

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

BY AND BETWEEN

MP Land Holdings, LLC

"Seller"

AND

The City of Sunnyvale

"Buyer"

_____, 2020__

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

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is made and entered into as of _____, 2020, (which date is for purposes of reference only), by and between MP Land Holding LLC, a California limited liability company ("**Seller**"), and the City of Sunnyvale, a California Charter City ("**Buyer**") for the purposes of setting forth the agreement of the parties with respect to the transaction contemplated by this Agreement.

RECITALS

A. Pursuant to authority granted under California Government Code Section 37350 and Chapter 2.07 of the Sunnyvale Municipal Code, the Buyer may purchase, control and dispose of property for the common benefit.

B. The Seller is fee owner of that certain real property located at 1178 Sonora Court (A.P.N. 205-50-013) in Sunnyvale, California as more particularly described in **Exhibit A** attached to this Agreement.

C. Upon and subject to the terms and conditions set forth in this Agreement, Seller desires to sell and Buyer desires to purchase the following (collectively, the "**Property**"):

(i) the fee interest in the real property described on **Exhibit A** hereto, together with all rights, privileges and easements appurtenant thereto or used in connection therewith, including, without limitation, all minerals, oil, gas and other hydrocarbon substances thereon, all development rights, air rights, water, water rights and water stock relating thereto, all strips and gores, and all of Seller's right, title and interest in and to any streets, alleys, easements, rights-of-way, public ways, or other rights appurtenant, adjacent or connected thereto or used in connection therewith (collectively, the "**Land**");

(ii) all buildings, improvements, structures and fixtures included or located on or in the Land (collectively, the "**Improvements**");

(iii) all of Seller's right, title and interest in the Tenant Lease as described in Section 5.1.9 below covering the Land and Improvements (the Land, the Improvements and Seller's right, title and interest in the Tenant Lease are sometimes hereinafter collectively referred to as the "**Real Property**");

(iv) all tangible personal property, equipment and supplies (collectively, the "**Personal Property**") owned by Seller and located on or about the Land or the Improvements or attached thereto or used exclusively in connection with the use, operation, maintenance or repair thereof (if any), including, without limitation, the personal property designated in **Exhibit B** attached hereto; and

(v) all intangible property (collectively, the "**Intangible Property**") owned by Seller and used exclusively in connection with the Land, the Improvements or the Personal Property (if any), including, without limitation, building-specific trademarks and trade names, transferable licenses, architectural, site, landscaping or other permits, development rights, applications, approvals, permits, authorizations and other entitlements, transferable guarantees and warranties covering the Land and/or Improvements, all contract rights (including, without limitation, rights under any consulting, architectural or engineering contracts and contracts rights under the "**Service Contracts**" (as hereinafter defined)), books, records, reports, test results, environmental assessments, as-built plans, specifications and other similar documents and materials relating to the use, operation, maintenance or repair of the Property or the construction or fabrication thereof, and all transferable utility contracts.

D. Concurrently with execution of this Agreement, Buyer and Seller are entering into a Disposition and Development Agreement whereby the Buyer will ground lease the Property to the Seller for the development of the Property as an affordable, transit-oriented rental housing project.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. AGREEMENT TO PURCHASE AND SELL.

Subject to all of the terms and conditions of this Agreement, Seller agrees to sell, transfer and convey to Buyer, and Buyer agrees to acquire and purchase from Seller, the Property upon the terms and conditions set forth herein.

2. INDEPENDENT CONSIDERATION.

Within ten (10) "**Business Days**" (as defined in Section 16.6) after the Effective Date, Buyer shall pay the Seller the amount of One Hundred Dollars (\$100) (the "**Independent Consideration**"). The Independent Consideration shall be non-refundable to Buyer and shall not be credited towards the payment of the Purchase Price (defined below). The Independent Consideration shall constitute separate, independent, and good and valuable consideration provided by the Buyer to the Seller for the rights extended to the Buyer under this Agreement.

3. PURCHASE PRICE.

The purchase price for the Property (the "**Purchase Price**") shall be Thirteen Million Five Hundred Fifty Thousand Dollars (\$13,550,000).

3.1. Deposit.

3.1.1. Not later than the date that is ten (10) Business Days (as defined in Section 16.16) after the date upon which Buyer and Seller have both executed and delivered this Agreement as indicated by the dates set forth next to their signatures (the "**Execution Date**"), Buyer shall open an escrow ("**Escrow**") with First American Title Insurance Company, National

Commercial Services, at 333 West Santa Clara Street, Suite 220, San Jose, CA 95113
Escrow Officer: Linda Tugade, Phone No.: (408) 579.8340, Fax No. (714) 913.6757,
Email: ltugade@firstam.com ("**Title Company**") and shall deposit into Escrow the sum of One Hundred Thousand Dollars (\$100,000) (which amount, together with any and all interest and dividends earned thereon, shall hereinafter be referred to as the "**Deposit**"). Title Company shall hold the Deposit in a non-commingled trust account and shall invest the Deposit in insured money market accounts, certificates of deposit, United States Treasury Bills or such other instruments as Buyer may instruct from time to time. In the event of the consummation of the purchase and sale of the Property as contemplated hereunder, the Deposit shall be paid to Seller at the "**Closing**" (as defined in Section 9.1) and credited against the Purchase Price.

3.2. Balance.

On the "**Closing Date**" (as defined in Section 9.1), Buyer shall pay to Seller the balance of the Purchase Price over and above the Deposit paid by Buyer under Section 3.1 above by wire transfer of federal funds to Title Company, net of all prorations and adjustments as provided herein.

3.3. Release.

3.3.1. The Seller understands and agrees that the amounts to be paid to the Seller pursuant to this Agreement are in full settlement of all claims the Seller has made or could have made against the Buyer in connection with or related to the Buyer's acquisition of the Property, including but not limited to, claims for compensation for the Property, improvements thereon or interests therein, severance damages, any amounts for relocation benefits and/or assistance pursuant to Government Code Sections 7260 *et seq.*, loss of goodwill, inverse condemnation, unreasonable precondemnation activities, interest, costs, and litigation expenses. Except as provided in this Agreement, the Seller shall not be entitled to receive and hereby waives all rights to receive any compensation, damages, or other amounts by reason of such claims and releases the Buyer from any claim or cause of action for any damage related to the Buyer's acquisition of the Property.

3.3.2. The Seller acknowledges and agrees that (i) to the extent required to be operative, the disclaimers of warranties contained in this Section 3.3 hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the consideration provided by the Buyer has been adjusted to reflect the same and that the Buyer would not have agreed to purchase the Property from the Seller for such consideration without the disclaimers and other agreements set forth in this Section.

3.3.3. The release set forth in this Section 3.3 hereof includes claims of which the Seller is presently unaware or which the Seller does not presently suspect to exist which, if known by the Seller, would materially affect the Seller's release of the Buyer. The Seller specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Seller agrees, represents and warrants that the Seller realizes and acknowledges that factual matters now unknown to the Seller may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies,

damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Seller further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Seller nevertheless hereby intends to release, discharge and acquit the Buyer from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Seller, on behalf of itself and anyone claiming by, through or under the Seller, hereby assumes the above-mentioned risks and hereby expressly waives any right the Seller and anyone claiming by, through or under the Seller, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which 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 must have materially affected his or her settlement with the debtor or released party."

