

County of Santa Clara
Office of the County Executive
Office of Supportive Housing



106434

DATE: June 22, 2021

TO: Board of Supervisors

FROM: Consuelo Hernandez, Director, Office of Supportive Housing
Jeffrey D Draper, Director, Facilities and Fleet

SUBJECT: 1870 & 1880 Senter Road Delegation of Authority to Purchase Real Property

RECOMMENDED ACTION

Adopt Resolution finding the acquisition of the Property is exempt from the California Environmental Quality Act (CEQA); finding the acquisition of the property located at 1870 and 1888 Senter Road, San Jose (Assessor's Parcel Nos: 477-20-133, 477-20-147, and 477-20-148) serves a public purpose; approving the purchase of the property; authorizing the President of the Board of Supervisors to execute the Purchase and Sale Agreement to acquire the property; and approving a delegation of authority to the County Executive, or designee, to negotiate, enter into, and sign all agreements and documents necessary or required for the consummation of the purchase of the Property, including but not limited to the Certificate of Acceptance, and to take all other necessary action to complete the acquisition, in an amount not to exceed \$28,000,000 plus closing costs of up to \$40,000, following approval by County Counsel as to form and legality, and approval by the Office of the County Executive. Delegation of authority shall expire on December 31, 2021.

FISCAL IMPLICATIONS

If approved, the acquisition, closing costs and due diligence costs of up to \$28,040,000 would be drawn from the 2016 Measure A Affordable Housing Bond (Housing Bond).

To implement the Housing Bond, the Board adopted Resolution BOS-2017-102 approving the issuance and sale of general obligations bonds on August 15, 2017 (Item No. 28). The bond sale for \$250,000,000 was completed on October 26, 2017. Through previous actions, the Board had committed \$665,880,028 of Housing Bond funds. If the Board approves the acquisition for consideration, the County's commitment of Housing Bond funds – for all Housing Bond-related programs – would be \$680,742,528 which is greater than the proceeds from the first bond issuance. At this stage, however, the County is only committing an up-to capital funding amount for each development with actual expenditures taking place over a three-to five-year period.

The Administration is working on the second bond issuance of \$350,000,000. On May 4, 2021 (Item No. 61), the Board adopted a Resolution authorizing the second issuance.

REASONS FOR RECOMMENDATION

The recommended actions advance the County's goal of creating new affordable and supportive housing and implements previously approved Board actions. The County would acquire real property located at 1870 and 1888 Senter Road, San Jose, California.

On May 25, 2021 (Item No. 73), the Board approved issuing a notice to the public of the County's intent to purchase the Property in accordance with California Government Code Sections 25350 and 6063. The public noticing period will have been completed by June 22, 2021. If the recommended actions are approved and negotiations are approved by the County Executive, the County could take ownership of the Property on or about July 13, 2021.

The Property consists of three legal parcels totaling 6.13 acres. 1870 Senter Road is improved with a 35,343 square foot single story office building on 3.04 acres (APN: 477-20-133). 1888 Senter Road is improved with a 26,546 square foot single story office building on 1.93 acres (477-20-147); and a vacant 1.16-acre parcel (477-20-148).

The intent of the County is to work with one of twelve developers on the County's Developer Qualified Pool to explore options for the development of the site. This potential development process is estimated to take several years, the typical time frame to obtain entitlements and financing for the development and construction of a new affordable housing project, and will be subject to any necessary entitlements and related California Environmental Quality Act ("CEQA") clearance.

Reasons for Delegation of Authority

Although delegations of authority are discouraged except under certain circumstances, this delegation of authority is necessary to allow the Administration to take actions required to timely consummate and close the transaction, following review and approval by County Counsel as to form and legality, and approval by the Office of the County Executive. Closing a real estate transaction requires rapid turnaround of real estate documents on short notice and review real estate legal matters. County Counsel will undertake such reviews and assist staff in evaluating final legal issues prior to closing.

California Environmental Quality Act ("CEQA")

For purposes of CEQA, Administration has determined that the acquisition of the Property is exempt from CEQA pursuant to CEQA Guideline 15301, as the acquisition will not result in any changes to the Property. Any proposed future development of the Property would be subject to legally required CEQA review by the lead agency.

CHILD IMPACT

This action would have a positive impact on children. Acquiring the property allows the County an opportunity to explore future uses that could benefit children in the community.

SENIOR IMPACT

This action would have a positive impact on seniors. Acquiring the property allows the County an opportunity to explore future uses that could benefit seniors in the community.

SUSTAINABILITY IMPLICATIONS

The action balances public policy and program interests, and enhances the Board of Supervisor's sustainability goal of social equity by improving homeless and low-income persons' access to permanent affordable housing.

BACKGROUND

The Administration has been actively identifying sites for possible acquisition. Most of these acquisitions are taking place in partnership with developers and cities. In this case, the Administration through the Office of Supportive Housing (OSH) has been working with the seller, DiNapoli for the past several years to reach mutually acceptable terms for the property purchase. OSH has been in touch with City staff.

CONSEQUENCES OF NEGATIVE ACTION

The County would not acquire the Property.

STEPS FOLLOWING APPROVAL

The Clerk of the Board will send notification and a copy of the adopted Resolution to Natalie Monk and Andrew Barnes of the Office of Supportive Housing and Andy Walker of the Facilities and Fleet Department.

LINKS:

- Linked From: 106433 : Public Hearing to consider the purchase of real property located at 1870 and 1888 Senter Road, San Jose, for a public purpose. (Supervisory District Two)
- References: BOS-2021-64 : Consider recommendations relating to intent to acquire real property located at 1870 and 1888 Senter Road, San Jose, Assessor's Parcel Nos. 466-20-133, 477-20-147 and 477-20-148.

ATTACHMENTS:

- Copy of Public Notice (PDF)
- Resolution to Acquire Property at 1870 and 1888 Senter Road San Jose (PDF)

RESOLUTION NO. BOS-2021-90

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA FINDING THE ACQUISITION OF THE PROPERTY LOCATED AT 1870 AND 1888 SENTER ROAD, SAN JOSE, CALIFORNIA (APNs 477-20-133, 477-20-147, AND 477-20-148) SERVES A PUBLIC PURPOSE AND IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; APPROVING THE PURCHASE OF THE PROPERTY; AUTHORIZING THE PRESIDENT OF THE BOARD OF SUPERVISORS TO EXECUTE THE PURCHASE AND SALE AGREEMENT TO ACQUIRE THE PROPERTY; AND DELEGATING AUTHORITY TO THE COUNTY EXECUTIVE, OR DESIGNEE, TO NEGOTIATE, ENTER INTO, AMEND, AND SIGN ALL DOCUMENTS NECESSARY TO CONSUMMATE THE PURCHASE IN AN AMOUNT NOT TO EXCEED \$28,000,000 PLUS CLOSING COSTS OF UP TO \$40,000, INCLUDING BUT NOT LIMITED TO THE CERTIFICATE OF ACCEPTANCE, FOLLOWING APPROVAL AS TO FORM AND LEGALITY BY COUNTY COUNSEL AND APPROVAL BY COUNTY EXECUTIVE, AND TO TAKE ALL OTHER NECESSARY ACTIONS TO COMPLETE THE ACQUISITION, WHICH DELEGATION SHALL EXPIRE ON DECEMBER 31, 2021

