

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

[Tract No. _____, _____, City of _____, CA]

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** (this "**Agreement**") is made and entered into as of _____, 20__ (the "**Effective Date**"), by and between _____ ("**Seller**") and _____ ("**Buyer**"). Seller and Buyer are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. The land that is the subject of this Agreement (the "**Land**") is located in the City of _____ ("**City**"), County of _____ ("**County**"), State of California ("**State**"), which consists of _____ (____) single family lots of Tract No. _____ as shown on a Subdivision Map Filed on _____, 20__, in Book at Pages ____ to ____, inclusive, of Maps, in the Office of the _____ County Recorder, and is more fully described on **Exhibit "A"** attached hereto. *[Change reference from "Land" to "Real Property" if property is developed or partially-developed and not vacant lots.]*

B. On or about _____, Seller became the owner of the Land pursuant to a foreclosure sale under which Seller was exercising its rights, as beneficiary, under a deed of trust which encumbered the Land.

C. On the terms and subject to the conditions contained in this Agreement, Seller desires to sell and Buyer desires to purchase the Land and all of Seller's right, title and interest in the following (collectively, together with the Land, the "**Property**"):

(i) all improvements on the Land/Real Property, including, without limitation, **[FILL IN]**

(ii) all assignable development rights, privileges, entitlements, governmental permits, licenses, certificates and other governmental approvals, if any, now or hereafter obtained that pertain to the Land/Real Property, including, without limitation, any future rights for project related utility deposit refunds, CFD proceeds and other project reimbursements, together with any and all applicable property reports, maps, plans and specifications in the possession of Seller ("**Intangible Rights**");

(iii) all assignable plans, specifications, engineering and architectural reports, maps, drawings and other renderings related to the Land/Real Property ("**Plans and Specifications**"); and

(iv) all easements, rights of way and other rights appurtenant to the Land/Real Property.

NOW, THEREFORE, in consideration of the promises and covenants herein made, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Recitals Incorporated. The Recitals above are an integral part of this Agreement and are incorporated herein by reference.

2. Escrow and Closing.

2.1 Opening of Escrow. Upon the mutual execution of this Agreement by the Parties, the Parties shall open an escrow (the “**Escrow**”) at _____ Title Company (“**Escrow Holder**”), whose address is set forth below, by delivering an executed copy of this Agreement to Escrow Holder. This Agreement shall constitute joint escrow instructions to Escrow Holder. The Parties shall execute such additional instructions not inconsistent or conflicting with the provisions of this Agreement which may be reasonably required by Escrow Holder and shall be bound by Escrow Holder’s instructions; provided, however, if any conflict or inconsistency between the provisions of this Agreement and the provisions of Escrow Holder’s instructions exists or arises, the provisions of this Agreement shall control.

2.2 Closing and Closing Date. The Close of Escrow shall occur on or before _____ (the “**Closing Date**”). As used herein, the terms “**Closing**” and “**Close of Escrow**” shall mean the recordation of the Deed (as hereinafter defined), conveying the Land to Buyer, in the Official Records of the County, and the disbursement of the Closing Payment (as hereinafter defined) to Seller.

2.3 Automatic Termination of Escrow and Agreement. Except as set forth in Section 13.1 below, if the Close of Escrow does not occur by the Closing Date, the Escrow and this Agreement shall automatically terminate and be of no further force and effect without the need for further instructions or acknowledgements by the Parties.

3. Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller.

3.1 Loan Guaranties. Notwithstanding anything herein to the contrary, Buyer acknowledges that Seller is retaining (and shall not transfer to Buyer) all rights, claims, causes of action of any kind against the borrower _____ (“**Borrower**”) and all affiliates or related parties arising in any way from the loan documents between Borrower and Seller and any guaranty in favor of Seller with respect to the Property. Buyer agrees that Seller shall have the right at its sole cost and expense to pursue all such rights, claims and causes of action and retain any and all costs relating thereto.

3.2 Purchase Price. The purchase price for the Property is _____ AND NO/100 DOLLARS (\$_____.00) (the “**Purchase Price**”).

3.3 [Conditions Precedent to Sale. Notwithstanding anything herein to the contrary, in the event Seller is not the successful bidder at the foreclosure sale for the

Land/Property or is unable to acquire title to the Land/Property for any other reason prior to the Closing Date, including without limitation, as a result of reinstatement of the Loan pursuant to applicable law, Seller shall have no obligation to sell the Land/Property to Buyer pursuant hereto, and this Agreement shall terminate and be of no further force and effect. In the event the Agreement is terminated pursuant to this Section 3.3, Seller shall promptly return to Buyer the Deposit, together with all interest earned thereon, whereupon the parties shall be released from all further obligations under this Agreement, except those obligations which are specifically stated to survive the termination of this transaction.][Note: Use if Seller not yet owner of property.]

4. Payment of Purchase Price. The Purchase Price shall be paid as follows:

4.1 Deposit. On or before _____ (**“Deposit Date”**), Buyer shall deliver to Escrow Holder the sum of _____ AND NO/100 DOLLARS (\$_____.00) (the **“Deposit”**) by cashier’s check or other immediately available funds. Escrow Holder shall invest the Deposit in an interest bearing account. If Buyer delivers or is deemed to deliver to Seller or Escrow Holder a **“Notice of Approval”** (as defined in Section 10.2 below) on or before _____ (the **“Feasibility Date,”** and the period ending at 5:00 p.m. PDT/PST on such date, the **“Feasibility Period”**), Escrow Holder shall immediately release such Deposit outside of Escrow to Seller without further instructions from the Parties and the Deposit shall be nonrefundable to Buyer under any circumstance except as set forth in Section 4.3 below. The Deposit shall be applied to payment of the Purchase Price upon Closing. This Agreement shall only be effective upon Escrow Holder’s receipt of the Deposit pursuant to this Section and if Buyer does not place the Deposit in Escrow before the 5:00 p.m. PDT/PST on the Deposit Date, this Agreement shall, at Seller's option upon notice to Buyer and Escrow Holder, terminate and be of no further force and effect without the need for further instructions or acknowledgements by the Parties.

4.2 Closing Payment. No later than by noon (California time) on that day which is one (1) Business Day prior to the Closing Date, Buyer shall deliver to Escrow Holder a sum equal to the Purchase Price (less the Deposit) in immediately available funds, as increased or decreased by an amount equal to Buyer’s share of prorations, closing costs and cash charges determined in accordance with this Agreement (the **“Closing Payment”**).

4.3 Refund of Deposit. Notwithstanding anything to the contrary set forth elsewhere herein the Deposit shall be refundable to Buyer (in accordance with and subject to the specific terms and conditions of such refund as provided in the subject sections of this Agreement) upon termination of this Agreement because of: (a) Seller's material default hereunder; (b) termination by Buyer in accordance with Section 8.3 as a result of the failure of any of the conditions to Buyer's obligation to close as set forth in Section 8.2; (c) termination by Buyer pursuant to Section 10 as a result of Buyer's investigations of title and of the Property, or (d) termination by Buyer pursuant to Section 18 as a result of a casualty or condemnation.

4.4 Independent Consideration. Seller acknowledges receipt as of the date hereof of \$_____ as independent consideration for Seller's execution of this Purchase Agreement and for the granting of the Feasibility Period to Buyer as herein provided. Such consideration shall be non-refundable to Buyer under any circumstances.