Seller's Initials: _____

4. DUE DILIGENCE

4.1. Property Documents.

4.1.1. Within three (3) days after the Execution Date, Seller shall deliver to Buyer, at Seller's sole cost and expense, for review and copying by Buyer all contracts, agreements, documents, financial reports, survey and other third party inspection reports, books and records and other materials pertinent to the Property in Seller's possession or control (collectively, the "**Property Documents**"), including, without limitation: (1) all building plans and specifications; (2) all service or maintenance contracts ("**Service Contracts**"); (3) any other contracts or warranties, including, without limitation, any contracts for environmental assessments and civil engineering contracts; (4) copies of all current tenant leases, current tenant files and lease applications; (5) the two (2) most recent Property tax bills, including all information on any tax assessments; (6) all environmental reports, seismic reports, soils reports or geotechnical studies, and any building inspection reports, other inspection reports or other third party reports, studies and investigations with respect to the Property; (7) Seller's current title insurance policy; (8) the most current survey of the Property; (9) any public sector notices; and (10) any records relating to any lawsuits pending against the Seller, its agents or employees in connection with the ownership, operation, or management of the Property. Notwithstanding the foregoing, Seller shall not be obligated to deliver to Buyer (i) any document or item that is subject to attorney client privilege, provided that Seller shall notify Buyer if Seller is withholding any documents or items subject to attorney client privilege, which notice shall include a brief description of the subject matter of the item being withheld; and (ii) any document or item that is proprietary to Seller or which Seller is contractually bound to keep confidential, provided that Seller shall notify Buyer if Seller is withholding any document or item subject to confidentiality restrictions, which notice shall include a brief description of the subject matter of the item being withheld. Seller's delivery of the above Property Documents shall be without any representation or warranty by Seller as to the accuracy or completeness of any such Property Documents and

Buyer acknowledges that Seller does not convey to Buyer any copyright or ownership rights of any third parties in the Property Documents.

4.1.2. The Seller shall complete and deliver to Buyer, within the Contingency Period described below, a Natural Hazard Disclosures Report for the Property.

4.1.3. The Seller shall provide an executed Tenant Estoppel in the form attached hereto as **Exhibit J**, executed by Tenant under the Tenant Lease within five (5) days prior to the Closing Date.

4.2. Investigations.

At all reasonable times from the Execution Date until the Closing or earlier termination of this Agreement and upon reasonable notice to Seller, Buyer and its agents, employees, representatives, and independent contractors shall be entitled, at Buyer's sole cost and expense, to (i) enter onto the Property during normal business hours to perform any inspections, investigations, studies and tests of the Property that Buyer deems prudent, including, without limitation, physical, structural, mechanical, architectural, engineering, soils, geotechnical, environmental, and asbestos tests and pest investigations (collectively, "**Tests and Inspections**"); (ii) cause an environmental assessment of the Property to be performed; (iii) review, examine and copy any Property Documents; (iv) interview the persons responsible for the management of the Property, including, without limitation, Seller's property manager ("**Manager**") and its employees; (v) interview occupants of the Property. The Buyer shall cooperate with the Seller and make diligent efforts to ensure that any such access results in a minimum of disruption of Seller's ongoing operations on the Property. After making any such Tests and Inspections, Buyer shall promptly restore the Property to its condition prior to such Tests and Inspections. Buyer shall indemnify and hold harmless Seller from any and all losses, costs and expenses (including reasonable attorneys' fees) incurred, suffered by, or claimed against the Seller by reason of any damage to the Property or injury to persons caused by Buyer and/or its agents, employees or contractors in performing any such Test and Inspections. Buyer's obligations above shall survive the termination of this Agreement.

4.3. Contingency Period.

Buyer, in Buyer's sole and absolute discretion, shall approve or disapprove the Property, including the condition of the Property and the feasibility of Buyer's intended development of the Property, during the period beginning on the Execution Date and ending at 5:00 p.m. (California time) on the date that is thirty (30) days after the Execution Date (such period, the "**Contingency Period**"). On or before expiration of the Contingency Period, Buyer shall deliver written notice to Seller either approving or disapproving the Property. Buyer's failure to deliver such notice shall be deemed disapproval. If Seller fails to deliver the Property Documents within three (3) days after the Execution Date, the Contingency Period shall be extended by one (1) day for each day after such three (3)-day period until Seller has delivered to Buyer all of the Property Documents. If Buyer disapproves (or is deemed to have disapproved) the Property, (i) the Deposit shall be returned to Buyer immediately upon the written request of Buyer to Title Company, (ii) the parties shall equally share any cancellation charges of the Title Company ("**Cancellation Charges**"), and (iii) this Agreement shall automatically terminate and

be of no further force or effect and neither party shall have any further rights or obligations hereunder, other than pursuant to any provision hereof that expressly survives the termination of this Agreement. If Buyer approves the Property pursuant to this Section 4.3, this Agreement shall remain in full force and effect, the Deposit shall be retained in Escrow.

4.4. Insurance.

Prior to entering the Property, Buyer shall obtain, or cause its agents and representatives that will enter the Property in connection with the investigations pursuant to Section 3.2 to obtain, workers' compensation and general liability insurance (including umbrella or excess policies) in the amount of at least One Million Dollars (\$1,000,000) per occurrence, and at least Two Million Dollars (\$2,000,000) in the aggregate, which insurance shall name Seller as an additional insured. Buyer shall provide Seller with proof of such insurance prior to commencing Buyer's physical inspections of the Property.

4.5. Title.

4.5.1. Title Documents. Within three (3) Business Days after the Execution Date, Seller shall obtain and deliver to Buyer a Preliminary Title Report for the Property issued by Title Company together with copies of all items shown as exceptions therein (collectively, the "**Preliminary Report**").

4.5.2. Buyer's Review of Title. Buyer may advise Seller in writing by not later than twenty (20) days after the Execution Date what exceptions to title, if any, listed therein are not acceptable to Buyer (collectively, the "**Title Objections**"). Seller shall have five (5) days after receipt of Buyer's Title Objections to give Buyer notice that (a) Seller will remove any Title Objections from title (or afford the Title Company necessary information or certifications to permit it to insure over such exceptions) or (b) Seller elects not to cause such exceptions to be removed. Seller's failure to provide notice to Buyer within such five (5) day period as to any Title Objection shall be deemed an election by Seller not to remove the Title Objection. If Seller so notifies or is deemed to have notified Buyer that Seller shall not remove any or all of the Title Objections, Buyer shall have until the later of close of the Contingency Period or five (5) days after receipt of Seller's notice (or deemed disapproval) to determine whether (i) to proceed with the purchase and take the Property subject to such exceptions or (ii) to terminate this Agreement. "**Permitted Exceptions**" shall include and refer to any and all exceptions to title shown on the Preliminary Report, excepting solely Title Objections that have been timely identified by Buyer and that Seller has notified Buyer pursuant to this Section that Seller is willing to remove, and any other exceptions to title approved in writing by Buyer. Notwithstanding anything to contrary herein, Seller shall be obligated to remove all title exceptions created by Seller on or after the date of this Agreement without the prior written consent of Buyer, any mechanic's liens or materialman's liens unless arising in connection with Buyer's activities on the Property, and all liens and encumbrances affecting the Property that secure an obligation to pay money (other than installments of real estate taxes and assessment not delinquent as of the Closing Date).

4.5.3. Condition of Title at Closing. Upon the Closing, Seller shall sell, transfer and convey to Buyer fee simple title to the Land and the Improvements thereon by a

duly executed and acknowledged grant deed in the form of **Exhibit C** attached hereto (the "**Deed**"), subject only to the Permitted Exceptions.

5. SELLER'S REPRESENTATIONS AND WARRANTIES

5.1. Representations and Warranties.

As an essential inducement to Buyer entering into this Agreement, Seller represents and warrants to Buyer as of the date hereof and as of the Closing Date:

5.1.1. No Conflicts. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement will not conflict with, or, with or without notice or the passage of time or both, result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, deed of trust, mortgage, loan agreement, or other document or instrument to which Seller is a party or by which Seller is bound, or any applicable regulation of any governmental agency, or any judgment, order or decree of any court having jurisdiction over Seller or any portion of the Property.