WHEREAS, the County of Santa Clara Board of Supervisors gave notice of its intent (“Notice of Intent”) to purchase the real property located at 1870 and 1888 Senter Road, San José, California (Assessor’s Parcel Numbers 477-20-133, 477-20-147, and 477-20-148), which is more particularly described in the attached Exhibits “A” and “A-1” (the “Property”), from DiNapoli Family L.P., RLD Family, L.P., and SDS Nexgen Partners, L.P. as tenants in common for 1870 Senter Road, and DiNapoli Family L.P., RLD Family, L.P., SDS Nexgen Partners, L.P., DLK Partners, L.P., and Shirlee DiNapoli Mulcahy Schiro Trust of 1942, as tenants in common for 1888 Senter Road (the “Seller”);

WHEREAS, the acquisition of the Property is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15301, as the acquisition will not result in any changes to the use of the Property, and any future development of the Property would be subject to CEQA review by the lead agency;

WHEREAS, for good and valuable consideration in an amount not to exceed \$28,000,000, which represents the fair market value, the County of Santa Clara (“County”) desires to acquire the Property for a public purpose;

WHEREAS, the Notice of Intent to purchase the Property was published according to law in a newspaper of general circulation in Santa Clara County;

WHEREAS, the County of Santa Clara Board of Supervisors did meet to consider the consummation of the proposed purchase at the time and place designated in the Notice of Intent;

WHEREAS, Government Code section 25353 authorizes the Board of Supervisors to receive and accept the Property for a public purpose and the Board may improve, preserve, take care of, manage, and control this property for this purpose;

WHEREAS, the County desires to accept the Property for use by the County for public purposes and desires to pay Seller a sum not to exceed \$28,000,000 for the transfer of this Property to the County; and,

WHEREAS, Government Code section 27281 requires the County to accept the dedication of the Property by adopting a resolution of acceptance or delegating the authority to the County Executive, or designee, to sign on the County's behalf a Certificate of Acceptance substantially in the form presented in Government Code section 27281.

NOW THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Santa Clara, State of California, that:

1. the acquisition of the Property serves a public purpose and is exempt from CEQA.
2. the purchase of the Property from the Seller pursuant to the terms of the Purchase and Sale Agreement (Exhibit B) for an amount not to exceed \$28,000,000 is authorized and approved.
3. the President of the Board of Supervisors shall execute the Purchase and Sale Agreement.

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4. the County Executive, or designee, is hereby delegated the authority to negotiate, amend and execute all documents and agreements necessary to consummate the purchase, in an amount not to exceed \$28,000,000 plus closing costs of up to \$40,000, including but not limited to the Certificate of Acceptance substantially in the form presented in California Government Code section 27281, following approval as to form and legality by County Counsel and approval by County Executive, and to take all other necessary actions to complete the acquisition of the Property. This delegation of authority expires on December 31, 2021.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on JUN 22 2021 by the following vote:

AYES: **CHAVEZ, ELLENBERG, LEE
SIMITIAN, WASSERMAN**

NOES: **NONE**

ABSENT: **NONE**

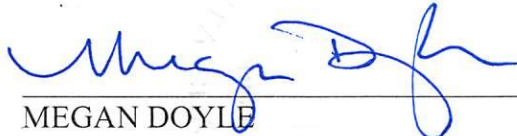
ABSTAIN: **NONE**



MIKE WASSERMAN, President
Board of Supervisors

Signed and Certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors

ATTEST:



MEGAN DOYLE

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



KAREN M. WILLIS

Deputy County Counsel

Exhibit A – Property Legal Description
Exhibit B – Purchase and Sale Agreement

EXHIBIT A

1870 Property:

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

PARCEL 1, AS SHOWN ON PARCEL MAP FILED NOVEMBER 1, 1988 IN BOOK 592 OF MAPS, AT PAGE 43, SANTA CLARA COUNTY RECORDS.

APN: 477-20-133

1888 Property:

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

PARCEL 1:

LOT 1, AS SHOWN ON PARCEL MAP FILED SEPTEMBER 24, 1991 IN BOOK 630 OF MAPS, AT PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

PARCEL 2:

AN EASEMENT FOR INGRESS AND EGRESS OVER A PORTION OF LOT 2 FOR THE BENEFIT OF LOT 1 ABOVE MENTIONED, AS DEDICATED AND SHOWN ON PARCEL MAP FILED SEPTEMBER 24, 1991 IN BOOK 630 OF MAPS, AT PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

APN: 477-20-147

And,

Real property in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

PARCEL A:

Lot 2, as shown on Parcel Map filed September 24, 1991 in Book 630 of Maps, at Pages 35 and 36, Santa Clara County Records.

PARCEL B:

An easement for ingress and egress over Lot 1 lying within the delineated and designated "26' Wide Reciprocal Ingress & Egress Easement", as shown on said Parcel Map.

PARCEL C:

Easements for storm drainage and sanitary sewer over Lot 1 lying within the delineated and designated "5' Wide Private Sanitary Sewer Easement" and "10' P.S.D.E.", as shown on said Parcel Map.

APN: 477-20-148

EXHIBIT "B"

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is dated as of the last of the dates set forth on the signature page(s) hereto, between County of Santa Clara, a political subdivision of the State of California ("**Buyer**", "**County**" or "**Grantee**" as used interchangeably), and DiNapoli Family L.P., a California limited partnership ("**DiNapoli Family**") RLD Family, Limited Partnership, a California limited partnership ("**RLD**") and SDS Nexgen Partners, LP, a California limited partnership ("**SDS**") as Tenants in Commons (collectively, the "**1870 Senter Sellers**") and DiNapoli Family, RLD, SDS, DLK Partners, LP, a California limited partnership, and Michael P. Mulcahy, as Trustee of the Shirlee DiNapoli Mulcahy Schiro Trust of March 1, 1942, as Tenants in Common (collectively, the "**1888 Senter Sellers**", together with the 1870 Senter Road Sellers, collectively, "**Seller**").

RECITALS

A. The 1870 Senter Sellers own that certain real property located at 1870 Senter Road in the City of San Jose, County of Santa Clara, State of California, (APN: 477-20-133) (the "**1870 Senter Property**") and the 1888 Senter Sellers own that certain property located at 1888 Senter Road in the City of San Jose, County of Santa Clara, State of California (APNs: 477-20-147, and 477-20-148) (the "**1888 Senter Property**") each as more particularly described on Exhibit A attached hereto (collectively, the "**Land**"), together with the buildings and other improvements located thereon (collectively, the "**Improvements**"), and all rights, privileges, easements and appurtenances to the Land and the Improvements, including without limitation all mineral and water rights, appurtenant easements, rights-of way and other appurtenances used in connection with or relating to the Land and Improvements (the Land, the Improvements and all such rights, privileges, easements and appurtenances being collectively referred to herein as the "**Property**").