5. Closing Costs, Taxes and Assessments.

5.1 Closing Costs. Buyer shall pay all closing costs, including, but not limited to, all costs related to the policy of title insurance ("**Title Policy**"), escrow fees, broker fees, transfer taxes and fees and recording costs. *[OR Seller shall pay (a) the normal premium for a CLTA standard coverage owner's policy of title insurance, with liability in the amount of the Purchase Price, showing title to the Property vested in Buyer subject only to the Permitted Exceptions (as defined below) ("**Title Policy**"), (b) one-half of Escrow Holder's fees, and (c) all documentary transfer taxes. Buyer shall pay (i) all additional premiums for the ALTA extended portion of the Title Policy (if Buyer opts for such coverage) and the costs of any title endorsements and surveys, (ii) one-half of Escrow Holder's fees and (iii) all recording fees. All other costs related to the transaction shall be paid by the Parties in the manner consistent with customary practice for land sales in the County. Escrow Holder shall notify the Parties in writing of their respective shares of such costs at least three (3) Business Days before the Closing Date.] [OR All escrow fees and costs shall be paid by both Seller and Buyer on a 50/50 basis. Seller shall pay the cost of an owner's title policy for Buyer (provided that Buyer shall be solely responsible for any extended coverage and endorsements) ("**Title Policy**"). Buyer shall pay all transfer taxes and fees and recording costs.]*

5.2 Prorations. All non-delinquent general and special real property taxes and assessments for the Land shall be prorated as of 12:00 a.m. on the day of the Closing. **[PLUS, FOR LEASED PROPERTY:** All common area maintenance charges that have been collected by Seller or Seller's agents and all prepaid rent that has been received by Seller or Seller's agents shall be prorated as of 12:00 a.m. on the day of the Closing. All security deposits reflected in all Leases on the Property, to the extent the same have been received by Seller or Seller's agents, shall be credited to Buyer's account.] Any prorations which are not expressly provided for herein shall be made in accordance with customary practice in the County. Such adjustments, if and to the extent known and agreed upon as of Closing, shall be paid by Buyer to Seller (if the prorations result in a net credit to Seller) or by Seller to Buyer (if the prorations result in a net credit to Buyer). Any such adjustments not determined as of Closing shall be paid in accordance with the process described in the immediately preceding sentence, in cash or other immediately available funds as soon as practicable following Closing. All delinquent taxes and delinquent installments or assessments on the Land shall be paid by Seller at Closing. **[OR Taxes and Assessments.** Buyer acknowledges that at Closing it shall take title to the Property subject to any and all accrued, unpaid and defaulted taxes and assessments. Without limiting the foregoing, Buyer shall be solely responsible for the payment of all general and special real property taxes and all other assessments relating to or arising from the Property, including, without limitation, all delinquent taxes and delinquent installments or assessments on the Property. Buyer shall indemnify, defend (with counsel acceptable to Seller) and hold Seller harmless from and against any and all losses, liabilities, damages, claims, costs, fines, penalties, expenses and fees (including attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with any general and special real property taxes and all other assessments relating to or arising from the Property.]

5.3 Survival. The terms of this Section 5 shall survive Closing.

6. Deposits by Seller. No later than one (1) Business Day prior to the Closing Date, Seller shall deposit with Escrow Holder the following:

(a) Two (2) counterpart originals of an assignment and bill of sale duly executed by Seller in the form of Exhibit "B" attached hereto (the "Assignment and Assumption").

(b) The Deed, in the form of Exhibit "C" attached hereto, duly executed by Seller and acknowledged;

(c) A duly executed affidavit in the form of Exhibit "D" (the "Nonforeign Affidavit") and a duly executed California FTB Form 593-C (the "Form 593-C"); and

(d) *[Two (2) counterpart originals of an assignment of lease duly executed by Seller in the form of Exhibit "E" attached hereto (the "Assignment of Lease").]*

(e) Such other customary instruments as are reasonably required by Escrow Holder or otherwise required to proceed to the Closing and consummate the purchase and sale of the Property in accordance with the terms of this Agreement; provided that any such instruments do not increase Seller's liability or obligations under this Agreement.

Provided, that any obligation of Seller to deposit any of the items set forth in this Section 6 shall be excused (and shall not otherwise constitute a default or breach of this Agreement by Seller) in the event Buyer fails to deposit the Closing Payment as and when required pursuant to Section 4.

7. Deposits by Buyer. No later than one (1) Business Day before the Closing Date, Buyer shall deposit with Escrow Holder the following:

(a) The Closing Payment in immediately available funds;

(b) Two (2) counterpart originals of the Assignment and Assumption, duly executed by Buyer;

(c) *[Two (2) counterpart originals of the Assignment of Lease;]*

(d) Buyer's share of closing costs and cash charges, in accordance with Section 5; and

(e) Such other instruments as are reasonably required by Seller or Escrow Holder or otherwise required to proceed to the Closing and consummate the purchase and sale of the Property in accordance with the terms of this Agreement.

8. Conditions to Close of Escrow.

8.1 Conditions to Seller's Obligations. The Closing and Seller's obligation to consummate the transactions contemplated by this Agreement are subject to the satisfaction of

the following conditions or Seller's written waiver on or before the Closing Date. Seller may waive in writing any or all of such conditions in its sole and absolute discretion.

(a) Buyer shall have performed all of the obligations to be performed by Buyer under this Agreement at or prior to the Closing, including without limitation, delivery of the Deposit described in Section 4.1, delivery of the Closing Payment described in Section 4.2, and execution and delivery of the documents described in Section 7.

(b) Buyer's representations and warranties herein shall be true and correct as of the Closing.

8.2 Conditions to Buyer's Obligations. The Closing and Buyer's obligation to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions or Buyer's written waiver thereof on or before the Closing Date. Buyer may waive in writing any or all of such conditions in its sole and absolute discretion.

(a) Seller shall have made the deposits required in Section 6.

(b) Seller's representations and warranties herein shall be true and correct as of the Closing.

8.3 Termination. In the event each condition set forth in Section 8.2 is not fulfilled as of the Closing or waived by Buyer, Buyer may, at its option, terminate this Agreement and Escrow, and the Deposit shall be returned to Buyer. In the event that each condition set forth in Section 8.1 is not fulfilled as of the Closing or waived by Seller, Seller may, at its option, terminate this Agreement and Escrow. This Section 8.3 shall in no way limit Seller's remedies under Section 12, when applicable. Notwithstanding anything herein to the contrary, Buyer's rights under this Section 8.3 shall be subject to Section 13.2. This Section 8.3 shall survive the termination of this Agreement for the sole purpose of the return of the Deposit to Buyer after such termination, when applicable.

9. Closing.

9.1 Escrow Holder's Actions. Upon the Closing Date and when Escrow Holder holds the items required to be deposited by Buyer and Seller as described above, Escrow Holder is instructed and authorized to: (a) record the Deed in the Office of the County Recorder of the County, (b) pay any transfer taxes, (c) instruct the County Recorder to return the Deed to the Party indicated thereon, (d) disburse to the order of Seller from the funds deposited into Escrow by Buyer the Closing Payment **[(if proration is being used: less Seller's share of prorations, closing costs, taxes, assessments and other charges, as applicable)]**, (e) disburse from funds deposited by Buyer amounts toward payment of all other items chargeable to the account of Buyer hereunder, and disburse the balance of such funds, if any, to Buyer, (f) deliver to Buyer the Non-Foreign Affidavit, the Form 593-C and the Title Policy, and (g) deliver to each Party an original counterpart of the Assignment and Assumption.

9.2 Escrow Cancellation. If Escrow fails to close due to a Party's default or breach, the defaulting or breaching Party shall pay all Escrow Cancellation Charges. If Escrow fails to close for any other reason, Buyer shall pay all Escrow Cancellation Charges. **"Escrow**

Cancellation Charges” means all fees, charges and expenses actually charged by Escrow Holder and the Title Company to the parties in connection with the cancellation of the Escrow and the Title order, if any.