5.1.2. Due Organization; Consents. All requisite action has been taken by Seller in connection with entering into this Agreement, and will be taken prior to the Closing in connection with the execution and delivery of the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent of any partner, member, shareholder, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required in connection herewith that has not been obtained.

5.1.3. Seller's Authority; Validity of Agreements. Seller has full right, power and authority to sell the Property to Buyer as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof. This Agreement is and all other documents and instruments to be executed and delivered by Seller in connection with this Agreement shall be duly authorized, executed and delivered by Seller and shall be valid, binding and enforceable obligations of Seller.

5.1.4. Bankruptcy. Seller has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

5.1.5. Property Documents. Seller has made available or will make available to Buyer during the time periods herein provided, all Property Documents in Seller's possession or control. At the Closing, the originals of the Property Documents will be delivered to Buyer, to the extent in Seller's possession or control.

5.1.6. Legal Compliance. Seller has received no notices from any governmental authority of any zoning, safety, building, fire, environmental, health code or any other violations whatsoever with respect to the Property other than as disclosed in the Property Documents and further described in **Exhibit D**. To the best of Seller's Knowledge as defined below, the Property complies with all state and municipal laws, ordinances, and regulations regarding tenant security deposits and the payment of interest thereon.

5.1.7. Permits and Licenses. To Seller's Knowledge, all permits, licenses and occupancy certificates necessary for the operation and occupancy of the Property, including, but not limited to, all building, vault, use and occupancy permits, have been obtained.

5.1.8. Litigation. Except as otherwise set forth in **Exhibit D**, there is no litigation or proceeding (including, but not limited to, condemnation or eminent domain proceedings, pending grievances or arbitration proceedings or foreclosure proceedings) or unfair labor practice charges or complaints, pending, or, to Seller's Knowledge, threatened, against or relating to the Seller or the Property. Seller has not received notice of any special assessment(s) from any governmental authority.

5.1.9. Tenant Lease. Except for the Commercial Lease with Hayes Manufacturing Services Inc. ("**Tenant**") dated July 9, 2018, a copy of which has been provided to Buyer ("**Tenant Lease**"), no other person or entity is currently occupying the Property or has any lease, rental agreement, or other right to occupy the Property, or portion thereof. Seller has not received any written notice of any default or breach on the part of landlord under the Tenant Lease which has not been cured. In the event the representation and warranty in this **Section 5.1.9** is breached, the Seller shall indemnify and hold harmless the Buyer for all damages sustained or incurred by the Buyer, including but not limited to, any compensation or benefits that the Buyer is required to pay to the person or entity other than Seller under the Eminent Domain Law (Civil Procedure Code Sections 1230.010 *et seq.*) or the Relocation Law (Government Code Sections 7260 *et seq.*) in connection with the Buyer's acquisition of that person or entity's interest in the Property and relocation from the Property.

5.1.10. Hazardous Materials. To Seller's Knowledge, the Property does not contain any hazardous or toxic materials, including, but not limited to, any chemicals or materials regulated as hazardous or toxic under any federal, state or local law, except for what is commonly incorporated into or used and stored at the Property for building purposes and normal maintenance and operations by the tenants (the "**Excluded Materials**"), and except as set forth in the Property Documents. Seller agrees to provide Buyer promptly in writing any information, which Seller has or may acquire regarding the presence and location of any hazardous materials, not including the Excluded Materials, or underground storage tanks on or about the Property.

5.1.11. Service Contracts. There are no maintenance, operating or other agreements relating to the operation of the Property other than the Service Contracts listed on **Exhibit F**. Other than the Service Contracts to be assumed by Buyer pursuant to this Agreement, this Agreement, the Tenant Lease and any agreements disclosed on the Title Report, Seller has not entered into any contract, agreement, understanding or commitment that will be binding on Buyer or the Property after the Closing Date.

5.1.12. Non-Foreign Status. Seller is not a "foreign person" as defined in Internal Revenue Code Section 1445 or Sections 18805 and 26131 of the California Revenue and Taxation Code or any related regulations.

5.1.13. Material Change. As of the Closing Date, Seller shall not, without Buyer's approval, have made any material changes to the Property since the Execution Date and Seller shall not be in default under this Agreement.

5.2. Survival and Restatement.

All of the representations and warranties of Seller set forth in Section 5.1 (collectively, "**Seller's Warranties**") shall be deemed re-made by Seller as of the Closing Date with the same force and effect as if in fact made at that time, subject to any qualifications made by Seller and accepted by Buyer pursuant to the provisions set forth below and, except as provided herein, Seller is making no other representations or warranties concerning the Property. All of Seller's Warranties, in the form deemed re-made by Seller and accepted by Buyer as of the Closing Date, shall survive the delivery of the Deed and other Closing instruments and documents. If, at any time after the Execution Date, Seller acquires Knowledge of any information that would require the material qualification of any Seller's Warranty for such Seller's Warranty to be true when re-made as of the Closing Date, Seller shall give Buyer prompt written notice of such information, and Seller shall have the right to qualify such Seller's Warranty when re-made at Closing as necessary to reflect such information; provided, however, that to the extent any such qualification represents a material and adverse change to such Seller's Warranty and written notice of such qualification is not received by Buyer until after the expiration of the Contingency Period, Buyer shall have the right either (a) to accept such qualification and to proceed with the Closing without any credit or offset to the Purchase Price unless otherwise agreed in writing by Seller and Buyer, or (b) to terminate this Agreement by delivering written notice to Seller and Title Company, in which case (i) Title Company, without the need for any further instructions from either Seller or Buyer, shall automatically and immediately return the Deposit to Buyer, (ii) the parties shall equally share the Cancellation Charges and (iii) thereafter neither party shall have any rights or obligations to the other hereunder, other than pursuant to any provision hereof that expressly survives the termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, a representation or warranty of Seller shall not be deemed to have been breached if such representation or warranty is not true and correct as of the Closing Date by reason of changed facts or circumstances which (i) pursuant to the terms of this Agreement are permitted to have occurred or (ii) are not within the control of Seller or (iii) if Seller does not require Buyer to assume the agreement which violate(s) such representations and warranties or (iv) if such representations and warranties are no longer true by reason of the actions of Seller as permitted by the provisions of this Agreement; provided that Seller shall notify Buyer immediately upon receipt of any facts or circumstances that a representation or warranty of Seller hereunder is not true and correct and, if such changed facts and circumstances are not permitted under subsections (i)-(iv) above, then Buyer may, within three (3) days after receipt of such facts and circumstances upon written notice to Seller and Title Company, terminate this Agreement, in which case the Deposit shall be returned to Buyer and neither party shall have any further obligation or liability, except for the obligations set forth herein that are expressly stated to survive termination of this Agreement.

5.3. Seller's Knowledge.

As used in this Agreement, the word "**Knowledge**" or the phrase "**to Seller's Knowledge**" and words of similar import shall mean the actual knowledge of Felix AuYeung and Melissa Jeng, without any duty of separate inquiry and investigation. Seller represents and warrants that the foregoing persons are those persons affiliated with Seller most knowledgeable regarding the ownership and operation of the Property. Buyer hereby agrees that none of the foregoing persons shall have or incur any personal liability for the breach of any representation or warranty in this Agreement, and that Buyer's sole remedy for any such breach shall be an action against Seller.

6. BUYER'S REPRESENTATIONS AND WARRANTIES.

As an essential inducement to Seller to enter into this Agreement, Buyer represents and warrants to and agrees with Seller that, as of the date hereof, and as of the Closing Date:

6.1. No Conflicts.

Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Buyer is a party or by which the Buyer may be bound.

6.2. Due Organization; Consents.

Subject to the approval of the Buyer's Council, the Buyer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

6.3. Buyer's Authority; Validity of Agreements.

Buyer has or will have prior to the Closing full right, power and authority to purchase the Property from Seller as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms hereof and thereof. This Agreement is, and all other documents and instruments to be executed and delivered by Buyer in connection with this Agreement shall be, duly authorized, executed and delivered by Buyer and shall be valid, binding and enforceable obligations of Buyer.

