

**AGREEMENT FOR SALE OF
SURPLUS CITY-OWNED REAL PROPERTY TO
MOVIMIENTO DE ARTE Y CULTURA LATINO AMERICANA DE SAN JOSE,
INCORPORATED**

THIS AGREEMENT is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY") and MOVIMIENTO DE ARTE Y CULTURA LATINO AMERICANA DE SAN JOSE, INCORPORATED, a California non-profit 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, comprised of land area of approximately 19,200 square feet and a two-story building ("BUILDING") of approximately 36,700 square feet, and more particularly described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"**, and (hereinafter "PROPERTY") attached hereto and incorporated herein; 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, pursuant to SJMC 4.20.080 the City Council may convey surplus property to a non-profit corporation engaged in programs or projects which provide a direct benefit to the residents of San Jose ("Eligible Non-Profit"), at a private negotiated sale upon such terms and conditions as the City Council may provide; and

WHEREAS, BUYER is an Eligible Non-Profit, and CITY desires to sell the PROPERTY to BUYER on the terms and conditions set forth below, which among other matters require a portion of the purchase price to be paid over a twenty-year term through BUYER's provision of non-profit services at the PROPERTY which benefit residents of San Jose.

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. For the avoidance of doubt, the foregoing transfer and conveyance shall not include personal property located on the second floor of the BUILDING, which personal property is stored in the BUILDING by certain third parties including the San Jose Downtown Association, Zero 1, and the Successor Agency to the Redevelopment Agency of the City of San Jose (“Storing Third Parties”).

2. Purchase Price. BUYER shall pay to CITY, in consideration of CITY’s conveyance to BUYER of said PROPERTY the sum of **ONE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,400,000)**. Said sum shall hereinafter be referred to as the “Purchase Price”.

3. Tender and Acceptance of Payment. BUYER has deposited with CITY a \$20,000 cashier’s check made payable to the CITY OF SAN JOSE (“Deposit”) which shall be applicable to the Purchase Price at the closing. In the event of BUYER’s breach of this AGREEMENT, the Deposit shall be retained by CITY as liquidated damages as provided by Section 12 of this AGREEMENT. The remainder of the Purchase Price shall be paid pursuant to the terms of the promissory note (“Promissory Note”), in substantially the same form as **Exhibit “D”**, which will be secured by the trust deed (“Trust Deed”), in substantially the same form as **Exhibit “E”**. BUYER shall deposit the Promissory Note and Trust Deed, duly executed (and, in the case of the Trust Deed, acknowledged) with First American Title Insurance Company, 1737 N. First Street, #500, San Jose, CA 95112, Attn: Liz Zankich (the “Escrow Holder”) no later than two (2) business days prior to the Closing Date. By its execution of this AGREEMENT, CITY accepts the Purchase Price as full compensation for the PROPERTY.

4. Conditions to Closing.

BUYER's obligations to proceed with the closing shall be subject to satisfaction of the following conditions:

a. BUYER shall have until the date which is forty-five (45) calendar days from and after the Effective Date (the "Contingency Date"), to satisfy itself, in its sole and absolute discretion and at its sole cost and expense, as to all matters regarding the legal or physical condition of the PROPERTY, including without limitation condition of title (a copy of Escrow Holder's preliminary report #_____, dated _____, concerning the PROPERTY having been delivered to BUYER prior to the Effective Date), and any zoning regulations or other governmental requirements. BUYER's failure to deliver written notice to CITY of its objection to the legal or physical condition of the PROPERTY before 5:00P.M. on the Contingency Date shall constitute BUYER's waiver of this condition and agreement to proceed to the closing. If, prior to 5:00P.M. on the Contingency Date, BUYER notifies CITY in writing that it objects to the legal or physical condition of the PROPERTY, this Agreement will terminate and the Deposit will be returned to BUYER. BUYER is presently in possession of the first floor of the BUILDING pursuant to that certain Lease, dated August 18, 2003, as amended twice ("Lease"), and that certain Property Use Agreement, dated March 16, 2011 ("PUA"); therefore, BUYER does not require CITY's permission to enter those portions of the PROPERTY in order to undertake its review of the legal and physical condition thereof. Notwithstanding the foregoing, i) no entry onto portions of the PROPERTY not subject to the Lease or PUA shall be undertaken by BUYER without prior notification to CITY and BUYER's appropriate coordination with the Storing Third Parties, and ii) no invasive or destructive testing or investigation of any portion of the PROPERTY shall be undertaken by BUYER without CITY's prior written consent, which consent may reasonably be conditioned.

b. At the closing, Escrow Holder shall be prepared to issue to BUYER Escrow Holder's CLTA Owner's policy of title insurance, in a principal amount equal to the Purchase Price, and insuring title to the PROPERTY in the name of BUYER subject to only such matters as are disclosed in Escrow Holder's preliminary report #_____, dated _____. If such condition is not satisfied or waived in writing by BUYER, this Agreement will terminate and the Deposit will be returned to BUYER.