10. Investigations.

10.1 Title Matters. Within three (3) Business Days of the Effective Date, Buyer shall obtain a Preliminary Title Report (“**Preliminary Title Report**”) for the Property, issued by _____ Title Insurance Company (“**Title Company**”), together with legible copies of all documents referenced therein as exceptions to title. On or before _____, Buyer shall notify Seller in writing of Buyer’s objections to title, if any (the “**Disapproved Exceptions**”). All exceptions not timely objected by Buyer shall be deemed “**Permitted Exceptions**”. On or before _____, Seller shall notify Buyer in writing whether Seller elects, in its sole and absolute discretion, to cause the Title Company to eliminate the Disapproved Exceptions. Seller’s failure to timely respond to Buyer’s notice of Disapproved Exceptions shall be deemed Seller’s election not to eliminate any of the Disapproved Exceptions. If Seller timely elects (or is deemed to have elected) not to eliminate such Disapproved Exceptions, then unless Buyer shall notify Seller in writing on or before 5:00 p.m. Pacific Time on the Feasibility Date that Buyer elects to waive its disapproval, Buyer shall be deemed to have approved title to the Property. If Buyer disapproves title before the expiration of the Feasibility Date, then Escrow shall terminate, Escrow Holder shall immediately return the Deposit to Buyer without any additional instructions from Seller, and Escrow Holder shall immediately return all other documents, instruments and monies to the Party that deposited same. **[OR Title Matters.** *Buyer acknowledges and agrees that prior to the execution of this Agreement, Buyer had the opportunity to thoroughly review the condition of title on the Property. By executing this Agreement, Buyer shall be deemed to have unconditionally approved of the condition of title to the Property.*

10.2 Investigations of the Property.

(a) *[Buyer acknowledges and agrees that prior to the execution of this Agreement, Buyer had the opportunity to thoroughly inspect, investigate and exercise due diligence, and the opportunity to fully satisfy itself regarding any and all matters relating to the Property. By executing this Agreement, Buyer shall be conclusively deemed to have unconditionally approved all matters relating to the Property.]* **[OR** Seller shall make available to Buyer for review at Seller’s offices all material documents concerning the Property in Seller’s Possession, (the “**Property Documents**”). However, the Property Documents shall not include any reports or documents related to the Borrower or guarantors or any internal credit or other regulatory reports or appraisals or any materials that are privileged or proprietary in nature, or subject to a confidentiality agreement. Without limiting any other provision of this Agreement, Seller expressly disclaims, and Buyer acknowledges that Seller has not made and does not make any representations or warranties regarding the veracity, accuracy, or completeness of the Property Documents. Seller will not be liable for any inaccuracy, misrepresentation, or omission in such Property Documents. Upon receipt of Seller's written consent, Buyer shall have the right to make copies of any or all of the Property Documents at Buyer's sole cost and expense. The information contained in the Property Documents shall continue to be subject to the confidentiality provisions set forth herein, including without limitation Section 17.16. As used

herein, "**Seller's Possession**" shall mean only those Property Documents in the actual physical possession of Seller's Authorized Representatives without any requirement on behalf of Seller to attempt to determine or otherwise seek to obtain any such information or documents from any other department or location within the financial institution of Seller. As used herein, "**Seller's Authorized Representatives**" means the manager of Seller's _____ and other employees of Seller within the _____ who have been expressly empowered by Seller's board of directors to engage in the proposed transactions with Buyer. Provided further that the failure of Seller to deliver any Property Documents within Seller's Possession shall not subject Seller to liability with all such liability expressly disclaimed by Seller.]

(b) Buyer shall have until 5:00 p.m. PDT/PST on the Feasibility Date to perform all investigations and reviews of the Property and the Property Documents and such other matters that Buyer deems necessary or appropriate in determining the feasibility of Buyer's purchase of the Property and to notify Seller and Escrow Holder in writing of Buyer's approval or disapproval of such feasibility in its sole and absolute discretion. In addition to the Confidentiality provisions set forth in Section 17.16 below, Buyer shall strictly coordinate with Seller all contacts (whether verbal or in person), with the City or any governmental agency concerning the Property, for the purposes of discussing future development possibilities for the Property, or otherwise, and shall not meet with or contact (verbally or in person) the City or any other governmental agency without prior written notice to Seller, and such contact has been approved by Seller in writing in its reasonable discretion. Seller shall be entitled to participate in all approved meetings and contacts with the City and any other governmental agency. If Buyer approves of the Property and the Property Documents, in Buyer's sole and absolute discretion, during the Feasibility Period, Buyer shall deliver to Seller and Escrow Holder before the Feasibility Date written notice to Escrow Holder and Seller of Buyer's unconditional approval ("**Notice of Approval**"). If for any reason Buyer determines within the Feasibility Period that, in Buyer's sole and absolute discretion, it disapproves of the Property for any reason whatsoever, Buyer may terminate this Agreement and cancel escrow without any liability by delivering written Notice of Cancellation ("**Notice of Cancellation**") to Escrow Holder and Seller before the Feasibility Date. The failure of Buyer to deliver a Notice of Approval or a Notice of Cancellation before the Feasibility Date shall be automatically deemed Buyer's Notice of Approval. If Buyer delivers a Notice of Cancellation, Buyer's and Seller's obligations to each other under this Agreement shall automatically terminate, except for Buyer's indemnification obligations under this Section 10.2, and Buyer's obligations to return the Property Documents and other materials to Seller as provided in Section 10.2(d), which obligations (and any other of Buyer's obligations which survive termination as set forth in this Agreement and in any applicable confidentiality agreement, if any) shall survive such termination, Escrow shall be cancelled and Escrow Holder shall return the Deposit to Buyer, after first deducting one-half of the Escrow Cancellation Charges. Buyer's investigations under this Section may include, without limitation: (i) review of the Property Documents; (ii) physical inspection of the Property and environmental assessment of the Property; and (iii) all other inquiries, investigations, and evaluations pertaining to the Property as Buyer has deemed appropriate, including without limitation evaluation of the feasibility of any planned development and suitability of the Property for Buyer's intended use.

(c) Without limiting the provisions of Section 10.2(a), during the Feasibility Period, Buyer shall have the right to enter the Property to perform such non-intrusive

inspections and examinations of the Property Buyer deems appropriate in connection with its review of the Property. Buyer agrees to indemnify, defend and hold harmless Seller and the Property from and against any liabilities, damages, expenses (including attorneys' fees), liens and claims of any nature whatsoever which may be asserted against Seller or the Property by reason of such activities by Buyer or on its behalf. Without in any way limiting the generality of the foregoing, Buyer further agrees that in connection with its inspections and entry on to the Property:

(i) any physical testing or inspections shall be at Buyer's sole cost and expense;

(ii) the persons or entities performing such tests shall be properly licensed and qualified and shall have obtained all appropriate permits for performing such tests;

(iii) Seller shall have the right of approval (which may be approved or withheld in Seller's sole discretion) of any proposed _____ testing, physical or invasive or intrusive testing or investigation of the Property;

(iv) Buyer shall advise Seller in advance of the dates of all tests and shall schedule all tests during normal business hours whenever feasible unless otherwise requested by Seller;

(v) Seller shall have the right to have a representative of Seller accompany Buyer and Buyer's representatives, agents, consultants, designees or invitees while they are on the Property;

(vi) If Buyer in any way damages or disrupts the condition of the Property, Buyer shall promptly restore the Property at Buyer's sole cost and expense, and until restoration is complete, Buyer shall take all steps necessary to ensure that any conditions on the Property created by Buyer's testing or entry onto the Property shall not create any dangerous, unhealthy or unsightly conditions on the Property; and

(vii) Before any entry onto the Property by Buyer or its agents, contractors, subcontractors or employees, Buyer shall deliver to Seller a certificate of insurance under Buyer's commercial liability insurance policy with a financially responsible insurance company, covering (a) the activities of Buyer, and Buyer's agents, consultants, contractors, subcontractors and employees on or upon the Property, and (b) Buyer's indemnity obligations set forth in this Section. Such certificate shall evidence that such insurance policy has a per occurrence limit of at least _____ Dollars (\$_____), shall name Seller as an additional insured (the "**Additional Insureds**"), shall be primary and non-contributing with any other insurance available to Seller, shall be issued on an "occurrence" basis, shall contain a full waiver of subrogation cause, and shall not be cancelable or subject to reduction in coverage except on at least thirty (30) days' prior written notice to Seller. Buyer shall maintain such insurance coverage in force at all times before Closing.

