



memorandum

City Clerk's Office
510-284-4060

DATE: August 15, 2023
TO: Mayor and Councilmembers
FROM: Christina Briggs, Assistant City Manager
SUBJECT: **August 15, 2023 City Council Meeting**
Update to Other Business, Agenda Item 6A

ITEM NO. 1

City staff requests that the City Council accept the following revised recommendation (addition in underline):

“RECOMMENDATIONS:

1. Adopt a Resolution of the City Council of the City of Fremont approving, and authorizing the City Manager to execute, a certain Standard Offer, Agreement, and Escrow Instructions for Purchase of Real Estate and accompanying Addendum thereto, subject to the revisions set forth in the staff Memorandum dated August 15, 2023, for City’s purchase of the property commonly known as 39180 Liberty Street and designated as Assessor Parcel Number 501-1130-50, and finding that the proposed purchase is exempt from CEQA review.
2. Reallocate \$6,750,000 from the Strategic Investment Opportunities Reserve in the Capital Improvements Fund (PWC8811-501) to the 39180 Liberty Street Acquisition Project (PWC9107-501).”

ITEM NO. 2

City staff recommends that the City Council accept the revised “Standard Offer, Agreement, and Escrow Instructions for Purchase of Real Estate”, including required exhibits, and accompanying “Addendum” attached to this staff Memorandum. This revised agreement and the addendum reflect revisions recommended by City staff and agreed to by the Seller.

**STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS
FOR PURCHASE OF REAL ESTATE**
(Non-Residential)

Dated: _____

1. Buyer.

1.1 City of Fremont, ("Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof ("Seller") (collectively, the "Parties" or individually, a "Party"), through an escrow ("Escrow") to close 30 ~~or~~ _____ days after the waiver or satisfaction of the Buyer's Contingencies, ("**Expected Closing Date**") to be held by Fidelity National Title ("**Escrow Holder**") whose address is _____, Phone No. _____, Facsimile No. _____ upon the terms and conditions set forth in this agreement ("**Agreement**"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer.

1.2 The term "**Date of Agreement**" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counteroffer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms accepted by both Parties.

2. Property.

2.1 The real property ("**Property**") that is the subject of this offer consists of (insert a brief physical description) the land and improvements thereon is located in the County of Alameda, is commonly known as (street address, city, state, zip) 39180 Liberty Street, Fremont, CA 94538 and is legally described as: _____ (APN: 501-1130-050).

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Fidelity National Title ("**Title Company**"), which shall issue the title policy hereinafter described.

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property: electrical distribution systems (power panel, bus ducting, conduits, disconnects, lighting fixtures); telephone distribution systems (lines, jacks and connections only); space heaters; heating, ventilating, air conditioning equipment ("**HVAC**"); air lines; fire sprinkler systems; security and fire detection systems; carpets; window coverings; wall coverings; and _____ (collectively, the "**Improvements**").

2.4 The fire sprinkler monitor: is owned by Seller and included in the Purchase Price, is leased by Seller, and Buyer will need to negotiate a new lease with the fire monitoring company, ownership will be determined during Escrow, or there is no fire sprinkler monitor.

~~2.5 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and _____ all of which shall be removed by Seller prior to Closing.~~

3. Purchase Price.

3.1 The purchase price ("**Purchase Price**") to be paid by Buyer to Seller for the Property shall be Six Million Five Hundred Forty Thousand Dollars (\$6,540,000.00), payable as follows:
(Strike any not applicable)

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price): \$6,540,000
\$195,000.00

~~(b) Amount of "New Loan" as defined in paragraph 5.1, if any:~~ _____

~~(c) Buyer shall take title to the Property subject to and/or assume the following existing deed(s) of trust ("**Existing Deed(s) of Trust**") securing the existing promissory note(s) ("**Existing Note(s)**"):~~

~~(i) An Existing Note ("**First Note**") with an unpaid principal balance as of the Closing of approximately:~~ _____

~~Said First Note is payable at _____ per month, including interest at the rate of _____ % per annum until paid (and/or the entire unpaid balance is due on _____):~~

~~(ii) An Existing Note ("**Second Note**") with an unpaid principal balance as of the Closing of approximately:~~ _____

~~Said Second Note is payable at _____ per month, including interest at the rate of _____ % per annum until paid (and/or the entire unpaid balance is due on _____):~~

~~(d) Buyer shall give Seller a deed of trust ("**Purchase Money Deed of Trust**") on the property, to secure the promissory note of Buyer to Seller described in paragraph 6 ("**Purchase Money Note**") in the amount of:~~ _____

Total Purchase Price: \$6,540,000.00

~~3.2 If Buyer is taking title to the Property subject to, or assuming, an Existing Deed of Trust and such deed of trust permits the beneficiary to demand payment of fees including, but not limited to, points, processing fees, and appraisal fees as a condition to the transfer of the Property, Buyer agrees to pay such fees up to a~~

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maximum of 1.5% of the unpaid principal balance of the applicable Existing Note.

4. Deposits.

4.1 Buyer has delivered to Broker a check in the sum of _____, payable to Escrow Holder, to be delivered by Broker to Escrow Holder within 2 or _____ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder, or within ~~2 or~~ five (5) business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder Buyer shall deliver to Escrow Holder a check in the sum of One Hundred Ninety Five Thousand Dollars (\$195,000.00). If said check is not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

~~4.2 Additional deposits:~~

~~(a) Within 5 business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of _____ to be applied to the Purchase Price at the Closing.~~

~~(b) Within 5 business days after the contingencies discussed in paragraph 9.1 (a) through (m) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of _____ to be applied to the Purchase Price at the Closing.~~

~~(c) If an Additional Deposit is not received by Escrow Holder within the time period provided then Seller may notify Buyer, Escrow Holder, and Brokers, in writing that, unless the Additional Deposit is received by Escrow Holder within 2 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.~~

4.3 Escrow Holder shall deposit the funds deposited with it by Buyer pursuant to paragraphs 4.1 and 4.2 (collectively the "Deposit"), in a State or Federally chartered bank in an interest bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is _____. NOTE: Such interest bearing account cannot be opened until Buyer's Federal Tax Identification Number is provided.

4.4 Notwithstanding the foregoing, within 5 days after Escrow Holder receives the monies described in paragraph 4.1 above, Escrow Holder shall release \$100 of said monies to Seller as and for independent consideration for Seller's execution of this Agreement and the granting of the contingency period to Buyer as herein provided. Such independent consideration is non-refundable to Buyer but shall be credited to the Purchase Price in the event that the purchase of the Property is completed.

4.5 Upon waiver of all of Buyer's contingencies the Deposit shall become non-refundable but applicable to the Purchase Price except in the event of a Seller breach, or in the event that the Escrow is terminated pursuant to the provisions of Paragraph 9.1(n) (Destruction, Damage or Loss) or 9.1(o) (Material Change).

~~5. Financing Contingency. (Strike if not applicable)~~

~~5.1 This offer is contingent upon Buyer obtaining from an insurance company, financial institution or other lender, a commitment to lend to Buyer a sum equal to at least _____ % of the Purchase Price, on terms acceptable to Buyer. Such loan ("New Loan") shall be secured by a first deed of trust or mortgage on the Property. If this Agreement provides for Seller to carry back junior financing, then Seller shall have the right to approve the terms of the New Loan. Seller shall have 7 days following receipt of the commitment setting forth the proposed terms of the New Loan to approve or disapprove of such proposed terms. If Seller fails to notify Escrow Holder, in writing, of the disapproval within said 7 days it shall be conclusively presumed that Seller has approved the terms of the New Loan.~~

~~5.2 If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing within _____ days following the Date of Agreement, that the New Loan has not been obtained, it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived this New Loan contingency.~~

~~5.3 If Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in paragraph 5.2 hereof, that Buyer has not obtained said New Loan, this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of the Deposit, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.~~

~~6. Seller Financing. (Purchase Money Note). (Strike if not applicable)~~

~~6.1 If Seller approves Buyer's financials (see paragraph 6.5) the Purchase Money Note shall provide for interest on unpaid principal at the rate of _____ % per annum, with principal and interest paid as follows: _____. The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or the New Loan expressly called for by this Agreement.~~

~~6.2 The Purchase Money Note and/or the Purchase Money Deed of Trust shall contain provisions regarding the following (see also paragraph 10.3 (b)):~~

~~(a) Prepayment. Principal may be prepaid in whole or in part at any time without penalty, at the option of the Buyer.~~

~~(b) Late Charge. A late charge of 6% shall be payable with respect to any payment of principal, interest, or other charges, not made within 10 days after it is due.~~

~~(c) Due On Sale. In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's option, require the entire unpaid balance of said Note to be paid in full.~~

~~6.3 If the Purchase Money Deed of Trust is to be subordinate to other financing, Escrow Holder shall, at Buyer's expense prepare and record on Seller's behalf a request for notice of default and/or sale with regard to each mortgage or deed of trust to which it will be subordinate.~~

~~6.4 WARNING: CALIFORNIA LAW DOES NOT ALLOW DEFICIENCY JUDGEMENTS ON SELLER FINANCING. IF BUYER ULTIMATELY DEFAULTS ON THE LOAN, SELLER'S SOLE REMEDY IS TO FORECLOSE ON THE PROPERTY.~~

~~6.5 Seller's obligation to provide financing is contingent upon Seller's reasonable approval of Buyer's financial condition. Buyer to provide a current financial statement and copies of its Federal tax returns for the last 3 years to Seller within 10 days following the Date of Agreement. Seller has 10 days following receipt of such documentation to satisfy itself with regard to Buyer's financial condition and to notify Escrow Holder as to whether or not Buyer's financial condition is acceptable. If Seller fails to notify Escrow Holder, in writing, of the disapproval of this contingency within said time period, it shall be conclusively presumed that Seller has approved Buyer's financial condition. If Seller is not satisfied with Buyer's financial condition or if Buyer fails to deliver the required documentation then Seller may notify Escrow Holder in writing that Seller Financing will not be available, and Buyer shall have the option, within 10 days of the receipt of such notice, to either terminate this transaction or to purchase the Property without Seller financing. If Buyer fails to notify Escrow Holder within said time period of its election to terminate this transaction then Buyer shall be conclusively presumed to have elected to purchase the Property without Seller financing. If Buyer elects to terminate, Buyer's Deposit shall be refunded less Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation.~~

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7. Real Estate Brokers.

7.1 Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this transaction with the following real estate broker(s) ("Brokers") and/or their agents ("Agent(s)"):

Seller's Brokerage Firm Jones Lang LaSalle, Inc. License No. _____ is the broker of (check one): the Seller; or both the Buyer and Seller (dual agent).

Seller's Agent Sofi Choi, Steven Chon, and Trent Barmby License No. 01445024 is (check one): the Seller's Agent (salesperson or broker associate); or both the Seller's Agent and the Buyer's Agent (dual agent).

