

**AGREEMENT FOR SALE OF SURPLUS
CITY-OWNED REAL PROPERTY TO JAY PAUL MANAGEMENT CO., INC.
(Park Avenue and Almaden Boulevard)**

THIS AGREEMENT FOR SALE OF SURPLUS CITY-OWNED REAL PROPERTY ("AGREEMENT") is made and entered into by and between the **CITY OF SAN JOSE**, a California municipal corporation (hereinafter "CITY") and **SJ PARK ALMADEN LLC, a Delaware limited liability company** (hereinafter "BUYER") and shall be made effective on the date it has been fully executed by all of the parties (hereinafter "Effective Date"). BUYER and CITY are sometimes individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, CITY is the owner of that certain ±13,204 square foot of real property located in the City of San José, County of Santa Clara, State of California, more particularly described in **EXHIBITS "A"** and depicted in **EXHIBIT "B"** (hereinafter "PROPERTY") attached hereto and incorporated herein; and

WHEREAS, ON November 19, 2019, the San José City Council adopted Resolution #_____, A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONDITIONALLY VACATING A ±13,204 SQUARE FOOT PORTION OF PARK AVENUE BETWEEN ALMADEN AVENUE AND ALMADEN BOULEVARD, RESERVING FROM THE VACATION PUBLIC SERVICE EASEMENTS OVER THE AREA VACATED ("Vacation Resolution"), conditionally vacating the public street commonly known Park Avenue located on the PROPERTY upon the satisfaction of the conditions stated therein; and

WHEREAS, on November 19, 2019, the San José City Council made a finding and a determination that, upon recordation of the VACATION RESOLUTION, the PROPERTY: (i) is not needed for, nor adaptable to, municipal purposes, (i) is not

independently developable, and (iii) that the sale of the Property will serve the public interest; and is therefore surplus to the needs of the CITY; and

WHEREAS, Section 4.20.070 of the San José Municipal Code authorizes the sale of surplus CITY-owned real property to the owner or owners of property adjacent to such surplus property at private sale at the fair-market value thereof subject to such terms and conditions as the City Council of CITY may, in its discretion, provide, and the City Council desires to sell the PROPERTY to BUYER pursuant to such Section 4.20.070;

NOW, THEREFORE, in consideration of their mutual promises, terms, covenants and conditions hereinafter set forth, as well as the sums to be paid by BUYER to CITY, and for good and valuable consideration, the receipt and sufficiency of all which are hereby acknowledged, the BUYER and CITY agree as follows:

1. Property to be Conveyed.

Subject to the provisions of this Agreement, CITY shall transfer and convey to BUYER by quitclaim deed in substantially the same form as **Exhibit “C”** (“Quitclaim Deed”), and BUYER shall purchase and take from CITY, all of CITY’s right, title, and interest in and to the PROPERTY.

2. Purchase Price.

BUYER shall pay to CITY, in consideration of CITY’s conveyance to BUYER of said PROPERTY the sum of FOUR MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (**\$4,750,000.00**). Said sum shall hereinafter be referred to as the “Purchase Price”.

3. Opening Escrow; Tender and Acceptance of Payment.

Upon full execution of this Agreement by BUYER and CITY, an escrow shall be opened, by BUYER, with First American Title Company, 1737 North First Street #500,

San Jose, CA 95112 Attention: Linda Tugade (the “Escrow Holder”). BUYER shall deposit FOUR HUNDRED SEVENTY-FIVE THOUSAND DOLLARS **(\$475,000.00)** (“Deposit”) in cash or other immediately available funds with the Escrow Holder upon the opening of escrow. The remaining balance of FOUR MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS **(\$4,275,000.00)** of the Purchase Price in cash or other immediately available funds shall be deposited with the Escrow Holder no later than three (3) business days prior to the “Closing Date”, as defined below. Except as set forth herein to the contrary, upon CITY’s execution of this Agreement and the opening of escrow, the Deposit (together with any interest accrued thereon), shall become non-refundable, to be retained by CITY as liquidated damages in the event BUYER’s breach of its obligation to purchase the PROPERTY pursuant to this agreement, but to be credited toward the Purchase Price. By its execution of this AGREEMENT, CITY accepts the Purchase Price as full compensation for the PROPERTY.

The parties shall not be bound by this AGREEMENT until City Council has approved this AGREEMENT and the City’s obligation to convey title to the Property shall not be binding until a portion of the public street easement commonly known as Park Avenue located on the PROPERTY shall have been vacated by the CITY’s recordation of the VACATION RESOLUTION with the Office of the Recorder for the County of Santa Clara. Prior to such approval, BUYER’s delivery of this AGREEMENT to CITY shall constitute an offer to purchase on the terms and conditions set forth herein, revocable at the sole discretion of BUYER upon written notice to CITY.