B. After over a year of negotiations and by way of settlement in lieu of condemnation, Seller agrees to sell to Buyer, and Buyer desires to purchase from Seller, the Property, subject to the terms and conditions of this Agreement.

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties agree to the foregoing and as follows:

1. Purchase and Sale. In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller all right, title, fee and interest in, to, upon, on and under the entire Property, together with all rights, privileges, air rights, easements and appurtenances thereto, including without limitation all mineral and water rights, appurtenant easements, rights-of way and other appurtenances used in connection with or relating to the Property, for the Purchase Price (defined in Section 2), subject to and on the terms and conditions set forth herein.

2. Purchase Price; Deposit. The purchase price for the Property is Twenty-Eight Million, and no/100 Dollars (\$28,000,000.00) (the "**Purchase Price**"), payable as follows:

(a) Within ten (10) calendar days after the full execution of this Agreement by Seller and Buyer (the "**Effective Date**"), Buyer shall deposit, as earnest money, in immediately available funds, the amount of One Million Three-Hundred Fifty Thousand and, no/100 Dollars

(\$1,350,000.00) (the “**Deposit**”) into an escrow (the “**Escrow**”) opened with Old Republic Title Company at its offices located at 226 Airport Parkway, Suite 200, San Jose, California, with Sharon LaFontaine as the designated escrow officer (telephone no.: (408) 557-8400, facsimile no.: (408) 228-6516, email: SLaFountain@ortc.com) (the “**Escrow Holder**”). If the Deposit has not been deposited into Escrow by the end of the tenth (10th) calendar day after the Effective Date, Buyer or Seller shall have the right to terminate this Agreement by notice given to the other party prior to the Deposit being delivered into Escrow, and upon such termination the parties shall be relieved of any further obligation under this Agreement other than the Surviving Obligations (defined below) and neither party shall be in default or breach of this Agreement as a result of such termination.

(b) The Deposit, and all interest earned thereon while in Escrow, are collectively referred to in this Agreement as the “**Deposit**”, and shall be applied to the Purchase Price at the Closing. Buyer may, upon delivery of the Deposit into Escrow, instruct the Escrow Holder to invest the Deposit in an interest-bearing money market or savings account with a national banking association or federally chartered savings and loan association, which interest shall accrue to the benefit of Buyer and shall be applied to the Purchase Price at the Closing. The Deposit shall be held by the Escrow Holder in accordance with the provisions of this Agreement.

(c) The Deposit shall become nonrefundable to Buyer at the expiration of the Due Diligence Period (as defined herein below), except that it shall be refunded to Buyer if (i) this Agreement terminates or Escrow otherwise fails to close due to Seller’s default or breach of Seller’s representations or warranties under this Agreement; (ii) Closing fails to occur due to the failure of any condition to Closing set forth in this Agreement which is for the benefit of Buyer; or (iii) this Agreement otherwise provides that the Deposit shall be returned to Buyer. If upon termination of this Agreement Seller is entitled to retain any portion of the Deposit, then Buyer shall within three (3) business days thereafter instruct Escrow Holder to immediately release such portion of the Deposit to Seller (which obligation shall survive the termination of this Agreement). If upon termination of this Agreement Buyer is entitled to the return of any portion of the Deposit, then Seller shall within three (3) business day thereafter instruct Escrow Holder to immediately release such portion of the Deposit to Buyer (which obligation shall survive the termination of this Agreement). Upon termination of this Agreement, the parties shall have no further obligations hereunder except for the Surviving Obligations. As used in this Agreement, “**Surviving Obligations**” shall mean all obligations of Buyer or Seller which are expressly stated in this Agreement to survive Close of Escrow (defined in Section 3(a)) or termination of this Agreement.

(d) In sufficient time for the Close of Escrow to occur on the Closing Date (defined in Section 3(a)), Buyer shall deposit into Escrow, in immediately available funds, a sum equal to the Purchase Price, adjusted by Buyer’s share of prorations and costs of Escrow as provided in Sections 11 and 12, less the Deposit (the “**Additional Closing Funds**”).

(e) Notwithstanding anything to the contrary in this Agreement, One Hundred Dollars (\$100) of the Deposit (the “**Independent Consideration**”) shall be earned by Seller upon the making by Buyer of the Deposit. The Independent Consideration represents adequate bargained for consideration for Seller’s execution and delivery of this Agreement and Buyer’s right to have inspected the Property pursuant to the terms hereof. The Independent Consideration is independent of any other consideration or payment provided for herein and is nonrefundable in all

events. Upon the Closing, or earlier termination of this Agreement, the Independent Consideration shall be paid to Seller, and in the case of a termination of this Agreement in which the Deposit or the remainder of the Purchase Price is required to be returned to Buyer, such amounts shall be returned to Buyer less the Independent Consideration, which shall be paid to Seller.

3. Closing.

(a) The consummation of the purchase and sale of the Property (the “**Closing**” or “**Close of Escrow**”) shall take place on the Closing Date, through an escrow (“Escrow”) established with Escrow Holder, as evidenced by recordation of the Grant Deeds described in Section 3(b) in the Official Records of Santa Clara County, California (“**Official Records**”). The “**Closing Date**” shall be the fifteenth (15th) day after the expiration of the Due Diligence Period, or such earlier date as the parties may mutually agree upon (without obligation to so agree).

(b) In sufficient time prior thereto to allow Closing to occur on the Closing Date, Seller shall cause to be delivered into the Escrow:

(1) A Grant Deed executed by the 1870 Senter Sellers, with signatures notarized for recording in the Official Records, in the form of Exhibit B attached hereto, with respect to the 1870 Senter Property, and a Grant Deed executed by the 1888 Senter Sellers, with signatures notarized for recording in the Official Records, in the form of Exhibit B-1 attached hereto, with respect to the 1888 Senter Property (collectively, the “**Grant Deeds**”), which Grant Deeds shall be recorded in the Official Records at the Closing;

(2) An affidavit in compliance with the Foreign Investment and Real Property Tax Act and a California Tax Withholding Form 593-C, executed by Seller (the “**Non-Foreign Status Certificate**” and “**Form 593-C**”, respectively), certifying that each entity comprising Seller is not subject to withholding under federal or state law;

(3) A termination of [Lease Agreement between DDD Partners, a California General Partnership and the County of Santa Clara, a political subdivision of the State of California] (the “**1870 Lease Termination**”) executed by the 1870 Seller; and,

(4) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and an owner’s affidavit reasonably required by the Title Company to enable the Title Company to issue the Title Policy to Buyer at the Closing (including without limitation certifications or other assurances relating to mechanics’ or materialmen’s liens, parties in possession and the status and capacity of Seller and persons signing on behalf of Seller).