Buyer's Brokerage Firm DCG Strategies, Inc. License No. _____ is the broker of (check one): the Buyer; or both the Buyer and Seller (dual agent).

Buyer's Agent Landis Graden License No. _____ is (check one): the Buyer's Agent (salesperson or broker associate); or both the Buyer's Agent and the Seller's Agent (dual agent).

The Parties acknowledge that other than the Brokers and Agents listed above, there are no other brokers or agents representing the Parties or due any fees and/or commissions under this Agreement. ~~Buyer shall use the services of Buyer's Broker exclusively in connection with any and all negotiations and offers with respect to the Property for a period of 1 year from the date inserted for reference purposes at the top of page 1.~~

7.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker, agent or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Brokers and Agents named in paragraph 7.1, and no broker, agent or other person, firm or entity, other than said Brokers and Agents is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, agent, finder or other similar party, other than said named Brokers and Agents by reason of any dealings or act of the indemnifying Party.

8. Escrow and Closing.

8.1 Upon acceptance hereof by Seller, this Agreement, including any counteroffers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by the Parties ~~or a Broker herein~~. Subject to the reasonable approval of the Parties, Escrow Holder may, however, include its standard general escrow provisions. In the event that there is any conflict between the provisions of the Agreement and the provisions of any additional escrow instructions the provisions of the Agreement shall prevail as to the Parties and the Escrow Holder.

8.2 As soon as practical after the receipt of this Agreement and any relevant counteroffers, Escrow Holder shall ascertain the Date of Agreement as defined in paragraphs 1.2 and 20.2 and advise the Parties and Brokers, in writing, of the date ascertained.

8.3 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.4 Subject to satisfaction of the contingencies herein described, Escrow Holder shall close this escrow (the "Closing") by recording a ~~general warranty deed (a grant deed in California)~~ and the other documents required to be recorded, and by disbursing the funds and documents in accordance with this Agreement.

8.5 Buyer and Seller shall each pay one-half of the Escrow Holder's charges ~~and Seller shall pay the usual recording fees and any required documentary transfer taxes~~. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance. (See also paragraph 11.)

8.6 Escrow Holder shall verify that all of Buyer's contingencies have been satisfied or waived prior to Closing. The matters contained in paragraphs 9.1 subparagraphs (b), (c), (d), (e), (g), (i), (n), and (o), 9.4, 12, 13, 14, 16, 18, 20, 21, 22, and 24 are, however, matters of agreement between the Parties only and are not instructions to Escrow Holder.

8.7 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in paragraph 9.2 or disapproval of any other matter subject to Buyer's approval, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of a breach of any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall, subject to the provisions of paragraph 8.10, be promptly refunded all funds deposited by Buyer with Escrow Holder, less only the \$100 provided for in paragraph 4.4 and the Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation. If this transaction is terminated as a result of Seller's breach of this Agreement then Seller shall pay the Title Company and Escrow Holder cancellation fees and costs.

8.8 The Closing shall occur on the Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing; provided, however, that if the Closing does not occur by the Expected Closing Date and said Date is not extended by mutual instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and Brokers, in writing that, unless the Closing occurs within 5 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

8.9 Except as otherwise provided herein, the termination of Escrow shall not relieve or release either Party from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained therein.

~~8.10 If this Escrow is terminated for any reason other than Seller's breach or default, then as a condition to the return of Buyer's deposit, Buyer shall within 5 days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property.~~

9. Contingencies to Closing.

~~9.1 IF, BEFORE EXPIRATION OF THE APPLICABLE TIME, BUYER FAILS TO PROVIDE ESCROW HOLDER WRITTEN NOTICE OF BUYER'S DISAPPROVAL OF ANY OF BUYER'S CONTINGENCIES OR ANY OTHER MATTER THAT IS SUBJECT TO BUYER'S APPROVAL IN THIS AGREEMENT, THEN BUYER SHALL BE CONCLUSIVELY DEEMED TO HAVE SATISFIED SUCH BUYER'S CONTINGENCIES AND/OR APPROVED OF SUCH OTHER MATTERS.~~ If a number of days is completed in any of the optional spaces in subparagraphs 9.1 (a) through (m), then such number shall apply and override the pre-printed number, even if the pre-printed number is not stricken. The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies:

(a) ~~Disclosure.~~ Seller shall make to Buyer, through Escrow, all of the applicable disclosures required by law (See AIR CRE ("AIR") standard form entitled "Seller's Mandatory Disclosure Statement") ~~and provide Buyer with a completed Property Information Sheet ("Property Information Sheet") concerning the Property, duly~~

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executed by or on behalf of Seller in the current form or equivalent to that published by the AIR within 10 or three (3) days following the Date of Agreement. Buyer has 10 days from the receipt of said disclosures to approve or disapprove the matters disclosed.

(b) *Physical Inspection.* Buyer has 10 or thirty (30) days following ~~the receipt of the Property Information Sheet or~~ the Date of Agreement, ~~whichever is later,~~ to satisfy itself with regard to the physical aspects and size of the Property.

(c) *Hazardous Substance Conditions Report.* Buyer has 30 or _____ days following ~~the receipt of the Property Information Sheet or~~ the Date of Agreement, ~~whichever is later,~~ to satisfy itself with regard to the environmental aspects of the Property. Seller recommends that Buyer obtain a Hazardous Substance Conditions Report concerning the Property and relevant adjoining properties. Any such report shall be paid for by Buyer. A "Hazardous Substance" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) *Soil Inspection.* Buyer has 30 or _____ days following ~~the receipt of the Property Information Sheet or~~ the Date of Agreement, ~~whichever is later,~~ to satisfy itself with regard to the condition of the soils on the Property. Seller recommends that Buyer obtain a soil test report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any soils report that Seller may have within 10 days following the Date of Agreement.

(e) *Governmental Approvals.* Buyer has 30 or _____ days following the Date of Agreement to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Property and which Buyer deems necessary or desirable in connection with its intended use of the Property, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, handicapped and Americans with Disabilities Act requirements, transportation and environmental matters.

(f) *Conditions of Title.* ~~Escrow Holder shall cause a current commitment for title insurance ("Title Commitment") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("Underlying Documents"), and a scaled and dimensioned plot showing the location of any easements to be delivered to Buyer within 10 or _____ days following the Date of Agreement. Buyer has 10 days from the receipt of the Title Commitment, the Underlying Documents and the plot plan to satisfy itself with regard to the condition of title. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.~~

(g) *Survey.* Buyer has 30 or _____ days following the ~~Date of Agreement receipt of the Title Commitment and Underlying Documents~~ to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association ("ALTA") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within 10 feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto.

(h) *Existing Leases and Tenancy Statements.* Seller shall within 10 or three (3) days following the Date of Agreement provide both Buyer and Escrow Holder with legible copies of all leases, subleases or rental arrangements (collectively, "Existing Leases") affecting the Property, ~~and with a tenancy statement ("Estoppel Certificate") in the latest form or equivalent to that published by the AIR, executed by Seller and/or each tenant and subtenant of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Buyer has 10 days from the receipt of said Existing Leases and Estoppel Certificates to satisfy itself with regard to the Existing Leases and any other tenancy issues.~~

(i) *Owner's Association.* ~~Seller shall within 10 or _____ days following the Date of Agreement provide Buyer with a statement and transfer package from any owner's association servicing the Property. Such transfer package shall at a minimum include: copies of the association's bylaws, articles of incorporation, current budget and financial statement. Buyer has 10 days from the receipt of such documents to satisfy itself with regard to the association.~~

(j) *Other Agreements.* Seller shall within 10 or three (3) days following the Date of Agreement provide Buyer with legible copies of all other agreements ("Other Agreements") known to Seller that will affect the Property after Closing. Buyer has ~~30~~ days from the ~~receipt of said Other~~ Date of Agreements to satisfy itself with regard to such Agreements.

(k) *Financing.* ~~If paragraph 5 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency:~~

(l) *Existing Notes.* ~~If paragraph 3.1(c) has not been stricken, Seller shall within 10 or _____ days following the Date of Agreement provide Buyer with legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively, "Loan Documents") to which the Property will remain subject after the Closing. Escrow Holder shall promptly request from the holders of the Existing Notes a beneficiary statement ("Beneficiary Statement") confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or _____ days following the receipt of the Loan Documents and Beneficiary Statements to satisfy itself with regard to such financing. Buyer's obligation to close is conditioned upon Buyer being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 3.2 hereof. Likewise if Seller is to carry back a Purchase Money Note then Seller shall within 10 or _____ days following the Date of Agreement provide Buyer with a copy of the proposed Purchase Money Note and Purchase Money Deed of Trust. Buyer has 10 or _____ days following the receipt of such documents to satisfy itself with regard to the form and content thereof.~~

(m) *Personal Property.* In the event that any personal property is included in the Purchase Price, Buyer has 10 or thirty (30) days following the Date of Agreement to satisfy itself with regard to the title condition of such personal property. Seller recommends that Buyer obtain a UCC-1 report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any liens or encumbrances affecting such personal property that it is aware of within 10 or three (3) days following the Date of Agreement.

(n) *Destruction, Damage or Loss.* ~~Subsequent to the Date of Agreement and prior to Closing there shall not have occurred a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than \$10,000.00 to repair or cure. If the cost of repair or cure is \$10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within 10 days after receipt of written notice of a loss costing more than \$10,000.00 to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than \$10,000.00, and Buyer does not elect to terminate this Agreement, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing.~~

(o) *Material Change.* ~~Buyer shall have 10 days following receipt of written notice of a Material Change within which to satisfy itself with regard to such~~

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~~change: "Material Change" shall mean a substantial adverse change in the use, occupancy, tenants, title, or condition of the Property that occurs after the date of this offer and prior to the Closing. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.~~

~~(p) Seller Performance. The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.~~

~~(q) Brokerage Fee. Payment at the Closing of such brokerage fee as is specified in this Agreement or later written instructions to Escrow Holder executed by Seller and Brokers ("Brokerage Fee"). It is agreed by the Parties and Escrow Holder that Brokers are a third party beneficiary of this Agreement insofar as the Brokerage Fee is concerned, and that no change shall be made with respect to the payment of the Brokerage Fee specified in this Agreement, without the written consent of Brokers.~~

9.2 The contingencies specified in subparagraphs 9.1(a) through (m) are for the benefit of, and may be waived by, Buyer, and are referred to collectively as "Buyer's Contingencies" and individually as a "Buyer's Contingency."