4. Additional Fees and Charges.

BUYER shall be responsible for the full payment of all title insurance, escrow, recording fees, documentary transfer taxes, broker commissions and other fees and charges associated with this transaction. BUYER shall indemnify, defend, and hold CITY harmless from and against, and CITY shall have no liability or responsibility for any such fees, costs, taxes, or expenses.

5. Due Diligence Period.

BUYER will have thirty (30) days from the date of execution of this AGREEMENT to investigate the PROPERTY, including without limitation conducting any and all investigations necessary to inform BUYER about the condition of the PROPERTY and its sufficiency for BUYER's intended use. Should BUYER need access to the PROPERTY to conduct such inspections, BUYER must notify CITY in writing indicating the date and time of such inspections and who will be representing BUYER.

6. Delivery and Recording of Deed and Real Property Taxes.

The Escrow Holder will close the escrow and record the Quitclaim Deed on such date (the "Closing Date") as is directed by CITY in its escrow instructions, which Closing Date shall be on a date which is as soon as practicable after (but in no event prior to) the vacation of a portion of the public street commonly known as Park Avenue located on the PROPERTY by the CITY's recordation of the VACATION RESOLUTION with the Office of the Recorder for the County of Santa Clara, but in no event later than the date which is 30 days after such vacation unless the CITY and BUYER agree in writing that the Closing Date be on a later date, which later date shall in no event be later than eighteen (18) months from the Effective Date.

No later than fifteen (15) days prior to the Closing Date, CITY shall deliver, to the office of the Escrow Holder, a Quitclaim Deed in the form set forth in **Exhibit "C"** ("Quitclaim Deed") executed and fully notarized by CITY. CITY and BUYER shall deliver any such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow. The CITY and BUYER shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this AGREEMENT.

CITY and BUYER acknowledge that the CITY's vacation of a portion of Park Avenue is conditioned on the following "Vacation Conditions," and the Parties agree, for the purposes of this AGREEMENT, that the term "property owner" in the Vacation Conditions means the Buyer herein:

- (1) The property owner shall have received a City-approved land use permit for the development of APNs 259-43-076 and 259-43-077 (each a "Parcel" and collectively, "Parcels") in accordance with the San Jose Municipal Code and other applicable laws and regulations and a final map for the Parcels shall have been approved and recorded in accordance with the California Subdivision Map Act and Title 19 of the San Jose Municipal Code, which results in all legal parcels created by or shown on the map having adequate public street access; or in the alternative
- (2) The property owner shall have: (i) demonstrated to the City's satisfaction that with respect to each Parcel, either (a) the owner has sole ownership and possession of the Parcel and no other persons or entities have a legal right to use or occupy such Parcel (such demonstration shall be by a sworn statement duly executed by the owner, current title report and, at the City's discretion, a confirmatory site inspection), or (b) the Parcel has adequate public street access other than via the Property (meaning adequate legal right to, and physical capability of, ingress and egress to/from such Parcel to a public street other than the Property, without the need for physical modifications); and (ii) executed an agreement acceptable to the City that indemnifies and holds the City harmless from any claims arising out of or related to the City's vacation of the Property.

For purposes of satisfying the Vacation Condition in subparagraph 1 above, the CITY, in its proprietary capacity as owner of the PROPERTY, hereby consents to the BUYER's inclusion of the PROPERTY in any development application filed with the City, with no further actions or approvals (such that the Buyer has the right to submit any application that includes the PROPERTY subject to the Vacation Conditions), and the CITY shall sign any subdivision map (or any other documents that may be required

for applications, filings and recordation of any subdivision map) as owner of the PROPERTY after BUYER has satisfied any applicable regulatory requirements or conditions of approval of its development applications or subdivision maps. Notwithstanding the CITY's foregoing consents, the City in its governmental and regulatory capacity, shall approve any land use permits and subdivision maps in accordance with the San Jose Municipal Code, the California Subdivision Map Act and other applicable laws. The City shall accept and process in accordance with its governmental discretion BUYER's requests for approval by the City of the Vacation Conditions, and the CITY shall, in its governmental and regulatory capacity, determine whether the Vacation Conditions have been satisfied. Notwithstanding any other provision in this Agreement to the contrary, it is the express intention of the parties hereto that the CITY would be acting in its capacity as owner of the PROPERTY under this Agreement and not as a government entity, and the CITY shall retain the full right and ability to exercise its regulatory, taxing and/or police powers with respect to the BUYER's development project, and in no event shall the CITY have any liability arising under this Agreement by virtue of any exercise of any such regulatory, taxing and/or police powers.

The preparation of all land use permits and map applications and the preparation and recording of the approved final map shall be at the BUYER's sole cost and expense, and any and all subdivision agreements, bonds and other obligations associated with approved land use permits and the recordation of the approved final map shall be the sole responsibility of BUYER.