On the Closing Date, Seller shall arrange to have a complete set of all keys to the Property, delivered to Buyer at the Property, to the extent not already in the possession of Buyer.

(c) Prior to Closing, in sufficient time prior thereto to allow Closing to occur on the Closing Date, Buyer shall cause to be delivered into Escrow the following:

(1) The Additional Closing Funds;

- (2) A Certificate of Acceptance to be recorded with each of the Grant Deeds;
- (3) A counterpart of the 1870 Lease Termination, executed by Buyer; and,
- (4) Such additional instruments or documents reasonably required in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions.

(d) If the Closing does not occur by the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party. If neither party is in default, then the cost of cancellation of the Escrow shall be shared equally between Buyer and Seller, unless otherwise expressly provided in the Agreement. If only one of the parties hereto is in default, then such defaulting party shall pay for the entire cost of cancellation of the Escrow. The termination of this Agreement and cancellation of the Escrow, as provided herein, shall be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement, that Buyer or Seller may have against each other arising out of this Agreement and the Escrow, which rights shall survive the termination of this Agreement.

(e) Possession of the Property shall be delivered to Buyer at the Closing, free and clear of all tenants and occupants (except the County, as tenant occupant of 1870 Senter Road), in broom clean condition, and with all furniture and personal property having been removed by Seller at Seller's cost.

4. Inspections.

Subject to this Section below, until the earlier to occur of the Close of Escrow or termination of this Agreement, Buyer shall have the right to enter upon the Property to inspect, investigate and conduct tests upon the Property at its sole cost and expense. Buyer shall keep the Property free and clear of any and all liens related to Buyer's inspections, tests and investigations. All entry onto and inspections of the Property shall be subject to the following:

(a) Buyer shall give Seller not less than twenty-four (24) hours prior notice of any entry onto the Property by Buyer or by Buyer's agents, employees, consultants and contractors (collectively "**Buyer's Representatives**").

(b) If the Property is physically damaged by Buyer or any of Buyer's Representatives, then Buyer, at Buyer's sole cost and expense, shall promptly repair such damage and restore the Property to its condition prior to such damage.

(c) Notwithstanding anything to the contrary in this Section 4, Buyer and Seller acknowledge that Buyer is the tenant of a portion of the Property comprised of 1870 Senter Road and that Buyer shall continue to have occupancy and access rights to such portion of the Property pursuant to its Lease with Seller.

(d) In no event shall Buyer be permitted to conduct any invasive testing without the prior written consent of Seller, which consent Seller may withhold in its sole discretion.

5. Property Materials. Not later than two (2) business days after the Effective Date, Seller shall deliver to Buyer for Buyer's review and copying the following documents relating to the Property to the extent in the possession or control of Seller or Seller's agents (such documents being collectively, the "**Property Materials**"): (i) all soils, groundwater, environmental, property inspection and other reports and test results relating to the physical condition of the Property, including without limitation engineers', consultants' plans, reports and studies relating to the physical condition of the Property; (ii) all notices of violation of laws, if any, from any governmental or quasi-governmental authorities related to the Property; (iii) other current correspondence and notices from any governmental or quasi-governmental authorities related to the Property; (iv) all current leases, rental agreements, service contracts, and other agreements pertaining to use of, service to or the management or operation of the Property; (v) all permits and other approvals or licenses concerning the Property, obtained from any governmental entity, including but not limited to, certificates of occupancy, conditional use permits, development plans, and license and permits pertaining to the operation, management or use of the Property, including those pertaining to any and all water rights or claims; (vi) a list of known material facts and defects affecting the Property, including insurance claims within the past five years; and, (vii) any and all other disclosures required by law.

6. Conditions to Closing.

(a) Buyer's Conditions. In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Buyer of the matters specified in this Section 6(a), below, which conditions are solely for the benefit of Buyer and can be unilaterally waived by Buyer:

- (i) Buyer's approval, in its sole and absolute discretion, of all matters and conditions pertaining to the Property. The Due Diligence Period shall be for thirty (30) days from the Effective Date of this Agreement (the "**Due Diligence Period**") during which time the Buyer shall have the right to review and approve the Property Materials, to inquire and meet with all governmental or quasi-governmental authorities, and to inspect and approve the physical condition of and all other matters concerning the Property, at Buyer's sole cost. Buyer may deliver to Seller notice that Buyer is waiving this due diligence contingency (the "Approval Notice"), in which case, the conditions set forth in this Section 6(a)(1) shall be waived. If Buyer does not deliver an Approval Notice to Seller prior to the expiration of the Due Diligence Period, Buyer shall be deemed to have elected to terminate this Agreement. Buyer may also, prior to the expiration of the Due Diligence Period, affirmatively terminate this Agreement by notifying Seller of such election to terminate. Upon termination or deemed termination of this Agreement pursuant to this Section 6(a)(i), Seller and Buyer shall be released from all further obligations under this Agreement, other than the Surviving Obligations. After the Due Diligence Period, the Deposit shall become nonrefundable, except where such Deposit is

made refundable by express provision made elsewhere in this Agreement;

- (ii) The Title Company shall be irrevocably committed to issue to Buyer at the Closing an extended coverage ALTA owners policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions, in the form and with endorsements to be approved by Buyer prior to the end of the Due Diligence Period (the “**Title Policy**”);
- (iii) There shall have been no material adverse change in the physical condition of the Property from the expiration of the Due Diligence Period through the Closing Date; and
- (iv) Seller shall not be in default of Seller’s obligations under this Agreement, and all of Seller’s express representations and warranties set forth in this Agreement shall continue to be true, correct and unchanged in all material respects as of the Closing.

The conditions in this Section 6(a) are solely for the benefit of Buyer and can be unilaterally waived by Buyer.

(b) Seller’s Conditions. It is a condition precedent to Seller’s obligation to sell the Property to Buyer that Buyer shall not be in material default of Buyer’s obligations under this Agreement, and that all of Buyer’s express representations and warranties set forth in this Agreement continue to be true, correct and unchanged in all materials respects as of the Closing. The conditions in this Section 6(b) are solely for the benefit of Seller and can be unilaterally waived by Seller.