7. COVENANTS OF SELLER.

In addition to the covenants and agreements of Seller set forth elsewhere in this Agreement, Seller covenants and agrees that between the date hereof and the Closing Date:

7.1. Notice of Change in Circumstances.

Seller shall promptly notify Buyer of any change in the physical condition of any portion of the Property of which Seller acquires Knowledge after the Execution Date or of any

other event or circumstance of which Seller acquires Knowledge after the Execution Date that (a) materially, adversely affects any material portion of the Property or the use or operation of any material portion of the Property, or (b) makes any Seller's warranty materially untrue or misleading, it being expressly understood that Seller's obligation to provide information to Buyer under this Section shall in no way relieve Seller of any liability for a breach by Seller of any of Seller's warranties or of any of Seller's covenants or agreements under this Agreement.

7.2. Insurance.

Seller shall maintain its present policies of insurance in effect until the Closing Date, and in any event shall maintain or cause to be maintained (i) all risk property insurance with respect to the Property, and (ii) comprehensive general liability insurance with a combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

7.3. No Defaults; Maintenance of Property.

Seller shall not default with respect to the performance of any material obligation relating to the Property, including, without limitation, the payment of all amounts due and the performance of all obligations with respect to the Tenant Lease, the Service Contracts and any existing indebtedness relating to the Property. Seller shall maintain the Property prior to the Closing Date in accordance with all applicable laws, rules, regulations, orders and judgments and shall make at its own expense, all repairs necessary to maintain the Property in such condition; provided, however, that the Seller shall make no material alterations in the Property without Buyer's prior written consent, which shall not be unreasonably withheld.

7.4. Exclusive Negotiations.

Seller shall (i) remove the Property from the market, and (ii) cease and refrain from any and all negotiations with any other prospective optionees or buyers of the Property.

7.5. Service Contracts.

Seller shall not enter into, extend, renew or replace any existing Service Contracts without Buyer's prior written consent (which consent may be withheld in Buyer's sole and absolute discretion), unless the same shall be cancelable, without penalty or premium, upon not more than thirty (30) days' notice from the owner of the Property and Seller shall immediately notify Buyer of any such new, extended, renewed or replaced Service Contracts. Buyer shall notify Seller at least thirty (30) days prior to Closing which, if any, of the Service Contracts Buyer wishes to assume. Seller shall, at Seller's sole cost and expense, terminate all Service Contracts which Buyer does not elect to assume, which termination shall be effective on or before the Closing Date.

7.6. Leases

7.6.1. Seller shall not enter into new tenant leases or amend or renew the existing Tenant Lease other than in accordance with a renewal approved by the Buyer, which approval may be withheld by Buyer in its sole and absolute discretion. Seller shall not, prior to the

Closing Date, rent out any space in the Property that is currently vacant or that becomes vacant prior to the Closing Date, nor shall the Seller authorize or permit an assignment or other transfer of any rights under the existing Tenant Lease from the current tenant to any other person or entity. The Seller shall not evict the Tenant prior to the Closing other than for failure to pay rent or other default or failure of the existing Tenant. Seller shall not accept from Tenant rental or any other payment more than one (1) month in advance of the due date of such rent or other payment.

7.6.2. Seller has previously obtained from Tenant that certain Waiver Agreement and Release of Certain Claims ("**Waiver Agreement**"), whereby Tenant released any and all claims it might have to Potential Relocation Benefits, as that term is defined in the Waiver Agreement. Seller shall prior to the Closing provide Buyer with a representation from Hayes Manufacturing Services LLC that the Waiver Agreement remains in full force and effect Seller acknowledges that the receipt of the Tenant Estoppel executed by Tenant and containing the representation above shall satisfy the above obligation of Buyer.

7.7. Litigation.

Seller shall not commence or allow to be commenced on its behalf any action, suit or proceeding with respect to any portion of the Property without Buyer's prior written consent (which consent may be withheld in Buyer's sole and absolute discretion). In the event Seller acquires Knowledge of any proceeding of the character described in Section 5.1.8 that has not been previously disclosed to Buyer prior to the Closing, Seller shall promptly advise Buyer in writing.

8. CONDITIONS PRECEDENT TO CLOSING.

8.1. Buyer's Conditions.

The obligation of Buyer to render performance under this Agreement is subject to the following conditions precedent (and conditions concurrent, with respect to deliveries to be made by the parties at Closing) ("**Buyer's Conditions**"), which conditions may be waived, or the time for satisfaction thereof extended, by Buyer only in a writing executed by Buyer:

8.1.1. Due Diligence Buyer shall have approved the condition of the Property during the Contingency Period pursuant to Section 4.3.

8.1.2. Title. Title Company shall be prepared and irrevocably committed to issue an ALTA extended coverage owner's policy of title insurance (2006 form) in favor of Buyer in an amount equal to the Purchase Price showing indefeasible fee simple title to the Property vested in Buyer, with an endorsement deleting any exclusion for creditor's rights and such other endorsements as may be reasonably requested by Buyer, subject only to the Permitted Exceptions (collectively, the "**Owner's Title Policy**").

8.1.3. Seller's Warranties. All of Seller's representations and warranties set forth in this Agreement shall be true and correct as of the Closing Date.

8.1.4. Seller's Deliveries. Seller shall have delivered all items to be delivered by Seller pursuant to Sections 10.1 and 10.3 on or prior to the Closing Date.

8.1.5. Condition of Property. Subject to the provisions of Section 12.2 below, the condition of the Property shall be substantially the same on the Closing Date as on the Execution Date, except for reasonable wear and tear and any damages due to any act of Buyer or Buyer's representatives.

8.1.6. Bankruptcy. No action or proceeding shall have been commenced by or against Seller under the federal bankruptcy code or any state law for the relief of debtors or for the enforcement of the rights of creditors and no attachment, execution, lien or levy shall have attached to or been issued with respect to any portion of the Property.

8.2. Failure of Buyer's Conditions.

If any of Buyer's Conditions have not been fulfilled within the applicable time periods, Buyer may either waive such condition (and proceed to the Closing pursuant to this Agreement, or terminate this Agreement, in which event (i) the Deposit shall promptly be released to Buyer, (ii) the parties shall equally share the Cancellation Charges and (iii) neither party shall thereafter have any rights or obligations to the other hereunder. Notwithstanding the foregoing, if any Buyer's Conditions are not satisfied due to a default on the part of Seller, then Buyer shall have the rights and remedies set forth in Section 13.2.

8.3. Seller's Conditions.

The obligation of Seller to render performance under this Agreement is subject to the following conditions precedent (and conditions concurrent with respect to deliveries to be made by the parties at Closing) ("**Seller's Conditions**"), which conditions may be waived, or the time for satisfaction thereof extended, by Seller only in a writing executed by Seller:

8.3.1. Buyer's Warranties. All of the representations and warranties of Buyer set forth in Section 6 hereof shall be true and correct as of the Closing Date.

8.3.2. Buyer's Due Performance. Buyer shall have delivered all items and funds to be delivered by Buyer pursuant to Section 10.2, on or prior to the Closing Date.

8.4. Failure of Seller's Conditions.

If any of Seller's Conditions have not been fulfilled within the applicable time periods, Seller may terminate this Agreement by delivery of written notice thereof to Buyer. Upon such termination, (i) the Deposit shall be released to Seller, (ii) the parties shall equally share the Cancellation Charges, and (iii) neither party shall thereafter have any rights or obligations to the other hereunder. Notwithstanding the foregoing, if any Seller Condition is not satisfied due to a default on the part of Buyer, then, in addition to the rights described above, Seller shall have the rights and remedies set forth in Section 13.1.