Real property taxes and assessments, if any, shall be payable by BUYER for the period from and after the date of recordation of the Quitclaim Deed executed by CITY. CITY and BUYER shall deliver any such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow. The CITY and BUYER shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this AGREEMENT.

7. BUYER's Sole Remedies for Failure to Convey.

In the event, the close of escrow and the consummation of the transaction contemplated by this AGREEMENT do not occur by reason of default of the CITY, including without limitation if the CITY's Quitclaim Deed shall, for any reason, be insufficient to convey fee title to the PROPERTY on or before the Closing Date (as shall be evidenced by Escrow Holder's willingness to issue an ALTA Standard Coverage Owner's policy of title insurance insuring such title in the name of BUYER in the amount of the Purchase Price), BUYER as its sole remedies will be entitled to (i) terminate this Agreement and receive a refund of the Deposit, or (ii) proceed to close of escrow, in which case the BUYER will have waived any CITY default. If the BUYER elects to proceed to close and the CITY does not take the actions required under this AGREEMENT in order for closing to occur, the BUYER reserves the right to seek specific performance. BUYER shall have no other right of action against CITY and shall not be entitled to recover any damages from CITY. BUYER's agreement to proceed to closing of escrow shall constitute BUYER's waiver of its right to terminate this AGREEMENT pursuant to this Section 7 or other right of action against CITY in regards to failure to convey fee title or other condition of title. AS A MATERIAL INDUCEMENT TO, AND AS MATERIAL CONSIDERATION FOR CITY'S ENTERING INTO THIS AGREEMENT WITH BUYER, BUYER WAIVES ANY RIGHT TO (A) SEEK OR OBTAIN RESCISSION OF THE SALE; AND (B) TO RECOVER ANY PUNITIVE OR CONSEQUENTIAL DAMAGES AND ANY OTHER DAMAGES OR MONETARY COMPENSATION.

8. Condition of Title.

CITY's right, title, and interest in and to the PROPERTY shall be delivered by CITY hereunder subject to all exceptions, encumbrances, liens, and restrictions of record and not of record, as of the Closing Date. For the avoidance of doubt, it is agreed that BUYER shall rely solely upon Escrow Holder's ALTA Standard Coverage Owner's policy of title insurance, if any, for protection with respect to matters affecting title to the PROPERTY,

and that CITY shall have no obligations with respect to matters affecting title to the PROPERTY (including, without limitation, providing owner affidavits or other assurances to Escrow Holder).

9. AS-IS Property Condition/BUYER's Due Diligence.

- a) BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSE OF ESCROW, CITY SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS," EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. BUYER ACCEPTS AND AGREES TO BEAR ALL RISKS REGARDING ALL ATTRIBUTES AND CONDITIONS, LATENT OR OTHERWISE, OF THE PROPERTY, EXCEPT AS PROVIDED IN THIS AGREEMENT. FURTHER, AND WITHOUT LIMITING THE FOREGOING, BUYER ACKNOWLEDGES AND AGREES THAT BUYER WILL HAVE REVIEWED ALL APPLICABLE LAWS, ORDINANCES, RULES, AND GOVERNMENTAL REGULATIONS (INCLUDING, BUT NOT LIMITED TO, THOSE RELATED TO BUILDING, ZONING AND LAND USE) PERTAINING TO THE PROPERTY AND BUYER WILL HAVE HAD AN OPPORTUNITY TO INSPECT THE PROPERTY. BY INITIALING BELOW, BUYER ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THIS SECTION AND THAT IT HAS HAD THE OPPORTUNITY TO OBTAIN COUNSEL AND ASK QUESTIONS AS TO ITS MEANING AND SIGNIFICANCE.

BUYER'S Initials: _____

- b) BUYER acknowledges, confirms, and agrees: (i) BUYER has relied on BUYER's own investigation of the condition of the PROPERTY, which it has had the opportunity to conduct to its satisfaction prior to the Effective Date

and (ii) it shall take the PROPERTY in the condition that it is in at the Close of Escrow Date.

- c) To the extent that CITY has provided to BUYER information or reports regarding the PROPERTY, CITY makes no representation or warranty, express or implied, as to the truth, accuracy or completeness of any materials, data, financial information, or other information in CITY's files or delivered or disclosed by CITY (or CITY's representatives or agents) to BUYER. BUYER acknowledges and agrees all such items are provided to BUYER as a convenience only and, except for the representations and warranties set forth in this Agreement, that any reliance on or use of such materials, data or information by BUYER shall be at the sole risk of BUYER. Neither CITY, nor the person or entity which prepared any report or reports delivered by CITY to BUYER shall have any liability to BUYER for any inaccuracy or omission from any such report. BUYER acknowledges and agrees that the obligations of CITY in connection with the purchase of the PROPERTY shall be governed by this Agreement irrespective of the contents of any such disclosures or the timing or delivery thereof.
- d) Except as expressly set forth in this Agreement, it is understood and agreed that CITY and CITY's agents, employees or attorneys have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the PROPERTY or the legal or physical condition thereof, including, but not limited to, warranties, representations or guaranties as to (1) matters of title (other than any CITY's warranty of title contained in the Quitclaim Deed), (2) zoning or building entitlements to which the PROPERTY or any portion thereof may be subject, now or in the future, (3) usages of adjoining property, (4) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical condition of the PROPERTY