Both parties' obligations to proceed to the closing shall be subject to satisfaction of the following additional condition:

a. The Property was transferred to CITY by the Redevelopment Agency of the City of San Jose ("RDA") on June 3, 2011 ("Prior Transfer"). Pursuant to California Health and Safety Code Section 34167.5, together with other recent transfers of the RDA the Prior Transfer is under review by the California State Controller ("SCO"). This review will result in a report by the SCO ("SCO Report") which is expected to be finalized before December 31, 2012, and may contain an order by the SCO which affects the Prior Transfer or otherwise adversely affects the position of CITY and/or BUYER. Accordingly, as a condition for the benefit of both parties, on or before the Closing Date the SCO Report shall have been issued in final form and the contents of thereof will be acceptable to both parties, as determined in their sole and absolute discretion. If either party has not notified the other in writing of its satisfaction with the final SCO Report, or waiver of this condition, on or before the Closing Date, this Agreement will terminate and the Deposit will be returned to BUYER. Notwithstanding anything to the contrary in this Agreement, in the event the final SCO Report has not been issued prior to the outside date established for the Closing Date (as provided in Section 6, below), either party may upon written notice to the other party extend the Closing Date up to an additional sixty (60) days.

CITY's obligations to proceed with the closing shall be subject to satisfaction of the following condition:

a. At the closing, Escrow Holder shall be prepared to issue to CITY Escrow Holder's ALTA Lender's policy of title insurance, in a principal amount equal to the principal sum of the Promissory Note, insuring the Trust Deed as the first-priority lien on the PROPERTY, and otherwise in form and content acceptable to CITY. If such condition is not satisfied or waived in writing by CITY, this Agreement will terminate and the Deposit will be returned to BUYER.

5. Additional Fees and Charges. In addition to the fees, costs and expenses which are the responsibility of BUYER pursuant to Section 4, above, 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.

6. Delivery and Recording of Deed and Real Property Taxes. No later than fifteen (15) days from and after the Contingency 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. 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 and Trust 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.

7. Buyer's Sole Remedy for Failure to Convey. In the event that CITY's Quitclaim Deed shall, for any reason, be insufficient 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, in the condition described in Escrow Holder's preliminary report # _____, dated _____, 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 close of escrow shall constitute BUYER's waiver of its right to terminate this AGREEMENT pursuant to this Section 7 or other right of action against CITY in regards to failure to convey fee title.

8. 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. For the avoidance of doubt, it is agreed that BUYER shall rely solely upon

Escrow Holder's CLTA Owner's policy of title insurance for protection with respect to matters affecting title to the PROPERTY, and that CITY shall have no obligations with respect to matters affecting title to the PROPERTY (including, without limitation, providing owner affidavits or other assurances to Escrow Holder).

9. 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 Contingency 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 ("Property Condition"), including without limitation any zoning regulations or other governmental requirements, the existence of "Hazardous Substances" (as defined in Section 10, 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. Without limiting the generality of the foregoing, BUYER agrees that prior to the Contingency Date it shall satisfy itself regarding the scope of any rights of the Storing Third Parties to use the PROPERTY and understands that it shall take title to the PROPERTY subject to, and be responsible for any claims arising out of, any such rights. 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.

10. 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, on or after the Closing Date directly or indirectly arising from or attributable to the Property Condition or BUYER's use of the PROPERTY (including BUYER's entry onto or other 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 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, except to the extent such Claim is a result of the gross negligence or willful misconduct of such parties following the closing, which gross negligence or willful misconduct is not covered by insurance which BUYER is required to maintain pursuant to the Trust Deed. 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, employees and agents 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, employees and agents 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 BUYER's use of the PROPERTY, or the Property Condition (including, without limitation, uses of or conditions on the PROPERTY undertaken or caused by BUYER prior to the Effective Date).

11. 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, employees and agents from all Claims, unknown or unsuspected, arising out of BUYER's use of the PROPERTY, or the Property Condition. The provisions of Sections 5, 7, 8, 9, 10 and 11 shall survive the close of escrow or earlier termination of this AGREEMENT.