9. CLOSING.

9.1. Closing Date.

Subject to the provisions of this Agreement, the Closing shall take place on the date which is seven (7) days after Buyer delivers written notice to Seller approving the Property pursuant to Section 4.3 or on such other date as the parties hereto may agree. As used herein, the "Closing" shall mean the recordation of the Deed in the Official Records, and the "Closing Date" shall mean the date upon which the Closing actually occurs.

9.2. Closing Costs.

Seller shall pay all costs and expenses arising in connection with the Closing including but not limited to escrow and recording fees, title insurance premiums attributable to the Buyer's title insurance policy, all transfer tax and any other costs associated with the Closing (the "Closing Costs").

10. CLOSING DELIVERIES.

10.1. Deliveries by Seller to Escrow.

In time sufficient to permit the Closing on the scheduled Closing Date (in no event later than one (1) Business Day in advance), Seller, at its sole cost and expense, shall deliver or cause to be delivered into Escrow the following documents and instruments, each effective as of the Closing Date and executed by Seller, in addition to the other items and payments required by this Agreement to be delivered by Seller:

10.1.1. Deed. The original executed and acknowledged Deed conveying the Property to Buyer or its nominee;

10.1.2. Non-Foreign Affidavit. an original Non-Foreign Affidavit in the form of **Exhibit F** attached hereto, executed by Seller;

10.1.3. California FTB Form 593-C. an original California FTB Form 593-C, executed by Seller;

10.1.4. Bill of Sale and Assignment. Two (2) original counterparts of the Bill of Sale and Assignment in the form of **Exhibit G** attached hereto, each executed by Seller, pursuant to which Seller shall transfer to Buyer all the Personal Property, the Tenant Lease, the Service Contracts and the Intangible Property, including, without limitation, the Property Documents, in each case free of all liens and encumbrances;

10.1.5. Seller's Certificate. An original certificate, in the form of **Exhibit H** attached hereto (the "Seller's Certificate"), executed by Seller;

10.1.6. Reliance Certificate. A certificate from Seller's environmental consultant that Buyer may rely upon the Phase II environmental report dated December 6, 2019, for the

Property prepared by Langan Engineering and Environmental Services, Inc., on behalf of the Seller;

10.1.7. Proof of Authority. Such proof of Seller's authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller as may be reasonably required by Title Company or Buyer; and

10.1.8. Tenant Notice of Sale. An original of the letter to the Tenant executed by Seller in the form attached hereto as **Exhibit I.**

10.1.9. Other. Such other documents and instruments, signed and properly acknowledged by Seller, if appropriate, as may be reasonably required by Buyer, Title Company or otherwise in order to effectuate the provisions of this Agreement and the Closing of the transactions contemplated herein, including, without limitation, reasonable or customary title affidavits and indemnities required by Title Company to issue the Owner's Title Policy.

10.2. Deliveries by Buyer.

In time sufficient to permit the Closing on the scheduled Closing Date (in no event later than one (1) Business Day in advance), Buyer, at its sole cost and expense, shall deliver or cause to be delivered into Escrow the following:

10.2.1. Balance, Prorations & Closing Costs. The balance of the Purchase Price and Buyer's share of prorations and Closing Costs;

10.2.2. Bill of Sale and Assignment. Two (2) original counterparts of the Bill of Sale and Assignment, each executed by Buyer; and

10.2.3. Other. Such other documents and instruments, signed and properly acknowledged by Buyer, if appropriate, as may reasonably be required by Title Company or otherwise in order to effectuate the provisions of this Agreement and the closing of the transactions contemplated herein.

10.3. Deliveries Outside of Escrow.

Seller shall deliver possession of the Property to Buyer upon the Closing, subject to the rights of the Tenant under the Tenant Lease. Further, Seller hereby covenants and agrees, at its sole cost and expense, to deliver or cause to be delivered to Buyer, on or prior to the Closing, the following items:

10.3.1. Tenant Lease and Tenant Estoppel. A fully executed copy or, if in Seller's possession or control, the fully executed original, of the Tenant Lease and any amendment, modification and supplement thereto and an executed Tenant Estoppel in the form attached to as **Exhibit J,** executed by the Tenant and dated no later than thirty (30) days prior to Closing;

10.3.2. Service Contracts. A fully executed copy or, if in Seller's possession or control, the fully executed original, of any Service Contract being assumed by Buyer and any amendment, modification, supplement and restatement thereto;

10.3.3. Intangible Property. A copy or, if in Seller's possession or control, the original of each document evidencing the Intangible Property or rights to ownership and use thereof, including any approvals, certifications, certificates of occupancy, consents, authorizations, licenses, and permits currently in effect in connection with the ownership, development, use and maintenance of the Property;

10.3.4. Property Documents. To the extent not previously delivered to or copied by Buyer, copies of or, if in Seller's possession or control, the originals of all of the Property Documents in Seller's possession or control;

10.3.5. Personal Property. The Personal Property (if any), including, without limitation, all keys, pass cards, remote controls, security codes or combinations, computer software and other devices relating to access to the Improvements; and

10.3.6. Other. Such other documents and instruments as may be reasonably required by Buyer or otherwise in order to effectuate the provisions of this Agreement and the Closing of the transactions contemplated herein.

10.4. Closing Procedure.

When the Title Company has timely received all documents and funds identified in Sections 10.1 and 10.2, and has received written notification from Buyer and Seller that all conditions to Closing have been satisfied or waived; and the Title Company is irrevocably committed to issue the Title Policy as described in Section 8.1.2, then, and only then, the Title Company shall

10.4.1. Record the Deed in the Official Records of Santa Clara County, California;

10.4.2. Issue the Owner's Title Policy to Buyer;

10.4.3. Deliver to Buyer (i) a conformed copy showing all recording information of the Deed, (ii) a fully executed original Bill of Sale and Assignment, Non-Foreign Affidavit, California FTB Form 593-C, Seller's Certificate, and (iii) Buyer's closing statement;

10.4.4. Deliver to Seller (i) the Purchase Price (as adjusted for prorations and Seller's share of closing costs, (ii) a fully executed original Bill of Sale and Assignment, and (iii) Buyer's closing statement; and

10.4.5. Deliver to Tenant the Tenant Notice.

10.5. Real Estate Reporting Person.

Title Company is designated the "real estate reporting person" for purposes of section 6045 of title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Title Company shall so provide. Upon the consummation of the transaction contemplated by this Agreement, the parties shall instruct Title Company to file Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

11. PRORATIONS.

11.1. Prorations.

Rent under the Tenant Lease and other income from the Property ("**Rent**") shall be prorated between Buyer and Seller as of 12:01 a.m. on the Closing Date. Since Buyer, as a public entity, does not pay real property taxes, real property taxes shall not be prorated at Closing. Seller shall be responsible for any real property taxes payable prior to the Closing Date and shall be responsible for requesting and/or obtaining any reimbursement for property taxes and assessment payable for the period after the Closing Date. Buyer and Seller also acknowledge that any costs and/or expenses related to the Property, including water, gas, electricity, sewer and other utility charges, annual permits and/or inspection fees and all other items of income and expense relating to the Property are payable directly by Tenant under the Tenant Lease (collectively, "**Property Related Costs**"). Therefore, Property Related Costs shall not be prorated between Buyer and Seller at Closing. Rent shall be prorated between Buyer and Seller to the extent actually collected. Buyer shall be entitled to a credit for Rent actually collected by Seller attributable to any date on or after the Closing Date. Buyer shall cause all utilities to be transferred into Buyer's name and account at the time of the Closing Date. Buyer shall obtain its own insurance with respect to the Property and shall not be responsible for any insurance premiums in connection with Seller's insurance. If any of the aforesaid prorations and credits cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date and either party owing the other party a sum of money based on such subsequent proration or credit shall promptly pay such sum to the other party.