or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the PROPERTY or any part thereof, (5) environmental matters relating to the PROPERTY or any portion thereof, including, without limitation, the presence of Hazardous Substances (as defined below) in, on, under or in the vicinity of the PROPERTY, (6) the condition or use of the PROPERTY or compliance of the PROPERTY with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (7) the size of, or square feet contained in, the PROPERTY or its dimensions, or (8) any other matter or thing with respect to the PROPERTY.

10. Indemnification and Hold Harmless.

BUYER agrees to protect, defend, indemnify and hold harmless, CITY, its officers, employees, or agents, from and against all claims, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (collectively, "Claims") of any kind whatsoever paid, incurred, suffered or asserted on or after the close of escrow directly or indirectly arising from or attributable to the Property Condition or any use of the PROPERTY (including BUYER's use of the PROPERTY before the Effective Date), including without limitation any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the PROPERTY, regardless of whether undertaken due to governmental action. The foregoing hold harmless and indemnification provision and following release provision shall apply to the fullest extent permitted by law, including where such Claim is the result of the act or omission of CITY, its officers, agents or employees. Without limiting the generality of this indemnity and hold harmless provision in any way, this provision is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order to indemnify, defend, protect and hold harmless CITY, its officers, agents or employees

for any liability pursuant to such sections. CITY and BUYER agree that for purposes of this Agreement, the term "Hazardous Substance" shall have the definition set forth in **EXHIBIT "D"**, which is attached to this AGREEMENT and incorporated by reference. BUYER, for itself, its legal representatives and assigns, releases CITY, its officers, agents or employees from any and all Claims that it had, now has, or claims to have, or that any person claiming through them may have, or claim to have, arising out of any use of the PROPERTY, or Property Condition (including, without limitation, uses of or conditions on the Property undertaken or caused by BUYER's prior to the Effective Date).

Notwithstanding anything to the contrary in this Agreement, upon the Effective Date and at all times thereafter, BUYER shall protect, defend, indemnify and hold harmless, CITY, its officers, employees, or agents, from and against all Claims of any kind whatsoever paid, incurred, suffered or asserted before, on or after the Effective Date directly or indirectly arising from or attributable to the City's conditional vacation of a portion of the public street commonly known as Park Avenue, including without limitation any claims, for relocation or damages, from former or current tenants or third party users of any Parcel. The foregoing hold harmless and indemnification provision and following release provision shall apply to the fullest extent permitted by law, including where such Claim is the result of the act or omission of CITY, its officers, agents or employees.

11. General Release.

BUYER, for itself and its agents, affiliates, successors and assigns, hereby agrees that BUYER releases and forever discharges CITY, its agents, affiliates, successors and assigns from any and all Claims, including, without limitation, rights, claims and demands at law or in equity, whether known or unknown at the time of this Agreement, which BUYER had, has or may have in the future, arising out of the physical, environmental, economic or legal condition of the PROPERTY, including, without limitation, any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et. seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property

owners for environmental matters. Further, BUYER, for itself, its legal representatives and assigns, releases CITY, its officers, agents or employees from any and all Claims that it had, now has, or claims to have, or that any person claiming through them may have, or claim to have, arising out of the City's conditional vacation of the public street commonly known as Old West Julian Street. For the foregoing purposes, BUYER hereby specifically waives the provisions of Section 1542 of the California Civil Code and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

“A general release does not extend to a claim, 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 or her must have materially affected his or her settlement with the debtor.”

Having been so apprised, to the fullest extent permitted by law, BUYER, elects to assume all risk for claims heretofore or hereafter, known or unknown, arising from the subject of this release, and BUYER knowingly and voluntarily expressly releases the CITY, its officers, agents or employees from all Claims, unknown or unsuspected, arising out of any use of the PROPERTY, or the Property Condition. The provisions of Sections 7, 8, 9 and 10 shall survive the close of escrow or earlier termination of this AGREEMENT.

12. Binding on Successors.

This AGREEMENT inures to the benefit of and is binding on the Parties hereto, their respective heirs, personal representatives, successors and assigns.