(d) If Buyer terminates this Agreement for any reason, then within five (5) days after such termination, and as a condition to return of the Deposit (unless the Agreement

is terminated as a result of Seller's material default hereunder), Buyer shall return to Seller all copies of all Property Documents, studies, reports and other materials Buyer may have received from Seller; and Buyer shall also deliver to Seller without payment of any fee or charge, upon Seller's written request, without representation or warranty by Buyer, and without recourse against Buyer, copies of all reports, studies, plans, assessments, analyses or other materials obtained or prepared by or for Buyer in connection with its feasibility investigations and/or its proposed acquisition, development and marketing of the Property. Buyer covenants to use commercially diligent efforts to make sure that all reports, studies, investigations and documents obtained by Buyer during its due diligence will be freely assignable to Seller. Buyer's obligations under this Section 10.2(d) shall survive the termination of this Agreement.

(e) Buyer's indemnification and insurance obligations under this Section 10.2 shall survive the Closing or the earlier termination of Escrow or this Agreement.

10.3 Survival. This Section 10 shall survive the termination of this Agreement for the sole purpose of the return of the Deposit to Buyer after such termination, when applicable.

11. Buyer's Representations, Warranties and Covenants.

11.1 Buyer's Representations, Warranties and Covenants. Buyer makes the following representations and warranties to Seller as of the Effective Date and at the Closing Date:

(a) Organization. Buyer is a _____ duly formed, validly existing and in good standing under the laws of the State of _____ and is qualified to do business in California.

(b) Authority; Binding Effect. The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized by all necessary action on the part of Buyer. Buyer has the power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. This Agreement is a valid and binding agreement of Buyer, enforceable in accordance with its terms.

(c) No Conflict. Neither the execution, delivery nor performance of this Agreement by Buyer, nor the consummation by Buyer of the transactions contemplated by this Agreement, will conflict with, or result in a breach of, any of the terms, conditions or provisions of any of the organizational documents of Buyer or any agreements or orders by which Buyer may be bound.

(d) OFAC List. Buyer and each of its subsidiaries, predecessors, direct and indirect owners (collectively, the "**Buyer Parties**") have at all applicable times been, are now, and will be as of the Closing Date, in compliance with all laws, statutes, rules and regulations or any federal, state or local governmental authority in the United States of America applicable to the Buyer Parties and all beneficial owners of the Buyer Parties, including, without limitation, the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the

Office of Foreign Asset Control, Department of the Treasury (“**OFAC**”) and in any enabling legislation in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the “**Orders**”). After due investigation and inquiry, Buyer has no knowledge or notice of any fact, event, circumstance, situation or condition which could reasonably be expected to result in (i) any action, proceeding, investigation, charge, claim, report or notice being filed, commenced or threatened against any of them alleging any failure to comply with the Orders, or (ii) the imposition of any civil or criminal penalty against any of them for any failure to so comply. None of the Buyer Parties are owned or controlled by, nor acts for or on behalf of, any person or entity on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (collectively the “**Lists**”) or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

(e) Adequacy of Information. Buyer acknowledges, represents, warrants and agrees that Seller shall not be responsible for and makes no representations or warranties about the accuracy or completeness of any information concerning the Property obtained by Buyer from any source. Buyer acknowledges, represents, warrants and agrees that Buyer has not relied and shall not rely on Seller in any manner whatsoever with respect to any documents or information or anything else relating to the Property. Buyer represents, warrants and agrees that Buyer shall have no rights against the Indemnitees (as defined in Section 11.1(h)) as a consequence of any information or misinformation obtained, completeness or incompleteness of documents, inaccuracies in any information or documents, or failure of any person to make any disclosure. Seller shall have no obligation to provide to, or make available to Buyer any documents or information concerning the Property.

(f) No Side Agreements or Representations. No person acting on behalf of Seller is authorized to make, and by execution hereof, Buyer acknowledges that neither Seller nor any person acting on behalf of Seller has made any representation, agreement, statement, warranty, guarantee or promise regarding the Property or the transaction contemplated herein or the zoning, construction, physical condition or other status of the Property.

(g) Purchase “AS-IS”. Buyer acknowledges that it is a sophisticated real estate developer and/or investor and is sufficiently knowledgeable and experienced to be able to evaluate the risk and merits of the purchase of the Property from Seller. Buyer further acknowledges that Seller is not a sophisticated real estate developer or investor and Seller hereby disclaims any and all liability that may be imputed to Seller based on its knowledge and experience with real estate and real estate investments. Buyer further acknowledges that Seller acquired the Property pursuant to a foreclosure sale, that Seller was not the builder or responsible for the construction of any improvements on the Property, and that Seller has had no involvement in the development or entitlement of the Property. Buyer acknowledges that it has had an adequate opportunity to inspect the Property and to investigate its physical and legal characteristics and conditions of the Property. Buyer expressly acknowledges and agrees, and represents and warrants to Seller, that Buyer is purchasing the Property “AS-IS”, “WHERE-IS” and “WITH ALL FAULTS”, after such inspection, analysis, examination and investigation Buyer cares to make and expressly without Seller’s covenant, warranty or representation as to

legal condition, pending or threatened litigation, physical condition, title, leases, rents, revenues, income, expenses, operation, access, zoning or other regulation, entitlements, conditions of approval, governmental obligations, compliance or non-compliance with law, property taxes and assessments, suitability for particular purposes or any other matter whatsoever. Seller has no obligation to make repairs, replacements or improvements to the Property, or to pay any fees, costs or expenses related to the Property. Buyer acknowledges and agrees that Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value of the Property; (b) the income to be derived from the Property; (c) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon, including the possibilities for development of the Property; (d) the habitability, marketability, merchantability, profitability or fitness for a particular purpose of the Property; (e) the manner, quality, state of repair or lack of repair of the Property; (f) the nature, quality or condition of the Property, including without limitation, soils and geology and environmental condition; (g) the conformity of the Property to past, current or future applicable zoning or building requirements; (h) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (i) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including but not limited to, Title III of the Americans with Disabilities Act of 1990, California Health and Safety Code, 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, as amended, the Resources Conservation and Recovery Act of 1976, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act and the Toxic Substance Control Act, as any of the foregoing may be amended from time to time and regulations promulgated under any of the foregoing from time to time; (j) the presence or absence of Hazardous Substances (as defined on **Exhibit "E"** attached hereto) at, on, under, or adjacent to the Property; (k) the conformity of the Property to past, current or future applicable zoning or building requirements; (l) deficiency of any drainage or undershoring; (m) that the Property may be located on or near earthquake faults; (n) the existence or non-existence of land use, zoning or building entitlements affecting the Property; (o) the land use status of the Property, including, but not limited to, general plan status, specific plan status, zoning status, subdivision status under the California Subdivision Map Act or the subdivision ordinances of the City (or any other governmental authority) or any other entitlements; (p) the applicability of the Federal or California endangered species acts and the existence of any species protected thereunder; (q) any non-compliance of the Property or any improvements thereon with the standards set forth in California Civil Code Section 896, as the same may be amended from time to time; (r) the status of property taxes or assessments; (s) the compliance of or by the Property or its operation with any development agreements, covenants, conditions or restrictions, community facilities district requirements, governmental approvals, or any other agreements or arrangements related to the development, use or operation of the Property; (t) the physical condition of the Property or any improvements thereon; (u) the nature, quality, assignability or condition of the Intangible Rights or of the Plans and Specifications; (v) any defaults, disputes, or unsatisfied conditions or requirements with respect to the Property, any master development or any governmental authority; (w) disputes between any governmental authority or any other Person; (x) the existence of continuing

obligations or liabilities to which the Property or any owner thereof may be subject; or (y) any other matter concerning the Property. Buyer further acknowledges and agrees that having obtained and examined such information and documentation affecting the Property as Buyer has deemed necessary or appropriate, Buyer is relying solely on its own investigations and review, and not on any information provided or to be provided by Seller. Further, Buyer expressly acknowledges and agrees that it is assuming all of the risks and obligations attendant to ownership of the Property, including without limitation, those identified, described or otherwise referred to in clause (a) through (y) above. This provision shall survive the Close of Escrow. Buyer also acknowledges that, due to its previous real estate experience, it is knowledgeable about the effect and impact of an "AS-IS" clause such as set forth in this Section. Upon Closing, Buyer shall assume each and every obligation and liability relating to or arising from the Property, which arises after the Close of Escrow, including, without limitation, (i) any claims, actions, causes of action, demands, proceedings and suits of any nature whatsoever, (ii) any mechanics liens, stop notices and other lien claims, (iii) all unfunded obligations, including, without limitation, any obligations under any set aside letters, (iv) all property taxes, assessments, home owner association dues, management obligations, development obligations and fees and costs payable to governmental entities, and (v) any other liabilities and obligations with respect to the Property.