~~9.3 Buyer's timely and written disapproval or conditional approval of a Buyer's Contingency or any other matter that is subject to Buyer's approval in this Agreement shall constitute disapproval thereof ("Disapproved Item(s)"). Concurrent with notice of a Disapproved Item, Buyer may make a request to Seller regarding such Disapproved Item ("Buyer's Request"). If Buyer fails to make a timely and written Buyer's Request, then this Agreement shall terminate due to the non-satisfaction and non-waiver of a contingency. Seller may respond to a Buyer's Request within 10 days following Seller's receipt thereof ("Seller's Response"). Seller's acceptance of a Buyer's Request shall amend this Agreement accordingly. If Seller fails to provide a timely and written Seller's Response, then Seller's Response shall be deemed to be a rejection of Buyer's Request. Buyer may, within 10 days following the earlier of Buyer's receipt of a Seller's Response (which is not an acceptance of Buyer's Request) or the date of Seller's deemed rejection of a Buyer's Request ("Buyer's Reply Period"), reply to a Seller's Response ("Buyer's Reply") and elect to (i) terminate this Agreement due to the non-satisfaction and non-waiver of the applicable contingency, (ii) accept the Seller's Response in which event this Agreement shall be amended accordingly, or (iii) withdraw Buyer's Request and waive the Disapproved Item in which event Buyer shall accept the Property subject to the Disapproved Item. If Buyer fails to provide a timely and written Buyer's Reply, then Buyer shall be deemed to have elected to terminate this Agreement as of the end of the Buyer's Reply Period. The date Buyer accepts a Seller's Response or withdraws a Buyer's Request and waives a Disapproved Item shall be the date of Buyer's approval of the Disapproved Item. A Party shall provide to Escrow Holder copy of all notices of a Disapproved Item, Buyer's Request, Seller's Response and Buyer's Reply and Escrow Holder shall promptly provide copies thereof to the other Party. Unless the Parties in writing agree otherwise, if the Expected Closing Date is a specific calendar date and a Buyer's Reply Period expires after such specific calendar date, then notwithstanding paragraph 1.3, the Expected Closing Date shall be extended to be 3 business days after the earlier of the date Buyer withdraws a Buyer's Request and waives the applicable Disapproved Item or Buyer accepts the applicable Seller's Response.~~

~~9.4 The Parties acknowledge that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of Hazardous Substances. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Brokers. The Parties acknowledge that they have been advised by Brokers to consult their own technical and legal experts with respect to the possible presence of Hazardous Substances on the Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Brokers with respect thereto. The Parties hereby assume all responsibility for the impact of such Hazardous Substances upon their respective interests herein.~~

10. Documents and Other Items Required at or Before Closing.

10.1 Five days prior to the Closing date Escrow Holder shall obtain an updated Title Commitment concerning the Property from the Title Company and provide copies thereof to each of the Parties.

10.2 Seller shall deliver to Escrow Holder in time for delivery to Buyer at the Closing:

(a) Grant ~~or general warranty~~ deed, duly executed and in recordable form, conveying fee title to the Property to Buyer.

~~(b) If applicable, the Beneficiary Statements concerning Existing Note(s).~~

(c) If applicable, the Existing Leases and Other Agreements together with duly executed assignments thereof by Seller and Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the AIR or its equivalent.

(d) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.

(e) If the Property is located in California, an affidavit executed by Seller to the effect that Seller is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Franchise Tax Board such sum as is required by such statute.

(f) If applicable, a bill of sale, duly executed, conveying title to any included personal property to Buyer.

(g) If the Seller is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the sale of the Property.

10.3 Buyer shall deliver to Seller through Escrow:

(a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement shall be deposited by Buyer with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. on the business day prior to the Expected Closing Date provided, however, that Buyer shall not be required to deposit such monies into Escrow if at the time set for the deposit of such monies Seller is in default or has indicated that it will not perform any of its obligations hereunder. Instead, in such circumstances in order to reserve its rights to proceed Buyer need only provide Escrow with evidence establishing that the required monies were available.

~~(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.~~

(c) The Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.2(c) above, duly executed by Buyer.

(d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.

~~(e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.~~

(f) If the Buyer is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the purchase of the Property.

10.4 At Closing, Escrow Holder shall cause to be issued to Buyer a standard coverage (or ALTA extended, if elected pursuant to 9.1(g)) owner's form policy of title insurance effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the exceptions approved by Buyer. In the event there is a Purchase Money Deed of Trust in this transaction, the policy of title insurance shall be a joint protection policy insuring both Buyer and Seller.

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IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.

11. Prorations and Adjustments.

11.1 *Taxes.* Applicable real property taxes and special assessment bonds shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment of the prorated amount shall be made promptly in cash upon receipt of a copy of any supplemental bill.

11.2 *Insurance.* **WARNING:** Any insurance which Seller may have maintained will terminate on the Closing. Buyer is advised to obtain appropriate insurance to cover the Property.

11.3 *Rentals, Interest and Expenses.* Scheduled rentals, interest on Existing Notes, utilities, and operating expenses shall be prorated as of the date of Closing. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

11.4 *Security Deposit.* Security Deposits held by Seller shall be given to Buyer as a credit to the cash required of Buyer at the Closing.

11.5 *Post Closing Matters.* Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

~~11.6 *Variations in Existing Note Balances.* In the event that Buyer is purchasing the Property subject to an Existing Deed of Trust(s), and in the event that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the closing will be more or less than the amount set forth in paragraph 3.1(c) hereof ("Existing Note Variation"), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Purchase Money Note, the cash required at the Closing per paragraph 3.1(a) shall be reduced or increased by the amount of such Existing Note Variation.~~

~~11.7 *Variations in New Loan Balance.* In the event Buyer is obtaining a New Loan and the amount ultimately obtained exceeds the amount set forth in paragraph 5.1, then the amount of the Purchase Money Note, if any, shall be reduced by the amount of such excess.~~

11.8 *Owner's Association Fees.* Escrow Holder shall: (i) bring Seller's account with the association current and pay any delinquencies or transfer fees from Seller's proceeds, and (ii) pay any up front fees required by the association from Buyer's funds.

12. Representations and Warranties of Seller and Disclaimers.

12.1 Seller's warranties and representations shall survive the Closing and delivery of the deed for ~~a period of 3 years, and any lawsuit or action based upon them must be commenced within such time period.~~ ^{the period set forth in the Addendum.} Seller's warranties and representations are true, material and relied upon by Buyer ~~and Brokers in all respects.~~ Seller hereby makes the following warranties and representations to Buyer ~~and Brokers:~~

(a) *Authority of Seller.* Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.

(b) *Maintenance During Escrow and Equipment Condition At Closing.* Except as otherwise provided in paragraph 9.1(n) hereof, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted.

(c) *Hazardous Substances/Storage Tanks.* Seller has no knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) *Compliance.* Except as otherwise disclosed in writing, Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement be performed on the Property.

(e) *Changes in Agreements.* Prior to the Closing, Seller will not violate or modify any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) *Possessory Rights.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) *Mechanics' Liens.* There are no unsatisfied mechanics' or materialmen's lien rights concerning the Property.

(h) *Actions, Suits or Proceedings.* Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency, arbitrator, court or tribunal that would affect the Property or the right to occupy or utilize same.

(i) *Notice of Changes.* Seller will promptly notify Buyer ~~and Brokers~~ in writing of any Material Change (see paragraph 9.1(o)) affecting the Property that becomes known to Seller prior to the Closing.

(j) *No Tenant Bankruptcy Proceedings.* Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy or insolvency proceeding.

(k) *No Seller Bankruptcy Proceedings.* Seller is not the subject of a bankruptcy, insolvency or probate proceeding.

(l) *Personal Property.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of any personal property included in the Purchase Price nor knowledge of any liens or encumbrances affecting such personal property, except as disclosed by this Agreement or otherwise in writing to Buyer.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Substance laws, or any other act, ordinance or law, have been made by either Party ~~or Brokers~~, or relied upon by either Party hereto.

12.3 In the event that Buyer learns that a Seller representation or warranty might be untrue prior to the Closing, and Buyer elects to purchase the Property anyway then, and in that event, Buyer waives any right that it may have to bring an action or proceeding against Seller ~~or Brokers~~ regarding said representation or warranty.

12.4 Any environmental reports, soils reports, surveys, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. Seller believes said documents to be accurate, but Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.

13. Possession.

Possession of the Property shall be given to Buyer at the Closing subject to the rights of tenants under Existing Leases.

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14. Buyer's Entry.

At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times and subject to rights of tenants, to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. No destructive testing shall be conducted, however, without Seller's prior approval which shall not be unreasonably withheld. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the re-compaction or removal of any disrupted soil or material as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend, protect and hold harmless Seller and the Property of and from any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith.

15. Further Documents and Assurances.

The Parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. The Parties agree to provide all further information, and to execute and deliver all further documents, reasonably required by Escrow Holder or the Title Company.

16. Attorneys' Fees.

If any Party ~~or Broker~~ brings an action or proceeding (including arbitration) involving the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees and costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party ~~or Broker~~ who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party ~~or Broker~~ of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

17. Prior Agreements/Amendments.

- 17.1 This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.
- 17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

18. Broker's Rights.

~~18.1 If this sale is not consummated due to the default of either the Buyer or Seller, the defaulting Party shall be liable to and shall pay to Brokers the Brokerage Fee that Brokers would have received had the sale been consummated. If Buyer is the defaulting party, payment of said Brokerage Fee is in addition to any obligation with respect to liquidated or other damages.~~

~~18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.~~

19. Notices.

19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger, or by mail, postage prepaid, to the address set forth in this agreement or by facsimile transmission, electronic signature, digital signature, or email.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered, or transmitted by facsimile transmission, electronic signature, digital signature, or email. Any such communication sent by regular mail shall be deemed given 48 hours after the same is mailed. Communications sent by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed delivered 24 hours after delivery of the same to the Postal Service or courier. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.

20. Duration of Offer.

~~20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of _____ on the date of _____, it shall be deemed automatically revoked.~~

20.2 The acceptance of this offer, or of any subsequent counteroffer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party ~~or either Broker~~ herein of a duly executed writing unconditionally accepting the last outstanding offer or counteroffer.