13. Merger; Entire Agreement.

This AGREEMENT supersedes any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between CITY and BUYER relating to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party, or by or to any employee, officer, agent, or

representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby. The terms of this AGREEMENT shall not be modified or amended except by an instrument in writing executed by each of the Parties.

14. Acknowledgement.

BUYER acknowledges that it has received the separate notice required by California Civil Code Section 1057.6 (regarding title insurance).

15. Notices.

Any notice which is required to be given hereunder, or which either Party may desire to give to the other, shall be in writing and may be personally delivered or given by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

To the BUYER: SJ PARK ALMADEN LLC, a Delaware limited liability
company
c/o Jay Paul Company
Four Embarcadero Center, Suite 3620
San Francisco, CA 94111
Attn. Janette D'Elia

With a Copy to: Clayton Gantz
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111

or to such other place as BUYER may designate by written notice.

To the CITY: Office of Economic Development,
Real Estate Services
City of San José
200 E. Santa Clara Street, 12th Floor
San Jose, CA 95113

Attn. Real Estate Manager

With a Copy to: Office of the City Attorney
City of San José
200 E. Santa Clara Street, 16th Floor
San José, CA 95113

Attn. Real Estate Attorney

or to such other place as CITY may designate by written notice.

16. Parties Costs.

Each party hereto shall bear the costs of its own attorneys and consultants in connection with the negotiation and preparation of this AGREEMENT and any and all costs associated with or stemming from the consummation of the transaction contemplated in this Agreement including any and all costs incurred in enforcing this AGREEMENT.

17. Miscellaneous.

- a. Whenever the singular number is used in this AGREEMENT and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- b. If there be more than one entity designated in or signatory to this AGREEMENT on behalf of BUYER, the obligations hereunder imposed upon BUYER shall be joint and several; and the term BUYER as used

herein shall refer to each and every of said signatory parties, severally as well as jointly.

- c. Time is and shall be of the essence of each term and provision of this AGREEMENT.
- d. Each and every term, condition, covenant and provision of this AGREEMENT is and shall be deemed to be a material part of the consideration for CITY's entry into this AGREEMENT, and any breach hereof by BUYER shall be deemed to be a material breach. Each term and provision of this AGREEMENT performable by BUYER shall be construed to be both a covenant and a condition.
- e. This AGREEMENT shall be deemed to have been made in, and be construed in accordance with the laws of the State of California. Venue for any proceeding to enforce the provisions of this AGREEMENT shall be in the County of Santa Clara.
- f. The headings of the several paragraphs and sections of this AGREEMENT are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this AGREEMENT and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- g. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either BUYER or CITY in its respective rights and obligations contained in the valid covenants, conditions and provisions of this AGREEMENT.

- h. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this AGREEMENT as if set forth fully herein. The exhibits to this AGREEMENT are as follows:

Exhibit A – Legal Description

Exhibit B – Plat Map of PROPERTY

Exhibit C – Form of Quitclaim Deed

Exhibit D – Hazardous Substances

- i. This AGREEMENT shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Party.
- j. As used in this Agreement, the term “Business Day” means any day that is not a Saturday, Sunday or legal holiday for national banks and government offices in San José, California; as used herein, the term “Calendar Day” or simply “day” or “days” means any day of the year without regard to weekends or legal holidays.
- k. In computing the time period (whether measured in Business Days or Calendar Days) within which a right may be exercised or an act is to be performed after some preceding event or delivery (such as a notice), such period shall begin on the first day following the last day of such preceding event or delivery, except if the first day is not a Business Day, in which case the first day of such period shall be deemed to be the next Business Day. If the last day of such period is not a Business Day, the period shall be extended to the next Business Day. The last day of any period shall be deemed to end at 5:00 p.m. California time.

- l. BUYER may not assign its rights or interest in this Agreement to any party without the express written consent of CITY, which consent may be given or withheld in CITY's sole and absolute discretion; provided however, this Agreement may be assigned, without the consent of the CITY, to any party that obtains fee title to all the parcels directly adjacent to the PROPERTY such that such assignee meets the requirements of Section 4.20.070 of the San José Municipal Code. Prior to any assignment of this Agreement, the form of assignment and assumption agreement shall be approved by the City Attorney's office.
- m. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.
- n. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party prior to the Closing Date, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing Date any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.
- o. The provisions of this Agreement and of the documents to be executed and delivered to close escrow are and will be for the benefit of CITY and BUYER 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 to close escrow.

- p. Each person signing below warrants and guarantees that s/he is legally authorized to execute this AGREEMENT on behalf of the respective party and that such execution shall bind said party to the terms of this AGREEMENT. The City Manager, or his designee, is authorized to execute, on behalf of the City of San José, deeds and all other documents as may be necessary to effectuate this AGREEMENT and the transfer of property rights herein.

[Remainder of Page Left Intentionally Blank. Signatures on Following Page.]