(h) Release. Except for those obligations of Seller which, by the express terms of this Agreement, survive Closing, Buyer, on behalf of itself, its shareholders, officers, directors, employees, partners, investors, members, managers, parents, subsidiaries, affiliates, agents, servants, attorneys, representatives, successors and assigns and anyone claiming by, through or under Buyer (collectively, "**Buyer's Representatives**") fully, unconditionally and irrevocably releases Seller, [_____] [_____] and their respective shareholders, officers, directors, employees, partners, investors, members, managers, parents, subsidiaries, affiliates, agents, servants, attorneys, representatives, successors and assigns (collectively, the "**Indemnitees**") from any and all claims that Buyer or any of Buyer's Representatives may now have or hereafter acquire against any of the Indemnitees for any costs, fees, loss, liability, damage, expenses, demand, fine, penalty, action or cause of action arising from or related to any conditions existing or events occurring on, in or about the Property whether occurring before, after or at the Closing, including without limitation (a) those identified, described or otherwise referred to in Section 11.1(g) above, (b) any construction defects, errors, omissions or other conditions, latent or otherwise, including, without limitation, environmental matters, affecting the Property, or any portion thereof, (c) any defaults by the prior owner and/or Seller under any governmental approvals, conditions and/or entitlements or with any third parties relating to the Property or its development, and the use, release or disposal on, in or under the Property of any Hazardous Substance and the environmental condition of the Property, and/or (d) any claims based on or related to the content, accuracy or completeness of any information concerning the Property obtained by Buyer from any source, including, without limitation, Seller and Seller's agents and brokers. This provision shall survive the Close of Escrow. This release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release of the Indemnitees. In connection with this release, Buyer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

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

This release by Buyer shall constitute a complete defense to any claim, cause of action, defense, contract, liability, indebtedness or obligation released pursuant to this release. Nothing in this release shall be construed as (or shall be admissible in any legal action or proceeding as) an admission by Seller or any other released party that any defense, indebtedness, obligation, liability, claim or cause of action exists which is within the scope of those hereby released.

Buyer's Initials

Seller's Initials

(i) Indemnity. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, Buyer shall indemnify, protect, defend and hold harmless Seller and the Indemnitees, with counsel reasonably acceptable to Seller, from and against any and all third party claims, liabilities, damages, costs, fines, penalties, expenses and fees (including attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with any of the following pertaining to the Property: (a) the use, release or disposal on, in or under the Property of any Hazardous Substance caused by Buyer or its employees, agents or contractors, (b) Buyer's ownership, construction, development, use, marketing or sale of the Property (or any portion thereof) in any way, and (c) any claims of third parties, including purchasers of the Property, or any portion thereof, relating to the Property or any portion thereof and including, without limitation, any construction defects, errors, omission or other conditions or matters, latent or otherwise, affecting the Property, or any portion thereof, (d) Buyer's failure to comply with Section 17.16, and/or (e) any claims made on any bonds posted by Seller or its predecessors in interest and any claims on any set aside letters issued by Seller or its predecessors in interest to any surety in connection with the development of the Property. This Section 11.1(i) shall survive the Closing.

(j) Permits and Approvals. Immediately following the Closing Date, but in no event later than thirty (30) days following the Closing Date, at Buyer's sole cost and expense, Buyer shall cause Buyer's name to be substituted on all governmental related permits and approvals related to the Property (to the extent such permits and approvals are assignable), and Buyer shall provide Seller with written evidence of such substitution. This Section 11.1(j) shall survive Closing.

(k) Bonds. Immediately following the Closing Date, but in no event later than ninety (90) days following the Closing Date, at Buyer's sole cost and expense, Buyer shall deliver to any governmental authority having jurisdiction over the Property any and all surety bonds and any extensions or modifications thereof required in connection with the development of the Property and any set aside letters required by any sureties in form and

amount sufficient to cause the release and exoneration of (i) all bonds posted by Seller or its predecessors in interest and/or Borrower with respect to the Property, and (ii) all set aside letters issued by Seller or its predecessors in interest to any surety in connection with any such bonds. Buyer shall provide Seller with written evidence of such exoneration, and shall cause any set aside letters issued by Seller or its predecessors in interest to be returned to Seller. This Section 11.1(k) shall survive Closing.

11.2 Seller's Representations, Warranties and Covenants. Seller makes the following representations and warranties to Buyer as of the Effective Date and at the Closing Date, which representations and warranties shall survive Closing for a period of six (6) months:

(a) Authority. This Agreement and all documents contemplated hereunder to be executed by Seller have been duly authorized by all requisite action on the part of Seller. Seller has the full authority to sell the Property without the necessity of third party consents or approvals.

(b) Organization. Seller is a duly formed _____ validly existing under the laws of the United States and is qualified to do business in the State of California. Seller has the full right, power and authority to enter into and carry out the transactions contemplated by this Agreement.

(c) Ownership of Property. Seller is the sole owner of the Property.

(d) Disclaimer. Seller hereby disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Property, including, without limitation, those matters set forth in Section 11.1(g) above.

12. LIQUIDATED DAMAGES. IN THE EVENT BUYER DEFAULTS UNDER THE TERMS OF THIS AGREEMENT OR IF CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT, SELLER WILL BE DAMAGED AND WILL BE ENTITLED TO COMPENSATION FOR THOSE DAMAGES, BUT SUCH DAMAGES WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN FOR THE FOLLOWING REASONS: THE DAMAGES TO WHICH SELLER WOULD BE ENTITLED IN A COURT OF LAW WILL BE BASED IN PART ON THE DIFFERENCE BETWEEN THE ACTUAL VALUE OF THE PROPERTY AT THE TIME SET FOR THE CLOSING AND THE PURCHASE PRICE AS SET FORTH IN THIS AGREEMENT; PROOF OF THE AMOUNT OF SUCH DAMAGES WILL BE BASED ON OPINIONS OF VALUE OF THE PROPERTY, WHICH CAN VARY IN SIGNIFICANT AMOUNTS; AND IT IS EXTREMELY DIFFICULT TO PREDICT AS OF THE DATE ON WHICH THIS AGREEMENT IS ENTERED INTO WHETHER THE VALUE OF THE PROPERTY WILL INCREASE OR DECREASE AS OF THE DATE SET FOR THE CLOSING. BUYER DESIRES TO LIMIT THE AMOUNT OF DAMAGES FOR WHICH BUYER MIGHT BE LIABLE SHOULD BUYER BREACH THIS AGREEMENT. BOTH BUYER AND SELLER WISH TO AVOID THE COSTS

AND LENGTHY DELAYS THAT WOULD RESULT IF SELLER FILED A LAWSUIT TO COLLECT ITS DAMAGES FOR A BREACH OF THIS AGREEMENT.

IN THE EVENT BUYER DEFAULTS UNDER THE TERMS OF THIS AGREEMENT, SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE TO BUYER AND ESCROW HOLDER. IF CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT, THEN THIS AGREEMENT SHALL AUTOMATICALLY TERMINATE WITHOUT FURTHER NOTICE. IF THE AGREEMENT IS TERMINATED AS SET FORTH HEREIN, THE PARTIES SHALL BE RELIEVED OF THEIR OBLIGATIONS HEREUNDER EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN, AND THE DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES AND SHALL BE DISBURSED TO SELLER AS LIQUIDATED DAMAGES. SELLER'S SOLE AND EXCLUSIVE REMEDY (EXCEPT AS SET FORTH BELOW) IN THE EVENT ESCROW FAILS TO CLOSE BECAUSE OF BUYER'S DEFAULT SHALL BE LIMITED TO RECEIPT AND RETENTION OF THE DEPOSIT. SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS. SELLER WAIVES ANY RIGHT TO SPECIFICALLY ENFORCE BUYER'S OBLIGATION TO PURCHASE THE PROPERTY (INCLUDING THE PROVISIONS OF CIVIL CODE SECTIONS 1680 AND 3389).