12. BUYER Default, Liquidated Damages. If BUYER shall fail to terminate this AGREEMENT as provided herein due to failure of a precondition for the benefit of BUYER and thereafter fails to consummate this AGREEMENT for any reason other than CITY's default hereunder, CITY shall be entitled to terminate this AGREEMENT

and have the Deposit retained by CITY as liquidated damages as CITY's sole and exclusive remedy. In such event, CITY shall have no right to an action for specific performance or for money damages or to any other remedy except the payment of such liquidated damage amount. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF BUYER, BUYER AND CITY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY CITY AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS PARAGRAPH REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH CITY WILL INCUR AS A RESULT OF SUCH FAILURE. THEREFORE, BUYER AND CITY DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT CITY WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AN AMOUNT EQUAL TO THE DEPOSIT. SAID AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR SUCH BREACH OF THIS AGREEMENT BY 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 TO CITY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. CITY HEREBY WAIVES THE CIVIL PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389.

City's Initials

Buyer's Initials

13. Binding on Successors. This AGREEMENT inures to the benefit of and is binding on the parties, their respective heirs, personal representatives, successors and assigns; provided, however, that no assignment or delegation by BUYER of any of its rights or obligations under this AGREEMENT shall be effective without the prior written consent of CITY.

14 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. CITY and BUYER agree that, effective as of the closing, the Lease and PUA shall terminate and be of no further force and effect.

15. Disclosures and Acknowledgements. BUYER acknowledges that, as lessee under the Lease, it shall be responsible to ensure that, as of the close of escrow, all water heaters in the BUILDING will have been braced, anchored or strapped for earthquakes as required by California Health & Safety Code Section 19211.

BUYER acknowledges its receipt of: i) the Rust Environment & Infrastructure Phase I and II environmental reports dated April 21, 2008, and _____, which among other matters disclose the presence of asbestos in the BUILDING, ii) various structural reports, including The Fantozzi Company report dated _____, 1987, and Biggs Cardoza Associates reports dated January 10, 2002, December 8, 2004 and February 16, 2012, which among other matters disclose BUILDING settlement and seismic issues, and iii) the Gilbane Building Company mechanical/electrical evaluation dated October 14, 2008, which among other matters discloses significant deficiencies in the BUILDING HVAC system.

BUYER acknowledges that the PROPERTY may not be in compliance with applicable accessibility requirements.

16. 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: MACLA
510 South First Street
San Jose, CA 95113
Attn. Anjee Helstrup-Alvarez, Executive Director

With a Copy to: Ferrari Ottoboni Caputo & Wunderling LLP
333 W. Santa Clara Street, Suite 700
San José, CA 95113
Attn. Daniel S. Gonzales, Esq.

or to such other place as SELLER 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

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.

17. 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 or person comprising BUYER, 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

Exhibit E – Form of Promissory Note

Exhibit F – Form of Trust Deed

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. Where this Agreement requires or permits CITY to act and no officer of CITY is specified, the City Manager or the designated representative of the City Manager has the authority to act on CITY’s behalf.

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: _____

APPROVED AS TO FORM:

“BUYER”
MOVIMIENTO DE ARTE Y CULTURA
LATINO AMERICANA DE SAN JOSE,
INCORPORATED, a California non-profit
corporation

DANIEL S. GONZALES
Counsel for BUYER

By: _____

Name: _____

Title: _____

EXHIBIT "A"

Legal Description

Lot 2, Block 5, Range 2 South, as shown on the Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which maps was filed for record in the office of the Recorder of the County of Santa Clara, State of California in Book "A" of Maps, at Pages 72 and 73.

EXHIBIT "B"