~~**21. LIQUIDATED DAMAGES. (This Liquidated Damages paragraph is applicable only if initialed by both Parties.)**~~

~~THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF _____ . UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.~~

Buyer's Initials

Seller's Initials

~~**22. ARBITRATION OF DISPUTES. (This Arbitration of Disputes paragraph is applicable only if initialed by both Parties.)**~~

~~22.1 ANY CONTROVERSY AS TO WHETHER SELLER IS ENTITLED TO LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF THE DEPOSIT SHALL BE DETERMINED BY BINDING ARBITRATION ADMINISTERED BY THE JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS") IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES ("COMMERCIAL RULES"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. SUCH CONTROVERSY SHALL BE ARBITRATED BY A SINGLE ARBITRATOR, APPOINTED UNDER THE COMMERCIAL RULES WHO HAS HAD AT LEAST 5 YEARS OF EXPERIENCE IN THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THE ARBITRATOR SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW OF THE JURISDICTION WHERE THE PROPERTY IS LOCATED, THE INTENTION OF THE PARTIES AS EXPRESSED IN THIS~~

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~~AGREEMENT AND ANY AMENDMENTS THERETO, AND UPON THE EVIDENCE PRODUCED AT AN ARBITRATION HEARING. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. THE ARBITRATOR SHALL RENDER AN AWARD WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, WHICH MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER PARAGRAPH 16 HEREOF AND SHALL BE ACCOMPANIED BY A REASONED OPINION. THE FAILURE OR REFUSAL OF A PARTY TO PAY SUCH PARTY'S REQUIRED SHARE OF THE DEPOSITS FOR ARBITRATOR COMPENSATION OR ADMINISTRATIVE CHARGES SHALL CONSTITUTE A WAIVER BY SUCH PARTY TO PRESENT EVIDENCE OR CROSS-EXAMINE WITNESSES, BUT SUCH WAIVER SHALL NOT ALLOW FOR A DEFAULT JUDGMENT AGAINST THE NON-PAYING PARTY IN THE ABSENCE OF EVIDENCE AND LEGAL ARGUMENT AS THE ARBITRATOR MAY REQUIRE FOR MAKING AN AWARD. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR THEREAT.~~

~~22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.~~

~~22.3 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.~~

~~WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.~~

Buyer's Initials

Seller's Initials

23. Miscellaneous.

23.1 **Binding Effect.** This Agreement shall be binding on the Parties without regard to whether or not paragraphs 21 and 22 are initialed by both of the Parties. Paragraphs 21 and 22 are each incorporated into this Agreement only if initialed by both Parties at the time that the Agreement is executed. Signatures to this Agreement accomplished by means of electronic signature or similar technology shall be legal and binding.

23.2 **Applicable Law.** This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located. Any litigation or arbitration between the Parties hereto concerning this Agreement shall be initiated in the county in which the Property is located.

23.3 **Time of Essence.** Time is of the essence of this Agreement.

23.4 **Counterparts.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

~~23.5 **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.~~

23.6 **Conflict.** Any conflict between the printed provisions of this Agreement and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions. **Seller and Buyer must initial any and all handwritten provisions.**

23.7 **1031 Exchange.** Both Seller and Buyer agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange. The cooperating Party shall not have any liability (special or otherwise) for damages to the exchanging Party in the event that the sale is delayed and/or that the sale otherwise fails to qualify as a 1031 exchange.

23.8 **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days.

24. ~~Disclosures Regarding The Nature of a Real Estate Agency Relationship.~~

~~24.1 The Parties and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized in paragraph 24.2.~~

~~24.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Brokers in this transaction, as follows:~~

~~(a) **Seller's Agent.** A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.~~

~~(b) **Buyer's Agent.** A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations: (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.~~

~~(c) **Agent Representing Both Seller and Buyer.** A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 24.2. (2) In representing both Seller and Buyer, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but~~

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not limited to, facts relating to either Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including Seller's willingness to accept a price less than the listing price or Buyer's willingness to pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Buyer has the duty to exercise reasonable care to protect Buyer, including as to those facts about the Property which are known to Buyer or within Buyer's diligent attention and observation. Both Seller and Buyer should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(d) Further Disclosures. Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document. Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties that may be of interest to this Buyer. Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this transaction may be brought against Broker more than one year after the Date of Agreement and that the liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Agreement shall not exceed the fee received by such Broker pursuant to this Agreement; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

24.3 Confidential Information. Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

25. Construction of Agreement. In construing this Agreement, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and vice versa. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

26. Additional Provisions.

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum or addenda consisting of paragraphs _____ through _____. (If there are no additional provisions write "NONE".)

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:
1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PROPERTY. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE INTEGRITY AND CONDITION OF ANY STRUCTURES AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE.
WARNING: IF THE PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THIS AGREEMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

NOTE:

- 1. THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.
- 2. IF EITHER PARTY IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO CORPORATE OFFICERS.

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

BROKER

DCG Strategies, Inc.
Attn: Landis Graden
Title: Senior Vice President
Address: 4085 Campbell Avenue, Suite 150,
Menlo Park, CA 94025
Phone: 650.480.2235
Fax: _____
Email: _____
Federal ID No.: _____
Broker DRE License #: _____
Agent DRE License #: _____

INITIALS

Date: _____

BUYER

City of Fremont
By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Approved as to form:

By: _____
Name Printed: _____
Title: City Attorney
Phone: _____
Fax: _____

Attest:

INITIALS

City Clerk

Email: _____

Address: _____

Federal ID No.: _____

27. Acceptance.

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

~~27.2 In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to _____ % of the Purchase Price to be divided between the Brokers as follows: Seller's Broker _____ % and Buyer's Broker _____ %. This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers out of the proceeds accruing to the account of Seller at the Closing as per separate agreement.~~

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.

Date: _____

BROKER

Jones Lang LaSalle, Inc.

Attn: Sofi Choi

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Federal ID No.: _____

Broker DRE License #: _____

Agent's DRE License #: 01445024

SELLER

By: _____

Name Printed: Marilyn Jayne Gordon

Title: Trustee of the Robert B. Gordon and Marilyn J. Gordon Declaration of Trust dated January 31, 1996

Phone: (480) 419-4219 (H); (480) 652-8611 (C)

Fax: _____

Email: mditnre@aol.com

By: _____

Name Printed: Shirley Ann Abreu

Title: Trustee of the Abreu Living Trust dated November 3, 1988

Phone: (510) 797-1849

Fax: _____

Email: shirleyannabreu@gmail.com

Address: _____

Federal ID No.: _____

By: _____

Name Printed: Gregory Krause

Title: Co-Trustees of the Bishop 2001 Living Trust

Phone: (415) 706-2332

Fax: _____

Email: :gregory_krause@icloud.com

By: _____

Name Printed: Eugene Roeben

Title: Co-trustee of the Bishop 2001 Living Trust

Phone: (559) 688-1030

Fax: _____

Email: wally@farmshow.org

AIR CRE * <https://www.aircre.com> * 213-687-8777 * contracts@aircre.com

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OFA-20.30, Revised 10-13-2022

INITIALS

Last Edited: 7/27/2023 2:32 PM

Page 10 of 10

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO,
AND MAIL TAX STATEMENTS TO:

City of Fremont
Attn: City Clerk
3300 Capitol Ave.
Fremont, CA 94538

EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE §27383

APN: 501-1130-050-00

(Above Space for Recorder's Use Only)

THE UNDERSIGNED GRANTOR DECLARES:

This transaction is exempt from documentary transfer tax pursuant to Revenue & Taxation Code Section §11922. City of Fremont, an exempt agency, is acquiring title.

Exempt from the Building Homes and Jobs Act Fee per Government Code §27388.1(a)(2)(D). This document is being recorded by a municipality.

Signature of Declarant

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, Marilyn Jayne Gordon, as Trustee of the Robert B. Gordon and Marilyn J. Gordon Declaration of Trust dated January 31, 1996, Shirley Ann Abreu as Trustee of the Abreu Living Trust dated November 3, 1988, and Gregory Krause and Eugene Roeben as co-trustees of the Bishop 2001 Living Trust ("**Grantors**") GRANT to CITY OF FREMONT, a California municipal corporation, the following described real property located in the City of Fremont, County of Alameda, State of California, as described on **Attachment 1** attached hereto.

[Signature Page Follows]

GRANTORS:

By:

Marilyn Jayne Gordon, Trustee of the Robert B. Gordon and Marilyn J. Gordon Declaration of Trust dated January 31, 1996

By:

Shirley Ann Abreu, Trustee of the Abreu Living Trust dated November 3, 1998

By:

Gregory Krause, Co-trustee of the Bishop 2001 Living Trust

By:

Eugene Roeben, Co-trustee of the Bishop 2001 Living Trust

ATTACHMENT 1

PRELIMINARY REPORT
Your Reference:

Fidelity National Title Company
Order No.: 991-30105128-KD9

EXHIBIT A LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FREMONT IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 2, [Parcel Map 3153](#), filed April 25, 1980, [Book 116 of Parcel Maps, Pages 86 and 87](#), Alameda County.

[APN: 501-1130-050-00](#)

ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (“Assignment”), made as of _____, 202__ (“**Effective Date**”), by and between Marilyn Jayne Gordon, as Trustee of the Robert B. Gordon and Marilyn J. Gordon Declaration of Trust dated January 31, 1996, Shirley Ann Abreu as Trustee of the Abreu Living Trust dated November 3, 1988, and Gregory Krause and Eugene Roeben as co-trustees of the Bishop 2001 Living Trust (collectively, “**Seller**”), and CITY OF FREMONT, a California municipal corporation (“**Buyer**”).

WITNESSETH:

WHEREAS, contemporaneously with the execution and delivery hereof, Seller has conveyed to Buyer all that tract or parcel of land more particularly described in Attachment 1 attached hereto and incorporated herein by reference (referred to as the “**Real Property**”);

WHEREAS, the purchase and sale of the Real Property is being made pursuant to the terms of that certain Standard Offer, Agreement and Escrow Instructions For Purchase of Real Estate and Addendum to Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate (collectively, the “**Purchase Agreement**”) dated as of _____, 2023, by and between Seller and Buyer;

WHEREAS, in connection with such conveyance of the Real Property, Seller and Buyer have agreed that Seller shall transfer and assign to Buyer all right, title and interest of Seller in and to all leases demising spaces to tenants on the Real Property, which leases are listed on Attachment 2 attached hereto and incorporated herein by reference (collectively, the “**Leases**”); and

WHEREAS, Seller and Buyer have further agreed that Buyer shall expressly assume by executing this Assignment all of the obligations of Seller, from and after the date hereof, under each of the Leases;

NOW THEREFORE, for and in consideration for the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge by each party hereto, Seller and Buyer hereby agree as follows:

1. Transfer and Assignment. Seller hereby sells, transfers, assigns, delivers and conveys to Buyer, its successors and assigns, all right, title and interest of Seller in, to and under the Leases. Seller agrees to indemnify, defend and hold Buyer harmless with respect to any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages, and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys’ fees and court costs) (“**Claims**”) arising under the Leases out of occurrences prior to the Effective Date. By its assumption hereof as evidenced in the following paragraph, Buyer hereby agrees to indemnify, defend and hold Seller harmless with respect to all Claims arising under the Leases out of occurrences from and after the Effective Date.

2. Assumption of Obligations. Buyer hereby assumes and agrees to observe, perform, carry out and discharge on time and in full all of the obligations and duties of Seller under each of the Leases listed on Attachment 2 attached hereto for that period of time from and after the date hereof, including without limitation (a) all covenants, obligations and liabilities of the

lessor and landlord under or with respect to the Leases; and (b) all of Seller's covenants and obligations with respect to the security deposits made under the Leases or imposed by applicable law, to the extent that such security deposits have been this day transferred and assigned by Seller to Buyer and received by Buyer.

3. Governing Law. This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of California.

4. Binding Effect. This Assignment shall be binding upon the parties hereto and their respective successors and assigns and, except as otherwise set forth herein, shall inure to the benefit of only the parties hereto.

5. Counterparts. This Assignment may be executed in one or more counterparts and the signature of any party to any counterpart may be appended to any other counterpart, all of which counterparts when taken together shall equal one Assignment. Seller and Buyer hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Assignment had been delivered. Seller and Buyer (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Assignment based on the foregoing forms of signatures.

IN WITNESS WHEREOF, Seller and Buyer have caused this instrument to be executed as of the day and year first above written.

[Signature Pages Follow]

BUYER:

CITY OF FREMONT

City Manager

Approved as to form:

Rafael Alvarado, City Attorney

Attest:

Susan Gauthier, City Clerk

SELLER:

By:

Name Printed: _____
Marilyn Jayne Gordon

Title: Trustee of the Robert B. Gordon and Marilyn J. Gordon
Declaration of Trust dated January 31, 1996

By:

Name Printed: _____
Shirley Ann Abreu

Title: Trustee of the Abreu Living Trust dated November 3, 1998

By:

Name Printed: _____
Gregory Krause

Title: Co-trustee of the Bishop 2001 Living Trust

By:

Name Printed: _____
Eugene Roeben

Title: Co-trustee of the Bishop 2001 Living Trust

ATTACHMENT 1

PRELIMINARY REPORT
Your Reference:

Fidelity National Title Company
Order No.: 991-30105128-KD9

EXHIBIT A LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FREMONT IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 2, [Parcel Map 3153](#), filed April 25, 1980, [Book 116 of Parcel Maps, Pages 86 and 87](#), Alameda County.

[APN: 501-1130-050-00](#)

ATTACHMENT 2
LEASES TO BE ASSIGNED

[TO BE INSERTED]

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

This Assignment and Assumption of Contracts (“**Assignment**”) is made as of the ____ day of _____, 2023 (“**Assignment Date**”), Marilyn Jayne Gordon, as Trustee of the Robert B. Gordon and Marilyn J. Gordon Declaration of Trust dated January 31, 1996, Shirley Ann Abreu as Trustee of the Abreu Living Trust dated November 3, 1988, and Gregory Krause and Eugene Roeben as co-trustees of the Bishop 2001 Living Trust (collectively, the “**Assignor**”), and CITY OF FREMONT, a California municipal corporation (the “**Assignee**”).

A. Pursuant to that certain Standard Offer, Agreement and Escrow Instructions For Purchase of Real Estate dated as of _____, 2023 by and between Assignor and Assignee and that certain Addendum to Standard Offer, Agreement and Escrow Instructions For Purchase of Real Estate by and between Assignor and Assignee (collectively, the “**Purchase Agreement**”), Assignee has this day acquired from Assignor the Property. Capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement.

B. Under the Purchase Agreement, Assignor is obligated to assign to Assignee all of Assignor’s right, title and interest in and to those contracts set forth in **Attachment 1** attached hereto and made a part hereof (collectively, the “**Contracts**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Assignment.** Effective as of the Assignment Date, Assignor hereby grants, transfers, conveys, assigns and delegates to Assignee all of its rights and interests of Assignor in, to and under the Contracts. Assignee hereby accepts such assignment and delegation by Assignor.

2. **Assumption.** Assignee hereby assumes the performance of all of the terms, covenants and conditions imposed upon Assignor as owner under the Contracts, in each case, accruing or arising on or after the Assignment Date.

3. **Indemnity.** Assignor shall defend, indemnify, and hold Assignee harmless with respect to the obligations of Assignor under the Contracts accruing on or before the Assignment Date. Assignee shall defend, indemnify, and hold Assignor harmless with respect to the obligations of Assignee under the Contracts accruing on or after the Assignment Date.

4. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which shall taken together be deemed one document. The parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called “pdf” format shall be legal and binding and shall have the same full force and effect as if an original of this Assignment had been delivered. Assignor and Assignee (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Assignment based on the foregoing forms of signatures.

5. Successors and Assigns. This Assignment and the provisions hereof shall inure to the benefit of and be binding upon the parties to this Assignment and their respective successors, heirs and permitted assigns.

6. No Third Party Beneficiaries. Except as otherwise expressly set forth herein, Assignor and Assignee do not intend, and this Assignment shall not be construed, to create a third-party beneficiary status or interest in, nor give any third-party beneficiary rights or remedies to, any other person or entity not a party to this Assignment.

7. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, Assignor and Assignee have caused this instrument to be executed the day and year first above written.

ASSIGNOR:

By:

Marilyn Jayne Gordon, Trustee of the Robert B. Gordon and
Marilyn J. Gordon Declaration of Trust dated January 31,
1996

By:

Shirley Ann Abreu, Trustee of the Abreu Living Trust dated
November 3, 1998

By:

Gregory Krause, Co-trustee of the Bishop 2001 Living Trust

By:

Eugene Roeben, Co-trustee of the Bishop 2001 Living Trust

ASSIGNEE:

CITY OF FREMONT

City Manager

Approved as to form:

Rafael Alvarado, City Attorney

Attest:

Susan Gauthier, City Clerk

ATTACHMENT 1
CONTRACTS TO BE ASSIGNED

[To be inserted]

ASSIGNMENT AND BILL OF SALE

This Assignment and Bill of Sale is made this _____ day of 2023. Reference is made to that certain property located in the County of Alameda, State of California and described in more detail on Attachment 1 attached hereto and made a part hereof and the improvements located thereon and the rights, privileges and entitlements incident thereto (the “**Property**”).

For good and valuable consideration, receipt of which is acknowledged, the undersigned, Marilyn Jayne Gordon, as Trustee of the Robert B. Gordon and Marilyn J. Gordon Declaration of Trust dated January 31, 1996, Shirley Ann Abreu as Trustee of the Abreu Living Trust dated November 3, 1988, and Gregory Krause and Eugene Roeben as co-trustees of the Bishop 2001 Living Trust (collectively, “**Seller**”), sells, transfers, assigns, conveys and delivers to CITY OF FREMONT, a California municipal corporation (“**Buyer**”), all of Seller’s right, title and interest in all assets, materials used or held in connection with the ownership, use, management, development or enjoyment of the Property, including, without limitation: (i) all items of personal property used in connection with the Property and/or Improvements; (ii) all entitlements, permits, subdivision agreements and other agreements relating to the development of Property; (iii) all plans, specifications, maps, drawings and other renderings relating to the Property; (iv) all warranties relating to and benefiting the Property or the assets transferred hereby; (v) all intangible rights, goodwill and similar rights benefiting the Property; (v) all development rights benefiting the Property; and (vi) all rights under any covenants, conditions and restrictions affecting the Property.

This Assignment and Bill of Sale specifically excludes any and all refunds, remittances or claims due or owing to Seller from any contractors or any other third parties pertaining to the development of the Property, and stemming from circumstances, events or obligations arising prior to the date hereof.

SELLER:

By:

Marilyn Jayne Gordon, Trustee of the Robert B. Gordon and
Marilyn J. Gordon Declaration of Trust dated January 31,
1996

By:

Shirley Ann Abreu, Trustee of the Abreu Living Trust dated
November 3, 1998

By:

Gregory Krause, Co-trustee of the Bishop 2001 Living Trust

By:

Eugene Roeben, Co-trustee of the Bishop 2001 Living Trust

ATTACHMENT 1

PRELIMINARY REPORT
Your Reference:

Fidelity National Title Company
Order No.: 991-30105128-KD9

EXHIBIT A LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FREMONT IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 2, [Parcel Map 3153](#), filed April 25, 1980, [Book 116 of Parcel Maps, Pages 86 and 87](#), Alameda County.

[APN: 501-1130-050-00](#)

**ADDENDUM TO STANDARD OFFER, AGREEMENT AND ESCROW
INSTRUCTIONS FOR PURCHASE OF REAL ESTATE**

THIS ADDENDUM dated as of ~~July~~-August __, 2023 (this "**Addendum**"), hereby supplements and amends that certain Standard Offer, Agreement and Escrow Instructions For Purchase of Real Estate (the "**Form Agreement**") between the City of Fremont, a municipal corporation ("**Buyer**"), and Marilyn Jayne Gordon, as Trustee of the Robert B. Gordon and Marilyn J. Gordon Declaration of Trust dated January 31, 1996, Shirley Ann Abreu as Trustee of the Abreu Living Trust dated November 3, 1988, and Gregory Krause and Eugene Roeben as co-trustees of the Bishop 2001 Living Trust ("**Seller**"), covering that certain property located at 39180 Liberty Street, Fremont, CA 94538 (the Form Agreement, as supplemented and amended by this Addendum, is referred to herein and in the Form Agreement as the "**Agreement**"). To the extent there is any inconsistency between the terms of this Addendum and the terms of the Form Agreement, the terms of this Addendum shall supersede and control in all respects.

28. **Property.** In addition to the items described in ~~Section-Paragraph 2~~ of the Form Agreement, the Property specifically includes all of Seller's right, title and interest in: (i) all rights, privileges and easements appurtenant to the real property described in ~~Section-Paragraph 2.1~~ of the Form Agreement (the "**Real Property**"), which Real Property is more fully described on Exhibit A attached hereto, including without limitation interest in any development rights, entitlements, air rights, water, water rights and water stock relating to the Real Property; (ii) any and all intangible property (the "**Intangible Property**") arising out of or in connection with the ownership or operation of the Real Property, including all licenses, permits, approvals, certificates of occupancy and franchises issued by federal, state or local municipal authorities relating to the use, maintenance, occupancy or operation of the Real Property; (iii) all tangible personal property (the "**Personal Property**") located in, on, arising out of or in connection with the ownership or operation of the Real Property, including all equipment and machinery, but excluding personal property owned by tenants of the Real Property.

29. The following sentence is added to the end of ~~Section-Paragraph 8.5~~ of the Form Agreement:

No recording fees or documentary transfer tax shall be due because Buyer is a public entity.

30. **Due Diligence; Inspections.**

a. At any time during Buyer's 30-day inspection period set forth in Paragraph ~~9.1(a)~~9.1(b) through (e), 9.1(g), 9.1(h), 9.1(j), and 9.1(m) of the Form Agreement, as these periods may be extended pursuant to ~~Section-Paragraph 30.f~~ (the "**Contingency Period**"), Buyer, its agents and representatives ("**Buyer's Representatives**"), shall have the right at reasonable times and subject to rights of tenants, to enter upon the Property for the purpose of making non-intrusive inspections and tests specified in this agreement, pursuant to this Paragraph. No invasive or destructive testing shall be conducted, however, without Seller's prior approval, which shall not be unreasonably withheld; provided, however, if Buyer's Phase 1 report recommends additional Phase 2 testing, Seller shall have the right to reasonably approve the scope of any Phase 2 testing to be performed by Buyer. Seller shall respond to Buyer's request for approval of the scope of any Phase 2 testing within two (2) business days of Buyer's request. Seller shall be given the opportunity to have Seller's representatives, which may include a third party consultant, present during any sampling activities performed as part of any Phase 2 testing and such representatives shall be entitled to receive a portion of the sampling materials collected (i.e. Buyer and Seller will "split" samples) utilizing procedures which are customary and accepted practices by environmental professionals. Buyer shall pay all costs arising from any inspections of the Property (except Seller shall pay the cost of analyzing any samples provided to Seller pursuant to this paragraph) and shall provide Seller with no less than forty eight (48) hour's notice prior to entering the Property, ~~and Seller shall have the right to have a representative present.~~ Prior to any access of the Property by Buyer or any of Buyer's Representatives, Buyer shall provide Seller with a certificate of insurance from Buyer and Buyer's Representatives accessing the Property or performing inspections (from an insurance carrier reasonably acceptable to Seller) evidencing the existence of (i) commercial general liability insurance, in an amount not less than \$2,000,000 combined limits for any injuries, deaths or property damage sustained as a result of any one accident or occurrence, (ii) worker's

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compensation insurance at statutory limits, and (iii) employer's liability insurance in an amount not less than \$1,000,000 for each accident, disease per employee and disease policy limit. The commercial general liability insurance shall name Seller and any other designees as additional insured. Additionally, Buyer, on behalf of Buyer and Buyer's Representatives, hereby waives any claims against the Seller and Seller's officers, members, directors, partners, employees, agents, contractors, and affiliates (collectively, "**Seller Parties**"), and their respective partners, members, officers, directors, employees, contractors, asset managers, agents, attorneys, beneficiaries, predecessors, successors and assigns for any injury to persons or damage to property arising out of any inspections, including, without limitation, any damage to the tools and equipment of Buyer or Buyer's Representatives, all of which shall be brought onto the Property at the sole risk and responsibility of Buyer and Buyer's Representatives; provided, however, the foregoing shall not apply to the extent of claims arising from the negligence or willful misconduct of Seller or the Seller Parties. Buyer shall, at its cost and expense, comply with all applicable federal, state and local laws, rules, statutes, regulations, ordinances or policies in conducting any inspections. Buyer shall permit Seller's consultants, agents, engineers, inspectors, contractors or employees to accompany Buyer and Buyer's Representatives during all such inspections.

~~a-b.~~ If Buyer fails to notify Seller and Escrow Holder of its approval or disapproval of the matters set forth in Section Paragraph 9.1 (a) through (e), (g), (h), (j) and (m) prior to the expiration of the Contingency Period (an "**Approval Notice**" or "**Disapproval Notice**," respectively), ~~Seller shall provide notice to Buyer of its failure to provide an Approval Notice or Disapproval Notice, and Buyer shall have two (2) business days from receipt of Seller's notice to provide an Approval Notice or Disapproval Notice to Seller and Escrow Holder~~Buyer shall be deemed to have disapproved of the Property. If Buyer provides a Disapproval Notice prior to the expiration of the Contingency Period or ~~within the time set forth in the preceding sentence, or fails to timely respond to Seller's notice~~is deemed to have disapproved of the Property as described in the preceding sentence ~~(which shall be deemed Buyer's disapproval of the Property)~~, such disapproval shall act to terminate this Agreement and the Escrow created pursuant hereto, in which event Buyer and Seller hereby direct Escrow Holder to pay the Deposit (together with accrued interest thereon) to Buyer and this Agreement shall have no further force and effect (except for any provision hereof expressly providing that the provision survives termination hereof), and Buyer and Seller shall have no liability or obligation hereunder whatsoever, except as otherwise expressly provided for herein. Buyer shall also have the right, on or before the expiration of the Contingency Period, to request in writing that Seller cure, to Buyer's reasonable satisfaction prior to the Close of Escrow, any condition related to the Property to which Buyer objects, and in the event that Seller notifies Buyer in writing that Seller is unable or unwilling to cure any such disapproved condition, Buyer shall have ~~five (5) days~~the right after receipt of Seller's notice to either waive Buyer's prior objection to the disapproved condition by delivering an Approval Notice or terminate this Agreement. If, prior to the expiration of the Contingency Period, Buyer delivers an Approval Notice to Seller and Escrow Holder, such approval shall satisfy this condition and the Deposit shall be nonrefundable to Buyer.

~~b-c.~~ 9.1(f) of the Form Agreement is deleted and replaced with the following:

"Escrow Holder shall cause a current commitment for title insurance or preliminary report ("**Title Commitment**") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("**Underlying Documents**"), ~~and a scaled and dimensioned plot showing the location of any easements~~ to be delivered to Buyer within five (5) days following the Date of Agreement. Buyer has ten (10) days from the Date of Agreement or receipt of the Title Commitment, ~~and~~ the Underlying Documents ~~and the plot plan~~, whichever is later ("**Title Approval Date**"), to give Seller and Escrow Holder written notice ("**Buyer's Title Notice**") of Buyer's approval, disapproval or conditional approval of any matters shown on the Title Commitment. ~~If Buyer does not timely provide Buyer's Title Notice, Seller shall provide notice to Buyer of its failure to provide Buyer's Title Notice and Buyer shall have two (2) business days from receipt of Seller's notice to provide Buyer's Title Notice.~~ If Buyer fails to timely respond to Seller's notice (which shall be deemed Buyer's disapproval of the condition of title of the Property), such disapproval shall act to terminate this Agreement. If Buyer's Title Notice disapproves or conditionally approves any matter of title shown in the Title Commitment, Seller shall give Buyer written notice ("**Seller's Title Notice**") not later five (5) days after Seller's receipt of Buyer's Title Notice of those disapproved or conditionally

approved title matters, if any, which Seller agrees to either eliminate from the Title Commitment as exceptions to title to the Property or to ameliorate to Buyer's satisfaction by the Closing Date. If Seller does not elect to eliminate or ameliorate to Buyer's satisfaction any disapproved or conditionally approved title matters, or if Buyer disapproves of Seller's Title Notice, or if Seller is unable to eliminate or ameliorate to Buyer's satisfaction all such disapproved matters prior to the Closing Date, then Buyer shall elect by written notice to Seller and Escrow Holder on or before the date which is two (2) business days after Buyer's receipt of Seller's Title Notice, to: (1) waive its prior disapproval, in which event said disapproved matters shall be deemed approved; or (2) terminate this Agreement and the Escrow created pursuant hereto, in which event, Escrow Holder shall disburse the then amount of the Deposit together with any interest accrued thereon (less the \$100 independent consideration) to Buyer. At Closing, title to the Property shall be conveyed to Buyer by Seller subject only to the following matters: (i) a lien to secure payment of real estate taxes and assessments, not delinquent; (ii) the lien of supplemental real estate taxes; and (iii) all exceptions that are disclosed in the Title Commitment which are approved by Buyer in writing in accordance with this Agreement. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing."

e.d. Buyer shall indemnify, defend with counsel reasonably acceptable to Seller and hold Seller harmless from all claims (including claims of liens for work or labor performed or materials or supplies furnished), demands, liabilities, losses, damages, costs, fees and expenses, including Seller's reasonable attorneys' fees, costs and expenses, incurred by Seller and arising out of the acts or activities of Buyer or Buyer's Representatives in, on or about the Property or arising in connection with any inspections performed under this Agreement, or otherwise from the exercise by Buyer or Buyer's Representatives of the right of access under this Agreement. Without limiting the generality of the foregoing, Buyer shall promptly repair, at its sole cost and expense, any damage to the Property to the extent directly caused by any inspection or entry in, on or around the Property, provided, however, Seller shall have the right to supervise any such repair. Notwithstanding anything contained in this Agreement, in no event shall Buyer be liable for, and no indemnification obligation of Buyer contained in this Agreement shall apply to any claims, losses, injuries, damages, liabilities, liens, costs or expenses to the extent arising out of (i) pre-existing conditions, (ii) the mere discovery of adverse matters by Buyer or Buyer's Representatives, and/or (iii) the fraud, negligence or willful misconduct of Seller or any of the Seller Parties. Buyer's obligations under this Paragraph shall survive the Closing or the earlier termination of this Agreement.

d.e. Buyer acknowledges that [as of the Date of Agreement](#), Seller has provided Buyer with copies of certain due diligence documents in Seller's possession and control ~~by way of a Box link~~ (collectively, the "**Property Documents**"), which Property Documents are more fully described on [Exhibit B](#) attached hereto. Except as expressly stated herein, Seller makes no representation or warranty as to the truth or accuracy of any materials, data or information contained in any opinions, reports, documents, or data generated by any third party ("**Third Party Materials**") and delivered by Seller to Buyer in connection with the transaction contemplated hereby. Buyer acknowledges and agrees that all such Third Party Materials delivered by Seller to Buyer in connection with the transaction contemplated hereby are provided to Buyer as a convenience only and that any reliance on or use of such Third Party Materials by Buyer shall be at the sole risk of Buyer, except as otherwise expressly stated herein. Without limiting the generality of the foregoing provisions, Buyer acknowledges and agrees that (a) any environmental or other Third Party Materials with respect to the Property which are delivered by Seller to Buyer shall be for general informational purposes only, (b) Buyer shall not have any right to rely on any such Third Party Materials delivered by Seller to Buyer, but rather will rely on its own inspections and investigations of the Property and any reports commissioned by Buyer with respect thereto, and (c) neither Seller, any affiliate of Seller nor the person or entity which prepared any such Third Party Materials delivered by Seller to Buyer shall have any liability to Buyer for any inaccuracy in or omission from any Third Party Materials.

e.f. Buyer shall have the right to extend the Contingency Period for a period of fifteen (15) days if Buyer discovers a Major Defect (as defined below) during the performance of its inspections or if its Phase 1 environmental report documents a recognized environmental condition ("**REC**") and recommends

further testing to evaluate such REC. As used herein, “Major Defect” means a defect in the physical condition of the Building or any building component or system which is reasonably expected to cost more than fifty thousand dollars (\$50,000) to repair. If Buyer wishes to extend the Contingency Period pursuant to the foregoing, Buyer must deliver written notice of such extension on or prior to expiration of the Contingency Period.

~~f.g.~~ If Closing occurs, Buyer shall be entitled to a credit in the amount of Forty Thousand Dollars (\$40,000.00) (the “Credit”) which may be applied toward the out of pocket costs and expenses of Buyer’s diligence and inspection costs, including without limitation its Phase 1 report, as evidenced by invoices submitted to Escrow. Any remaining balance of such Credit shall be applied toward the commission due to Buyer’s Broker, if and only if, Closing occurs. If Closing does not occur, Buyer shall not be entitled to any Credit.

31. **AS-IS SALE.** BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 12 OF THE FORM AGREEMENT, SELLER HAS NOT MADE ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES 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, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, AND ANY IMPROVEMENTS THEREON; (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; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (G) THE COST TO DEVELOP THE PROPERTY; (H) COMPLIANCE WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING WITHOUT LIMITATION ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS SUBSTANCES OR MATERIALS; OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY, WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 12 OF THE FORM AGREEMENT MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE OR OTHER REPRESENTATIVE. EXCEPT FOR SELLER’S REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN PARAGRAPH 12 OF THE FORM AGREEMENT, BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN “AS-IS” CONDITION AND BASIS WITH ALL FAULTS. ADDITIONALLY, PARAGRAPH 12.1 IS HEREBY AMENDED TO REPLACE 3 YEARS WITH ~~EIGHTEEN (18)~~TWELVE (12) MONTHS.

a. Buyer hereby agrees that Seller and Seller Parties, and their respective partners, members, officers, directors, employees, contractors, asset managers, agents, attorneys, beneficiaries, predecessors, successors and assigns (collectively, the “Released Parties”) shall be, and are hereby, fully and forever released and discharged from any and all liabilities, losses, claims (including third party claims), demands, damages (of any nature whatsoever), causes of action, costs, penalties, fines, judgments, attorneys’ fees, consultants’ fees and costs and experts’ fees (collectively, the “Claims”) with respect to any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the Property, this Agreement or the transactions contemplated hereby. Buyer hereby waives and agrees not to

commence any action, legal proceeding, cause of action or suits in law or equity, of whatever kind or nature, directly or indirectly, against the Released Parties or their agents in connection with Claims described above and expressly waives the provisions of Section 1542 of the California Civil Code which provides:

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

and all similar provisions or rules of law. Buyer elects to and does assume all risk for such Claims heretofore and hereafter arising, whether now known or unknown by Buyer. Seller has given Buyer material concessions regarding this transaction in exchange for Buyer agreeing to the provisions of this ~~Section~~ Paragraph. Buyer has initialed this ~~Section~~ Paragraph to further indicate its awareness and acceptance of each and every provision hereof. The provisions of this ~~Section~~ Paragraph shall survive the Closing and shall not be deemed merged into any instrument or conveyance delivered at the Closing.

Buyer's Initials: _____

Notwithstanding anything contained in this Agreement, in no event shall Buyer disclaim, waive or release Seller from any (i) fraud, gross negligence or willful misconduct, (ii) breach of an express representation, warranty or covenant which survives the closing or termination of this Agreement, or (iii) covenant or obligation contained in any document, agreement or instrument delivered by Seller at or through Closing.

- b. When "Seller's knowledge", or comparable language is used in Paragraph 12 of the Form Agreement or in this Addendum, the same shall be deemed to refer to the actual knowledge of Jennifer Bishop-Krause (without duty of independent investigation) ("**Seller's Representative**"), ~~or matters of which Seller's Representative should have knowledge after a reasonable inquiry~~; provided that so qualifying Seller's knowledge shall in no event give rise to any personal liability on the part of Seller's Representative, or any other partner, officer or employee of Seller, on account of any breach of any representation or warranty made by Seller herein. Such terms do not include constructive knowledge, imputed knowledge, or knowledge Seller or such persons do not have but could have obtained through further investigation or inquiry.

32. **POST CLOSING LIABILITY.** SELLER SHALL HAVE NO LIABILITY FOR, BUYER AND ITS SUCCESSORS AND ASSIGNS SHALL BE DEEMED TO HAVE WAIVED AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM ANY BREACH OR ALLEGED BREACH BY OR ON THE PART OF SELLER (COLLECTIVELY, "**BUYER'S POST-CLOSING CLAIMS**"), UNLESS BUYER HAS DELIVERED TO SELLER WRITTEN NOTICE THAT BUYER IS SEEKING RECOURSE WITH RESPECT THERETO (THE "**RECOURSE NOTICE**") AFTER THE CLOSE OF ESCROW BUT ON OR BEFORE THE DATE THAT IS TWELVE (12) MONTHS FOLLOWING THE CLOSE OF ESCROW AND BUYER HAS FILED SUIT WITH RESPECT THERETO ON OR BEFORE SUCH DATE. THE RECOURSE OF BUYER AND ITS SUCCESSORS OR ASSIGNS AGAINST SELLER WITH RESPECT TO BUYER'S POST-CLOSING CLAIMS SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED FIVE HUNDRED THOUSAND (\$500,000.00) IN THE AGGREGATE (PLUS ANY AWARD FOR PROFESSIONAL FEES), PROVIDED HOWEVER, BUYER SHALL HAVE NO RIGHT TO FILE SUIT FOR RECOURSE WITH RESPECT TO BUYER'S POST-CLOSING CLAIMS UNLESS AND UNTIL THE AGGREGATE AMOUNT OF SUCH RECOURSE EXCEEDS TWENTY THOUSAND DOLLARS (\$20,000) (IN WHICH EVENT THE FULL AMOUNT OF SUCH CLAIMS SHALL BE ACTIONABLE). In no event shall Seller be liable to Buyer for any consequential, exemplary, punitive, or any other type of damages (other than direct damages) or for unrealized expectations or other similar claims in respect of any such claims, and in every case Buyer's recovery for any claims shall be net of any insurance proceeds and any indemnity, contribution, or other similar payment recovered or recoverable by Buyer from any insurance company or other third party.

33. **Natural Hazard Disclosure.** Buyer and Seller acknowledge that Seller may be required to disclose if any of 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) an earthquake fault or special studies zone; or (vi) a seismic hazard zone. Buyer acknowledges that Seller will employ the services of Disclosure Source ("**Natural Hazard Expert**") to examine the maps and other information specifically made available to the public by government agencies and to report the results of its examination to Buyer in writing. The written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges Seller from its disclosure obligations referred to herein, and, for the purposes of this Agreement, the provisions of Civil Code Section 1103.4 regarding the non-liability of Seller for errors and/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.

34. The following shall be inserted at the end of Paragraph 9.1(h) of the Form Agreement:

"At least ten (10) days prior to the expiration of the Contingency Period, Seller shall provide Buyer with an Estoppel Certificate, executed by Seller and/or each tenant ~~and subtenant~~ of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Seller shall also deliver an updated rent roll five (5) days prior to the expiration of the Contingency Period identifying the name of each tenant, the suite each tenant occupies, the rent rate for each tenant, whether each tenant is current or delinquent on rent, whether each tenant provided a security deposit, the remaining amount of any security deposit, and the expiration date of the tenant's lease."

35. The following shall be inserted as the first sentence of Paragraph 9.1(o) of the Form Agreement:

"There shall have been no Material Change, or Seller shall have satisfied itself with respect to any Material Change. "Material Change" shall mean a substantial adverse change in the use, occupancy, tenants, title, or condition of the Property that occurs after the date of this offer and prior to the Closing; provided, however, (A) with respect to any existing leases, the following shall not constitute a Material Change or be deemed a Material Representation Change: (i) any monetary defaults by tenants with a collective total of less than \$5,000; (iii) any monetary defaults by tenants with a collective total in excess of \$5,000 which Seller agrees to cure prior to Closing, and (B) any Material Change which occurs after the date of this Agreement but which Buyer approves or waives as of the Contingency Date, shall not be deemed a Material Change or Material Representation Change for purposes of this Agreement. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing."

36. The following shall be inserted as Paragraph 9.1(q) of the Form Agreement:

"There shall have been no Material Representation Change, or Seller shall have satisfied itself with respect to any Material Representation Change."

37. All closing costs shall be allocated in accordance with the custom and practice of the county in which the Property is located. Rents shall be prorated as of the close of escrow and all security deposits shall be transferred to Buyer through escrow.

38. The following shall be inserted at the end of ~~Section-Paragraph~~ 10.2(a) of the Form Agreement: The grant deed shall be in the form of the Grant Deed attached hereto as Exhibit C ("Grant Deed").

39. ~~Section-Paragraph~~ 10.2(b) and (c) of the Form Agreement are deleted and replaced with the following:

"(b) Intentionally deleted.

(c) An assignment of any Existing Leases and Other Agreements Buyer elects to assume and have assigned to Buyer. The assignment of leases shall be in substantially the form of the Assignment and Assumption of Leases attached hereto as Exhibit D ("Assignment and Assumption of Leases"). The assignment of any Other Agreements shall be in substantially the form of the Assignment and Assumption of Contracts attached hereto as Exhibit E ("Assignment and Assumption of Contracts")."

40. The following shall be inserted at the end of ~~Section Paragraph~~ 10.2(f) of the Form Agreement: “The bill of sale shall be in the form of the Bill of Sale attached hereto as Exhibit F.”

41. Paragraphs 10.3(b) through (e) of the Form Agreement are deleted and replaced with the following:

“(b) Intentionally deleted.

(c) The Assignment and Assumption of Leases, duly executed by Buyer.

(d) The Assignment and Assumption of Contracts, duly executed by Buyer.

(e) Intentionally deleted.

(g) A Certificate of Acceptance of the Grant Deed, in the form attached hereto as Exhibit G.

42. The following shall be inserted at the end of Paragraph 11.1 of the Form Agreement:

“The portion of current property taxes which would otherwise be allocable to the period after the close of Escrow shall not be allocated, as Buyer is exempt from payment of property taxes. Accordingly, Escrow Agent shall pay and charge Seller for that portion of current property taxes and assessments and any penalties and interest thereon allocable to the period prior to the close of Escrow. Escrow Agent shall pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property. Seller shall have the sole right, after Close of Escrow, to apply to the Alameda County Tax Collector for a refund of any excess property taxes which have been paid by Seller with respect to the Property. This refund would apply to the period after Buyer’s acquisition of the Property, pursuant to Revenue and Taxation Code Section 5096.7.”

43. The following shall be inserted at the end of Paragraph 12.1(i) of the Form Agreement:

“Seller shall in all events at least ~~ten (10)~~five (5) days prior to the Closing (and the Closing shall be extended if necessary to give Buyer ~~ten (10)~~five (5) days to review such Material Change), give written notice of such Material Change to Buyer.”

44. The following shall be added to Paragraph 12.1 of the Form Agreement:

“(m) Seller has not received notice of any violation of any law or municipal ordinance, order, or requirement noted or issued against the Property by any governmental authority having jurisdiction over the Property, that has not been cured, corrected, or waived.

(n) A list of the Existing Leases, ~~and~~ true, correct, and complete copies of ~~which the Existing Leases and any material amendments~~ have been delivered to Buyer. Except as otherwise provided for in Exhibit H to this Addendum, (i) the Existing Leases are in good standing and in full force and effect in accordance with their respective terms; (ii) the Existing Leases have not been modified, amended, terminated, renewed, or extended, except as set forth in the applicable Existing Lease; (iii) none of the parties to any Existing Lease is in default of any of its obligations thereunder and to Seller’s knowledge no event has occurred that, with the giving of notice or passage of time, or both, would constitute a default thereunder; and (iv) there are no leasing or other commissions, fees, or other amounts due or owing, to any third party, or that may become due and owing to any third party after the Closing, in connection with any Existing Leases or any existing listing or brokers’ agreements related thereto (including with respect to any renewal of any Existing Lease, extension of the term of any Existing Lease, any expansion of any leased premises, or any right of any tenant under any Existing Lease to purchase the Property.

(o) Seller has not received any written notice or information regarding any condemnation, environmental, zoning, sewer moratorium, or other land-use regulation proceedings, either instituted or planned to be instituted that would materially and adversely affect the use and operation of the Property.

(p) If, prior to the Closing, Seller becomes aware of any fact or circumstance that would (i) materially change a representation or warranty of Seller in this Agreement (“**Material Representation Change**”), then Seller shall promptly, and in all events at least ~~ten (10)~~five (5) days prior to the Closing (and the Closing shall be extended if necessary to give Buyer ~~ten (10)~~five (5) days to review such Material Representation Change), give written notice of such Material Representation Change to Buyer.

(q) The Property Documents delivered to Buyer pursuant to this Agreement or in connection with the purchase and sale contemplated hereby are all of the documents or agreements affecting the Property that are in Seller's possession, custody, or control, are complete and accurate originals or copies, and are in full force and effect, without default by Seller, and, to Seller's knowledge, without default by any other party."

~~45.~~ The following shall be added as a new Paragraph 12.5 of the Form Agreement:

~~"Seller hereby indemnifies and holds Buyer harmless from any and all losses, damages, costs, liabilities and expenses, including, without limitation, reasonable attorneys' fees (and those fees incurred upon any appeals) incurred or suffered by Buyer as a result of the breach by Seller of any of the representations and warranties contained in this Agreement (subject to the limitations set forth in Paragraph 32), the failure by Seller to comply with any of the covenants contained in this Agreement or any other default by Seller under the terms of this Agreement (r) Jennifer Bishop Krause is the person with the most knowledge of the matters that are the subject of Seller's representations and warranties herein."~~

~~46.~~45. Paragraph 21 of the Form Agreement is amended and restated as follows:

Liquidated Damages. SELLER AND BUYER AGREE THAT, IF THE PURCHASE AND SALE OF THE PROPERTY IS NOT COMPLETED IN ACCORDANCE WITH THIS AGREEMENT AS A DIRECT RESULT OF A MATERIAL DEFAULT BY BUYER UNDER THIS AGREEMENT, SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT AND UPON TERMINATION THE DEPOSIT SHALL BE PAID TO SELLER AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AND BUYER AGREE THAT, UNDER THE CIRCUMSTANCES EXISTING AS OF THE **EFFECTIVE DATE OF AGREEMENT**, ACTUAL DAMAGES MAY BE DIFFICULT TO ASCERTAIN AND THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT WILL BE INCURRED BY SELLER IF BUYER MATERIALLY DEFAULTS UNDER OR MATERIALLY BREACHES THIS AGREEMENT AND FAILS TO PURCHASE THE PROPERTY IN ACCORDANCE WITH THIS AGREEMENT. SUCH RETENTION OF THE DEPOSIT BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR SECTION 3369 OF THE CALIFORNIA CIVIL CODE OR ANY SIMILAR PROVISION. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BUYER SHALL NOT BE IN DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OTHER THAN A FAILURE TO CLOSE ON THE CLOSING DATE UNLESS AND UNTIL BUYER RECEIVES NOTICE FROM SELLER SPECIFYING SUCH DEFAULT AND BUYER FAILS TO CURE SUCH DEFAULT WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF SUCH NOTICE. BY PLACING ITS INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, IN NO EVENT WHATSOEVER WILL EITHER BUYER OR SELLER BE ENTITLED TO RECOVER FROM THE OTHER ANY PUNITIVE, CONSEQUENTIAL OR SPECULATIVE DAMAGES PURSUANT TO THIS AGREEMENT.

SELLER'S INITIALS: _____

BUYER'S INITIALS: _____

~~47.~~46. **Seller Default.** Seller shall be in default under this Agreement if Seller breaches the terms of this Agreement and fails to cure such breach within five (5) days of receipt of notice from Buyer. In the event Seller defaults under this Agreement and Closing does not occur, as Buyer's sole and exclusive remedy, Buyer shall have the right to either (a) sue Seller for specific performance (without the need to post a bond in connection therewith but Buyer shall in a position, ready, willing and able, as required by law, to fully perform all of its obligations under this Agreement, including without limitation, delivery to Escrow Agent of the Purchase Price) provided Buyer commences such action for specific performance within sixty (60) days after the expected Closing Date, or (b) terminate the Agreement and receive an immediate return of the Deposit. Buyer agrees that its failure to timely commence such an action for specific performance within

such sixty (60) day period shall be deemed a waiver by it of its right to commence an action for specific performance as well as a waiver by it of any right it may have to file or record a notice of lis pendens or notice of pendency of action or similar notice against any portions of the Property. In no event may Buyer seek, and Buyer hereby waives and releases Seller from any claim for damages, if either the transfer of the Property does not occur or if the transfer of the Property does occur pursuant to an action for specific performance.

This Paragraph ~~47~~46 shall only limit Buyer's rights and remedies in the event that Closing does not occur due to Seller's breach. Subject to the limitations set forth in Paragraph 32, Buyer shall have all rights and remedies available to it at law or equity with respect to any other breach by Seller including the rights set forth in Paragraph 12.5.

~~48~~47. **Personal Property.** The Property shall include, at no additional cost to Buyer, Seller's personal property, furniture and furnishings, except for that certain office furniture belonging Alan Bishop which shall be removed by Seller prior to Closing. Notwithstanding anything to the contrary in the Agreement, title to any personal property owned or leased by any tenant of the Property is not included in the sale of the Property hereunder.

~~49~~48. The following sentence shall be added to the end of Paragraph 19.1. Notices shall be provided to Buyer and Seller at the following addresses:

To Buyer:

City of Fremont
Attn: Christina Briggs, Assistant City Manager
300 Capitol Ave
Fremont, CA 94538

and

City of Fremont
Attn: Donovan Lazaro, Economic Development Director
300 Capitol Ave
Fremont, CA 94538
Email: DLazaro@fremont.gov

With a Copy to:
City of Fremont
Rafael Alvarado, Jr., City Attorney
300 Capitol Ave
Fremont, CA 94538
Email: ralvarado@fremont.gov

and

Burke, Williams & Sorensen LLP
Attn: Jerry Ramiza and Meghan Nihan
1999 Harrison Street, Suite 1650
Oakland, CA 94612
Email: jramiza@bwslaw.com
mnihan@bwslaw.com

and

DCG Strategies, Inc.
Attn: Landis Graden, Senior Vice President
Address: 4085 Campbell Avenue, Suite 150,
Menlo Park, CA 94025
Email: lgraden@dcgstrategies.com

To Seller:

[Seller insert]

[Marilyn Jayne Gordon, as Trustee of the Robert B. Gordon and Marilyn J. Gordon Declaration of Trust dated January 31, 1996, Shirley Ann Abreu as Trustee of the Abreu Living Trust dated November 3, 1988, and Gregory Krause and Eugene Roeben as co-trustees of the Bishop 2001 Living Trust](#)
[39180 Liberty Street](#)
[Fremont, CA 94538](#)
Email: [redacted]

~~50-49~~. **Business Days.** As used herein, the term "Business Day" means any day that is not a Saturday, Sunday or legal holiday for national banks in the city in which the Property is located; provided however, that if the expected Closing Date is scheduled to occur on a date on which the clerk's office or office of public records and/or Escrow Agent are not open for business as a result of the coronavirus referred to as COVID-19, or, as a direct result of governmental actions taken in connection with such virus, it is otherwise not reasonably feasible for the employees, agents and representatives of Buyer or Seller to consummate Closing on the expected Closing Date, in which case the expected Closing Date shall automatically be extended to the next Business Day on which such offices are open for business and it is reasonably feasible for the employees, agents and representatives of Seller and Buyer to consummate Closing.

~~54-50~~. **Office of Foreign Assets Control ("OFAC") Representations.** Seller and Buyer (each, a "**Representing Party**") each represents and warrants to the other: (i) that neither the Representing Party nor any person or entity that directly owns a 10% or greater equity interest in it nor any of its officers, directors or managing members is a person or entity (each, a "**Prohibited Person**") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "**Executive Order**") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, (ii) that the Representing Party's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "**Anti-Money Laundering Act**"), and (iii) that throughout the term of this Agreement the Representing Party shall comply with the Executive Order and with the Anti-Money Laundering Act. Calculation of Time. Unless otherwise specified, in computing any period of time described in the Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

~~52-51~~. **Confidentiality of Terms of Agreement.** Except as required by statute, rule, regulation or legal process, Seller and Buyer shall each keep the terms of the Agreement, and all documents exchanged by the parties in connection with the transaction, strictly confidential and shall not disclose or permit their employees or agents to disclose the terms of the transaction, except to their respective attorneys, accountants, financial advisors or consultants, real estate brokers, actual and prospective lenders, and actual and prospective investors, or to enforce the terms of this Agreement. The foregoing confidentiality requirements shall not apply to any information or matter that is or becomes generally available to the public. For the avoidance of doubt, the Parties acknowledge and agree that (a) the Ralph M. Brown Act (California Government Code Sections 54950 to 54963) requires Buyer to submit the Agreement to the City Council for approval and include the Agreement in a publicly available agenda prior to City approval and (b) the Agreement will become public record once the Agreement is finalized and the documents exchanged in connection with the transaction [to the extent required by applicable law](#) will become public record after Closing pursuant to the California Public Records Act (California Government Code Sections 7920.000-7931.000).

Exhibit B
Property Documents

- Preliminary title report (through escrow)
- Natural Hazards Report (through escrow)
- Copies of all tenant leases
- Offering Memorandum & Financials and Rent Roll Summary
- Latest Rent Roll 2023
- Rent Roll 2020-2022¹
- Profit and Loss Statements 2020, 2021, 2022
- Property Tax Bill 2020-2021, 2021-2022, 2022-2023
- Assa Abloy contract – maintenance of automatic doors
- Environment Control letter – for janitorial services
- Ontario contract – HVAC
- Highland documents – roof
- Conveyance permit
- Kings contract – communications
- SF Elevator contract
- KBA contract – copy machine lease thru Feb 2024 for 2nd floor usage

¹ Rent roll must include the name of each tenant, the suite each tenant occupies, the rent rate for each tenant, whether each tenant is current or delinquent on rent, whether each tenant provided a security deposit, the remaining amount of any security deposit, and the expiration date of the tenant's lease