7. Title. At Closing, title to the Property shall be conveyed to Buyer subject to only the following exceptions (collectively, the “**Permitted Exceptions**”): (i) non-delinquent real property taxes and assessments, (ii) the standard pre-printed exceptions and exclusions contained in an ALTA extended coverage owner’s policy of title insurance, (iii) liens and encumbrances to which Buyer has consented in writing, and (iv) liens and encumbrances directly caused by the acts of Buyer or any of Buyer’s Representatives. Not later than five (5) days prior to the expiration of the Due Diligence Period (“**Title Review Period**”), Buyer may deliver to Seller written notice of any objections that Buyer may have to the Title Report. If Buyer fails to deliver such written notice of objection to Seller prior to expiration of the Title Review Period, and/or fails to notify Seller that it has approved all matters affecting title before expiration of the Title Review Period, Buyer shall be deemed to have approved title. If Buyer does timely object to any title exceptions, Seller shall notify Buyer within three (3) business days following the date of Buyer’s notice of such objections that either (A) Seller will cause the matters objected to be removed from title to the Property, or (B) Seller will not cause the matters objected to be removed, subject to this Section below. If Seller does not notify Buyer of its election within such three (3) business day period, Seller shall be deemed to have elected not to cause such matters to be removed, in which case, Buyer may elect either:

- (i) to terminate this Agreement (and such termination shall not be a Buyer default), or
- (ii) to take title as it then is without any reduction in the Purchase Price, with all such exceptions being deemed Permitted Exceptions,

which election must be made before expiration of the Due Diligence Period (“**Buyer’s Election Period**”). If Buyer does not make any election within the Buyer’s Election Period, then Buyer shall be deemed to have elected to have waived its termination rights with respect to such objected to items, and such items shall be deemed Permitted Exceptions. Upon termination of this Agreement pursuant to this Section 7, the Deposit shall be promptly returned to Buyer and neither party shall have any further obligations to the other except for the Surviving Obligations. If following the expiration of the Title Review Period, the Title Company discloses exceptions other than the Permitted Exceptions, and other than those which Seller has agreed to pay or discharge, then unless Buyer agrees to accept title as it then is without reduction of the Purchase Price, Buyer may, at its option determined in Buyer’s sole and absolute discretion, but in any event no more than five (5) days after its receipt of any disclosure from the Title Company, terminate this Agreement, in which event the Deposit shall be released to Buyer, unless such exception has been caused by Buyer’s default under this Agreement. If Buyer does not timely notify Seller of its election to terminate this Agreement, then Buyer shall be deemed to have waived any objection to such disclosed exceptions and said exceptions shall thereafter be deemed a Permitted Exception.

Notwithstanding anything to the contrary in this Agreement, Seller shall pay or discharge, or cause to be removed, whether or not specifically objected to by Buyer, the following, which shall not be considered Permitted Exceptions: all monetary liens or encumbrances voluntarily made by Seller and affecting the Property and all liens or encumbrances voluntarily created or assumed by Seller in violation of Section 8(d) below (excluding non-delinquent taxes); in no event shall Seller be allowed to elect or be deemed to have elected not to pay, discharge or cause to be removed such matters.

8. Representations, Warranties and Covenants.

- (a) Representations By Seller. Seller represents and warrants to Buyer as follows:

- (1) No consent or approval is required for the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations hereunder other than those already obtained by Seller.

- (2) The Property Materials delivered to Buyer are complete copies of the originals of such documents in the possession or control of Seller or Seller’s agents, and to Seller’s knowledge, are all of the Property Materials in the possession or control of Seller or Seller’s agents. Prior to the Closing, Seller agrees to promptly deliver to Buyer any additional documents received by Seller relating to the physical condition, use and operation of the Property. Seller’s agents, employees, officers, directors, property managers, contractors, subcontractors, attorneys, consultants and representatives may be referred to collectively herein as the “**Seller’s Representatives**”.

(3) Seller has not received written notice from any governmental or quasi-governmental authority of existing violations of any laws or other legal requirements applicable to the Property, or of any material defects in any Improvements, which remain uncured.

(4) Seller has not received written notice of any action, suit or proceeding pending, and Seller has no actual knowledge of anything threatened against or affecting all or any portion of the Property, or relating to or arising out of the ownership, management, development, proposed development or operation of the Property, or which would affect Seller's ability to perform its obligations under this Agreement in any court or arbitration or other quasi-judicial proceeding or before or by any governmental or quasi-governmental authority.

(5) As of the Closing, there shall be no outstanding contracts made by Seller for any services provided to the Property or improvements made or to be made to the Property which have not been fully paid for, and Seller shall cause to be discharged and removed as an exception to title all mechanics' and materialmen's liens arising from any labor and material furnished prior to the Closing (other than those caused by work performed by Buyer).

(6) To Seller's knowledge, the Property Materials delivered to Buyer include all reports relating to whether any Hazardous Materials have been located on the Property or have migrated onto the Property or have been released into the environment, or discharged, placed or disposed of at, on or under the Property. To Seller's knowledge, except as set forth in the environmental reports provided by Seller to Buyer during the term of this Agreement, there are no Hazardous Materials on, under, about or affecting the Property in violation of any applicable laws. As used in this Agreement, "**Hazardous Materials**" shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq. or the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101 et seq.; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 et seq.; mold; industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; and any other substance, waste or material which has been determined to be injurious to health, public safety or the environment.

Except for the express representations and warranties of Seller set forth herein. Buyer acknowledges and agrees that it is acquiring the Property AS-IS without any representation or warranty.

The representations and warranties of Seller set forth in this Section 8(a) shall survive the Close of Escrow for a period of twelve (12) months.

(b) Representations By Buyer. Buyer represents and warrants to Seller that no consent or approval from anyone other than Buyer's Board of Supervisors is required for the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder.

The representations and warranties of Buyer set forth in this Section 8(b) shall survive the Close of Escrow.

(c) Brokers. Seller and Buyer each represents and warrants that it has not been represented by any third-party real estate broker, agent or finder working on its behalf, in connection with the negotiation of this Agreement or the sale of the Property to Buyer. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with this Agreement, Seller, if such claim is based upon an alleged relationship with or any agreement alleged to have been made by Seller or its brokers, hereby agrees to indemnify, protect and defend with counsel reasonably acceptable to Buyer and hold Buyer and its Board of Supervisors, officers, agents, employees, successors and assigns harmless against any and all claims and liabilities which Buyer may or does sustain or incur by reason of such claim or claims. The provisions of this Section 8(c) shall survive the Close of Escrow and termination of this Agreement.

(d) Covenants of Seller. Seller hereby agrees as follows:

(1) After the Effective Date and prior to the Closing, no part of the Property, or any interest therein, shall be sold, leased, licensed, encumbered or otherwise transferred without Buyer's prior written consent.

(2) Prior to Closing, Seller shall promptly notify Buyer of any fact or circumstance of which Seller becomes aware or should be aware which would make any of Seller's representations and warranties untrue in any material respect, or any covenant of Seller under this Agreement incapable or improbable of being cured or performed.

(3) Seller shall not accept, consider or entertain any offers to acquire or purchase the Property from any third parties as of the Effective Date of this Agreement.