Plat of Property

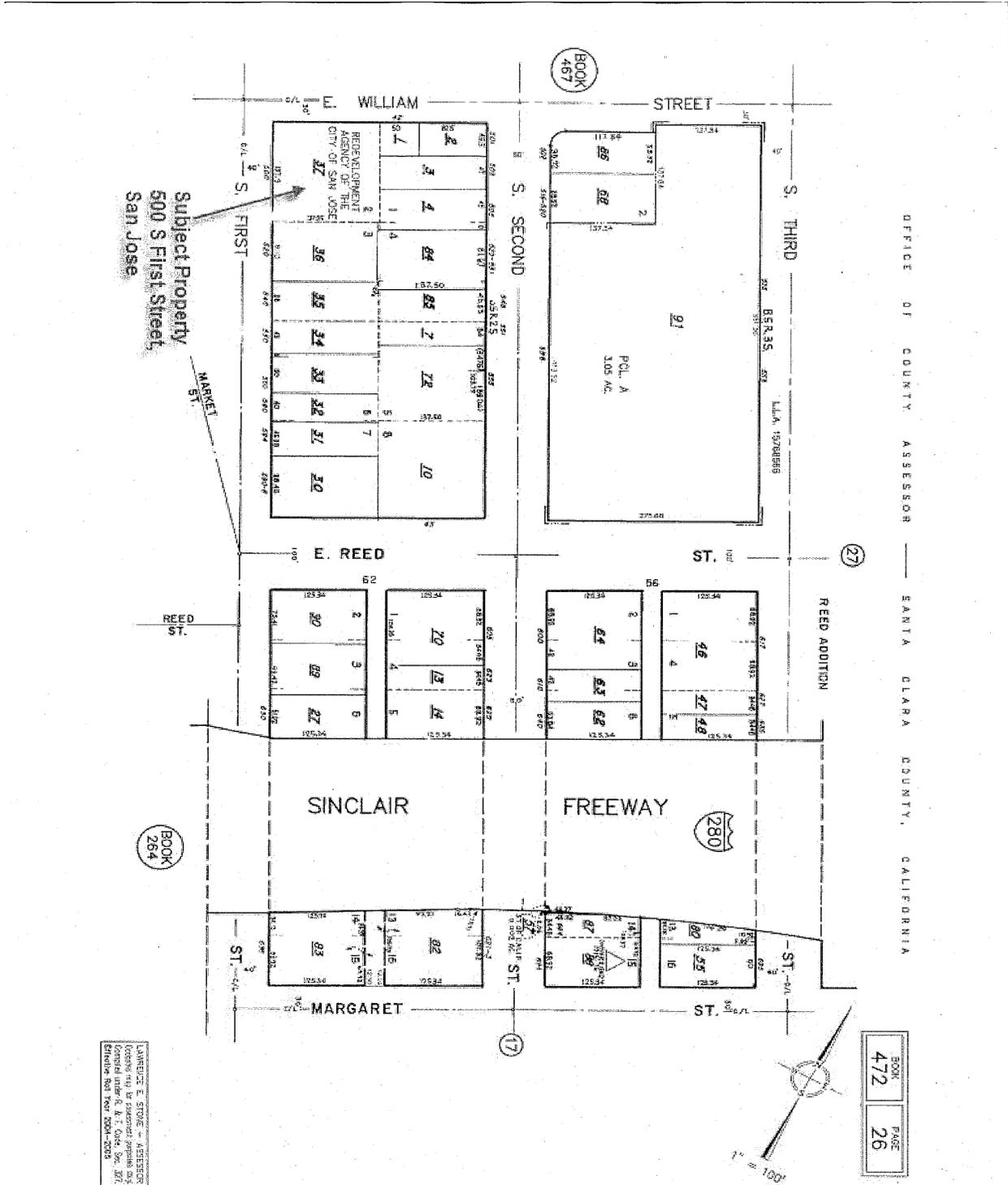


EXHIBIT "C"

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:

(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 **MOVIMIENTO DE ARTE Y CULTURA LATINO AMERICANA DE SAN JOSE, INCORPORATED**, a California non-profit corporation, any and all right, title or interest in the following described real property located in the City of San Jose, County of Santa Clara, State of California:

See attached Exhibit 1, 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

By: _____
Name: _____
Title: _____

EXHIBIT 1 TO QUITCLAIM DEED

DESCRIPTION OF PROPERTY

Lot 2, Block 5, Range 2 South, as shown on the Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which maps was filed for record in the office of the Recorder of the County of Santa Clara, State of California in Book "A" of Maps, at Pages 72 and 73.

EXHIBIT "D"

Hazardous Substances

For the purpose of this AGREEMENT, "**HAZARDOUS SUBSTANCES**" 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 Substances, including without limitation, all federal or state superlien or environmental clean-up.

EXHIBIT "E"
Form of Promissory Note
[insert]

**PROMISSORY NOTE
SECURED BY DEED OF TRUST**

\$1,380,000.00

San Jose, California
_____, 2012

FOR VALUE RECEIVED, the undersigned MOVIMIENTO DE ARTE Y CULTURA LATINO AMERICANA DE SAN JOSE, INCORPORATED, a California non-profit corporation (hereinafter, the "Buyer") promises to pay to the CITY OF SAN JOSE, a municipal corporation, or order, (the "City") at 200 East Santa Clara Street, T-4, San Jose, California 95113, or such other place as the City may from time to time designate in writing, the principal sum of One Million Three Hundred Eighty Thousand and no/100ths Dollars (\$1,380,000.00) pursuant to that Agreement for Sale of Surplus City-Owned Real Property entered into as of _____, 2012 between the City and Buyer.