11.2. Security Deposits.

The security deposit under the Tenant Lease shall be credited to Buyer on the Closing Date. Seller shall retain as Seller's own funds any such deposits which Seller holds and credits to Buyer, but such deposits shall be deemed transferred to Buyer as if a cash payment were made by Seller to Buyer.

12. RISK OF LOSS.

12.1. Condemnation.

In the event that prior to the Closing Date, the Property, or any part thereof, is subject to a taking by the public authority, then Buyer shall have the right, exercisable by giving notice to Seller within thirty (30) days after receiving written notice of such taking either: (a) to

terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder, the Deposit shall be released to the Buyer, and the parties shall equally share the Cancellation Charges; or (b) to accept the Property in its then condition and proceed to close this transaction, and to receive an assignment of all of Seller's rights to any condemnation awards payable by reason of such taking. If Buyer elects to proceed under clause (b) above, Seller shall not compromise, settle or adjust any claims to such awards without Buyer's prior written consent, which consent shall not unreasonably be withheld. Seller agrees to give Buyer prompt notice of any taking of the Property promptly after Seller receives notice of the same.

12.2. Casualty.

If, prior to the Closing Date, any portion of the Property is damaged or destroyed, Seller shall immediately notify Buyer of such fact. If the cost to repair such damage or destruction is reasonably estimated to be more than One Hundred Thousand Dollars (\$100,000), Buyer shall have the option to terminate this Agreement by delivering written notice to Seller not later than thirty (30) days after Buyer's receipt of Seller's notice regarding such damage or destruction. Upon such termination, the Deposit shall be released to Buyer, the parties shall equally share the Cancellation Charges, and neither party shall have any further rights or obligations hereunder, other than pursuant to any provision hereof that expressly survives the termination of this Agreement. If Buyer does not elect to terminate this Agreement within the time period set forth above, (i) the parties shall proceed to Closing pursuant to the terms hereof without modification of the terms of this Agreement and without any reduction in the Purchase Price (unless otherwise agreed in writing by Seller and Buyer), (ii) Seller shall assign to Buyer, and Buyer shall be entitled to receive and keep, all insurance proceeds payable in connection with the casualty, (iii) Buyer shall receive a credit against the Purchase Price equal to the amount of any applicable insurance deductible, and (v) Buyer shall receive a credit against the Purchase Price of up to One Hundred Thousand Dollars (\$100,000) for the amount of any uninsured loss. If Buyer does not elect to terminate this Agreement pursuant to this Section 12.2, Buyer shall have the right to participate in any adjustment of the insurance claim and Seller shall not compromise, settle or adjust any such claim without Buyer's prior written consent (which consent may be withheld in Buyer's sole and absolute discretion).

13. DEFAULT.

13.1. Default by Buyer.

In the event that the Escrow and this transaction fail to close solely as a result of the default of the Buyer in the performance of its obligation to purchase the Property under this Agreement, Seller's sole remedy shall be specific performance.

13.2. Default By Seller.

In the event of a breach of this Agreement by Seller, the Buyer may pursue any and all remedies at law and equity, including specific performance.

14. BROKERS.

14.1. Seller.

Seller hereby represents, warrants, and covenants to Buyer that Seller has not dealt with any third party in a manner that would obligate Buyer to pay any brokerage commission, finder's fee or other compensation due or payable with respect to the transaction contemplated hereby. Seller hereby indemnifies and agrees to protect, defend and hold Buyer harmless from and against any and all claims, losses, damages, costs and expenses (including attorneys' fees, charges and disbursements) incurred by Buyer by reason of any breach or inaccuracy of the representation, warranty and agreement of Seller contained in this Section 14.1. The provisions of this Section 14.1 shall survive the Closing or earlier termination of this Agreement.

14.2. Buyer.

Buyer hereby represents, warrants, and covenants to Seller that Buyer has not dealt with any third party in a manner that would obligate Seller to pay any brokerage commission, finder's fee or other compensation due or payable with respect to the transaction contemplated hereby. Buyer hereby indemnifies and agrees to protect, defend and hold Seller harmless from and against any and all claims, losses, damages, costs and expenses (including attorneys' fees, charges and disbursements) incurred by Seller by reason of any breach or inaccuracy of the representation, warranty and agreement of Buyer contained in this Section 14.2. The provisions of this Section 14.2 shall survive the Closing or earlier termination of this Agreement.

15. MISCELLANEOUS PROVISIONS

15.1. Governing Law.

This Agreement and the legal relations between the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

15.2. Entire Agreement.

This Agreement, including the exhibits and schedules attached hereto, constitutes the entire agreement between Buyer and Seller pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements, express or implied, made to either party by the other party in connection with the subject matter hereof except as specifically set forth herein or in the documents delivered pursuant hereto or in connection herewith.

15.3. Modifications; Waiver.

No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof

(whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

15.4. Notices.

All notices, consents, requests, reports, demands or other communications hereunder (collectively, "**Notices**") shall be in writing and may be given personally, by reputable overnight delivery service by e-mail or by facsimile transmission to each of the parties at the following addresses:

To Buyer: City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086
Attn: City Manager
Email: citymgr@sunnyvale.ca.gov

With a copy to: Goldfarb & Lipman
1300 Clay Street, 9th Floor
Oakland, CA 94612
Attn: Karen Tiedemann
Email: ktiedemann@goldfarblipman.com

To Seller: MP Land Holdings LLC
c/o MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: Felix AuYeung
Phone: (510) 426-5667
Email: fauyeung@midpen-housing.org

With A Copy To: McPharlin Sprinkles & Thomas
160 West Santa Clara Street, Suite 400
San Jose, CA 95113
Attention: Tom Murtha
Email: tmurtha@mstpartners.com

or to such other address or such other person as the addressee party shall have last designated by written notice to the other party. A copy of any Notice sent by facsimile also must be personally delivered or sent by reputable overnight courier service (in accordance with this Section) within 48 hours of the transmission of such Notice by facsimile, provided that failure to do so will not invalidate any Notice actually received by the party to whom the facsimile was addressed. Notices given by facsimile transmission shall be deemed to be delivered as of the date and time when transmission and receipt of such facsimile is confirmed; and all other Notices shall have been deemed to have been delivered on the date of delivery or refusal; provided that Notices delivered by e-mail to the addresses provided below shall be deemed to be delivered

upon acknowledgement of receipt by the recipient. All copies of Notices (i.e., those provided to any person or entity other than Seller, Buyer, or Title Company) shall be given as a courtesy only, and the failure or inability to deliver any courtesy copy of any Notice will not invalidate the Notice given to Seller, Buyer, or Title Company.

15.5. Severability.

Any provision or part of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to such situation and such jurisdiction, be ineffective only to the extent of such invalidity and shall not affect the enforceability of the remaining provisions hereof or the validity or enforceability of any such provision in any other situation or in any other jurisdiction.

15.6. Successors and Assigns; Third Parties.

Buyer may not transfer its rights under this Agreement to any person or entity (the "Assignee") without the prior written approval or consent of the Seller, which consent shall be within the sole and absolute discretion of the Seller. Possession of the Property shall be delivered to the Buyer or the Assignee, as applicable, at the Close of Escrow. All of the rights, duties, benefits, liabilities and obligations of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns. Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

15.7. Counterparts.

This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

15.8. Headings.

The section headings of this Agreement are for convenience of reference only and shall not be deemed to modify, explain, restrict, alter or affect the meaning or interpretation of any provision hereof.

15.9. Time of The Essence.

Time shall be of the essence with respect to all matters contemplated by this Agreement.

15.10. Further Assurances.

In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Closing or after the

Closing any and all such further acts, instruments, deeds and assurances as may be reasonably required to consummate the transactions contemplated hereby.

15.11. Joint and Several Liability.

The obligations of each person or entity executing this Agreement as Seller shall be joint and several.