9. Prorations.

(a) Subject to this Section 9 below, all revenues and expenses of the Property, including without limitation real property taxes, special taxes, assessments (if any) shall be prorated and apportioned between Buyer and Seller as of the Closing Date, so that Seller bears all expenses with respect to the Property, and has the benefit of all income with respect to the Property, through and including the date immediately preceding the Closing Date. If any portion of the Property is affected by any assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien due and payable as part of the annual ad valorem property tax bill received for the Property, then such installment shall be prorated as of the Closing Date. Notwithstanding the foregoing, Seller shall be solely responsible for clearing all possessory interest taxes from the Property not later than the Closing. Any necessary adjustment due either party on receipt of a supplemental tax bill will be made by the parties outside of this Escrow within the time required

by this Section 10 below, which obligation shall survive the Closing. All other Closing costs shall be prorated between the Parties.

(b) Subject to Section 10(a) above, if any of the items to be prorated as of Closing cannot be finally determined as of Closing, the prorations shall be made at Closing based on the last available information, and post-closing adjustments between Buyer and Seller shall be made within twenty (20) days after the date that the actual amounts are determined. This subsection (b) shall survive the Closing.

10. Title Charges; Other Closing Costs. If this transaction is terminated before Close of Escrow by either party for any reason other than a breach or default by either party hereunder, Buyer and Seller shall share equally all escrow costs billed by the Escrow Holder and Title Company; however, if this transaction closes as provided in this Agreement, (i) Seller shall pay that portion of the premium for the Title Policy attributable to standard CLTA coverage (exclusive of endorsements), and the escrow fees; (ii) Buyer shall pay recording fees for the recording of the Grant Deeds (if any), and the portion of the premium for the Title Policy attributable to extended ALTA coverage and endorsements issued with the Title Policy; and (iii) all other Closing costs, if any, shall be allocated between Seller and Buyer in accordance with the custom in Santa Clara County, California.

11. Disbursement of Funds. On the Close of Escrow, after all Escrow conditions and requirements have been satisfied, and upon recordation of the Grant Deeds, Escrow Holder shall be instructed to disburse the Purchase Price less (a) Seller's share of prorations as determined pursuant to Section 9, (b) Seller's share of costs of Escrow pursuant to Section 10, in immediately available funds, as directed by Seller.

12. Delivery of Documents. Escrow Holder shall be instructed to, upon the Close of Escrow, deliver all instruments and documents as follows:

(a) Escrow Holder shall be instructed to deliver to Seller:

- (i) A copy of the Grant Deeds executed by Seller, showing recording information, and certified by the Escrow Holder as being a true and complete copy of the Grant Deeds recorded in the Official Records;
- (ii) A copy of the Non-Foreign Status Certificate, and Form 593-C;
- (iii) A copy of all other documents deposited into Escrow; and,
- (iv) The Purchase Price, less the costs and prorations chargeable to Seller pursuant to this Agreement.

(b) Escrow Holder shall be instructed to deliver to Buyer following the Close of Escrow the following:

- (i) A copy of the Grant Deeds signed by each applicable Seller, showing recording information, and certified by the Escrow Holder

as being a true and complete copy of the Grant Deeds recorded in the Official Records;

- (ii) A copy of the Non-Foreign Status Certificate, and Form 593-C from Seller;
- (iii) The original Title Policy; and
- (iv) A copy of all other documents deposited into Escrow.


13. Condemnation. If between the date of this Agreement and the Closing Date any condemnation or eminent domain proceedings are initiated which would result in the taking of any portion of the Property, then Buyer may terminate this Agreement by written notice to Seller. Seller shall promptly notify Buyer in writing upon receiving written notice of the commencement or occurrence of any condemnation or eminent domain proceedings affecting the Property. If such proceedings are initiated for the taking of any part of the Property, Buyer shall then notify Seller, within ten (10) business days after Buyer's receipt of Seller's notice (but in no event later than 24 hours prior to the Closing Date), whether or not Buyer elects to terminate this Agreement. If Buyer elects not to terminate this Agreement or fails to make an election within such ten (10) business day period or twenty-four (24) hours prior to the Closing Date, whichever is earlier, then Buyer shall be deemed to have elected to proceed with the Closing without any reduction to the Purchase Price, in which event Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings, or if such payment has been received by Seller such payment shall be credited to Buyer at the Closing, and Closing shall be delayed, if necessary, until the later to occur of (i) the Closing Date, or (ii) ten (10) days after the expiration of the ten (10) business day period. If this Agreement is terminated in accordance with this Section 13, then the Deposit shall be released to Buyer, and Seller and Buyer shall thereupon be released from all further obligations under this Agreement other than the Surviving Obligations.

14. Risk of Loss. If prior to the Closing, the Improvements, or any part thereof, are materially damaged or destroyed, Buyer has the right, exercisable by giving written notice to Seller within ten (10) days after receiving written notice of such damage or destruction, either (A) to terminate this Agreement, in which case the Deposit shall be returned to Buyer, and any other money or documents in escrow shall be returned to the party depositing the same, and neither party shall have any further rights or obligations under this Agreement other than the Surviving Obligations, or (B) to accept the Property in its then condition and to proceed with the Closing and all of Seller's right to insurance proceeds shall be transferred and assigned to Buyer at the Closing, and Buyer shall receive a credit against the Purchase Price in the amount of any insurance deductible and other insurance shortfall as reasonably estimated by Buyer and Seller. A failure by Buyer to notify Seller in writing within such ten (10) business day period or the Closing Date, whichever is earlier, will be deemed an election to proceed under clause (B) above. If Buyer elects (or is deemed to elect) to proceed under clause (B) above, then thereafter, Seller shall not compromise, settle or adjust any claims to such insurance proceeds without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed.

15. Default.

(a) DEFAULT BY BUYER; LIQUIDATED DAMAGES.

IF CLOSING FAILS TO OCCUR SOLELY BECAUSE OF BUYER'S DEFAULT UNDER THIS AGREEMENT, ESCROW HOLDER SHALL BE INSTRUCTED BY SELLER TO CANCEL THE ESCROW, SELLER AND BUYER SHALL THEREUPON BE RELEASED FROM THEIR RESPECTIVE OBLIGATIONS HEREUNDER (OTHER THAN THE SURVIVING OBLIGATIONS), AND AS LIQUIDATED DAMAGES HEREUNDER, THE DEPOSIT SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES, SUBJECT TO THIS SECTION BELOW. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY BUYER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES OR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT DESIGNATED AS LIQUIDATED DAMAGES IN THIS SECTION 15(a) ABOVE HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS REASONABLE LIQUIDATED DAMAGES PURSUANT TO THE TERMS HEREOF, CALIFORNIA CIVIL CODE SECTIONS 1671 AND 1677 AND ANY OTHER APPLICABLE LAW, AND TERMINATION OF THIS AGREEMENT AND RETENTION OF LIQUIDATED DAMAGES AS A RESULT THEREOF SHALL CONSTITUTE SELLER'S ONLY AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT OF A DEFAULT ON THE PART OF BUYER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES. THE PROVISIONS OF THIS SECTION 15(a) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SELLER'S INITIALS: ^{DS} JD ^{DS} RCD ^{DS} RCD ^{DS} MFD BUYER'S INITIALS: 

