the “Assigned Agreements”), that are to be assigned to, and assumed by, Assignee.

C. Assignor has simultaneously executed and delivered to Assignee a Bill of Sale conveying all of the Assignor’s right, title and interest in and to certain personal property located on or attached to the Property.

D. Pursuant to that certain Purchase and Sale Agreement dated _____, 2019 (the “Purchase Agreement”), by and between Assignor, as seller, and Assignee, as Buyer, Assignor agreed to assign (to the extent assignable) all of its right, title and interest in and to the Assigned Agreements and the Assignee desires to assume Assignor’s right, title and interest in and to the Assigned Agreements in accordance with the terms hereinafter set forth, subject, however, to the terms and conditions of the Purchase Agreement. To the extent City is presently a counterparty to any Assigned Agreement which requires that the City give its consent to the assignment provided for herein, the City has given such consent to this Assignment.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, Assignor and Assignee do hereby agree as follows:

1. **Recitals.** The above recitals are true and are incorporated herein by reference.

Exhibit “F”

Page 1

2. **Assignment.** Assignor hereby gives, grants, bargains, sells, conveys, transfers and sets over unto Assignee, its successors and assigns, as of the date first above written (the “**Effective Date**”), without representation or warranty of any kind, all of Assignor’s right, title and interest in and to the Assigned Agreements (to the extent assignable).

3. **Assumption.** Assignee hereby accepts the foregoing assignment and, in consideration thereof, Assignee hereby covenants and agrees that, on and after the Effective Date, the Assignee shall assume, observe, perform, fulfill and be bound by all terms, covenants, conditions and obligations of the Assigned Agreements (to the extent assignable) that first accrue and arise on and after the Effective Date and are to be observed, performed and fulfilled by Assignor on and after the Effective Date in the same manner and to the same extent as if Assignee were named therein.

4. **Consent to Brandenburg Assignment.** Assignor hereby consents to the assignment by Brandenburg Properties of Florida, LLC, a Florida Limited liability company; William Brandenburg, as trustee of the William Brandenburg Revocable Trust dated January 31, 2006; Diane M. Brandenburg, Trustee of the Lee Brandenburg Non-exempt QTIP Trust UAD September 19, 1993; Diane M. Brandenburg, Trustee of the Jackson Lee Brandenburg Separate Property Trust UAD Dated August 14, 2001; and Diane M. Brandenburg, Trustee of the Taylor Ann Brandenburg Separate Property Trust UAD Dated August 14, 2001 (individually or collectively, “**Brandenburg**”) to Assignee of any interest Brandenburg may have in the Assigned Agreements.

5. **No Admission.** Nothing in this Assignment, the Purchase Agreement, or Assignee's acceptance and assumption of the Assigned Agreements, shall be construed as an admission or acknowledgment by Assignee or Assignor that any of the Assigned Agreements is valid or currently in effect.

6. **Successors and Assigns.** The terms and conditions of this Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

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

8. **Definitions.** All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Purchase Agreement.

[Remainder of Page Intentionally Left Blank, Signatures on Following Pages]

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first written above.

ASSIGNOR: SI 5, LLC,
a California limited liability company

By: Sobrato Interests 3,
a California limited partnership
Its: Sole Member

By: Sobrato Development Companies, LLC,
a California limited liability company
Its: General Partner

By: _____
Matthew W. Sonsini
Its: Manager

ASSIGNEE: CITY OF SAN JOSE,
a municipal corporation

By: _____
Name: _____
Its: _____

EXHIBIT A to
Assignment and Assumption Agreement
LEGAL DESCRIPTION OF THE LAND

[Insert the legal description attached to the Agreement as Exhibit A.]

EXHIBIT B to
Assignment and Assumption Agreement

ASSIGNED AGREEMENTS

[NOTE: PENDING VERIFICATION BY SELLER.]