NOTWITHSTANDING THE FOREGOING, THIS LIQUIDATED DAMAGES PROVISION SHALL NOT LIMIT SELLER'S RIGHT TO (I) RECEIVE REIMBURSEMENT FOR OR RECOVER DAMAGES IN CONNECTION WITH BUYER'S INDEMNITY OF SELLER AND/OR BREACH OF BUYER'S OBLIGATIONS UNDER SECTIONS 11.1(h), 11.1(i), 15 OR 17.16, (II) INJUNCTIVE RELIEF FOR BUYER'S BREACH OF BUYER'S OBLIGATIONS UNDER SECTIONS 11.1(h), 11.1(i), 15 OR 17.16 AND/OR (III) PURSUE ANY AND ALL REMEDIES AVAILABLE AT LAW OR IN EQUITY IN THE EVENT THAT FOLLOWING ANY TERMINATION OF THIS AGREEMENT, BUYER OR ANY PARTY RELATED TO OR AFFILIATED WITH BUYER ASSERTS ANY CLAIMS OR RIGHT TO THE PROPERTY THAT WOULD OTHERWISE DELAY OR PREVENT SELLER FROM HAVING CLEAR, INDEFEASIBLE AND MARKETABLE TITLE TO THE PROPERTY. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

BUYER'S INITIALS

SELLER'S INITIALS

13. Buyer's Remedies.

13.1 Seller's Cure Rights. In the event of any breach of this Agreement by Seller, the Buyer shall give the Seller written notice of breach and Seller shall have the right to cure such breach until fifteen (15) days following written notice from Buyer before Seller is in default under this Agreement. If the time for Seller to cure such breach extends past the Closing Date, then the Closing Date shall be automatically extended.

13.2 Seller Default.

(a) In the event Closing fails to occur because of Seller's default, Buyer shall have the right, as its sole and exclusive remedy with respect to such default, to receive the return of the Deposit, together with all interest earned thereon, plus _____ AND NO/100 DOLLARS (\$_____), whereupon the parties shall be released from all further obligations under this Agreement, except those obligations which are specifically stated to survive the termination of this transaction. Buyer hereby expressly waives Buyer's right to any other rights or remedies at law or in equity, including without limitation, the right to seek specific performance of Seller's obligations under this Agreement.

(b) Section 13.2 shall survive the termination of this Agreement for the sole purpose of the return of the Deposit to Buyer after such termination, when applicable.

13.3 Waiver of Special Damages. Buyer hereby expressly waives Buyer's right to sue for punitive, special or consequential damages. This Section shall survive the Closing.

14. WAIVER OF JURY TRIAL AND JUDICIAL REFERENCE PROVISION.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(A) ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. VENUE FOR THE REFERENCE PROCEEDING WILL BE IN THE STATE OR FEDERAL COURT IN THE COUNTY OR DISTRICT WHERE VENUE IS OTHERWISE APPROPRIATE UNDER APPLICABLE LAW.

(B) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(C) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS. A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(D) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES, THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(E) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

15. Real Estate Brokerage Commission. Buyer and Seller represent to each other that it has not engaged or dealt with any broker, finder or other real estate agent in connection with

this Agreement or is obligated to pay any real estate brokerage or other commission or fee in connection with the sale of the Property to Buyer [*except for Seller's obligation to pay a commission to _____ pursuant to a separate written agreement. Such commission to _____ shall under no circumstance be payable unless and until the transaction contemplated hereby is closed in accordance with the terms of this Agreement.*]. Buyer and Seller shall indemnify, defend and hold each other free and harmless from and against all costs and liabilities including, without limitation, attorneys' fees and the costs and expenses of litigation, for causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying Party in connection with this transaction. The Parties further agree that no broker shall be a party to or a third party beneficiary of this Agreement or the Escrow, and that no consent of any broker shall be necessary for any agreement, amendment or document with respect to the transaction contemplated by this Agreement. This Section 15 shall survive the Closing.

16. Back-up Offers. Prior to the Close of Escrow, Seller shall have the right to entertain, negotiate, pursue, accept and execute "back-up" offers and agreements from prospective purchasers, which back-up offers and agreements shall become effective only in the event that this Agreement is terminated for any reason.

17. Miscellaneous.

17.1 Assignment. From the expiration of the Feasibility Period until the Closing, Buyer shall have the right to nominate in writing to Seller another entity to take title to the Property at Closing with Seller's prior written consent, which shall not be unreasonably withheld, conditioned or delayed; provided that, in any event (a) each of the representations and warranties of Buyer set forth herein shall remain true and correct as to such nominee, (b) the nominee is controlled by Buyer, (c) Buyer is not in default of any of its covenants or obligations under this Agreement at the time of such nomination, (d) notwithstanding any such nomination, Buyer shall not be released from its liabilities and obligations under this Agreement, and (e) such assignment shall not be a condition of or delay Closing.

17.2 No Modifications. No addition to or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by both Seller and Buyer.

17.3 Construction of Agreement. Each Party and attorneys for each Party have participated in the drafting and preparation of this Agreement. Therefore, the provisions of this Agreement shall not be construed in favor of or against either Party, but shall be construed as if both Parties equally prepared this Agreement.

17.4 Headings. The paragraph and section headings herein are used only for the purpose of convenience only and shall not be deemed to limit the subject of the paragraphs of this Agreement or to be considered in their construction.

17.5 Governing Law. The laws of the State of California applicable to contracts to be performed wholly within California shall govern this Agreement.

17.6 Time of the Essence. Time is of the essence of each and every provision of this Agreement. Unless Business Days are expressly provided for, all references to “days” herein shall refer to consecutive calendar days. If the Closing Date or any other date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday in California, then such date shall automatically be extended to the next day which is not a Saturday, Sunday or federal, state or legal holiday in California. For purposes of this Agreement, “**Business Day**” means a day other than a Saturday, Sunday or holiday on which national banking institutions, the County recorder or escrow companies in the County are closed; if the date upon which the Closing Date or any other date or time period provided for in this Agreement is or ends on a day other than a Business Day, then such date shall automatically be extended until the next Business Day.

17.7 Successors and Assigns. Subject to the provisions of Section 17.1, all of the provisions of this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties.

17.8 Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Agreement.

17.9 No Waiver. The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

17.10 Gender and Number. In this Agreement the masculine, feminine and neuter genders and the singular and the plural include one another, unless the context requires otherwise.

17.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and shall supersede all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written. The foregoing sentence shall in no way affect the validity of any instrument executed by the Parties in the form of the exhibits attached to this Agreement.

17.12 Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by this reference.

17.13 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute a single Agreement. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other

counterpart identical thereto except having additional signature pages executed by the other Party.

17.14 Buyer's Waiver of Vendee's Lien. In consideration of the delivery of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Buyer hereby waives and relinquishes any right to file any and all of the following against or in respect of the Property or any part thereof: (a) a vendee's lien; (b) a *lis pendens* or any other notice of pendency of action; and (c) any other lien, charge or encumbrance. This waiver and relinquishment is absolute and unconditional. It is further agreed that this Agreement shall not be recorded in the Official Records of the County or other office, and the recordation or attempted recordation by Buyer shall be considered a default by Buyer to be governed by the provisions of Section 12.