(b) Default or Breach by Seller. ^{DS} MPM

If Seller defaults in the performance of its obligations hereunder or is otherwise in breach of the terms hereof, Buyer shall, at its election, have the right solely to elect one of the following: (i) specific performance of Seller's obligations under this Agreement, and Seller agrees that, because of the unique nature of the Property, specific performance is an appropriate remedy for enforcement of Seller's obligations under this Agreement; or (ii) terminate this Agreement, upon which termination Buyer's remedy shall be the return of the Deposit and recovery of all out of pocket expenses incurred by Buyer in connection with this Agreement and Buyer's due diligence investigations relating to the Property and all other damages incurred by Buyer as the result of Seller's default in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00). The provisions of this Section 15(b) shall survive the Close of Escrow or the termination of this Agreement.

16. Notice. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to Seller: J.P. DiNapoli Companies, Inc.
99 Almaden Blvd., Suite 565
San Jose, CA 95113
Attention: John DiNapoli
Phone No.: (408) 535-2220
Email: johnd@dinco.com

With a copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, California 92614-7321

Attention: Sandy A. Jacobson, Esq.
Facsimile No.:
Phone No.: (949) 851-5461
Email: sjacobson@allenmatkins.com

If to Buyer: County of Santa Clara
Facilities and Fleet Department
Property Management Division
2310 North First Street, Suite 200
San Jose, CA 95131
Email: Loretta.Smith@faf.sccgov.org

With a Copy to: County of Santa Clara
Office of County Counsel
70 W. Hedding Street, East Wing, 9th Floor
San Jose, CA 95110
Attention: Karen Willis, Deputy County Counsel
Phone No.: 408.299.5982
Email: karen.willis@cco.sccgov.org

Subject to this Section below, any such notices shall be sent either (a) by certified mail, return receipt requested, postage prepaid in the U.S. mail, (b) by personal delivery, (c) by a nationally recognized overnight courier, (d) by telecopier, in which case notice shall be deemed delivered when the transmitting telecopier machine has confirmed that the notice has been completed or sent without error, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above, or (e) by email, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above. The above addresses may be changed by written notice to the other party; provided, however, that in no event shall a change of address include a P.O. Box. Notwithstanding this Section above, if a notice is sent in the manner required by this Section above, it shall be deemed given upon receipt, refusal of delivery by the intended recipient or failure of delivery due to incorrect delivery information provided by the intended recipient to the noticing party.

17. Time of Essence. Time is of the essence of this Agreement.

18. Governing Law and Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

19. Counterparts; Electronic Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of this agreement, or an electronically signed agreement, has the same force and legal effect as the agreement executed with an original ink signature. The term “electronic copy of this agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed agreement in a portable document format. The term “electronically signed agreement” means the agreement that is executed by applying an electronic signature using technology approved by the County.

20. Assignability. Neither party shall assign this Agreement without the prior written consent of all parties, which approval may be withheld in the sole and absolute discretion of such party.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of both the parties hereto and their respective legal representatives, successors and permitted assigns.

22. Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

23. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

24. Partial Invalidity. Any provision of this Agreement which is void, unenforceable or invalid or the inclusion of which would adversely affect the validity, legality or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect.

25. Submission of Agreement. The submission of this Agreement by one party to the other or their agents or attorneys for review will not be deemed an offer to sell or purchase the Property, and no agreement with respect to the purchase and sale of the Property will exist unless and until this Agreement is executed and delivered by both Seller and Buyer.

26. Real Estate Reporting Person. Escrow Holder 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 Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall file a Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

27. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, “**business day**” shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in California.

28. Number and Gender; Joint and Several Liability. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders. In the event either party is comprised of one or more persons or entities, such persons or entities shall be jointly and severally liable for the actions and omissions of the respective party.

29. Negotiated Terms. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as such party under this Agreement.

30. California Public Records Act. All documents and records provided to or made available to Buyer under this Agreement become the property of the Buyer, which is a public agency subject to the disclosure requirements of the California Public Records Act (“**CPRA**”). If proprietary information is contained in documents submitted by Seller or Seller’s Representatives to Buyer, and Seller expressly claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information “**CONFIDENTIAL AND PROPRIETARY,**” and identify the specific lines containing the confidential information. In the event of a request for such information, the Buyer will make reasonable efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before Buyer’s deadline to respond to the CPRA request. If Seller fails to obtain such a remedy before the Buyer responds to the CPRA request, Buyer will disclose the requested information and shall not be liable or responsible for such disclosure.

31. Conflict of Interest. Seller shall, and Seller shall ensure that Seller’s Representatives, comply with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act

(California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Agreement and is grounds for immediate termination of this Agreement by the Buyer. A violation of Government Code 1090 may make this Agreement void on its face. In accepting this Agreement, Seller covenants, warrants, represents and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Seller further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest.

32. Relationship of Parties. The parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the parties as affiliates, joint-venturers, partners, associations, master-servant, agents, representatives, a joint enterprise, employer-employee, lender-borrower or contractor. Seller shall have no authority to employ any person as employee, agent or representative on behalf of Buyer for any purpose. Neither Seller nor any person using or involved in or participating in any actions or inactions relating to the Agreement, or the Property shall be deemed an affiliate, employee, representative or agent of Buyer, nor shall any such person or entity represent himself, herself or itself to others as an employee, affiliate, agent or representative of Buyer.

33. No Third-Party Rights. The parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of or to this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.

34. OFAC. Seller represents and warrants to Buyer that: (i) Seller and the Seller's Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Seller and Seller's Representatives are not entering into this Agreement, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

35. Non-Discrimination. Seller shall comply with all applicable Federal, State and local laws and regulations including the County of Santa Clara's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et sea.); California Labor Code sections 1101 and 1102. Seller shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring,

employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Seller or any of Seller's Representatives discriminate in the fulfillment of any of the Agreement terms because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

36. Headings. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement or in any way affect this Agreement.

37. No Permitted Use of Santa Clara County Name. Except as allowed herein or by another written agreement entered into by and between the parties, Seller shall not publicize or use, or allow anyone else to use, the name, trade name, trade dress, seal, logo or other proprietary information of Buyer in any manner.

38. Exclusivity. During the term of this Agreement, Seller shall not offer the Property or any interest therein for sale or lease to any other party, or negotiate, solicit or entertain any offers.