WITNESS THE EXECUTION HEREOF on the date of execution by CITY as written below:

APPROVED AS TO FORM:

CAMERON DAY

Deputy City Attorney

“CITY”

CITY OF SAN JOSE,
a California municipal corporation

By: _____

Name: Leland Wilcox

Title: Chief of Staff, Office of the City
Manager

Date of Execution: _____

“BUYER”

**SJ PARK ALMADEN LLC, a Delaware
limited liability company**

By: _____

Name:

Title:

Date of Execution:

EXHIBIT A

LEGAL DESCRIPTION FOR: PARK AVENUE - STREET VACATION

That portion of Park Avenue situate in the City of San Jose, County of Santa Clara, State of California, as shown on that certain Record of Survey filed for record on March 28, 2018 in Book 912 of Maps at Page 15, Santa Clara County Records, more particularly described as follows:

Beginning at the most northerly corner of Parcel One of that certain Quitclaim Deed recorded December 12, 2008 as Document No. 20067445, and as shown on said Record of Survey;

Thence along the northwesterly line of said Parcel One the following two (2) courses and distances:

1. South $57^{\circ}29'00''$ West, 203.49 feet;
2. Along a curve to the left having a radius of 50.00 feet, through a central angle of $91^{\circ}28'43''$ for an arc distance of 79.83 feet to a point of cusp on the northeasterly line of Almaden Boulevard as shown on said Record of Survey;

Thence along the following five (5) courses and distances:

1. Along the arc of a non-tangent curve to the right having a radius of 1725.00 feet whose center point bears South $56^{\circ}00'29''$ West, through a central angle of $01^{\circ}43'25''$ for an arc distance of 51.89 feet to a point of compound curvature;
2. Along a curve to the right having a radius of 50.00 feet, through a central angle of $91^{\circ}32'58''$ for an arc distance of 79.89 feet;
3. North $59^{\circ}16'52''$ East, 90.23 feet;
4. Along a curve to the left having a radius of 215.50 feet, through a central angle of $14^{\circ}41'10''$ for an arc distance of 55.24 feet;
5. North $44^{\circ}35'42''$ East, 61.18 feet to a point on the northwesterly prolongation of the northeast line of said Parcel One also being the southwesterly line of Almaden Avenue;

Thence along said prolongation, South $30^{\circ}37'25''$ East, 66.53 feet to the Point of Beginning.

Containing 13,204 \pm square feet.

As shown on Exhibit B" attached hereto and by this reference made a part hereof.

Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.