17.15 Notices. Any notice to be given hereunder to either Party or to Escrow Holder shall be in writing and shall be given either by confirmed facsimile, overnight courier, personal delivery (including express or courier service), or by registered or certified mail, with return receipt requested, postage prepaid and addressed as follows:

To Seller:

Attention: _____
Telephone: _____
Facsimile: _____

and a copy to:

_____.
Attention: _____
Telephone: _____
Facsimile: _____

To Buyer:

Attention: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

With a copy to:

Attention: _____
Telephone: (____) ____ - ____
Facsimile: (____) ____ - ____

To Escrow Holder: _____

Attention: _____
Telephone: (____) ____-____
Facsimile: (____) ____-____

Either Party may, by written notice to the other and to Escrow Holder, designate a different address which shall be substituted for the one specified above. Any such notice shall be deemed to have been delivered (i) on the date of delivery if personally delivered or transmitted by facsimile transmission, (ii) if sent by overnight courier, one Business Day after delivery to the subject overnight courier, or (iii) three (3) Business Days after mailing if mailed by first-class mail, postage prepaid, to the parties at their addresses set forth above, or such other address designated from time to time in writing by such party to all other parties.

17.16 Confidentiality. Each Party agrees that it is an essential economic element of this Agreement that any proprietary non-public information related to the parties or their affiliates or the Property revealed, disclosed or discovered in connection with the transactions contemplated by this Agreement and, during the Escrow period, the terms of this Agreement, remain strictly confidential. Therefore, except as otherwise expressly provided in this Section 17.16, the parties, their agents and Escrow Holder hereby agree to strictly maintain the confidentiality of this Agreement and its terms, and any such non-public proprietary information that may be revealed, disclosed or discovered during the course of the offers, counteroffers and other negotiations relating to this Agreement and the purchase and sale of the Property or during the course of Buyer's investigation and reviews relating to the acquisition of the Property. The parties and Escrow Holder agree that they shall not disclose any such non-public information nor suffer, permit, cause or allow, any of their respective representatives, employees and/or agents to disclose, whether intentionally, negligently or otherwise any such non-public information except (i) as may be required by law or valid legal process (reasonable notice of the receipt of which each party agrees to provide to the other party, so that the other party will have a reasonable opportunity to seek a protective order before disclosure pursuant to such legal process), (ii) as such disclosure to Buyer's lenders, financial partners, investors, accountants, attorneys and consultants (collectively, "**Buyer Parties**") may be necessary in order for Buyer to perform or complete its investigations or to consummate the purchase of the Property pursuant to this Agreement, (iii) as such disclosures are required by Seller under the rules and regulations of the Securities and Exchange Act of 1934, as amended, by Seller's regulators, or Seller's auditors, (iv) as such disclosures are related to information which now is or hereafter becomes known or available to the public (including, without limitation, any information filed with any governmental agency and known or available to the public) other than a result of a disclosure by Buyer in breach of this Agreement, or (v) as such disclosures are with representatives of the City (or any other governmental authority) concerning the Property and any development thereof. If any such non-public information is so disclosed to Buyer Parties, then Buyer agrees to notify any such Buyer Parties that such information is confidential and may not be further disseminated without the consent of Seller. Further, Buyer shall be responsible for, and shall indemnify Seller in connection with any claims, actions, damages, fees, costs and expenses (including reasonable attorneys' fees), relating to or arising from any breach by Buyer or any Buyer Parties of this Section 17.16. If Closing does not occur and this Agreement is terminated, then the provisions

of this Section 17.16 shall survive such termination for a period of one (1) year. If Closing does occur, then the provisions of this Section 17.16 shall no longer apply.

Notwithstanding anything herein to the contrary, neither party shall issue any press release or otherwise publicize in any manner the transactions contemplated by this Agreement before or after the Closing without the other party's prior written consent, which may be withheld before Closing in the sole and absolute discretion of the party whose consent is necessary, and after Closing in the reasonable discretion of the party whose consent is necessary.

17.17 Natural Hazard Report Compliance. Buyer and Seller acknowledge that Seller may be required to disclose if the Property lies within the following natural hazard areas or zones: (i) a special flood hazard area designated by the Federal Emergency Management Agency; (ii) an area of potential flooding; (iii) a very high fire hazard severity zone; (iv) a wild land area that may contain substantial forest fire risks and hazards; (v) earthquake fault zone; or (vi) a seismic hazard. If and to the extent such obligations exist, Escrow Holder shall engage the services of Disclosure Source, or other expert of Seller's choice (which, in such capacity, is herein called the "**Natural Hazard Expert**") to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill its disclosure obligations with respect to the natural hazards referred to in California Civil Code Section 1103 et. seq., California Public Resource Code Sections 2621.9, 4136 and 2694, and California Government Code Sections 8589.3, 8589.4 and 51183.5, as applicable, and to report the result of its examination to Buyer and Seller in writing. The written report prepared by the Natural Hazard Expert regarding the results of its full examination will fully and completely discharge Seller from its disclosure obligations referred to herein, if and to the extent any such obligations exist. For the purpose of this Agreement, the provisions of Civil Code Section 1103 et seq. (to the extent such provisions are applicable to the subject transaction) regarding non-liability of Seller for errors or omissions not within its personal knowledge shall be deemed to apply and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. If the Closing fails to occur for any reason other than a termination of this Agreement because of Seller's material default hereunder, Buyer shall be responsible for the payment of any costs or expenses incurred by Seller in connection with the terms set forth in this Section 17.17.

17.18 Limitation on Liability. In no event shall any member, partner, affiliate, officer, director, agent or employee of Seller or any of Seller's affiliates be or be held liable or responsible in any way for the obligations or liabilities of Seller under this Agreement.

17.19 No Recordation. Neither this Agreement nor any memorandum thereof shall be recorded in the records of the County without Seller's prior written consent, which Seller may withhold in its sole and absolute discretion.

17.20 Merged With Deed. Unless expressly set forth herein, the terms and provisions of this Agreement shall not survive the Closing of this transaction and such terms and provisions shall be deemed merged into the Deed and extinguished on the date of Closing.

17.21 Severability. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

17.22 Exchange. Upon the request of a party hereto (the "**Requesting Party**"), the other party (the "**Cooperating Party**") shall cooperate with the Requesting Party in Closing the sale of the Property in accordance with this Agreement so as to qualify such transaction as an exchange of like-kind property: provided, however, the Cooperating Party shall not be required to take title to any exchange property and the Cooperating Party will not be required to agree to or assume any covenant, obligation or liability in connection therewith, the Closing hereunder shall not be delayed as a result of or conditioned upon, such exchange, the Requesting Party shall pay all costs associated with such exchange, and the Requesting Party shall remain primarily liable under this Agreement and indemnify the Cooperating Party from any liability in connection with such exchange.]

18. [Damage or Destruction, Condemnation, Insurance]. [Note: Consider using if Property is improved.]

*****ALTERNATIVE 1*****

18.1 Except as provided below, in the event that prior to the Closing Date, all or any portion of the Property shall be damaged by fire or other casualty, or condemned or taken by eminent domain by any authority, then Seller, at Seller's option, may: (a) repair such damage to the extent of the insurance proceeds collected, if any, and may retain any excess proceeds remaining after the required repairs are made; or (b) deliver the Property in its then existing condition without abatement of the Purchase Price, in which event Buyer shall be entitled to the eminent domain award or insurance proceeds paid or payable as a result of such loss or damage, if any, and Seller shall have no further liability with respect to the damaged Property. Nothing in this Section shall supersede any statutory provisions applicable to "risk of loss" for condemnation and/or casualty.

*****ALTERNATIVE 2*****

18.1 Condemnation. If at any time prior to the Closing Date any "material" portion of the Property is condemned or taken by eminent domain proceedings by any public authority, then at Buyer's option, to be exercised within three (3) days after receipt of notice of such taking, this Agreement shall terminate, and the Deposit shall be promptly returned to Buyer, and except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. As used herein, the term "material" shall mean a taking which materially and adversely affects the value or operations of the Property and adversely affects the value of the Property by more than **[fifteen percent (15%)]** of the Purchase Price, Seller shall give Buyer written notice of any taking promptly after Seller obtains knowledge thereof. If less than a material portion of the Property is condemned or taken by eminent domain proceedings or if Buyer does not timely notify Seller in writing of its election to terminate this Agreement, Buyer shall be deemed to have elected not to terminate this Agreement. If Buyer elects or is deemed to have elected not to terminate this Agreement, the parties shall proceed to

the Closing Date without a reduction in the Purchase Price and, upon the Closing, all condemnation proceeds paid or payable to Seller (other than losses pertaining to periods prior to the Closing) shall belong to Buyer and shall be paid over and assigned to Buyer. Seller shall have no obligation to make any repairs to the Property in the event of a condemnation.

