

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:

City of San Jose  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 95113  
Attention: City Attorney's Office

COMPENSATION AGREEMENT PURSUANT TO  
HEALTH AND SAFETY CODE SECTION 34180(f) REGARDING  
THE TRANSFER OF PROPERTY FOR FUTURE DEVELOPMENT

This Compensation Agreement (“Agreement”) is made and entered into as of January 1, 2018 by and among the Successor Agency of the Redevelopment Agency of the City of San Jose, a public entity established under Health and Safety Code section 34173 (the “Successor Agency”); the City of San Jose, a California municipal corporation (“City”); and each of the undersigned local agencies and school districts, each a taxing entity as defined by Health and Safety Code section 34171(k) (the “Taxing Entities”), with the consent of the Oversight Board to the Successor Agency, established under Health and Safety Code section 34179 (the “Oversight Board”). The Successor Agency, the City and the Taxing Entities are collectively the “Parties” and each a “Party.”

RECITALS

**WHEREAS**, pursuant to Health and Safety Code section 34191.5, the Successor Agency prepared a long range property management plan (the “Plan”) to dispose of all of the real property of the former Redevelopment Agency of the City of San Jose (“the “RDA”), including the following parcels: 8 South Montgomery Street (APN 259-38-130), 102 South Montgomery Street (APN 259-48-012), 105 South Montgomery Street (APN 261-35-003, 006, 010), 510 West San Fernando Street (APN 259-48-011, 013), 150 South Montgomery Street (APN 259-48-053) and 645 Park Avenue (APN 261-35-014), all of which are located in the City of San Jose, County of Santa Clara, California, and more particularly described in the attached **Exhibit A** (collectively, the “Property”); and

**WHEREAS**, the Oversight Board and the California Department of Finance (“DOF”) approved the Plan and, pursuant to Health and Safety Code section 34191.4(a), the properties referenced in the Plan transferred to the Community Redevelopment Property Trust Fund for administration by the Successor Agency; and

**WHEREAS**, under the Plan, the Property shall be retained for future development and shall be transferred to the City in the manner provided by Health and Safety Code section 34180(f) and in consideration of the terms and conditions of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENT**

### **Section 1. Conveyance of Property to City.**

(a) **Conveyance.** Subject to the terms and conditions of this Agreement, within thirty (30) days after this Agreement has been signed by all Parties (“Effective Date”), the Successor Agency shall convey to the City, and the City shall accept, all of the interest in and to the Property as evidenced by recordation of the Grant Deed described below (the “Closing Date”). The Successor Agency shall convey the Property by grant deed (“Grant Deed”) recorded in the Santa Clara County Office of the Clerk-Recorder (“Recorder’s Office”) in substantially the same form attached hereto as **Exhibit B.**

(b) **Release.** Except as expressly provided herein, City hereby waives, releases, acquits, and forever discharges Successor Agency and Taxing Entities, and Successor Agency’s and Taxing Entities’ agents, directors, officers, and employees to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, compensation, attorneys’ fees, consultants’ fees and costs and expert fees (collectively “Claims”) whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with the physical condition of the Property, including without limitation, the physical and environmental condition of the Property or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of hazardous materials on, in, under or around the Property regardless of when such hazardous materials were first introduced in, on or about the Property, (ii) any patent or latent defects or deficiencies with respect to the Property, (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and asbestos containing materials were first introduced in, on or about the Property. City hereby waives and agrees not to commence any action, legal proceeding, cause of action or suit in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Section 9601 *et seq.* and California Health and Safety Code section 25300 *et seq.* (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against Successor Agency or Successor Agency’s agents, directors, officers, and employees in connection with the Property, except matters arising from Successor Agency’s fraud, intentional misrepresentation, or concealment.

**AS IS CONDITION OF PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT SUCCESSOR AGENCY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR**

**REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. CITY ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE SUCCESSOR AGENCY SHALL SELL AND CONVEY THE PROPERTY TO CITY “IN ITS THEN EXISTING CONDITION AS IS, WHERE IS, WITH ALL FAULTS,” EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, CITY HAS NOT RELIED AND WILL NOT RELY ON, AND SUCCESSOR AGENCY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY SUCCESSOR AGENCY OR ANY AGENT PURPORTING TO REPRESENT SUCCESSOR AGENCY, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT.**