7/10/19

Date

Rodney A Stewart II, L.S. 9225



EXHIBIT B

PLAT MAP OF PROPERTY

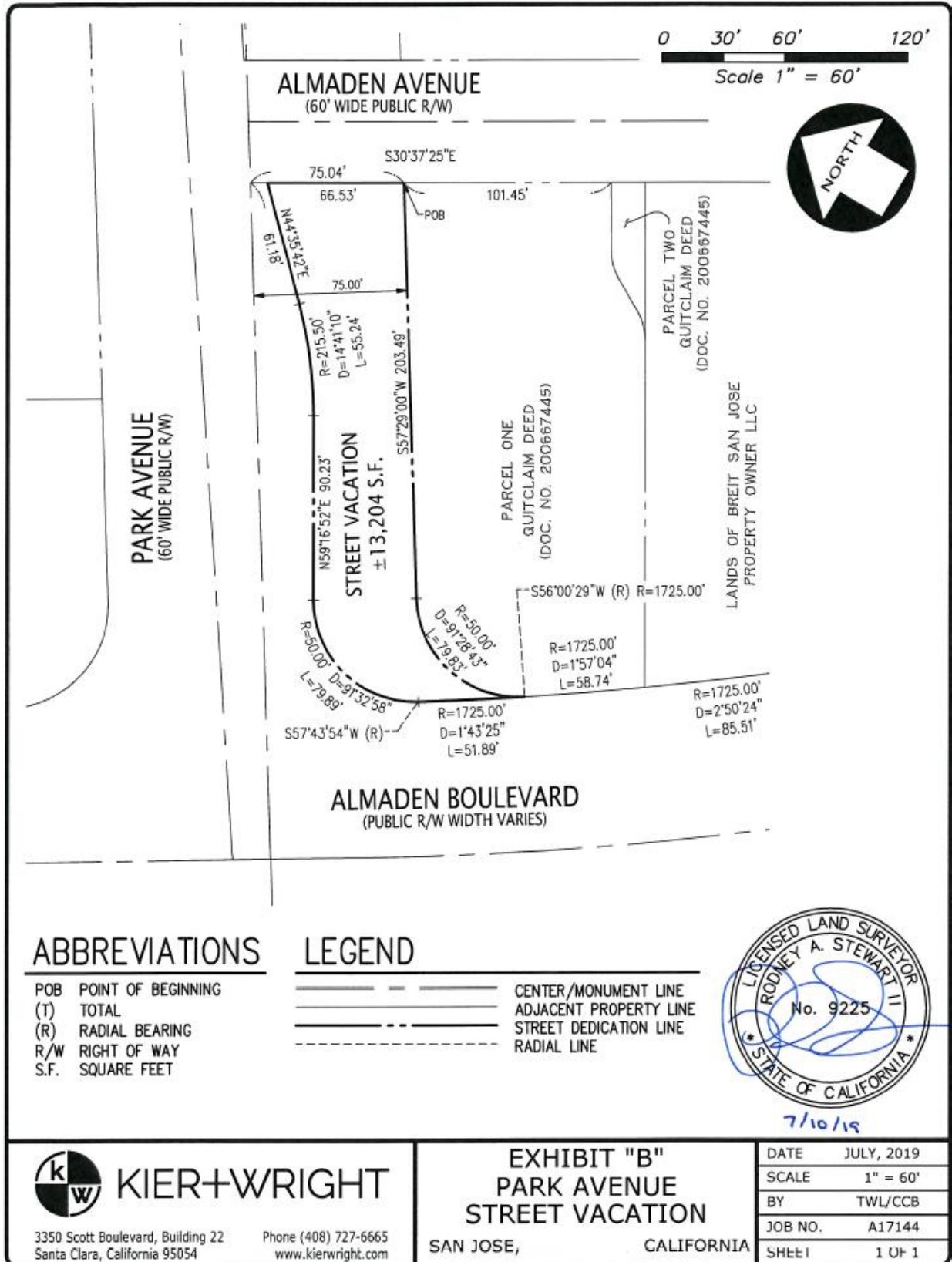


EXHIBIT C
QUITCLAIM DEED

RECORDING REQUESTED BY
City of San Jose

WHEN RECORDED MAIL TO:

With a copy to:
City of San Jose
OED Real Estate Services
200 E. Santa Clara Street, T-12
San Jose, CA 95113

MAIL TAX STATEMENTS TO:

(space above for recorder's use only)

Document transfer tax is _____

Computed on full value of property conveyed

City Transfer tax is _____

Signature of declarant

QUITCLAIM DEED

The **CITY OF SAN JOSE**, a municipal corporation of the State of California, hereby REMISES, RELEASES AND FOREVER QUITCLAIMS to JAY PAUL MANAGEMENT CO., INC. any and all right, title or interest in the real property located in the City of San Jose, County of Santa Clara, State of California, described and depicted in the attached Exhibits A and B ("Property"), incorporated by reference to this document, reserving and excepting therefrom (1) a public service easement and all rights necessary to construct, maintain, operate, modify, enlarge, replace, remove and renew any and all in-place and future public utility facilities located at-grade and above-grade within the Property, and (2) a public service easement and all rights necessary to construct, maintain, operate,

modify, enlarge, replace, remove and renew any and all in-place and future public utility facilities located at-grade and below-grade within the Property; said public service easements to be kept open and free from buildings and structures of any kind except irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs.

IN WITNESS WHEREOF, the CITY OF SAN JOSE has caused this instrument to be executed as of this _____ day of _____, 20_____.

APPROVED AS TO FORM:

CITY OF SAN JOSE,
a municipal corporation of the State of
California

By:_____

Name: Leland Wilcox

Title: Chief of Staff, Office of the City Manager

EXHIBIT A to Quit Claim

LEGAL DESCRIPTION FOR: PARK AVENUE - STREET VACATION

That portion of Park Avenue situate in the City of San Jose, County of Santa Clara, State of California, as shown on that certain Record of Survey filed for record on March 28, 2018 in Book 912 of Maps at Page 15, Santa Clara County Records, more particularly described as follows:

Beginning at the most northerly corner of Parcel One of that certain Quitclaim Deed recorded December 12, 2008 as Document No. 20067445, and as shown on said Record of Survey;

Thence along the northwesterly line of said Parcel One the following two (2) courses and distances:

1. South 57°29'00" West, 203.49 feet;
2. Along a curve to the left having a radius of 50.00 feet, through a central angle of 91°28'43" for an arc distance of 79.83 feet to a point of cusp on the northeasterly line of Almaden Boulevard as shown on said Record of Survey;

Thence along the following five (5) courses and distances:

1. Along the arc of a non-tangent curve to the right having a radius of 1725.00 feet whose center point bears South 56°00'29" West, through a central angle of 01°43'25" for an arc distance of 51.89 feet to a point of compound curvature;
2. Along a curve to the right having a radius of 50.00 feet, through a central angle of 91°32'58" for an arc distance of 79.89 feet;
3. North 59°16'52" East, 90.23 feet;
4. Along a curve to the left having a radius of 215.50 feet, through a central angle of 14°41'10" for an arc distance of 55.24 feet;
5. North 44°35'42" East, 61.18 feet to a point on the northwesterly prolongation of the northeast line of said Parcel One also being the southwesterly line of Almaden Avenue;

Thence along said prolongation, South 30°37'25" East, 66.53 feet to the Point of Beginning.