1. First Amended and Restated Bailey Extension Cooperation Agreement, dated as of July 17, 2003, by and among the City of San Jose (the “City”), Coyote Valley Research Park, LLC (“CVRP”) and the Santa Clara County Transportation Authority.
2. Master Cooperation Agreement dated as of April 19, 2001 by and between the City and CVRP.
3. Development Agreement by and between the City of CVRP Relative to the Development of Property in North Coyote Valley dated October 24, 2000, and recorded as Instrument No. 15529779 of Official Records.
4. Land Transfer and Maintenance Agreement, dated as of February 20, 2001 by and among the City, CVRP and the Santa Clara Valley Water District.
5. Agreement for Bailey Avenue Overcrossing Easements, dated as of July 9, 2001 by and among CVRP, the City and the County of Santa Clara, as amended December 18, 2002 and December 10, 2004.
6. Construction Agreement No. 3-14785 – Flood Control/Mass Grading.
7. Construction Agreement No. 3-14770 – Coyote Valley Parkway, Calle de Cisco & Storm Drain Outfall Improvements.
8. Construction Agreement No. 3-14771 – Santa Teresa Boulevard Improvements.
9. Construction Agreement No. 3-14771A – Santa Teresa Boulevard Water System Improvements.
10. Construction Agreement No. 3-14772 – Bailey Avenue Improvements.
11. Construction Agreement No. 3-14773 – Bailey Avenue and Fire Station Access Road Improvements.
12. Construction Agreement No. 3-14774 – Fisher Creek Boulevard Improvements.
13. Construction Agreement No. 3-14775 – Calle de Cisco Grade Separation.

14. Construction Agreement No. 3-14776 – Coyote Valley Parkway/Valentine Court Improvements.
15. Construction Agreement No. 3-14777 – Water Tank and Access Road Improvements.
16. Construction Agreement No. 3-14778 – Water Pump Station Facilities.
17. Construction Agreement No. 3-14779 – Bailey Road Safety Improvements & Traffic Mitigations.
18. Construction Agreement No. 3-14780 – Santa Teresa Boulevard Traffic Mitigations.
19. Construction Agreement No. 3-14781 – San Jose Traffic Mitigations.
20. Construction Agreement No. 3-14782 – Santa Teresa Soundwall.
21. Construction Agreement No. 03-109196 IP (3-13970) Fills on Bailey Avenue and Monterey Road.

EXHIBIT “G”
INTENTIONALLY OMITTED

EXHIBIT “H”

FORM OF ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY

ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY

THIS ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY (the “**Assignment**”) is made this ____ day of _____, 2019 (the “**Effective Date**”), by and between SI 5, LLC, a California limited liability company (the “**Assignor**”), and the City of San Jose, a municipal corporation (the “**Assignee**”).

W I T N E S E T H:

WHEREAS, pursuant to that certain Sale-Purchase Agreement dated as of _____, 2019 (the “**Purchase Agreement**”), by and between Assignor, as seller, and Assignee, as purchaser, Assignor agreed to sell and Assignee agreed to purchase the real property owned by Assignor and located as described in the Purchase Agreement;

WHEREAS, pursuant to the Purchase Agreement, Assignor desires to assign all of its right, title and interest in and to certain intangible personal property to Assignee, and Assignee desires to assume Assignor’s right, title and interest in and to the intangible personal property in accordance with the terms hereinafter set forth;

WHEREAS, Assignor has simultaneously executed and delivered to Assignee a Bill of Sale conveying all of Assignor’s right, title and interest in and to certain personal property (collectively, the “**Tangible Personal Property**”) located on or attached to the real estate, the building and improvements erected thereon located at the Property;

WHEREAS Assignor may be a party to or beneficiary of certain agreements, easements, contracts, licenses, permits and other documents with respect to the Property and the Tangible Personal Property.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, intending to be legally bound, the Assignor and the Assignee do hereby agree as follows:

1. Assignment. Assignor hereby assigns, gives, sells, conveys, transfers and quitclaims unto the Assignee, its successors and assigns, as of the Effective Date, without representation or warranty of any kind, all of Assignor’s right, title and interest, if any, in and to the following (the “**Intangible Property**”):

All intangible property owned by Assignor and used solely in the ownership, use or operation or development of the Property, including, without limitation, all (A) governmental licenses, zoning, use, occupancy, operating and utility permits, and all other intangible rights, permits, entitlements, development rights, licenses,

approvals, franchises, certificates, utility will-serve letters, development allocations and other records, documents, maps, prepaid tap fees and fee credits relating to the Property; (B) claims, causes of action, construction warranties, guaranties and indemnities from, by or against any contractors, subcontractors, laborers or suppliers of materials, labor or other services performed with respect to, or equipment installed in, the project; (C) any transferable development rights and other entitlements related to the project; (D) any project name used by Seller; (E) permits, and fees related to the Project; (F) sewer and water capacity, trip generation rights, density allocations (including, without limitation, excess development density), other water credits (including, without limitation, water and wastewater system development fee credits), water wells, water and sewer taps, rebates, refunds and development rights (including any available fee credits), rights to recoupment for any costs; and (G) all building licenses, certificates, authorizations, approvals and permits to the extent transferable, all warranties, guaranties, and rights to indemnification, to the extent transferable, together with all records, substantive correspondence and other documents affecting in any way a right to own, use, operate or occupy any portion of the Property and all guaranties thereof and all amendments thereto, but specifically excluding any intangible personal property relating to the operation of Assignor's business on the Property.