18.2 **Damage and Destruction.** *If at any time prior to the Closing Date a material portion of the Property is destroyed or damaged as a result of fire or any other casualty whatsoever, then at Buyer's option, to be exercised three (3) days after receipt of notice of such destruction or damage, this Agreement shall terminate, the Deposit shall be returned to Buyer, and except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. If Buyer does not timely notify Seller in writing of its election to terminate this Agreement, Buyer shall be deemed to have elected not to terminate this Agreement. For purposes hereof, the term "material" shall be deemed to be a damage or destruction in excess of **[fifteen percent (15%)]** of the Purchase Price. If less than a material portion of the Property is damaged or destroyed or if a material portion is damaged or destroyed and Buyer elects or is deemed to have elected not to terminate this Agreement, the parties shall proceed to the Closing Date without reduction in the Purchase Price and, upon the Closing, all property insurance proceeds paid or payable to Seller as a result of such casualty shall belong to Buyer and shall be paid over and assigned to Buyer. Seller shall have no obligation to make any repairs to the Property in the event of a damage or destruction.]*

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

SELLER:

By:_____

Name:_____

Title:_____

BUYER:

a _____ limited liability company

By:_____

Name:_____

Title:_____

Exhibits:

- “A” - Description of the Land
- “B” - Assignment and Assumption
- “C” - Grant Deed
- “D” - Nonforeign Affidavit
- “E” - Hazardous Substances

EXHIBIT "A"

DESCRIPTION OF THE LAND

THAT CERTAIN LAND SITUATED IN THE CITY OF _____, IN THE COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Assessor's Parcel No: _____

EXHIBIT "A"

**TO PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

EXHIBIT "B"

ASSIGNMENT AND ASSUMPTION AND BILL OF SALE

Reference is hereby made to (a) that certain real property located in the City of _____, County of _____, California and described in more detail on Exhibit "A" of that certain Purchase and Sale Agreement and Joint Escrow Instructions between Seller and Buyer (as such parties are defined below) dated as of _____ (the "**Purchase Agreement**"), (b) the improvements located thereon and (c) the rights, privileges and entitlements incident thereto (the "**Property**").

For good and valuable consideration, receipt of which is hereby acknowledged and subject to Section 3 in the Agreement, the undersigned, _____ ("**Seller**"), does hereby, transfer, assign, and deliver to _____, a _____ limited liability company ("**Buyer**"), and Buyer hereby accepts and assumes, without representation or warranty, all of Seller's assignable right, title and interest, if any, in all "Intangible Rights," and "Plans and Specifications" (each as defined in the Purchase Agreement) and in all rights, agreements, documents and/or claims used, owned or held in connection with the use, management, development or enjoyment of the Property, including, without limitation: (i) all assignable entitlements, subdivision agreements and other agreements relating to the development of the Property; (ii) all assignable plans, specifications, architectural and engineering reports, maps, drawings and other renderings relating to the Property; (iii) all assignable warranties, claims and any similar rights relating to and benefiting the Property or the assets transferred hereby; (iv) all assignable development rights benefiting the Property; and (v) all assignable rights, claims or awards benefiting the Property.

The foregoing assignment is made without any recourse, representation or warranty, express or implied by the Seller.

[SIGNATURES FOLLOW ON NEXT PAGE]

EXHIBIT "B"

TO PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

SELLER:

By: _____

Name: _____

Title: _____

BUYER:

a _____ limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT "C"

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

(Space Above For Recorder's Use)

The undersigned grantor declares:
Documentary Transfer Tax not shown pursuant
to Section 11932 of the Revenue and
Taxation Code, as amended

City of _____
County of _____

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, _____ ("**Grantor**") hereby grants to _____, a _____ limited liability company, that certain real property ("**Property**") in the City of _____, County of _____, State of California, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

This conveyance is made subject to (i) all covenants, conditions, restrictions, rights of way, easements, reservations, and other matters of record; (ii) all laws, rules and regulations governing the use and development of the Property; and (iii) all non-delinquent real property taxes and general and special assessments. This conveyance is made without any recourse, representation or warranty, express or implied by Grantor.

EXHIBIT "C"
TO PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of the
_____ day of _____, 20__.

GRANTOR:

By: _____

Name: _____

Title: _____

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 "A"

DESCRIPTION OF THE LAND

THAT CERTAIN LAND SITUATED IN THE CITY OF _____, IN THE COUNTY
OF _____, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Assessor's Parcel No: _____

EXHIBIT "A"
TO GRANT DEED

Document No. _____

Recorded _____

STATEMENT OF TAX DUE AND REQUEST THAT TAX
DECLARATION NOT BE MADE A PART OF THE
PERMANENT RECORD IN THE OFFICE OF THE COUNTY
RECORDER (PURSUANT TO SECTION 11932 OF THE
CALIFORNIA REVENUE AND TAXATION CODE)

TO: Recorder
County of [_____]

Request is made in accordance with the provisions of the Documentary Transfer Tax Act
that the amount of the tax due not be shown on the original document which names:

Grantor: _____, a _____

Grantee: _____, a _____

The property described in the accompanying document is located in the City of
[_____] , County of [_____].

The amount of tax due on the accompanying document is \$_____.

_____ Computed on full value of property conveyed.

_____ Or computed on full value, less liens and encumbrances remaining at the
time of sale.

(Signature of Declarant or Agent)

(Firm Name)

Note: After the permanent record is made, this form will be affixed to the conveying document
and returned with it.

EXHIBIT "D"

NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code of 1986, as amended, provides that a transferee of an U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of an U.S. real property interest by _____, a _____ ("**Transferor**"), the undersigned certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in section 1.1445-2(b)(2)(iii);
3. Transferor's U.S. employer identification number is _____;
and
4. Transferor's office address is _____, California _____.

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

EXHIBIT "D"

**TO PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete. I further declare that I have authority to sign this document on behalf of Transferor.

Dated: _____, 20__

SELLER:

_____, a _____

By: _____

Name: _____

Its: _____

EXHIBIT "E"

HAZARDOUS SUBSTANCES

The term "**Hazardous Substance**" as used in this Agreement means any hazardous substance, hazardous waste, or toxic substance as defined in any federal, state or local statute, ordinance, rule, regulation or order applicable to the Property and shall include, without limitation, any substance, chemical, compound, waste, material or mixture which is (or which contains or is the decomposition product of any substance, chemical compound, or mixture which is):

(1) a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Refuse Act, the Carpenter-Presley-Tanner Hazardous Substance Account Act, the Hazardous Waste Control Law, or under any regulations adopted and publications promulgated pursuant to such laws;

(2) an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;

(3) a "Designated Waste" under California Water Code § 13173.

(4) a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 25023.2 or 39655 of the California Health and Safety Code;

(5) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance, by-product or waste;

(6) listed or defined as a "Hazardous Waste", "Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(7) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.8(a) of the California Health and Safety Code;

(8) a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, human or animal health, public or worker safety, or the environment, or is required by any law or public agency to

EXHIBIT "E"

TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

be remediated, including remediation which such law or public agency requires in order for the Property to be put to any lawful purpose;

(9) any material the presence of which would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(10) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;

(11) radon, asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. or other applicable laws;

(12) any radioactive material including, without limitation, any “source material”, “special nuclear material”, “by-product material”, “low-level wastes”, “high-level radioactive waste”, “spent nuclear fuel” or “transuranic waste”, “special waste” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 25800 et seq.;

(13) industrial process and pollution control wastes, whether or not “hazardous” within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. or the Hazardous Waste Control Act, California Health and Safety Code §§ 25100 et seq.;

(14) “waste” under Section 13050 of the California Water Code, or in regulations adopted and publications promulgated pursuant to such laws;

(15) regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or

(16) regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

[Tract No. _____, _____, City of _____, CA]

by and between

_____, a _____

("Seller")

and

a _____ limited liability company

("Buyer")