**CITY REPRESENTS TO SUCCESSOR AGENCY THAT CITY HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS CITY DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SUCCESSOR AGENCY OR ITS AGENTS, OTHER THAN SUCH REPRESENTATIONS AND WARRANTIES OF SUCCESSOR AGENCY AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, SUBJECT TO SUCH REPRESENTATIONS AND WARRANTIES OF SUCCESSOR AGENCY AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, CITY SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY CITY'S INVESTIGATIONS, AND CITY, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SUCCESSOR AGENCY (AND**

**SUCCESSOR AGENCY'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH CITY MIGHT HAVE ASSERTED OR ALLEGED AGAINST SUCCESSOR AGENCY (AND SUCCESSOR AGENCY'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY EXISTING AT OR OCCURRING PRIOR TO CLOSING. IN CONNECTION THEREWITH, CITY EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT:**

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

**THE COVENANTS SET FORTH IN THIS SECTION SHALL SURVIVE CLOSE OF ESCROW AND DELIVERY OF THE GRANT DEED.**

**Section 2. Disposition of Property by City.**

(a) **Disposition for Development.** Commencing on January 1, 2018 and ending on thirty days after the Effective Date or December 31, 2018, whichever is later ("Developer Disposition Period"), the City shall use good faith efforts to: (i) select a developer for the Property ("Developer"), (ii) negotiate and execute an agreement for the sale of the Property, which agreement may include an option agreement, purchase and sale agreement or disposition and development agreement ("Sale Agreement"), and (iii) dispose of the Property to the Developer for an amount not less than the Market Value (as defined below) in order to obtain proceeds from the sale of the Property ("Net Sales Proceeds") (as defined below) for distribution pursuant to Section 3 below. Notwithstanding the foregoing, at the City's request, the Developer

Disposition Period may be extended up to March 1, 2019 with the approval of the Oversight Board; the consideration of such request shall be in the Oversight Board's sole and absolute discretion.

(b) **Acquisition by City for its Own Use.** Recognizing that the City will hold title to the Property pursuant to Section 1 above after the Closing Date, if the Property is not sold during the Developer Disposition Period, the City may elect, within thirty (30) days after the expiration of the Developer Disposition Period ("City Acquisition Period"), to retain the Property for its own use by paying the Market Value, as defined below, of the Property. The City shall notify the County Auditor-Controller ("Auditor-Controller") in writing upon its election to retain the Property for its own use ("Notice to Acquire") and shall, within the City Acquisition Period, remit the Net Sales Proceeds as provided in Section 3 below.

(c) **Purchase Price.** If the Property is sold for development under a Sale Agreement as described in Section 2(a) above or is retained by the City for its own use as described in Section 2(b) above, the purchase price for the Property shall be an amount that is not less than Sixty-Seven Million Dollars (\$67,000,000) ("Market Value").

(d) **Expiration of Developer Disposition Period.** If the Property is not sold prior to expiration of the Developer Disposition Period as described in Section 2(a) above or retained by the City as described in Section 2(b) above, the City shall then sell the Property, within nine (9) months of the expiration of the Developer Disposition Period or the City Acquisition Period, whichever is applicable, with a minimum marketing period of six (6) months, pursuant to the open and competitive solicitation process described in the Disposition Process for Sale of Properties approved by the Oversight Board in Resolution No. 2014-02-1060 and subsequently amended by Resolution No. 2015-12-1101 ("Solicitation Process"). Subject to approval of the sale by the Oversight Board, the Property shall be sold to the bidder submitting the highest bid during the Solicitation Process and the Net Sales Proceeds from the sale of the Property shall be distributed as provided in Section 3 below.

### **Section 3. Sales Proceeds.**

(a) **Distribution of Net Sales Proceeds.** Upon the close of escrow for the sale of the Property under a Sale Agreement during the Developer Disposition Period or after acquisition of the Property by the City during the City Acquisition Period, or close of escrow through the Solicitation Process ("Close of Escrow"), the Net Sales Proceeds as defined below shall be wired directly to the Auditor-Controller for subsequent distribution by the Auditor-Controller among the Taxing Entities pursuant to Health and Safety Code Section 34188.

(b) **Accounting Requirements.** Within thirty (30) days after the Close of Escrow, the City shall provide to the Auditor-Controller a statement prepared in accordance with generally accepted accounting practices that provides the City's calculation of the Net Sales Proceeds, together with a closing statement from the escrow holder selected to handle the closing ("Escrow Holder") showing an itemized list of any deductions or credits to the Purchase Price ("Sales Proceeds Statement"). The City shall keep complete, accurate and appropriate books and records of its calculation of the Net Sales Proceeds. The Auditor-Controller shall have the right,

on behalf of the Taxing Entities and upon reasonable written notice to City, to audit and examine such books, records and documents and other relevant items in the possession or control of City.

(c) **Calculation of Net Sales Proceeds.** Net Sales Proceeds means the gross purchase price and other compensation in whatever form, if any, actually received by the City in consideration for the disposition of the Property (but in no event less than the Market Value), less the sum of the City's actual, reasonable, and customary costs for the following items (but only to the extent paid from City funds and not from funds provided by the Successor Agency or the buyer), each to be documented in reasonable detail in the Sales Proceeds Statement for the Property ("Closing Costs"):

(1) Costs for normal maintenance, management and insurance of the Property from the date the Property is transferred by the Successor Agency to the Close of Escrow; plus

(2) Costs of any capital improvements or repairs to maintain the Property in a safe and lawful condition incurred from the date the Property is transferred by the Successor Agency to the Close of Escrow; plus

(3) Costs to pay third party vendors for appraisal, title company, title insurance and other reasonable and customary costs related to the sale of the Property.

**Section 4. Term.** The term of this Agreement shall commence on the Effective Date and shall expire upon the earlier of: (i) if the Property is sold pursuant to the Sale Agreement, the date of recordation of a grant deed for the transfer of the Property and distribution of the Net Sales Proceeds as provided in Section 3(a) above; (ii) if the Property is retained by the City, the date the Net Sales Proceeds are distributed as provided in Section 3(a) above; or (iii) if the Property is sold through the Solicitation Process, the date of recordation of a grant deed for the transfer of the Property and distribution of the Net Sales Proceeds as provided in Section 3(a) above.

**Section 5. Miscellaneous Provisions.**

(a) **Non-Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the waiving Parties.

(b) **No Partnership.** Nothing contained in this Agreement shall be construed to constitute any Party as a partner, employee, joint venturer, or agent of any other Party.

(c) **Notices.** All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed as specified in each Party's signature block.

(d) **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

(e) **Time is of the Essence.** Time is of the essence of each and all of the agreements, covenants, and conditions of this Agreement.

(f) **Ambiguities.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

(g) **Integration.** This instrument constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written.

(h) **Amendment.** This Agreement may be modified only in writing and only if signed by the Taxing Entities and the City at the time of the modification. Following the execution of this Agreement, the Successor Agency's consent shall not be required for any modification of the Agreement.

(i) **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Sacramento. The Parties agree that subject matter and personal jurisdiction are proper in state court in the County of Sacramento and waive all venue objections.

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(j) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

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

**SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE  
CITY OF SAN JOSE**

Approved as to form:

\_\_\_\_\_  
Thomas D. Murtha  
Senior Deputy City Attorney

By: \_\_\_\_\_  
Dave Sykes  
Executive Officer

**CITY OF SAN JOSE**

Approved as to form:

\_\_\_\_\_  
Kevin Fisher  
Chief Deputy City Attorney

By: \_\_\_\_\_  
Dave Sykes  
City Manager

**SANTA CLARA COUNTY  
AUDITOR-CONTROLLER**

Approved as to form and legality:

\_\_\_\_\_  
Christopher R. Cheleden  
Lead Deputy County Counsel

By: \_\_\_\_\_  
Name: Emily Harrison  
Title: Finance Director  
70 W. Hedding Street  
East Wing, 2<sup>nd</sup> Floor  
San Jose, CA 95110



**TAXING ENTITIES**

**COUNTY OF SANTA CLARA**

Approved as to form and legality:

\_\_\_\_\_  
Christopher R. Cheleden  
Lead Deputy County Counsel

By: \_\_\_\_\_  
Name: S. Joseph Simitian  
Title: President, Board of Supervisors  
70 W. Hedding Street  
East Wing, 10th Floor  
San Jose, CA 95110

**FRANKLIN-McKINLEY SCHOOL DISTRICT**

**SAN JOSE-EVERGREEN COMMUNITY COLLEGE DISTRICT**

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

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

**SAN JOSE UNIFIED SCHOOL DISTRICT**

**ORCHARD ELEMENTARY SCHOOL DISTRICT**

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

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

**EAST SIDE UNION HIGH SCHOOL DISTRICT**

**SANTA CLARA UNIFIED SCHOOL DISTRICT**

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

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

**OAK GROVE SCHOOL DISTRICT**

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

**WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**

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

**SANTA CLARA OFFICE OF EDUCATION**

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

**SANTA CLARA VALLEY WATER DISTRICT**

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

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

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

**GUADALUPE-COYOTE RESOURCE CONSERVATION DISTRICT**

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**

**FORM OF GRANT DEED**

When recorded mail to:

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

APN: \_\_\_\_\_

**GRANT DEED**

The undersigned Grantor(s) declare(s): DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_; CITY TRANSFER TAX \$ \_\_\_\_\_; SURVEY MONUMENT FEE \$ \_\_\_\_\_

[\_\_\_\_\_] \_\_\_\_\_  
Signature of Declarant

- [\_\_\_\_\_] computed on the consideration or full value of property conveyed; OR
- [\_\_\_\_\_] computed on the consideration or full value less of liens and/or encumbrances remaining at time of sale,
- [\_\_\_\_\_] unincorporated area; [x] City of San Jose, and
- [\_\_\_\_\_] Exempt from transfer tax; Reason:

\_\_\_\_\_  
Declarant's signature (must be signed if no transfer tax is being paid)

Mail Tax Statement to: same as above address

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Successor Agency to the Redevelopment Agency of the City of San Jose ("Grantor") hereby grants to the City of San Jose ("Grantee"), all that real property situated in the City of San Jose, County of Santa Clara County, State of California as more particularly described in Exhibit A attached hereto ("Property").

(1) This conveyance is made subject to any exceptions to title noted in Exhibit B attached hereto, which exceptions and reservations are set forth solely to note items to which the title granted by this Grant Deed is subject and shall in no event extend or expand the effect of such exceptions on the title herein conveyed.

(2) Grantee covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of

the Government Code, or on the basis of actual or perceived gender identity, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

(3) The covenants against discrimination set forth in paragraph (2) of this Grant Deed shall remain in perpetuity and shall not be subject to release.

(4) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove in Section (2) both for and in its own right and also for the purposes of protecting the interests of the community. All such covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreements or covenants, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

(5) No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in the Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest recorded against the Property; provided, however, that any subsequent owner of the Property or portion thereof shall, from and after its acquisition of title to the Property, unless or to the extent otherwise released, be bound by such covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(6) None of the terms, covenants, agreements or conditions heretofore agreed upon in writing between the parties to this Grant Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property shall be deemed to be merged with this Grant Deed.

(7) Except as otherwise expressly provided, the covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title and in no event shall a violation or breach of the covenants, conditions, restrictions, terms, and provisions contained in this Grant Deed result in a forfeiture of title.

(8) Grantee is fully aware of the condition of the Property and the improvements situated thereon. Pursuant to California Civil Code section 1102.2(j), the Property is being sold "AS IS," without express or implied warranty. Successor Agency makes no representations with respect to the presence of hazardous materials, the suitability of the Property for the uses intended, or with respect to the conformance of the Property to any codes, rules, regulations or ordinances, whether local, state or federal.

(9) Release. Except as expressly provided herein, Grantee hereby waives, releases, acquits, and forever discharges Successor Agency, and Successor Agency’s agents, directors, officers, and employees to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, compensation, attorneys’ fees, consultants’ fees and costs and expert fees (collectively “Claims”) whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with the physical condition of the Property, including without limitation, the physical and environmental condition of the Property or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of hazardous materials on, in, under or around the Property regardless of when such hazardous materials were first introduced in, on or about the Property, (ii) any patent or latent defects or deficiencies with respect to the Property, (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and asbestos containing materials were first introduced in, on or about the Property. Grantee hereby waives and agrees not to commence any action, legal proceeding, cause of action or suit in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Section 9601 *et seq.* and California Health and Safety Code section 25300 *et seq.* (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against Successor Agency or Successor Agency’s agents, directors, officers, and employees in connection with the Property, except matters arising from Successor Agency’s fraud, intentional misrepresentation, or concealment.

**GRANTEE EXPRESSLY WAIVES ITS RIGHTS GRANTED UNDER CALIFORNIA CIVIL CODE § 1542 AND ANY OTHER PROVISION OF LAW THAT PROVIDES A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE DEBTOR.**

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IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

“Grantor”

SUCCESSOR AGENCY TO THE  
REDEVELOPMENT OF THE CITY OF SAN  
JOSE

Approved as to form:

\_\_\_\_\_  
Senior Deputy City Attorney

By: \_\_\_\_\_  
Richard Keit  
Managing Director