Notwithstanding the foregoing, the Intangible Property shall not include any rights or obligations of Assignor under the Redemption Agreement Documents (as defined in the Purchase Agreement) or any agreement pertaining to the Property not expressly listed above.

2. Successors and Assigns. The terms and conditions of this Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

3. Counterparts. This Assignment may be executed in several counterparts, all of which together shall constitute one and the same instrument.

4. Governing Law. This Assignment shall be governed by, construed and enforced in accordance with the laws of the state where the Property is located.

[Remainder of Page Intentionally Left Blank, Signatures on Following Pages]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed on the day and year first set forth above.

ASSIGNOR:

SI 5, LLC,
a California limited liability company

By: Sobrato Interests 3,
a California limited partnership

Its: Sole Member

By: Sobrato Development
Companies, LLC, a California
limited liability company

Its: General Partner

By: _____
Matthew W. Sonsini

Its: Manager

[Signatures continued on next page.]

ASSIGNEE: CITY OF SAN JOSE,
a municipal corporation

By: _____
Name: _____
Its: _____

EXHIBIT "I"

FORM OF BUYER REMEDIATION COVENANT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Space Above Line For Recorder's Use

AGREEMENT FOR BUYER REMEDIATION

This Agreement for Buyer Remediation dated as of _____, 2019 (“**Agreement**”), for reference purposes, is made by and between SI 5, LLC, a California limited liability company (collectively, “**Seller**”) and the CITY OF SAN JOSE, a California municipal corporation (“**Buyer**”) who agree as follows:

1. Purchase Agreement. Pursuant to that certain *Purchase and Sale Agreement and Escrow Instructions* dated as of _____, 2019 (the “**Purchase Agreement**”), Seller agreed to sell to Buyer the real property described on Exhibit 1 attached hereto, as more particularly described as the “Property” in the Purchase Agreement.

2. Buyer Remediation Covenant. On behalf of itself and its respective successors, assigns and successors in interest in and to the Property or any part thereof or interest therein, Buyer covenants and agrees for the benefit of Seller and each of the persons and entities constituting Seller to perform as and when required and at the expense of Buyer or its successors and assigns (without cost to Seller or any of the persons and entities constituting Seller) any obligation of Buyer arising under any order of any court or governmental authority binding on Buyer or its successors in interest to take (or cause to be taken) any action or otherwise respond in connection with any Hazardous Material on the Property and to comply with law with respect to Hazardous Materials that are either: currently on the Property that are disturbed and rendered more dangerous or likely to cause harm by Buyer or such successor in interest, as applicable; or are hereafter introduced onto the Property. Buyer shall have the right to appeal or contest in accordance with applicable procedures any such order requiring such investigation, testing for, remediation, removal, encapsulation, or taking of any other action. Notwithstanding the foregoing, Buyer’s obligations hereunder shall not be construed to require Buyer or its successors in interest to perform any obligations that are imposed upon Seller or any of the persons and entities constituting Seller (but not on Buyer) by any order of any court or government authority with respect to any Hazardous Materials presently on the Property.

Exhibit “I”

Page 1

3. Indemnity. On behalf of itself and its respective successors, assigns and successors in interest in and to the Property or any part thereof or interest therein, Buyer hereby agrees to indemnify, defend, and hold Seller and Seller's directors, officers, shareholders, employees, affiliates, members, representatives, heirs, successors, beneficiaries and assigns harmless from and against any liability, cause of action, loss, cost, expense, claim or damages, including attorneys' fees, which arise from or in connection with any breach by Buyer or its successors in interest of the covenants set forth in Paragraph 2 above.

4. Definitions.

(a) Any capitalized term that is not otherwise defined herein shall have the meaning attributed to it in the Purchase Agreement.

(b) "Hazardous Material" shall mean and include any hazardous or toxic chemical or substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (references to statutes, codes or regulations below, in each case, as amended or superseded): (i) petroleum or oil or gas or any direct or derivative product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vi) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(p) and (q) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (vii) asbestos; (viii) polychlorinated biphenyls, paint or other materials containing lead, urea formaldehyde foam insulation and radon; (ix) pathogens; (x) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (xi) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (xii) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (xiii) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (xiv) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (xv) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; (xvi) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect; and/or (xvii) substances now or hereafter known by the State of California to cause cancer and/or reproductive toxicity.

