

PURCHASE AND SALE AND SETTLEMENT AGREEMENT

This PURCHASE AND SALE AND SETTLEMENT AGREEMENT (this "**Agreement**") is made and entered into as of _____, 2020 (the "**Effective Date**"), by and between LOYOLA CORNERS ESTATES LLC, a California limited liability company (the "**Seller**"), GREGG BUNKER, an individual who is the Managing Member of Seller ("**Bunker**"), and BURKE KALTENBERGER, an individual ("**Kaltenberger**") (Seller, Bunker and Kaltenberger shall sometimes hereinafter be referred to collectively as the "**Plaintiffs**"), and CITY OF LOS ALTOS, a California municipal corporation ("**Purchaser**"). Seller and Purchaser may be referred to individually as a "**Party**" and collectively as the "**Parties.**"

RECITALS

A. Seller is the owner of certain real property located at 999 Fremont Avenue, in the City of Los Altos, Santa Clara County, California, (APN 189-15-092) and more particularly described in Exhibit A attached hereto (the "**Real Property**"). The Real Property together with the following shall be referred to herein as the "**Property**": all of Seller's right, title and interest, if any, in and to all intangible personal property, to the extent assignable and related to the Real Property, including but not limited to, any and all (A) warranties, guaranties and indemnities, (B) entitlements, (C) plans, drawings, specifications, surveys, engineering reports, other technical descriptions and any names by which the improvements on the Real Property may be known or identified, including its street address, and (D) rights, refunds, claims, reimbursements, credits and awards benefitting or appurtenant to the Real Property.

B. On October 23, 2015, Plaintiffs filed a Complaint against Purchaser in Santa Clara County Superior Court as Case No. 115CV287198 (the "**Complaint**"), which Complaint relates to the Property.

C. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Property on and subject to the terms and conditions of this Agreement.

AGREEMENT

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Incorporation of Recitals. The recitals set forth above in the section entitled "Recitals" are true and correct and are incorporated herein by this reference.

2. Sale and Purchase of the Property. Seller agrees to sell and convey the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, on the terms and conditions set forth herein.

3. Purchase Price. The total purchase price for the Property shall be Two Million Eight Hundred Fifty Thousand Dollars (\$2,850,000) (the "**Purchase Price**"). The Parties acknowledge and agree that the Purchase Price is full monetary compensation for Purchaser's purchase of the Property, including but not limited to any damages related to disruption of Seller's businesses or to the use or enjoyment of or benefits, attorneys' fees, litigation costs and expenses, or any other claims of costs or damages incurred. Notwithstanding anything contained in this Agreement to the contrary, contemporaneously with its execution of this Agreement, Purchaser shall deposit the sum of One Hundred Thousand Dollars (\$100,000.00) with Escrow Holder (the "**Deposit**"). The Deposit shall be placed by Escrow Holder in an interest-bearing account, with interest accruing in the name of Purchaser. The interest accrued on the

Deposit while in escrow shall be deemed part of the Deposit for purposes of this Agreement. A portion of the Deposit in the amount of One Hundred Dollars (the "**Independent Consideration**"), shall be deemed to be in addition to and independent of any other consideration provided hereunder, which Independent Consideration shall be released to Seller and is fully earned by Seller and is non-refundable under all circumstances. The Deposit shall be credited toward the Purchase Price upon Close of Escrow.




4. Waiver of Property Rights and Interests. Upon receipt by Seller of the Purchase Price, subject to the terms and conditions set forth in this Agreement, Plaintiffs and each member of Plaintiffs for themselves and for their respective agents, successors and assigns (collectively, the "**Releasing Parties**") fully releases, acquits and discharges Purchaser and its officers, officials, council members, employees, attorneys, accountants, other professionals, insurers, and agents, all entities, boards, commissions, and bodies related to any of them, and designated volunteers (collectively, the "**Purchaser Parties**") from all claims that the Releasing Parties have or may have against the Purchaser Parties arising out of or related to Purchaser's acquisition of the Property, including, without limitation, all of Seller's property rights and interests in the Property, including but not limited to (i) any improvements, including improvements pertaining to the realty, furniture, fixture, and equipment, (ii) business goodwill and lost income (past or future) relating to the Property, (iii) lost income, (iv) economic or consequential damages, (v) professional consultant fees and attorney's fees and costs, and (vi) all other costs, and any and all compensable interests, and/or damages, and/or claims, of any kind and nature, claimed or to be claimed, suffered or to be suffered, by the Releasing Parties by reason of Purchaser's acquisition of the Property.

4.1 Mutual Release of Claims. Except for claims arising from any of the rights or obligations of Plaintiffs or Purchaser under this Agreement, upon receipt by Seller of the Purchase Price (less any applicable prorations and closing costs), Plaintiffs and Purchaser, hereby absolutely, fully, irrevocably, finally, and unconditionally release and discharge each other and each of them from any and all claims and liabilities of every and any kind or nature whatsoever, whether such claims and liabilities are presently known or unknown, direct or indirect, fixed or contingent, which such waiving party has had, now has or may claim to have against another party hereto, arising from, incidental to, based upon, or related in any way to the Complaint.

4.2 Waiver of Civil Code Section 1542. Each party hereto, on behalf of itself and its agents, successors and assigns, expressly waives all rights under Section 1542 of the Civil Code of the State of California ("**Section 1542**"), or any other federal or state statutory rights or rules, or principles of common law or equity, or those of any jurisdiction, government, or political subdivision thereof, similar to Section 1542 (hereinafter referred to as a "**Similar Provision**"). Thus, Plaintiffs and Purchaser, and their respective agents, successors and assigns, and any business, enterprise, or venture in which they are involved, may not invoke the benefits of Section 1542 or any Similar Provision in order to prosecute or assert in any manner the matters released in this Section 4 above. Section 1542 provides as follows:

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

Plaintiffs' Initials:

 Kalttenberger
 Bunker for Himself
 Bunker for Seller

Purchaser's Initials: _____

4.3 Tenant or Other Interests. Seller represents and warrants that except as specified below there are no oral or written leases on any portion of the Property, and no claims by a third party of a right to use any portion of the Property. Seller shall hold harmless and reimburse Purchaser for any and all losses and expenses occasioned by any such lease or claim and arising from Purchaser's efforts to remove or eliminate such lease or claim to allow development and use of the Project. Seller represents and warrants that Seller shall deliver the Property to Purchaser free and clear of any tenancy and/or occupancy.

4.4 Survival. The provisions of this Section 4 shall survive the Closing and shall not be merged into the Grant Deed, and shall be fully enforceable after Close of Escrow.

5. "As Is" Sale. Purchaser specifically acknowledges and agrees that Seller is selling and Purchaser is purchasing the Property on an "As-Is, Where-Is, With All Faults" basis as of the Closing and that Purchaser is not relying on any representations or warranties of any kind whatsoever, express or implied, from Plaintiffs, their agents, employees or attorneys as to any matters concerning the Property, including without limitation: (a) the quality, nature, adequacy and physical condition of the Property and any improvements thereon, (b) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (c) the presence of hazardous materials on, under or about the Property or the adjoining or neighboring lands, (d) the quality of any labor and materials used in any improvements on the Property, and (e) the condition of title to the Property. Seller hereby specifically disclaims: (i) all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Seller's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose; and (ii) any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (x) the nature and condition of the Property or other items conveyed hereunder, including, without limitation, the water, soil, and geology, the suitability thereof and of the Property or other items conveyed hereunder for any and all activities and uses which Purchaser may elect to conduct thereon, the existence of any environmental hazards or conditions thereon (including but not limited to the presence of asbestos or other hazardous substances) or compliance with applicable environmental laws; (y) the nature and extent of any right-of-way, possession, lien, encumbrance, license, reservation, condition or otherwise; and (z) the compliance of the Property or other items conveyed hereunder or its operation with any laws (including environmental laws), ordinances, rules, requirements, resolutions, policy statements and regulations.

6. Conveyance of Title/Title Policy.

6.1 Subject to the fulfillment of the conditions precedent described in Section 10 below, at the Close of Escrow, Seller shall convey to Purchaser the Property by Grant Deed in the form attached as Exhibit B and incorporated herein by reference, subject only to (a) nondelinquent taxes and assessments; and (b) exceptions which are approved and/or accepted by Purchaser in writing (collectively, "**Approved Conditions of Title**").

6.2 Purchaser and Seller shall cause First American Title Company (the "**Title Company**") to deliver to Seller and Purchaser an updated Preliminary Title Report for the Property within five (5) days after the Effective Date. Within thirty (30) days from the Effective Date, Purchaser shall have completed its review of all title matters affecting the Property to the extent desired by Purchaser and shall obtain whatever assurances and/or commitments it desires from the Title Company as to title matters and the title insurance policies which Purchaser desires the Title Company to issue to Purchaser at the Closing for the Property (the "**Title Policy**"). Purchaser shall cause Escrow Agent at Close of Escrow to provide Purchaser with a standard CLTA or ALTA (as the Purchaser may request in its sole discretion) policy of title insurance in the amount of the Purchase Price issued by the Title Company, together with any endorsements reasonably requested by Purchaser, showing fee simple title vested in Purchaser for the

Property, subject only to the Approved Conditions of Title set forth above and the standard and printed exceptions, exclusions and stipulations contained in the form of owner's title insurance policy to be obtained by Purchaser. Purchaser shall pay all premiums for the Title Policy and any endorsements to the Title Policy.

7. Escrow. Purchaser and Seller have opened or shall, within five days of the Effective Date of this Agreement, open an escrow ("**Escrow**") in accordance with this Agreement at First American Title Company ("**Escrow Agent**"), in Escrow Agent's office located at 333 West Santa Clara Street, Suite 220, 95113 Attn: _____. This Agreement, together with any supplemental escrow instructions prepared by Escrow Agent and executed by Purchaser and Seller, constitutes the joint escrow instructions of Purchaser and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. Seller and Purchaser shall execute and deliver to Escrow Agent any additional or supplementary instructions as may be necessary or convenient to implement the terms of this Agreement and close the transactions contemplated hereby, provided such instructions are consistent with and merely supplement this Agreement and shall not in any way modify, amend or supersede this Agreement.

8. Escrow Agent Authorization. Escrow Agent is authorized to, and shall:

8.1 Costs and Expenses. Charge to Purchaser: (a) all premiums for the Title Policy and any title endorsements, (b) all documentary transfer taxes, (c) all City transfer taxes, (d) all fees charged by the Escrow Agent in connection with the consummation of the transaction described herein, and (e) all document recording charges, all of which shall be paid by Purchase through Escrow. Purchaser shall pay outside of Escrow all costs and expenses related to its due diligence investigations, and all legal and professional fees and costs of attorneys and other consultants and agents retained by Purchaser. Plaintiffs shall pay outside of Escrow legal fees and costs incurred by Plaintiffs. If the Closing does not occur due to Plaintiffs' failure to satisfy Plaintiffs' obligations under this Agreement, then Seller shall pay all cancellation fees charged by Escrow Agent; otherwise, Purchaser shall pay all such cancellation fees.

8.2 Disbursement.

(a) Disburse funds, including the Purchase Price to the Attorney-Client Trust Account of William R. Seligmann for the benefit of Seller; provided, that Purchaser shall not have any liability to Plaintiffs and/or Sellers and/or their individual members arising from failure or delay to distribute funds or distribution of funds arising out of any dispute amongst the Plaintiffs as to how the funds are to be distributed amongst them.

(b) Record the Grant Deed and Certificate of Acceptance.

(c) Deliver to Purchaser the originals of the Title Policy, the Non-Foreign Transferor Declaration; deliver to Purchaser and Seller conformed copies of the Grant Deed and Certificate of Acceptance when conditions of the Escrow have been fulfilled by Purchaser and Seller.

8.3 Close of Escrow. The "**Closing**" or "**Close of Escrow**" shall be the date that is five (5) days after the expiration of the Contingency Period.

8.4 Time Limits. All time limits within which any matter specified is to be performed may be extended only by the mutual agreement of the Plaintiffs and Purchaser. Any amendment of, or supplement to, any instructions must be in writing.

8.5 Time of the Essence. TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND, EXCEPT AS OTHERWISE PROVIDED BELOW, ESCROW IS TO CLOSE ON OR BEFORE

THE DATE THAT IS THIRTY-FIVE (35) DAYS AFTER THE EFFECTIVE DATE, UNLESS SAID DATE IS EXTENDED BY THE MUTUAL WRITTEN AGREEMENT OF THE PARTIES HERETO. If this Escrow is not in condition to close by such date, then any party who has fully complied with this Agreement may, in writing, demand the return of its money or property; provided, however, no demand for return shall be recognized until five days after Escrow Agent shall have mailed copies of the demand to all other parties hereto at the respective addresses shown in the notice provisions below, and if any objections are raised within such five-day period, Escrow Agent is authorized to hold all money, papers and documents until instructed by a court of competent jurisdiction or mutual instructions.

8.6 FIRPTA. Seller and Purchaser agree to execute and deliver as directed by Escrow Agent any instrument, affidavit, and statement, including without limitation the Non-Foreign Transferor Declaration which is attached hereto as Exhibit C, if applicable, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder.

8.7 Tax Requirements. Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement and tax withholding forms, and be responsible for withholding taxes, if any such forms are provided for or required by law.

8.8 Transfer Taxes. Purchaser represents and warrants that no transfer tax shall be due because Purchaser is a public entity.

9. Due Diligence Period.

(a) Access to and Delivery of Materials. Within two (2) days following the Effective Date, Seller shall deliver to Purchaser any documents in Seller's (or Seller's property manager's) possession, which are related to the operation, ownership and/or management of the Property.

(b) General. On or before the date that is thirty (30) days after the Effective Date (the "**Contingency Date**"), Purchaser shall have completed any and all due diligence activities which Purchaser may choose to conduct or commission, including without limitation, a review of: Seller's Documents, any other documents made available to Purchaser, the condition of title to the Real Property as disclosed by the Preliminary Title Report, the condition of the improvements located on the Real Property and all operating systems relating thereto, the presence of hazardous materials if any, the status of the contracts, compliance with governmental regulations, the development potential (or lack thereof) of the Real Property, and any and all other matters of similar or dissimilar nature relating in any way to the Property or Purchaser's purchase of the Property (collectively, the "**Due Diligence**").

(c) Contracts. In connection with its Due Diligence, Purchaser shall also have the right to disapprove any of the service contracts listed on Exhibit D attached hereto (collectively, the "**Contracts**") which are terminable on thirty days or less prior written notice without any penalty or premium by delivering a written notice to Seller within fifteen (15) days of the Effective Date of this Agreement specifying the disapproved Contracts (a "**Contract Disapproval Notice**"). If Purchaser fails for any reason to timely deliver a Contract Disapproval Notice, Purchaser shall be deemed to have approved all of the Contracts and to have waived its right to deliver a Contract Disapproval Notice. All of the Contracts which are not specified in any Contract Disapproval Notice timely delivered to Seller, together with any and all Contracts which are not terminable on thirty days or less prior written notice without any penalty or premium, are collectively referred to herein as the "**Approved Contracts**." Notwithstanding anything contained herein to the contrary, Seller shall terminate all of its listing agreements and property management agreements, to the extent relating to the Property, at its expense as of the Close of Escrow.

(d) **Purchaser's Right to Terminate.** Purchaser may terminate this Agreement in its sole and absolute discretion, for any reason or no reason whatsoever, at any time prior to 5:00 P.M. (Pacific Time) on the Contingency Date by delivering written notice thereof to Seller and Escrow Holder if Purchaser learns of new information adversely affecting the title or condition of the Real Property that was not reasonably available to Purchaser as of the Effective Date of this Agreement (and/or of which Seller was aware, but did not disclose to Purchaser prior to the Effective Date). In the event that Purchaser fails to notify Seller, in writing, of Purchaser's election to proceed with the transaction contemplated by this Agreement or terminate this Agreement prior to 5:00 P.M. (Pacific Time) on the Contingency Date, then Purchaser shall be deemed to have elected to consummate this Agreement. If Purchaser elects to terminate this Agreement pursuant to the terms of this Section, then this Agreement shall terminate, and Purchaser shall be entitled to the immediate return of the Deposit and all interest accrued thereon (less the Independent Consideration).

(e) **Access by Purchaser.** Purchaser and Purchaser's agents and representatives shall have the right to enter upon the Real Property at all reasonable times in order to conduct such inspections, tests or studies as Purchaser may deem appropriate, provided that (i) any invasive investigations of the land or improvements thereon shall be subject to Seller's prior consent (which consent shall not be unreasonably withheld, conditioned or delayed), and (ii) any such entry shall be coordinated with Seller or Seller's property manager or other agent of Seller in control of the Real Property, and shall be conducted in such a manner as to cause the least disruption possible in the on-going operation of the Real Property. Any damage caused to the Real Property in connection with any inspection, test, or study shall be promptly repaired by Purchaser and the Real Property returned to substantially the condition existing prior to such inspection, test or study, all at Purchaser's cost; provided, however, that Purchaser's restoration obligation shall not apply (i) to the extent arising from the negligence or willful misconduct of Seller or Seller's agents and representatives, or (ii) to the mere discovery of any pre-existing condition at the Real Property.

10. **Conditions Precedent to Close of Escrow.**

10.1 **Purchaser's Conditions Prior to Closing; Seller's Deposits.** The obligation of Purchaser to complete purchase of the Property is subject to satisfaction of the following conditions:

(a) At or before the Closing, Seller shall deliver through Escrow the executed, acknowledged and recordable Grant Deed.

(b) At or before the Closing, Seller shall deliver through Escrow a duly-executed Non-Foreign Transferor Declaration, from Seller.

(c) At or before the Closing, Seller shall deposit into Escrow such other documents as are reasonably required by the Title Company and/or Escrow Agent to close the Escrow and consummate the purchase and sale of the Property in accordance with the terms of this Agreement.

(d) Seller shall not be in default of any of its obligations under the terms of this Agreement, and all of Seller's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the Close of Escrow.

(e) Escrow Agent shall have committed to deliver to Purchaser the Title Policy as provided in Section 6.2 of this Agreement.

On failure of any of the conditions set forth above, Purchaser may terminate its obligations to purchase the Property pursuant to this Agreement with no further liability to Seller by giving notice to Seller on or before the expiration of the time allowed for each condition. In the event of such termination by

Purchaser, the Escrow Agent shall return to Purchaser any portion of the Purchase Price, including the Deposit, and any other funds already deposited by Purchaser. Purchaser's failure to elect to terminate its obligations due to failure of a condition listed in this Section 10.1 shall constitute a waiver of the condition by Purchaser.

10.2 Seller's Conditions Precedent to Closing; Purchaser's Deposits. The obligation of Seller to complete sale of the Property is subject to satisfaction of the following conditions:

(a) At or before the Closing, Purchaser shall have deposited into Escrow a duly executed and acknowledged Certificate of Acceptance in the form attached to the Grant Deed in Exhibit B for the Escrow Agent to attach to the Grant Deed for recordation.

(b) At or before the Closing, Purchaser shall have deposited into Escrow (i) the Purchase Price in immediately available funds, and (ii) Purchaser's share of closing costs as described herein.

(c) At or before the Closing, Purchaser shall deposit into Escrow such other documents as are necessary to comply with Purchaser's obligations under this Agreement.

(d) Purchaser shall not be in default of any of its obligations under the terms of this Agreement, and all of Purchaser's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the Close of Escrow.

On failure of any of the conditions set forth above, Seller may terminate its obligations under this Agreement with no further liability to Purchaser by giving notice to Purchaser on or before the expiration of the time allowed for each condition. Seller's failure to elect to terminate its obligations due to failure of a condition listed in this Section 10.2 shall constitute a waiver of the condition by Seller.

11. Closing Statement. Seller instructs Escrow Agent to release a copy of Seller's closing statement to Purchaser.

12. Loss or Damage to Property. Loss or damage to the Property, by fire or other casualty, occurring prior to recordation of the Grant Deed, shall be at the risk of Seller. In the event that loss or damage to the Property, by fire or other casualty, occurs prior to the recordation of the Grant Deed, and the Property is no longer useable for any reasonable purpose, then Purchaser may elect to either terminate this Agreement or waive the right to terminate and close Escrow without any offset to the Purchase Price or any rights to insurance proceeds, if any.

13. Warranties, Representations, and Covenants of Seller. Seller hereby warrants, represents, and/or covenants to Purchaser that:

13.1 Pending Claims. To the best of Seller's knowledge, there are no actions, suits, claims, legal proceedings, or administrative proceedings pending with respect to the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign, except as disclosed in the Complaint.

13.2 Seller's Title. Until the Close of Escrow, Seller shall not intentionally do anything which would impair Seller's title to any of the Property.

13.3 Condition of Land. To the best of Seller's knowledge, there are no substances, materials or conditions on the Property that qualify as hazardous materials in violation of any applicable

environmental laws, and Seller has received no written notice alleging that the conditions of the Property are in violation of any such applicable environmental laws.

13.4 Conflict with Other Obligation. To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Seller may be bound with respect to the Property.

13.5 Authority. Plaintiffs have the full right, power, and authority to execute and perform their respective obligations under this Agreement.

13.6 Bankruptcy. Seller is not the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Property as provided herein.

13.7 Governmental Compliance. To the best of Seller's knowledge, Seller has not received any notice from any governmental agency or authority alleging that the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Seller following the date this Agreement is signed by Purchaser, Seller shall notify Purchaser within ten days of receipt of such notice. Seller then, at its option, may either elect to perform the work or take the necessary corrective action prior to the Close of Escrow or refuse to do so, in which case Seller shall notify Purchaser of such refusal and Purchaser shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement.

13.8 Non-Foreign Transferor. Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Act or any similar state statute, and Seller will comply with all of the requirements of the Foreign Investment in Real Property Act and any similar state statute in connection with this transaction.

13.9 Change of Situation. Until the Close of Escrow, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 13 not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to Purchaser.

The representations and warranties of Seller set forth in this Section 13 shall survive the Close of Escrow for a period of twelve (12) months (the "**Survival Period**"). No claim for a breach of any representation or warranty of Seller will be actionable or payable if (a) Purchaser does not notify Seller in writing of such breach and commence a "legal action" thereon within the Survival Period, or (b) the breach in question results from or is based on a condition, state of facts or other matter which was known to Purchaser prior to Closing.

14. Broker's Commission. Plaintiffs and Purchaser each warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the sale of the Property. Plaintiffs and Purchaser agree to and do hereby indemnify and hold the other harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement. The provisions of this Section 14 shall survive the Close of Escrow or termination of this Agreement.


15. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Purchaser and Plaintiffs shall be deemed both a covenant and a condition and shall be a material consideration for Plaintiffs' and Purchaser's performance hereunder, as appropriate, and any breach thereof

by Purchaser or Plaintiffs shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement. This Agreement constitutes a writing signed by the parties outside the presence of the court pursuant to California Code of Civil Procedure section 664.6 for settlement of the case initiated by the Complaint, and the court shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement, and upon motion may enter judgement pursuant to the terms of the settlement.

16. Attorneys' Fees. In the event any declaratory or other legal or equitable action is instituted between Plaintiffs or any of them, Purchaser and/or Escrow Agent in connection with this Agreement, then as between Purchaser and Plaintiffs or any of them, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

17. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by reputable overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of: (a) if personally delivered, the date of delivery to the address of the person to receive such notice; (b) if mailed, three business days after the date of posting by the United States post office; or (c) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day. Notice of change of address shall be given by written notice in the manner described in this Section. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

To Purchaser: _____

To Plaintiffs Loyola Corners Estates, LLC
1900 Camden Avenue
San Jose, CA 95124
Emails: 

With copies to:

Berliner Cohen LLP
Ten Almaden Blvd., 11th Floor
San Jose, California 95113
Attn: Jolie Houston
Email: [REDACTED]

Law Offices of William R. Seligmann
333 Church Street, Suite A
Santa Cruz, CA 95060
Attn: William Seligmann
Email: [REDACTED]

18. Default. Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within five (5) days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such five (5) day period (and if Purchaser is the terminating party in such event, the Deposit shall be immediately returned to Purchaser).

19. Interpretation. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate. The words "include" and "including" shall be interpreted as though followed by the words "without limitation." This Agreement shall be interpreted as though jointly prepared by both parties.

20. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein, except as provided in Section 33.

21. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

22. Governing Law; Venue. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California without reference to its choice of laws rules. The exclusive venue for any disputes or legal actions shall be in the Superior Court of California, County of Santa Clara.

23. Invalidity of Provision. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way effect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

24. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Purchaser and Plaintiffs.

25. Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall

constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document. This Agreement may be executed by signatures transmitted by facsimile, adobe acrobat or other electronic image files and these signatures shall be valid, binding and admissible as though they were ink originals.

26. Time of Essence. Time is of the essence of each provision of this Agreement.

27. Binding Upon Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

28. Offer. Any delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom delivered, and neither the delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by Purchaser or Plaintiffs, nor in any way imply that Purchaser or Plaintiffs are under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Plaintiffs constitutes an offer which shall not be deemed accepted by Purchaser unless and until this Agreement has been executed on behalf of Purchaser by its City Manager or his/her designee after action by the City Council of the City of Los Altos. Plaintiffs agree that this offer shall be acceptable and cannot be revoked by Plaintiffs for a period of 30 days following presentation to Purchaser.

29. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "**holiday**" shall mean all holidays as specified in sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

30. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

31. Cooperation. Each party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

32. Dismissal of Complaint. Within three (3) business days of the date on which the Purchaser receives notice that the Grant Deed conveying the Property from Seller to Purchaser is recorded, Seller will dismiss the Complaint with prejudice. In the event that the Grant Deed is not recorded until after January 30, 2020, Purchaser agrees to stipulate to continue the pending dismissal date of the Complaint to a date sufficient to accommodate the recordation of the Grant Deed.

33. Relationship to Prior Settlements. This Agreement shall supersede any prior settlement agreements entered into between the parties hereto, and upon consummation of the purchase and sale of the Property contemplated by this Agreement, all prior settlement agreements shall be null and void; provided, however, that if this Agreement is terminated prior to the consummation of the purchase and sale of the Property, the Deposit shall be immediately returned to Purchaser, the Amended Conditional

Settlement Agreement and Release from Liability entered into by the Plaintiffs and Purchaser on August 7, 2018 shall be given full force and effect, as if this instant Agreement had never existed.

34. Recitals; Exhibits. The above recitals and the following exhibits attached to this Agreement are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A	Legal Description of Real Property
Exhibit B	Form of Grant Deed
Exhibit C	FIRPTA Certificate
Exhibit D	Contracts

[SIGNATURES START ON NEXT PAGE.]

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

“PURCHASER”:

CITY OF LOS ALTOS,
a California municipal corporation

By: _____
City Manager

APPROVED AS TO FORM:

City Attorney

“PLAINTIFFS”:

LOYOLA CORNERS ESTATES LLC, a California
limited liability company

By: _____
Name: Gregg Bunker
Its: Managing Member

Gregg Bunker

By: _____
Name: Gregg Bunker

Burke Kaltenberger

DocuSigned by:

1/6/2020

By: _____
Name: Burke Kaltenberger

APPROVED AS TO FORM:

William R. Seligmann, Attorney for Plaintiffs

EXHIBIT A

Legal Description of the Real Property

[to be attached]

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 189-15-092

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS ALTOS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lots 1, 2, 3 and 4, in Block 1, as shown upon Map entitled, "Loyola Townsite, part of Lot No. 3 Section 4, TP, 7 So. Rancho 2# M.D.B. & M. Santa Clara County, California", which said Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Vol. "V" of Maps, Page 28.

Excepting therefrom the interest conveyed to the City of Los Altos, A Municipal Corporation, for street purposes by Deed recorded July 14, 1981 in Book G212, Page 312, described as follows:

Being a portion of Lots 1, 2 and 3, Block 1, Map of Loyola Townsite, recorded in Book V of Maps, Page 28, Santa Clara County Records, and described as follows:

Beginning at a point distant S. 89° 09' 52" E., 37.26 feet from the most Northwesterly corner of Lot 4, Block 1 as shown on said Map; Thence, along the Southerly line of "A" Street as shown on said Map and continuing S. 89° 09' 52" E., for a distance of 0.49 feet to a point of tangent curve to the right; thence, Easterly and Southerly along said tangent curve to the right having a radius of 10 feet through a central angle of 90° 01' for an arc length of 15.71 feet to a point of tangency; thence, S. 0° 51' 08" W., 108.93 feet to a point of a tangent curve to the right; thence, Southwesterly along said tangent curve to the right having a radius of 15 feet through a central angle of 78° 15' 57" for an arc length of 20.49 feet to a point of cusp; thence, Northeasterly on a curve to the left having a radial bearing of N. 42° 35' 25" W., and having a radius of 14.50 feet through a central angle of 46° 33' 27" for an arc length of 11.78 feet to a point of tangency; thence, N. 0° 51' 08" E., 116.09 feet to a tangent curve to the left; thence, along said tangent curve to the left having a radius of 9.50 feet through a central angle of 47° 27' 41" for an arc length of 7.87 feet to the Point of Beginning.

EXHIBIT B

GRANT DEED

Recording Requested by and
After Recordation Mail to:

City of Los Altos

Attention: _____

*This document is exempt from the
payment of a recording fee pursuant to Government Code § 27383*

GRANT DEED

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned (collectively, "**Grantor**") hereby grants to the City of Los Altos, all of Grantor's right, title, and interest in and to the real property located in the City of Los Altos, Santa Clara County, California, described in Attachment No. 1 attached hereto.

GRANTOR:

LOYOLA CORNERS ESTATES LLC, a California
limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Certificate of Acceptance

This is to certify that the interests in real property conveyed by Grant Deed dated _____, 2020, from LOYOLA CORNERS ESTATES LLC, a California limited liability company, as grantor, to the City of Los Altos, as grantee, are hereby accepted by the City Manager of the City of Los Altos pursuant to authority conferred by Resolution No. _____ of the City Council adopted on _____, 2020, and the City of Los Altos, as grantee, consents to recordation of said Grant Deed.

Date: _____, 2020

By: _____
City Manager

Attachment No. 1

PLAT AND LEGAL DESCRIPTION

(See attached.)

EXHIBIT C

FIRPTA AFFIDAVIT

Section 1445 of the Internal Revenue Code of 1954, as amended (“Code”), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U. S. real property interest by Loyola Corners Estates LLC, a California limited liability company, as Transferor, the undersigned hereby certifies the following:

1. The Transferor is not a non-resident alien for purposes of U.S. income taxation (as such term is defined in the Internal Revenue Code and Income Tax Regulations);

2. The Transferor’s U. S. taxpayer identification number or social security number is _____.

3. The Transferor’s mailing address is _____.

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

Under penalty 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 further declares that he/she has authority to sign this document on behalf of the Transferor.

Dated: _____, 2020

LOYOLA CORNERS ESTATES LLC, a California
limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT D

CONTRACTS

[to be attached]