Containing 13,204 ± square feet.

As shown on Exhibit B" attached hereto and by this reference made a part hereof.

Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.

7/10/19

Date



Rodney A Stewart II, L.S. 9225



EXHIBIT B to Quit Claim PLAT MAP OF PROPERTY

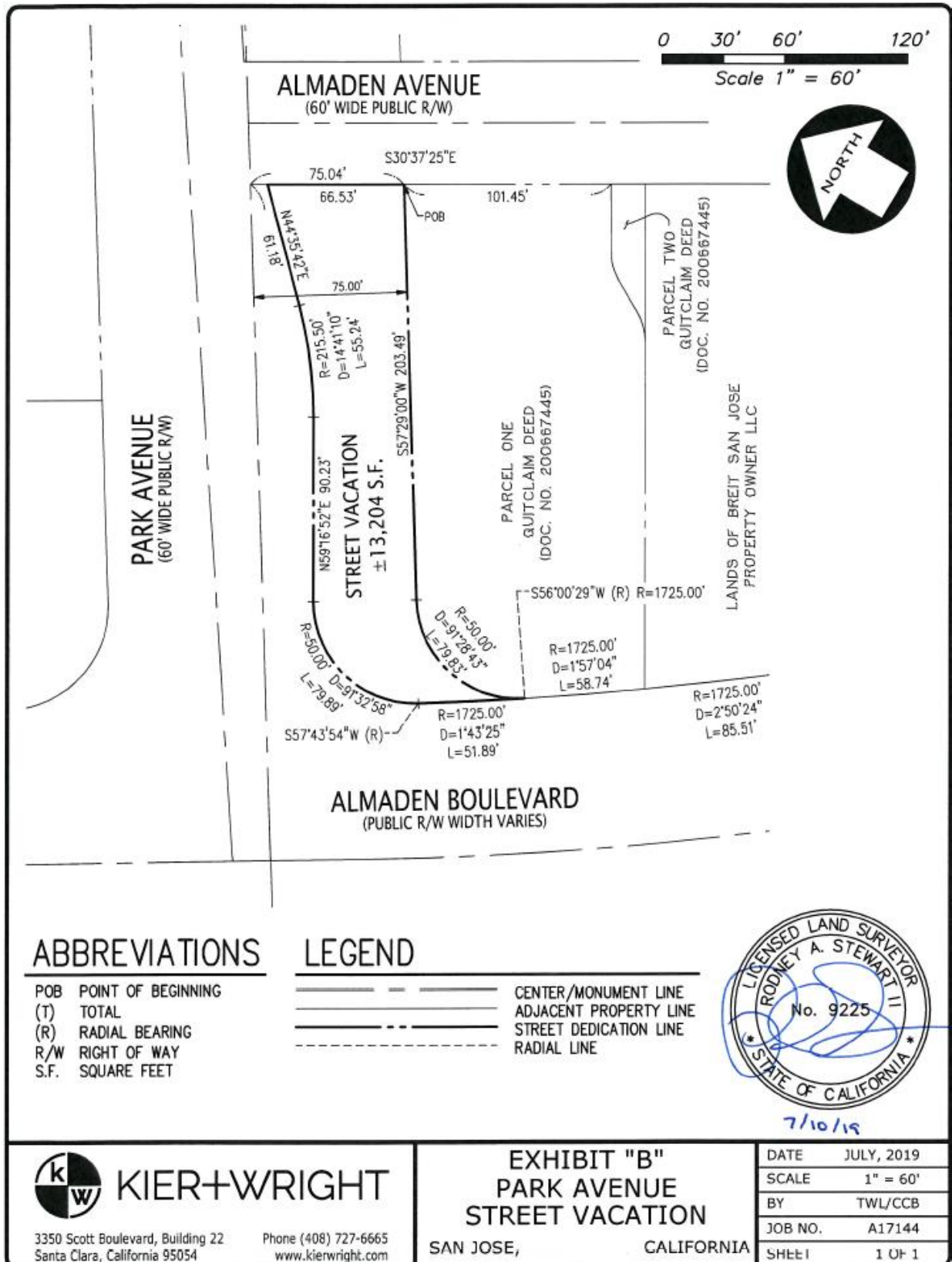


EXHIBIT D
Hazardous Substances

For the purpose of this Agreement, “**HAZARDOUS SUBSTANCES**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Agreement, “**ENVIRONMENTAL LAWS**” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Substances, including without limitation, all federal or state superlien or environmental clean-up.