Exhibit "I"

Page 2

5. Term. This Agreement shall expire and no longer be in force or effect on the date that is ten (10) years from the date it is first recorded.

6. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of Buyer in each and every portion of the Property. Each and every portion of the Property shall be held, conveyed, hypothecated and encumbered subject to this Agreement, all of which shall run with the land, shall constitute equitable servitudes, shall be binding on all parties having or acquiring any right, title or interest in the Property, and each and every portion of the Property, and shall be binding on and inure to the benefit of Seller and each of the persons and entities constituting Seller.

7. Severability. Should any covenant herein be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the covenants shall nonetheless remain in full force and effect.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

SI 5, LLC,
a California limited liability company

By: Sobrato Interests 3,
a California limited partnership
Its: Sole Member

By: Sobrato Development Companies, LLC,
a California limited liability company
Its: General Partner

By: _____
Matthew W. Sonsini
Its: Manager

BUYER:

CITY OF SAN JOSE,
a municipal corporation

By: _____
Toni J. Taber, CMC,
City Clerk

APPROVED AS TO FORM:

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)
)
COUNTY OF _____)

On _____, before me, _____,
Date Here Insert Name And Title Of the Officer
personally appeared _____,
Name(s) of Signer(s)

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.

Place Notary Seal Above

Signature of Notary Public

Exhibit 1

Legal Description of Property

[To be attached at Closing]

EXHIBIT “J”

Permitted Exceptions

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2019-2020.
2. The fact that said land lies within CFD 5A and may be subject to assessment thereunder payable with the county taxes or through the City's Director of Finance.
3. The fact that said land lies within CFD 5B and may be subject to assessment thereunder payable with the county taxes or through the City's Director of Finance.
4. The Property lies within the boundaries of that certain Mello-Roos Community Facilities District (CFD) described as “San Jose-CFD #9 Mello Roos” on the Preliminary Report and is liable for an annual special tax which is included with and payable with the general property taxes of the City of San Jose, County of Santa Clara.
5. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to Seller or as a result of changes in ownership or new construction occurring prior to Date of Policy.
6. [intentionally omitted]
7. Water rights, claims or title to water, whether or not disclosed by the public records.
8. Any adverse claim based upon the assertion that: (a) Some portion of said Land has been created by artificial means, or has accreted to such portion so created; or (b) Some portion of said Land has been brought within the boundaries thereof by an avulsive movement of a certain “Unnamed Creek’s” as described on the Preliminary Report (“Unnamed Creek’s”) or has been formed by accretion to any such portion.
9. Rights and easements for navigation and fishery which may exist over that portion of said Land lying beneath the waters of Unnamed Creek’s.
10. Any rights in favor of the public which may exist on said Land if said Land or portions thereof are or were at any time used by the public.
11. Rights of the public to any portion of the Land lying within the area commonly known as Santa Teresa Boulevard and Bailey Avenue.
12. The ownership of said Land does not include rights of access to or from the street, highway, or freeway abutting said Land, such rights having been relinquished by the document recorded on August 8, 1972 on Book 9961, Page 529 of Official Records.
13. Easement(s) granted to the City of San Jose recorded on July 17, 1986 in Book J769, Page 615 of Official Records.
14. Easement(s) granted to the City of San Jose recorded on July 17, 1986 in Book J769, Page 629 of Official Records.
15. That certain Development Agreement between Coyote Valley Research Park, LLC, a Delaware limited liability company and the City of San Jose recorded January 18, 2001 as Instrument No. 15529779 of Official Records

Exhibit “J”

Page 1

16. Partial Assignment of Development Agreement and Master Cooperation Agreement recorded November 16, 2004 as Instrument No. 18101218 of Official Records.
 - a) The terms and provisions contained in the document entitled Assignment Relating to Partial Assignment of Development Agreement and Master Cooperation Agreement recorded July 26, 2011 as Instrument No. 21255360 of Official Records.
 - b) The terms and provisions contained in the document entitled Assignment Relating to Partial Assignment of Development Agreement and Master Cooperation Agreement, recorded June 12, 2012 as Instrument No. 21704891 of Official Records.
17. Easement(s) delineated as offered for dedication on that certain parcel map filed for record in Book 777 of Maps at Pages 20 through 22 of the Official Records.
18. [intentionally omitted]
19. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Official Records.

EXHIBIT "K"
INTENTIONALLY OMITTED

Exhibit "K"
Page 1

EXHIBIT “L”
INTENTIONALLY OMITTED

Exhibit “L”
Page 1

EXHIBIT “M”

FORM OF “1033 LETTER”

[CITY OF SAN JOSE LETTERHEAD]

November __ 2019

Ladies and Gentlemen:

We are writing to confirm that SI 5 LLC, a California limited liability company (“Owner”) has reached an agreement with the City of San Jose (“City”) for the sale of the above-referenced real property. The real property which Owner is selling to the City will be used for a public purpose. Had Owner not been able to reach an agreement with the City, staff would have recommended that the City adopt a resolution of necessity for the acquisition of this real property by condemnation. Please note that should Owner fail to finalize the sale of the above-referenced real property to the City, the staff shall recommend the adoption of a resolution of necessity for the acquisition of this real property by condemnation.

Very truly yours,

EXHIBIT “N”

FORM OF LETTER TERMINATING SETTLEMENT AGREEMENT

[date of Closing]

Certified Mail, Return Receipt Requested

City Manager
City of Salinas
200 Lincoln Avenue
Salinas, California 93901-2639

City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, California 93901-2639

Re: Termination of Settlement Agreement re Coyote Valley Research Park

Mr. Corpuz and Mr. Callihan:

On September 11, 2001, the City of Salinas entered into a settlement agreement (“Agreement”) with the City of San Jose and Coyote Valley Research Park, LLC (“CVRP”) concerning the City of San Jose’s approval of a large campus industrial development in North Coyote Valley on property formerly owned by CVRP (“CVRP Property”). A copy of the settlement agreement is attached hereto.

We represent the most recent owners of the CVRP Property and, therefore, the successors to CVRP’s interests under the Agreement. These parties have decided not to pursue the campus industrial development project that is the subject of the settlement agreement and not to commence construction of any new buildings within the CVRP Property pursuant to Section 13.21 of the Agreement. Instead, on the date of this letter these owners conveyed title to the CVRP Property to the City of San Jose for conservation purposes.

We understand that the City of San Jose and its partners intend to use the CVRP Property as open space for purposes of providing natural flood control, groundwater protection, climate resilience, and habitat connectivity, while preserving the City of San Jose’s existing water supply facilities.

Accordingly, please be advised that, as a result of the foregoing, the Agreement is automatically terminated as of the date of this letter.

Thank you for your attention to this matter.

Sincerely,

[Brandenburg] [Sobrato]

cc: City of San Jose [add appropriate contact]

EXHIBIT "O"

FORM OF LETTER TERMINATING CONSERVATION PARTNERSHIP AGREEMENT

[date of Closing]

Certified Mail, Return Receipt Requested

Re: Termination of October 18, 2000 Agreement for Establishment of the Conservation Partnership

Dear Ms. Brown-Stevens and Ms. Mackenzie,

On October 18, 2000, the Greenbelt Alliance and the Santa Clara Valley Open Space Authority ("OSA") entered into an agreement ("Agreement") with Coyote Valley Research Park, LLC ("CVRP") concerning the City of San Jose's approval of a large campus industrial development in North Coyote Valley on property formerly owned by CVRP ("CVRP Property"). A copy of the agreement is attached hereto.

We represent the most recent owners of the CVRP Property and, therefore, the successors to CVRP's interests under the Agreement. These parties have decided not to pursue the campus industrial development project that is the subject of the Agreement, and not to commence construction of any new buildings in the CVRP Project pursuant to Section 9.20 of the Agreement. Instead, on the date of this letter these owners conveyed title to the CVRP Property to the City of San Jose for conservation purposes.

We understand that the City of San Jose and its partners, including OSA, intend to use these properties as open space for purposes of providing natural flood control, groundwater protection, climate resilience, and habitat connectivity, while preserving the City of San Jose's existing water supply facilities.

Accordingly, please be advised that, as a result of the foregoing, the Agreement is automatically terminated as of the date of this letter.

Thank you for your attention to this matter.

Sincerely,

[Brandenburg]

[Sobrato]

EXHIBIT “P”

FORM OF QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged SI 5 LLC, a California limited liability corporation (“**Grantor**”) does hereby QUITCLAIM to the City of San Jose, a municipal corporation (“**Grantee**”), the following described real property located in the City of San Jose County of Santa Clara, State of California, together with all improvements (if any) thereon, and all other rights and interests appurtenant thereto, including all of Grantor’s right, title, and interest in and to adjacent streets, alleys, easements, rights-of-way and any adjacent strips or gores of real estate adjacent to and/or related to the real property (the “**Property**”):

All of that certain real property situated in the City of San Jose, County of Santa Clara, State of California identified as “Arroyo de Fuego Court” on that certain parcel map recorded in the Official Records of Santa Clara County on October 28, 2004 in Book 777 of Maps, Pages 20-22.

[Signatures on Following Pages]

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed as of the ____ day of November, 2019.

GRANTOR:

SI 5, LLC,
a California limited liability company

By: Sobrato Interests 3,
a California limited partnership
Its: Sole Member

By: Sobrato Development Companies, LLC,
a California limited liability company
Its: General Partner

By: _____
Matthew W. Sonsini
Its: Manager

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed to the City of San Jose by that certain Grant Deed dated November __, 2019, executed by SI 5, LLC, a California Limited liability company, as Grantor, and the City, as Grantee, is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by action of the City Council on [____], 2019, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: November __, 2019

Print Name: _____
Title: _____

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)

County of _____)

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

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

WITNESS my hand and official seal.

Signature

(Seal)

EXHIBIT "P"

INTENTIONALLY OMITTED

Exhibit "P"
Page 3

EXHIBIT “Q”

INTENTIONALLY OMITTED

EXHIBIT “R”

FORM OF REDEMPTION AGREEMENT TERMINATIONS

[FORM OF TERMINATION OF REDEMPTION AGREEMENT]

TERMINATION OF REDEMPTION AGREEMENT

THIS TERMINATION OF REDEMPTION AGREEMENT (“Termination”) is dated as of November __, 2019, and is executed by SI 5, LLC, a California limited liability company (“SI 5”), and by BRANDENBURG PROPERTIES OF FLORIDA, LLC, a Florida limited liability company; WILLIAM BRANDENBURG, a trustee of The William Brandenburg Revocable Trust dated January 31, 2006; and DIANE M. BRANDENBURG, as trustee of The Lee Brandenburg Non-exempt QTIP Trust UAD September 19, 1993, as Trustee of The Jackson Lee Brandenburg Separate Property Trust UAD August 14, 2001, and as Trustee of the Taylor Ann Brandenburg Separate Property Trust UAD August 14, 2001 (collectively, “Brandenburg Owners”).

RECITALS

A. SI 5 and Brandenburg Owners are the successors-in-interest to the parties to that certain Redemption Agreement, dated as of September 30, 2004, by and among Coyote Valley Research Park LLC (“CVRP”) Cisco Technology, Inc. (“Cisco”), Coyote Valley Properties, LLC, Coyote Valley Properties, LLC, and CVP Holdings, LLC, as amended by that certain First Amendment to Redemption Agreement, dated as of November 16, 2004 (“Redemption Agreement”), and are the current owners of those certain parcels of real property described in Exhibit A attached hereto and incorporated herein by this reference (collectively, the “Property”).

B. SI 5 and Brandenburg Owners have decided not to proceed with the proposed CVRP Project as defined in the Redemption Agreement. Concurrently herewith, SI 5 and Brandenburg Owners are reconveying the Cisco Deed of Trust and the CVRP Deed of Trust (as those terms are defined in the Redemption Agreement), terminating the Declaration (as defined in the Redemption Agreement), and selling their respective interests in the Property to the City of San Jose (“City”) for purposes of conservation.

C. It is a condition to the sale of the Property to the City that SI 5 and Brandenburg Owners execute and deliver to City this Termination, which terminates all rights and remedies that SI 5 and Brandenburg Owners have under the Redemption Agreement.

NOW, THEREFORE, for the benefit of SI 5, Brandenburg Owners, the City and any successors of the City in title to the Property, SI 5 and the Brandenburg Owners hereby terminate the Redemption Agreement and all of their rights and remedies thereunder, effective immediately preceding the recordation in the Official Records of Santa Clara County of deeds to the City from SI 5 and from Brandenburg Owners to their respective interest in the Property (the “Conveyance”).

Exhibit “R”

Page 1

SI 5 hereby represents and warrants to City that SI 5 has not assigned any of its rights or remedies under the Redemption Agreement. Each Brandenburg Owner hereby represents and warrants to City that it has not assigned any of its rights or remedies under the Redemption Agreement.

Effective as of the Conveyance, each of SI 5 and Brandenburg Owners (each a “Releasing Party”) irrevocably waive any and all of their respective rights and remedies which they may have against the other party and such other party’s principals, affiliates, officers, directors, members managers, partners, agents, employees, successors and assigns (collectively, the “Released Parties”) under the Redemption Agreement and release each of the Released Parties from and against any and all claims, counterclaims and causes of action which they may now or in the future have against the Released Parties arising from the Redemption Agreement.

Each of SI 5 and Brandenburg Owners hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

“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.”

By initialing below, effective as of the Conveyance, each of SI 5 and Brandenburg Owners hereby (1) waives the provisions of California Civil Code Section 1542 in connection with the matters which are the subject of the foregoing waivers and releases, and (2) agrees and acknowledges that, in giving the foregoing waiver and release, it has with its legal counsel, considered any statute or other law that might apply to and limit the effect of its waiver and release herein and hereby knowingly waives the benefits of any such law and intends that it not be applicable here.

Brandenburg Properties of Florida, LLC: _____

Trustee of the Jackson Lee Brandenburg Separate Property Trust: _____

Trustee of the Taylor Ann Brandenburg Separate Property Trust: _____

Trustee of the William Brandenburg Revocable Trust: _____

Trustee of the Lee Brandenburg Non-Exempt QTIP Trust: _____

SI 5, LLC, a California limited liability company: _____

IN WITNESS WHEREOF, the Parties hereto have duly executed this Termination effective as of the Conveyance.

[Signatures on Next Page]

BRANDENBURG OWNERS:

BRANDENBURG PROPERTIES OF FLORIDA,
LLC

By: _____
Name: _____
Its: _____

WILLIAM BRANDENBURG, AS TRUSTEE OF
THE WILLIAM BRANDENBURG REVOCABLE
TRUST DATED JANUARY 31, 2006

By: _____
William Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE JACKSON LEE BRANDENBURG
SEPARATE PROPERTY TRUST UDT DATED
AUGUST 14, 2001

By: _____
Diane M. Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE TAYLOR ANN BRANDENBURG
SEPARATE PROPERTY TRUST UDT DATED
AUGUST 14, 2001

By: _____
Diane M. Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE LEE BRANDENBURG NON-EXEMPT QTIP
TRUST UAD SEPTEMBER 19, 1993

By: _____
Diane M. Brandenburg, Trustee

SI 5:

SI 5, LLC,
a California limited liability company

By: Sobrato Interests 3,

Exhibit "R"

Page 3

Its: a California limited partnership
Sole Member

By: Sobrato Development Companies, LLC,
a California limited liability company
Its: General Partner

By: _____
Matthew W. Sonsini
Its: Manager

[Exhibit “R” continued on following page]

[FORM OF TERMINATION OF CC&Rs AND EASEMENTS]

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of San Jose
200 East Santa Clara Street
San Jose, Ca 95112-1905
Attn: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TERMINATION OF COVENANTS, CONDITIONS, CONSTRUCTION OBLIGATIONS
AND RESTRICTIONS, AND QUITCLAIM/TERMINATION OF EASEMENTS**

THIS TERMINATION OF COVENANTS, CONDITIONS, CONSTRUCTION OBLIGATIONS AND RESTRICTIONS, AND QUITCLAIM/TERMINATION OF EASEMENTS (“Termination”) is dated as of November __, 2019 (“Effective Date”), and is executed by SI 5, LLC, a California limited liability company (“SI 5”), and by BRANDENBURG PROPERTIES OF FLORIDA, LLC, a Florida limited liability company; WILLIAM BRANDENBURG, a trustee of The William Brandenburg Revocable Trust dated January 31, 2006; and DIANE M. BRANDENBURG, as trustee of The Lee Brandenburg Non-exempt QTIP Trust UAD September 19, 1993, as Trustee of The Jackson Lee Brandenburg Separate Property Trust UAD August 14, 2001, and as Trustee of the Taylor Ann Brandenburg Separate Property Trust UAD August 14, 2001 (collectively, “Brandenburg Owners”).

RECITALS

A. SI 5 and the Brandenburg Owners own all of the real property encumbered by “Declaration of Covenants, Conditions, Construction Obligations and Restrictions and Reservation of Reciprocal Easements for Coyote Valley Research Park” dated September 30, 2004, executed by Coyote Valley Research Park, LLC (“CVRP”), a Delaware limited liability company, and recorded on November 16, 2004 as Document No. 18101214 in the Official Records of Santa Clara County, as amended by a “First Amendment to Declaration of Covenants, Conditions, Construction Obligations and Restrictions and Reservation of Reciprocal Easements for Coyote Valley Research Park” dated November 16, 2004 executed by CVRP and joined by Cisco Technology, Inc., a California corporation, recorded on November 16, 2008 as Document No. 18101215 in said Official Records (the “CC&R’s”).

B. SI 5 and the Brandenburg Owners desire to terminate the CC&R’s and terminate and quitclaim the easements granted therein.

TERMINATION

As of the date of recording of this Termination, the CC&R's and all easements granted therein are terminated, and the easements are quitclaimed to the owners of the real property burdened thereby.

As of the date of recording of this Termination, each of SI 5 and Brandenburg Owners (each a "Releasing Party") irrevocably waive any and all of their respective rights and remedies which they may have against the other party and such other party's principals, affiliates, officers, directors, members managers, partners, agents, employees, successors and assigns (collectively, the "Released Parties") under the CC&R's and release each of the Released Parties from and against any and all claims, counterclaims and causes of action which they may now or in the future have against the Released Parties arising from the CC&R's.

Each of SI 5 and Brandenburg Owners hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

"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."

By initialing below, effective as of the date of recording of this Termination, each of SI 5 and Brandenburg Owners hereby (1) waives the provisions of California Civil Code Section 1542 in connection with the matters which are the subject of the foregoing waivers and releases, and (2) agrees and acknowledges that, in giving the foregoing waiver and release, it has with its legal counsel, considered any statute or other law that might apply to and limit the effect of its waiver and release herein and hereby knowingly waives the benefits of any such law and intends that it not be applicable here.

Brandenburg Properties of Florida, LLC: _____

Trustee of the Jackson Lee Brandenburg Separate Property Trust: _____

Trustee of the Taylor Ann Brandenburg Separate Property Trust: _____

Trustee of the William Brandenburg Revocable Trust: _____

Trustee of the Lee Brandenburg Non-Exempt QTIP Trust: _____

SI 5, LLC, a California limited liability company: _____

IN WITNESS WHEREOF, the Parties hereto have duly executed this Termination effective as of the date of recording of this Termination.

BRANDENBURG OWNERS:

BRANDENBURG PROPERTIES OF FLORIDA,
LLC

By: _____
Name: _____
Its: _____

WILLIAM BRANDENBURG, AS TRUSTEE OF
THE WILLIAM BRANDENBURG REVOCABLE
TRUST DATED JANUARY 31, 2006

By: _____
William Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE JACKSON LEE BRANDENBURG
SEPARATE PROPERTY TRUST UDT DATED
AUGUST 14, 2001

By: _____
Diane M. Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE TAYLOR ANN BRANDENBURG
SEPARATE PROPERTY TRUST UDT DATED
AUGUST 14, 2001

By: _____
Diane M. Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE LEE BRANDENBURG NON-EXEMPT
QTIP TRUST UAD SEPTEMBER 19, 1993

By: _____
Diane M. Brandenburg, Trustee

SI 5:

SI 5, LLC,
a California limited liability company

Exhibit "R"
Page 7

By: Sobrato Interests 3,
a California limited partnership
Its: Sole Member

By: Sobrato Development Companies, LLC,
a California limited liability company
Its: General Partner

By: _____
Matthew W. Sonsini
Its: Manager

[acknowledgment forms to be attached]

EXHIBIT A TO TERMINATION OF CC&R'S

LEGAL PROPERTY DESCRIPTION

[Insert the legal description]

[Exhibit "R" continued on following page]

[FORM OF RECONVEYANCE OF CISCO DEED OF TRUST]

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of San Jose
200 East Santa Clara Street
San Jose, Ca 95112-1905
Attn: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE

The undersigned, being the present beneficiary under that certain "Deed of Trust, Security Agreement with Assignment of Rents, and Fixture, Filing, dated as of November 16, 2004, by Cisco in favor of CVRP and recorded as Instrument No. 18101220 of Official Records.(the "Deed of Trust"), HEREBY APPOINTS AND SUBSTITUTES itself as the trustee thereunder.

As such duly appointed trustee thereunder, the undersigned **DOES HEREBY RECONVEY** to the person or persons legally entitled thereto, without warranty, all the estate, title, interest and rights acquired by it as the trustee and/or beneficiary under said Deed of Trust.

BRANDENBURG PROPERTIES OF FLORIDA,
LLC

By: _____
Name: _____
Its: _____

WILLIAM BRANDENBURG, AS TRUSTEE OF
THE WILLIAM BRANDENBURG REVOCABLE
TRUST DATED JANUARY 31, 2006

By: _____
William Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE JACKSON LEE BRANDENBURG
SEPARATE PROPERTY TRUST UDT DATED
AUGUST 14, 2001

By: _____
Diane M. Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE TAYLOR ANN BRANDENBURG
SEPARATE PROPERTY TRUST UDT DATED
AUGUST 14, 2001

By: _____
Diane M. Brandenburg, Trustee

DIANE M. BRANDENBURG, AS TRUSTEE OF
THE LEE BRANDENBURG NON-EXEMPT QTIP
TRUST UAD SEPTEMBER 19, 1993

By: _____
Diane M. Brandenburg, Trustee

[acknowledgment forms to be attached]

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