39. Exchange. The parties recognize that Seller, if it chooses to seek replacement property, is entitled to pursue tax-free benefits of IRC §1033. Other than providing a confirming letter that the Buyer negotiated this Purchase Agreement in lieu of pursuing condemnation of the "Land", the responsibility for seeking such replacement property under IRC §1033 is the sole responsibility of the Seller. The Closing shall not be delayed or affected by reason of the Seller's pursuit of such tax-free benefits, and nothing in this Agreement shall be considered a representation or warranty from Buyer that Seller is entitled to any tax-free benefits under IRC §1033.

40. Survival. Those provisions which by their nature should survive termination, expiration or cancellation of this Agreement, shall so survive, including but not limited to those Sections with express survival terms and Sections 8, and 14 through 43, inclusive.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

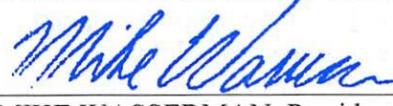
SELLER:

BUYER:

DINAPOLI FAMILY, L.P., a California limited partnership, as tenant-in-common for 1870 Senter Road and 1888 Senter Road

COUNTY OF SANTA CLARA, a Political Subdivision of the State of California

By: JP DiNapoli Companies, Inc., a California corporation, general partner



MIKE WASSERMAN, President Board of Supervisors

DocuSigned by:
John DiNapoli
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By: John B. DiNapoli, President

Date: JUN 22 2021

Date: 4/16/2021

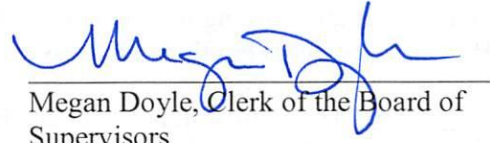
RLD FAMILY LIMITED PARTNERSHIP, a California limited partnership, as tenant-in-common for 1870 Senter Road and 1888 Senter Road

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of supervisors.

By: R & L Management, LLC, a California limited liability company, general partner

ATTEST:

By: The DiNapoli Survivor's trust created under the terms of the Richard L. and Lynette DiNapoli Revocable Living Trust dated March 15, 1986, as amended and restated



Megan Doyle, Clerk of the Board of Supervisors

DocuSigned by:
Richard C. DiNapoli
48E169614FEC481...
By: Richard C. DiNapoli, Trustee

APPROVED AS TO FORM AND LEGALITY:

Date: 4/16/2021

DocuSigned by:
Karen Willis
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By: Karen M. Willis, Deputy County Counsel

DocuSigned by:
Robert C. DiNapoli
813E4193903E400...
By: Robert C. DiNapoli, Trustee

Date: 4/16/2021

DocuSigned by:
Matthew F. DiNapoli
E5FAP4919DP84CD...
By: Frank Matthew DiNapoli, Trustee

Date: 4/16/2021

SDS NEXGEN PARTNERS, LP, a California limited partnership, a California limited partnership, as tenant-in-common for 1870 Senter Road and 1888 Senter Road

By: Shirlee DiNapoli Schiro & Mulcahy Partners, LLC, a California limited liability company, general partner

By: Shirlee DiNapoli Schiro Living Trust, UTA August 1, 1989, as amended, managing member

DocuSigned by:
Michael P. Mulcahy
By: _____
545359E347D4469...
Michael P. Mulcahy, Trustee

Date: 4/16/2021

DLK PARTNERS, LP, a California limited partnership, as tenant-in-common for 1888 Senter Road

By: RLD Family Limited Partnership, LP, a California limited partnership, its general partner

By: R & L Management, LLC, a California limited liability company, general partner

By: The DiNapoli Survivor's Trust created under the terms of the Richard L. and Lynette DiNapoli Revocable Living Trust dated March 15, 1986, as amended and restated

DocuSigned by:
Richard C. DiNapoli
By: _____
48F169614FEC481...
Richard C. DiNapoli, Trustee

4/16/2021

Date: _____
DocuSigned by:
Robert C. DiNapoli
By: _____
D713E2193903F400...
Robert C. DiNapoli, Trustee

4/16/2021

Date: _____
DocuSigned by:
Matthew F. Dinapoli
By: _____
E5EAF4919DF84CD...
Frank Matthew DiNapoli, Trustee

Date: 4/16/2021

SHIRLEE DINAPOLI MULCAHY SCHIRO
TRUST OF MARCH 1, 1942 as tenant-in-common
for 1888 Senter Road

By: _____
DocuSigned by:
Michael P. Mulcahy
543358E347D4489...

Michael P. Mulcahy, Trustee

Date: 4/16/2021

EXHIBIT A

LEGAL DESCRIPTION

1870 Property:

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

PARCEL 1, AS SHOWN ON PARCEL MAP FILED NOVEMBER 1, 1988 IN BOOK 592 OF MAPS, AT PAGE 43, SANTA CLARA COUNTY RECORDS.

APN: 477-20-133

1888 Property:

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

PARCEL 1:

LOT 1, AS SHOWN ON PARCEL MAP FILED SEPTEMBER 24, 1991 IN BOOK 630 OF MAPS, AT PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

PARCEL 2:

AN EASEMENT FOR INGRESS AND EGRESS OVER A PORTION OF LOT 2 FOR THE BENEFIT OF LOT 1 ABOVE MENTIONED, AS DEDICATED AND SHOWN ON PARCEL MAP FILED SEPTEMBER 24, 1991 IN BOOK 630 OF MAPS, AT PAGES 35 AND 36, SANTA CLARA COUNTY RECORDS.

APN: 477-20-147

EXHIBIT B

GRANT DEED

**RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTIONS 27383 AND 6103**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

[INSERT]

MAIL TAX STATEMENTS TO: Same as above

Space above this Line for Recorder's Use

A.P.N. _____

Transfer is exempt from documentary transfer tax pursuant to R&T Code Section 11922

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, _____, a _____ ("Grantor"), hereby **GRANTS** to the County of Santa Clara, a political subdivision of the State of California ("Grantee"), all right, title, fee, and interest in and to that real property situated in the City of _____, County of Santa Clara, State of California, described on Exhibit A attached hereto, together with all buildings and other improvements located on said real property, and all rights, privileges, easements and appurtenances thereto, including without limitation all mineral and water rights, appurtenant easements, rights-of way and other appurtenances used in connection with or relating to such real property, buildings, structures and other improvements.

In Witness Whereof, Grantor has caused this instrument to be executed.

GRANTOR: _____

_____, a

Dated: By:Its:

Mail tax statements to: Same as above address.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
(Signature)

EXHIBIT C

CERTIFICATE OF ACCEPTANCE

(Government Code Section 27281)
Certificate of Acceptance by
County of Santa Clara

THIS IS TO CERTIFY that the interest in real property conveyed by the Grant Deed dated _____, ____ from _____, to the County of Santa Clara, a political subdivision of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the County of Santa Clara pursuant to authority conferred by Resolution No. _____ of the Santa Clara County Board of Supervisors adopted on _____, and the grantee consents to recordation thereof by its duly authorized officer.

In witness whereof, I have hereunto set my hand on _____ day of _____.

By: _____

Name:

Title: