

**AGREEMENT FOR SALE OF
SURPLUS CITY-OWNED REAL PROPERTY TO
ARCADIA DEVELOPMENT CO.**

THIS AGREEMENT is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY") and ARCADIA DEVELOPMENT CO., a California corporation (hereinafter "BUYER") upon execution by CITY (hereinafter "Effective Date").

W I T N E S S E T H:

WHEREAS, CITY is the owner of that certain real property located in the City of San José, County of Santa Clara, State of California, more particularly described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"** (hereinafter "PROPERTY") attached hereto and incorporated herein, and BUYER is the owner of that certain real property known as APN 458-17-017, which is adjacent to the PROPERTY; and

WHEREAS, the City Council has previously found and determined that the PROPERTY is not needed for, nor adaptable to, municipal purposes and is therefore surplus property, and that the public interest and necessity will be served by its sale; and

WHEREAS, Section 4.20.050 of the San José Municipal Code authorizes the sale of surplus CITY-owned real property to the owner or owners of property adjacent to such surplus property at private sale at the fair market value thereof without notice, subject to such terms and conditions as the City Council of CITY may, in its discretion, provide, and the City Council desires to sell the PROPERTY to BUYER pursuant to such Section 4.20.050.

NOW, THEREFORE, in consideration of their mutual promises, covenants and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. Property to be Conveyed.

Subject to the provisions of this AGREEMENT, CITY shall transfer and convey to BUYER by Quitclaim Deed in substantially the same form as **Exhibit "C"**, and BUYER shall purchase and take from CITY, all of CITY's right, title and interest in and to the PROPERTY.

2. Purchase Price.

BUYER shall pay to CITY, in consideration of CITY's conveyance to BUYER of said PROPERTY the sum of **TWENTY FOUR THOUSAND AND NO/100 DOLLARS (\$24,000)**. Said sum shall hereinafter be referred to as the "Purchase Price".

3. Tender and Acceptance of Payment.

BUYER shall deposit the Purchase Price with First American Title, 1737 North First Street, San Jose, CA (the "Escrow Holder") no later than two (2) business days prior to the "Closing Date", as defined below. By its execution of this AGREEMENT, CITY accepts the Purchase Price as full compensation for the PROPERTY.

4. Additional Fees and Charges.

BUYER shall be responsible for the full payment of all title insurance, escrow, recording fees, documentary transfer taxes, broker commissions and other fees and charges associated with this transaction. BUYER shall indemnify, defend and hold CITY harmless from and against, and CITY shall have no liability or responsibility for any such fees, costs, taxes, or expenses.

5. Delivery and Recording of Deed and Real Property Taxes.

No later than thirty (30) days from the Effective Date, CITY shall deliver, to the office of the Escrow Holder, a Quitclaim Deed executed by CITY. CITY and BUYER shall deliver such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow. The CITY and BUYER shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this AGREEMENT. The Escrow Holder will close the escrow and record the Quitclaim Deed on such date (the "Closing Date") as is directed by CITY in its escrow instructions, but in no event later than fifteen (15) days of delivery of the Quitclaim Deed to the Escrow Holder.

Real property taxes and assessments, if any, shall be payable by BUYER from and after the date of recordation of the Quitclaim Deed.

6. Buyer's Sole Remedy for Failure to Convey.

In the event that CITY's Quitclaim Deed shall, for any reason, not be sufficient to convey fee title to the PROPERTY on or before the Closing Date, as shall be evidenced by Escrow Holder's willingness to issue a CLTA Owner's policy of title insurance insuring such title in the name of BUYER in the amount of the Purchase Price, BUYER shall have the right to terminate this AGREEMENT, but shall have no other right of action against CITY and shall not be entitled to recover any damages from CITY, and all parties hereby shall return to status quo ante. BUYER's agreement to proceed to closing of escrow shall constitute BUYER's waiver of its right to terminate this AGREEMENT pursuant to this Section 6 or other right of action against CITY in regards to failure to convey fee title.

7. Condition of Title.

CITY's right, title and interest in and to the PROPERTY shall be delivered by CITY hereunder subject to all exceptions, encumbrances, liens and restrictions of record and not of record, as of the Closing Date.

8. AS-IS Condition of Property/BUYER's Due Diligence.

BUYER agrees that: i) it is purchasing the PROPERTY "as is" and in reliance on BUYER's own investigation, which it has or will have conducted to its satisfaction prior to the Effective Date, ii) no representations or warranties of any kind whatsoever, express or implied, have been made by CITY regarding the PROPERTY or the legal or physical condition thereof, including without limitation any zoning regulations or other governmental requirements, the existence of "Hazardous Substances" (as defined in Section 9, below) or other site conditions, or any other matters affecting the use, value or condition of the PROPERTY, and iii) it shall take the PROPERTY in the condition that it is in at the Closing Date. To the extent that CITY has provided to BUYER information or reports regarding the PROPERTY, CITY makes no representations or warranties with respect to the accuracy or completeness thereof.

9. Indemnification and Hold Harmless.

BUYER agrees to protect, defend, indemnify and hold harmless, CITY, its officers, employees, or agents, from and against all claims, response costs, losses,

demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (collectively, "Claims") of any kind whatsoever paid, incurred, suffered or asserted, or related to, on or after the Closing Date directly or indirectly arising from or attributable to conditions on or BUYER's use of the PROPERTY (including BUYER's use of the PROPERTY before the Effective Date), including without limitation any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the PROPERTY, regardless of whether undertaken due to governmental action. The foregoing hold harmless and indemnification provision and the following release provision shall apply to the fullest extent permitted by law, including where such Claim is the result of the act or omission of CITY, its officers, agents or employees. Without limiting the generality of this indemnity and hold harmless provision in any way, this provision is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order to indemnify, defend, protect and hold harmless CITY, its officers, agents or employees for any liability pursuant to such sections. CITY and BUYER agree that for purposes of this AGREEMENT, the term "Hazardous Substance" shall have the definition set forth in **EXHIBIT "D"**, which is attached to this AGREEMENT and incorporated by reference. BUYER, for itself, its legal representatives and assigns, releases CITY, its officers, agents or employees from any and all Claims that it had, now has, or claims to have, or that any person claiming through them may have, or claim to have, arising out of any use of, or conditions on, the PROPERTY (including, without limitation, uses of or conditions on the Property undertaken or caused by BUYER prior to the Effective Date).

10. General Release.

BUYER acknowledges that it has read and understood the following statutory language of Civil Code Section 1542:

A general release does not extend to a claim, which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Having been so apprised, to the fullest extent permitted by law, BUYER elects to assume all risk for Claims heretofore or hereafter, known or unknown, arising from the subject of this release, and BUYER knowingly and voluntarily expressly releases the CITY, its officers, agents or employees from all Claims, unknown or unsuspected, arising out of any use of, or conditions on, the PROPERTY. The provisions of Sections

4, 6, 8, 9 and 10 shall survive the close of escrow or earlier termination of this AGREEMENT.

11. Binding on Successors.

This AGREEMENT inures to the benefit of and is binding on the parties, their respective heirs, personal representatives, successors and assigns.

12 Merger; Entire Agreement.

This AGREEMENT supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between CITY and BUYER relating to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to any employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby. The terms of this AGREEMENT shall not be modified or amended except by an instrument in writing executed by each of the parties hereto.

13. Acknowledgements.

BUYER acknowledges that it has received:

a. the separate notice required by California Civil Code Section 1057.6 (regarding title insurance).

14. Notices.

Any notice which is required to be given hereunder, or which either party may desire to give to the other, shall be in writing and may be personally delivered or given by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

To the BUYER: Arcadia Development Co.
1115 Coleman Ave
San Jose, CA 95110
Attn:

or to such other place as BUYER may designate by written notice.

To the CITY: OED Real Estate Services
City of San Jose
200 E. Santa Clara Street, T-4
San Jose, CA 95113
Attn. Senior Executive Analyst

With a Copy to: Office of the City Attorney
City of San José
200 E. Santa Clara Street
San José, CA 95113
Attn. Real Estate Attorney

or to such other place as CITY may designate by written notice.

15. Miscellaneous.

- a. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- b. If there be more than one entity designated in or signatory to this Agreement, the obligations hereunder imposed upon BUYER shall be joint and several.
- c. Time is and shall be of the essence of each term and provision of this Agreement.
- d. Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for CITY's entry into this Agreement, and any breach hereof by BUYER shall be deemed to be a material breach. Each term and provision of this Agreement performable by BUYER shall be construed to be both a covenant and a condition.
- e. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of California. Venue for any proceeding to enforce the provisions of this Agreement shall be in the County of Santa Clara.

- f. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- g. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either BUYER or CITY in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.
- h. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein. The exhibits to this Agreement are as follows:
 - Exhibit A – Legal Description of PROPERTY
 - Exhibit B – Plat of PROPERTY
 - Exhibit C – Form of Quitclaim Deed
 - Exhibit D – Hazardous Substances
- i. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.
- j. Days, unless otherwise specified, shall mean calendar days.
- k. The City Manager, or designee, is authorized to execute, on behalf of the City, deeds and all other documents as may be necessary to effectuate this Agreement and the transfer of property rights herein.

WITNESS THE EXECUTION HEREOF on the date of execution by CITY as written below:

APPROVED AS TO FORM:

“CITY”
CITY OF SAN JOSE, a municipal corporation

KENNETH D. JOHNSON
Senior Deputy City Attorney

By: _____
Name: _____
Title: _____

Date of Execution: _____

“BUYER”
ARCADIA DEVELOPMENT CO,
a California corporation

Name: _____
Title: _____

EXHIBIT "A"
Legal Description of Property

DESCRIPTION
STREET VACATION
ALMADEN RANCH, SAN JOSE, CA

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being more particularly described as follows:

Being a portion of the property described in that certain Grant Deed recorded January 5, 1971 in Book 9178, Page 352, Santa Clara County Official Records, being more particularly described as follows:

Beginning at the southerly common corner of Parcel 1 and Parcel 2 as said Parcels are shown on that Parcel Map recorded January 9, 1978 in Book 434 of Maps at Page 5, Santa Clara County Records;

Thence along the southerly line of said Parcel 2, North 84° 50' 00" East 111.71 feet to the most easterly corner of the property described in said Grant Deed;

Thence leaving said southerly line along the southeasterly line of said property described in said Grant Deed, South 56° 06' 44" West 35.25 feet;

Thence leaving said southeasterly line, along a non-tangent curve to the left, radial bearing South 05° 42' 59" West, radius 1053.00 feet, central angle 04° 26' 53", and curve length 81.75 feet to the southerly prolongation of the westerly line of said Parcel 2;

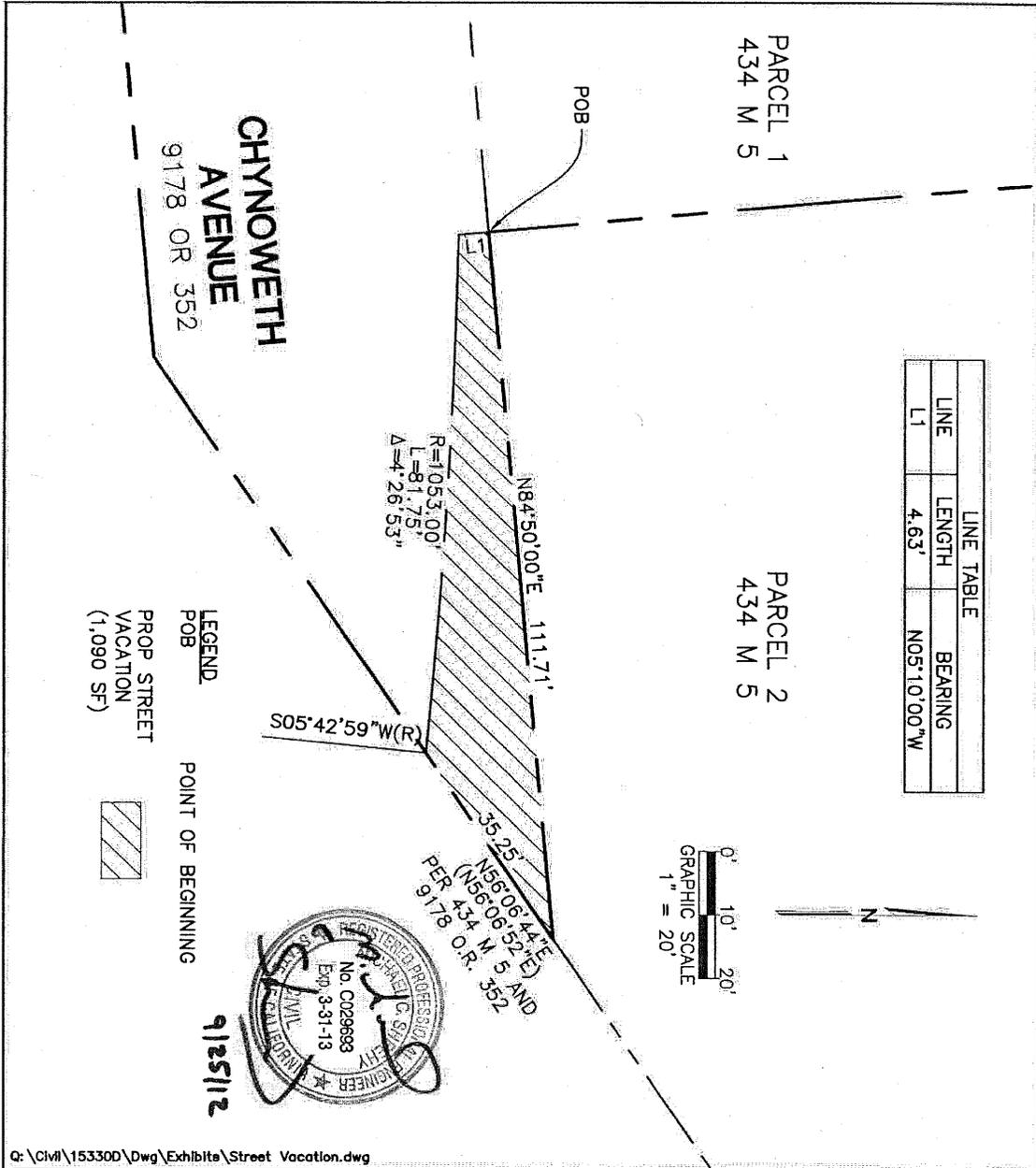
Thence along said southerly prolongation, North 05° 10' 00" West 4.63 feet to the Point Of Beginning.

Prepared By:
Ruth and Going, Inc.
P.O. Box 26460
San Jose, CA 95159-6460
(408) 236-2400
R+G Job # 15330D



9/25/12

EXHIBIT "B"
Plat of Property



Q:\Civil\153300\Dwg\Exhibits\Street Vacation.dwg

	RUTH AND GOING, INC. Civil Engineering Land Surveying 2216 THE ALAMEDA SANTA CLARA, CA. 95050 (408) 236-2400		STREET VACATION PORTION OF CHYNOWETH AVENUE ALMADEN RANCH	
	revised: 09-25-12 08-01-12 Dept.: Survey	15330D Scale: 1" = 20'	Drwn.: JM Chkd.: MCS	City of San Jose California

EXHIBIT "C"
QUITCLAIM DEED

RECORDING REQUESTED BY
City of San Jose

WHEN RECORDED MAIL TO:

With a copy to:
City of San Jose
OED Real Estate Services
200 E. Santa Clara Street, T-4
San Jose, CA 95113

MAIL TAX STATEMENTS TO:

ARCADIA DEVELOPMENT CO.
Name
Title
Address
City, CA 94566

(space above for recorder's use only)
Document transfer tax is _____
Computed on full value of property conveyed
City Transfer tax is _____

Signature of declarant

QUITCLAIM DEED

The **CITY OF SAN JOSE**, a municipal corporation of the State of California, hereby REMISES, RELEASES AND FOREVER QUITCLAIMS to ARCADIA DEVELOPMENT CO., a California coporation, any and all right, title or interest in the following described real property in the City of San Jose, County of Santa Clara, State of California:

See attached Exhibit A, incorporated by reference to this document.

IN WITNESS WHEREOF, the Quitclaimor has caused this instrument to be executed as of this _____ day of _____, 2012.

CITY OF SAN JOSE, a municipal corporation
of the State of California

EXHIBIT A TO QUITCLAIM DEED
DESCRIPTION OF PROPERTY

DESCRIPTION
STREET VACATION
ALMADEN RANCH, SAN JOSE, CA

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Thence leaving said southeasterly line, along a non-tangent curve to the left, radial bearing South 05° 42' 59" West, radius 1053.00 feet, central angle 04° 26' 53", and curve length 81.75 feet to the southerly prolongation of the westerly line of said Parcel 2;

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9/25/12

EXHIBIT "D"
Hazardous Substances.

For the purpose of this AGREEMENT, "**HAZARDOUS MATERIALS**" shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this AGREEMENT, "**ENVIRONMENTAL LAWS**" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up.