15.12. Number and Gender.

Whenever the singular number is used, and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders.

15.13. Construction.

This Agreement shall not be construed more strictly against one party hereto than against any other party hereto merely by virtue of the fact that it may have been prepared by counsel for one of the parties.

15.14. Exhibits.

All exhibits attached hereto are hereby incorporated by reference as though set out in full herein.

15.15. Attorneys' Fees.

If any action is brought by either party against the other party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action. The provisions of this Section shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

15.16. Business Days.

As used herein, the term "**Business Day**" shall mean a day that is not a Saturday, Sunday or legal holiday. In the event that the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday under the laws of the State of California, the date for performance thereof shall be extended to the next Business Day. To the extent the date for the performance of any covenant or obligation under this Agreement does not specifically use the term "Business Day", then the performance of such covenant or obligation shall be determined using calendar days.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their respective signatures.

BUYER:

CITY OF SUNNYVALE, a California charter city

By: _____
Kent Steffens, City Manager

Date of Execution: _____

APPROVED AS TO FORM:
John Nagel, City Attorney

By: _____

ATTEST:

[Signatures continued on Next Page]

SELLER:

MP LAND HOLDINGS, LLC, a California Limited Liability company

By: MidPen Housing Corporation, a California
nonprofit public benefit corporation, its Manager

By: _____
Jan M. Lindenthal, Assistant Secretary

Date of Execution: _____

Acceptance by Title Company

First American Title Insurance Company acknowledges receipt of the foregoing Agreement and accepts the instructions contained herein.

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____

Name: _____

Title: _____

Date of Execution by Title Company: _____

EXHIBIT A

LEGAL DESCRIPTION

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA DESCRIBED AS FOLLOWS:

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A RESUBDIVISION OF A PORTION OF LOT 2 OF THAT CERTAIN MAP ENTITLED, 'PLAN OF LAND OF NORWOOD,' RECORDED IN [BOOK E OF MAPS, AT PAGE 91](#), SANTA CLARA COUNTY RECORDS," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JUNE 12, 1975 IN [BOOK 357 OF MAPS, AT PAGE 26](#).

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID LAND WHICH UNDERLIES A PLANE PARALLEL TO AND 500 FEET BELOW THE PRESENT SURFACE OF SAID LAND FOR THE PURPOSES OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID OIL, GAS, PETROLEUM AND OTHER MINERAL OR OTHER HYDROCARBON SUBSTANCES FROM SAID LAND BY MEANS OF WELLS DRILLED INTO SAID SUBSURFACE OF SAID LAND FROM DRILL SITES LOCATED ON OTHER LAND. IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT THE GRANTOR THEREIN, ITS SUCCESSORS AND ASSIGNEES, SHALL HAVE NO RIGHT TO ENTER UPON THE SURFACE OF SAID LAND OR TO USE SAID LAND OR ANY PORTION THEREOF FROM THE SURFACE TO SAID DEPTH OF 500 FEET FOR ANY PURPOSES WHATSOEVER, AS RESERVED IN THAT CERTAIN GRANT DEED RECORDED JULY 19, 1974 IN [BOOK B001, PAGE 243](#) OF OFFICIAL RECORDS.

APN: 205-50-013

EXHIBIT B

LIST OF PERSONAL PROPERTY

EXHIBIT C

GRANT DEED

RECORDING REQUESTED BY:

First American Title Insurance Company

**When Recorded Mail Document
and Tax Statement To:**

City of Sunnyvale

Attn: City Clerk

No fee for recording pursuant to

ORDER NO. NCS-607688-SF

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

GRANT DEED

The undersigned grantor declares:

Documentary transfer tax is \$ **None (Exempt)** pursuant to **R&T Code Section 11922**

County of Santa Clara

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MP Land Holding, LLC, a California limited liability company (the "Grantor"),

hereby GRANT(S) to the City of Sunnyvale, a municipal corporation (the "Grantee"),

the following described real property in the City of Sunnyvale, County of Santa Clara, State of **California:**
SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Grantor hereto has executed this Grant Deed as of this
_____ day of _____, 2020.

GRANTOR:

MP LAND HOLDINGS, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY

_By: MidPen Housing Corporation, a
California nonprofit public benefit
corporation, its Manager

By: _____
Jan M. Lindenthal,
Assistant Secretary

**CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code 27281)**

This is to certify that the interest in real property, conveyed by that certain Grant Deed dated as of ____, 2020, by MP Land Holding, LLC, a California limited liability company (the "Grantor"), to the City of Sunnyvale, a California municipal corporation (the "Grantee"), located in the County of Santa Clara, State of California, is hereby accepted by the undersigned authorized official or officer on behalf of the City Council of the City of Sunnyvale as reflected in Section 2.08 of the Sunnyvale Municipal Code and City Council Resolution 102-01 dated January 9, 2001.

The City of Sunnyvale consents to the recordation of said document in the Office of the Recorder of Santa Clara County, State of California

Dated: _____

CITY OF SUNNYVALE, a municipal
corporation

By: _____
Sherine Nafie,
City Property Administrator

EXHIBIT A

Legal Description of the Property

THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA DESCRIBED AS FOLLOWS:

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A RESUBDIVISION OF A PORTION OF LOT 2 OF THAT CERTAIN MAP ENTITLED, 'PLAN OF LAND OF NORWOOD,' RECORDED IN [BOOK E OF MAPS, AT PAGE 91](#), SANTA CLARA COUNTY RECORDS," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JUNE 12, 1975 IN [BOOK 357 OF MAPS, AT PAGE 26](#).

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID LAND WHICH UNDERLIES A PLANE PARALLEL TO AND 500 FEET BELOW THE PRESENT SURFACE OF SAID LAND FOR THE PURPOSES OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID OIL, GAS, PETROLEUM AND OTHER MINERAL OR OTHER HYDROCARBON SUBSTANCES FROM SAID LAND BY MEANS OF WELLS DRILLED INTO SAID SUBSURFACE OF SAID LAND FROM DRILL SITES LOCATED ON OTHER LAND. IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT THE GRANTOR THEREIN, ITS SUCCESSORS AND ASSIGNEES, SHALL HAVE NO RIGHT TO ENTER UPON THE SURFACE OF SAID LAND OR TO USE SAID LAND OR ANY PORTION THEREOF FROM THE SURFACE TO SAID DEPTH OF 500 FEET FOR ANY PURPOSES WHATSOEVER, AS RESERVED IN THAT CERTAIN GRANT DEED RECORDED JULY 19, 1974 IN [BOOK B001, PAGE 243](#) OF OFFICIAL RECORDS.

APN: 205-50-013

EXHIBIT D

**LIST OF LEGAL COMPLIANCE NOTICES AND LITIGATION, PROCEEDINGS AND
CHARGES**

None

EXHIBIT E

SERVICE CONTRACTS

EXHIBIT F

NON-FOREIGN AFFIDAVIT

1. Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445 of the Code), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity.

2. In order to inform _____ and its nominees, designees and assigns (collectively, "**Transferee**"), that withholding of tax is not required upon the disposition by _____, a _____ ("**Transferor**"), of the United States real property more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Property**"), the undersigned Transferor certifies and declares by means of this certification, the following:

a. Transferor is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate (as such terms are defined in the Code and the Income Tax Regulations).

b. Transferor is not a disregarded entity (as defined in Section 1.1445-2(b)(2)(iii) of the Income Tax Regulations).

c. Transferor's federal taxpayer identification number is: _____.

d. Transferor's address is: _____

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

Under penalties of perjury, the undersigned declares that he/she has examined this certification and to the best of his/her knowledge and belief it is true, correct, and complete, and he/she further declares that he/she has authority to sign this certification on behalf of Transferor.

Executed this _____ day of _____, 2020 at _____.

TRANSFEROR:

_____, a

By: _____

Name: _____

Its: _____

EXHIBIT G

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT (this "Assignment") is executed as of _____, 2020 by and between MP Land Holdings, LLC, a California limited liability company ("Assignor"), and the City of Sunnyvale, a municipal corporation ("Assignee"), with reference to the following facts:

1. Concurrently herewith, Assignor is conveying to Assignee certain real property, together with all improvements thereon, located at 1178 Sonora Court, Sunnyvale, California (the "Property"), in accordance with the terms of that certain Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement") dated as of _____, 2020, by and between Assignor and the City of Sunnyvale. Capitalized terms used herein and not defined herein shall have the meanings set forth in the Agreement.

2. Assignor desires to assign, transfer and convey to Assignee all of Assignor's interests in: (i) the Personal Property listed in Exhibit 2, attached hereto; (ii) the Tenant Lease listed in Exhibit 3, attached hereto; (iii) all intangible personal property arising out of or in connection with ownership of the Property, including without limitation, the right to use the current name(s) of the Property, all licenses, permits, certificates of occupancy and franchises issued to Seller by any governmental authorities and all warranties or guaranties given by third parties with respect to the Property or the Personal Property (collectively, the "Intangible Property"); (iv) the Service Contracts listed on Exhibit 4, attached hereto (all of the foregoing being referred to herein collectively as "Assigned Property"). All of the exhibits attached hereto are incorporated herein by reference thereto.

NOW, **THEREFORE**, in consideration of the foregoing and other good and valuable consideration in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby ASSIGN, TRANSFER and DELIVER and GRANT, SELL and CONVEY to Assignee all of the Assigned Property, including, without limitation of the generality of the foregoing, the following:

- (a) The Personal Property;
- (b) The Intangible Personal Property;
- (c) The Service Contracts; and
- (d) The Tenant Lease.

Assignor agrees to indemnify and hold harmless Assignee from all obligations and liabilities arising prior to the Effective Date (hereinafter defined) out of Assignor's performance or failure to perform Assignor's obligations under the Assigned Property, including as landlord under the Tenant Lease and as owner under the Service Contracts.

Assignee hereby accepts and agrees to perform all of the terms, covenants and conditions to be performed by Assignee under the Assigned Property, including as landlord under the Tenant Lease and as owner under the Service Contracts, from and after the Effective Date but not prior thereto, including the obligation to repay in accordance with the terms of the Tenant Lease to the Tenant, security and other deposits, but only to the extent such deposits have been delivered (or credited) to Assignee.

Assignee agrees to indemnify and hold harmless Assignor from all obligations and liabilities arising from and after the Effective Date out of Assignee's performance or failure to perform Assignee's obligations under the Assigned Property, including as landlord under the Tenant Lease and as owner under the Service Contracts.

Assignor represents to Assignee that Assignor is the lawful holder of the landlord's interest under the Tenant Lease.

This Assignment shall be governed by the laws of the State of California.

This Assignment shall be effective as of the Closing Date, as such term is defined under the Agreement (the "Effective Date").

This Assignment may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one (1) agreement.

IN WITNESS WHEREOF, the undersigned have executed this Assignment, on the date set forth above, as of the Effective Date.

ASSIGNOR:

ASSIGNEE:

**MP Land Holdings, LLC, a California
Limited Liability Company**

a _____

By: MidPen Housing Corporation, a
California nonprofit public benefit
corporation, its Manager

By: _____

Name: _____

By: _____

Its: _____

Jan M. Lindenthal

Assistant Secretary

EXHIBIT H

SELLER'S CERTIFICATE

The undersigned hereby certifies to the City of Sunnyvale ("**Buyer**") that, as of the date hereof:

1. all of the representations, covenants and warranties of MP Land Holding LLC, a California limited liability company ("**Seller**") made in that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of _____, 2020 (the "**Agreement**"), between Seller and the Buyer are true, accurate, correct and complete; and

2. all conditions to the "**Closing**" (as such term is defined in the Agreement) that Seller was to satisfy or perform have been satisfied and performed.

Dated: _____, 2020

MP Land Holdings, LLC, a California Limited Liability company

By: MidPen Housing Corporation, a California nonprofit public benefit corporation, is Manager

By: _____
Jan M. Lindenthal, Assistant Secretary

EXHIBIT I

NOTICE TO TENANT

_____, 20__

Re: Sale of 1178 Sonora Court, Sunnyvale, CA

Dear Tenant:

This will notify you that on _____, 2020, the building located at 1178 Sonora Court (A.P.N. _____), Sunnyvale, California, in which you are a tenant, was sold by MP Land Holding, LLC to the City of Sunnyvale ("New Owner"). As of _____, _____, the project will be managed by:

City of Sunnyvale

From this date on, please make your rent checks payable to _____, and please mail the rent checks to:

City of Sunnyvale

Attn: Assistant City Manager

Any written notices you desire or are required to make to the landlord under your lease should be sent to New Owner at the above address. Any inquiries about the project or your lease should be made to New Owner at this address, or by telephone to _____ (____) _____.

Very truly yours,

"Previous Owner":

**MP Land Holdings, LLC, a California
Limited Liability company**

By: MidPen Housing Corporation, a
California nonprofit public benefit corporation,
its Manager

By: _____
Jan M. Lindenthal,
Assistant Secretary

EXHIBIT J

FORM OF TENANT ESTOPPEL CERTIFICATE

TENANT ESTOPPEL CERTIFICATE

THE UNDERSIGNED, Hayes Manufacturing Services Inc. ("Lessee") hereby certifies to the City of Sunnyvale ("Buyer") as follows:

1. Lessee is the present lessee under that certain lease (the "Lease") dated _____ By and between _____, as Lessor, and Lessee. The Lease covers certain real property located in the building know as 1178 Sonora Court, Sunnyvale, California, as more fully described therein (the "Premises").

2. The term of the Lease commenced on _____ and shall expire on _____. Other than one six month option to extend the lease, there are no further options to renew or extend the Lease, or any notice required prior to termination of the Lease.

3. A full, true and correct copy of the Lease and all amendments thereto is attached hereto, marked Exhibit A and made a part hereof by reference. The Lease has not been amended or modified, except as any amendments attached as part of Exhibit A, and is presently in full force and effect.

4. Lessee has accepted and is now in possession of the Premises. No person or entity is in occupancy of the Premises other than Lessee.

5. The present monthly rent payable by Lessee under the Lease is _____ Dollars (\$_____). The Lessor is presently holding a security deposit of _____ Dollars (\$_____).

6. Lessor is not in default under the Lease. There are no existing claims, defenses or offsets against rent due or to become due under the Lease.

7. Lessee has not received any written notice from Lessor declaring it to be in default under the Lease and, to the best of Lessee's knowledge, Lessee is not in default under the Lease nor is there any event or condition which, with the giving of notice or the passage of time, or both, would constitute a default under the Lease. In addition, Lessee has not assigned, transferred or hypothecated its interest in the Lease.

9. No deposits or prepayments of rent have been made in connection with the Lease.

10. The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Premises and Lessee claims no rights with respect to the Premises other than as set forth in the Lease.

11. Lessee hereby acknowledges and agrees that the certain Waiver Agreement and Release of Claims dated January 13, 2020 remains in full force and effect and that the waivers and releases contained therein run to the benefit of the Buyer.

12. Lessee hereby agrees and acknowledges Lessor is transferring fee title to the Premises to Buyer. Lessee hereby further agrees and acknowledges that Buyer shall have no obligation or liability to the Lessee under the Lease for any matter related to the Lease which occurred prior to the date of Buyer's acquisition of the Property. Lessee hereby agrees and acknowledges that Buyer and its partners and lenders, and their successors and assigns, may rely upon the representations, warranties, certifications and agreements set forth herein.

Dated: _____, 200_

"LESSEE"

By: _____

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