This Note shall be secured by a deed of trust ("Trust Deed") against that certain real property located at 500 South First Street, San Jose, California as legally described on the attached Exhibit 1 ("Property"), which Property is being acquired by Buyer from City on the date hereof pursuant to the Agreement.

1. Interest. This Note shall not bear interest, except if there occurs any default or breach by Buyer of any covenant or provision required to be performed by Buyer under the terms of this Note or the Trust Deed, whereupon interest at the Default Rate (as defined in Section 4.2 below) shall begin to accrue from and after the date thereof.

2. Term. All outstanding principal, together with any accrued and unpaid interest, shall be due and payable twenty (20) years from the date of this Note ("Term").

3. Payments. Payments during the Term of this Note shall be due as follows:

(A) On each of the first and third anniversaries of the date of this Note, Buyer shall make to City principal reduction cash payments of Three Hundred Fifteen Thousand and no/100ths Dollars (\$315,000.00), and

(B) Commencing on the first anniversary of the date of this Note and on each subsequent anniversary of the date of this Note thereafter, Buyer shall pay to City the remainder of the Seven Hundred Fifty Thousand and no/100ths Dollars (\$750,000.00) in principal owing under this Note over the Term of this Note in equal annual amounts of Thirty Seven Thousand Five Hundred and no/100ths Dollars (\$37,500.00). Buyer shall receive a "Loan Credit" against such remaining principal, as described below. As a material consideration for City's sale of the Property to pursuant to the Agreement, for the Term of this Note, Buyer shall provide at the Property non-profit services benefitting residents of San Jose ("Services"), as such Services are more particularly described on

the attached Exhibit 2. The parties acknowledge that the annual value of such Services to the City is \$37,500.00 and Buyer shall receive such amount each year as a credit, which shall first be applied to any interest owing under this Note and then to outstanding principal ("Loan Credit"). The Loan Credit shall be personal to Buyer and shall not be assumable by any person or entity except as approved in writing by the City Manager.

4. Acceleration of Obligation; No Prepayment Permitted.

4.1 After the expiration of any applicable notice and cure periods, the unpaid principal, plus any applicable charges set forth herein, shall, at the option of the City, be immediately due and payable if during the Term of this Note there occurs any default or breach by Buyer of any covenant or provision required to be performed by Buyer under the terms of this Note or the Trust Deed, including without limitation any default of Buyer's obligation to make cash payments or Buyer's obligation to provide the Services as described above.

4.2 From and after the time when City has the right to accelerate the repayment of this Note as set forth in subsection 4.1, the entire unpaid balance of the principal sum of this Note shall automatically bear a maximum rate of interest equal to the lesser of (i) ten percent (10%) per annum or (ii) if applicable, the maximum rate permitted by Section 1 (2) of Article XV of the California Constitution ("Default Rate");

4.3 As a material consideration for City's sale of the Property to pursuant to the Agreement, Buyer has agreed to provide the Services over the full twenty-year Term of this Note. Accordingly, without the prior written consent of the City Manager, in no event shall Buyer be entitled to prepay any portion of the principal (other than the principal reduction payments described in Section 3(A) above), or to pay any portion of the principal (other than the principal reduction payments described in Section 3(A) above) other than by rendering the Services. Buyer acknowledges the reasonableness of these requirements and understands that City would not have agreed to sell the Property to Buyer in the absence of Buyer's agreement to these requirements.

5. Waiver by Buyer. Buyer, any endorser of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note hereby severally waive demand, presentment for payment, demand and protest, notice of protest, demand and dishonor and non-payment and consent to any number of renewals or extensions of time hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability. The pleading of any statute of limitations as a defense to any demand against the Buyer is expressly waived by Buyer.

6. Purpose of Agreement. It is the intent of the parties that the relationship evidenced by this Note shall be deemed to be one of debtor/creditor, and not of partnership or joint venture.

7. Waiver by City. Any failure of the City or other holder to exercise any rights hereunder shall not constitute a waiver of the rights to the later exercise thereof.

8. **Amendment.** This Note may not be changed, amended or modified orally.

9. **Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of California.

10. **Binding on Successors.** The terms of this Note shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, and permitted successors and assigns.

11. **Due on Sale.** Except for: a) a sale of the Property to a non-profit organization which has been approved in writing in advance by the City Manager (“Permitted Transferee”), b) the creation of liens which are subordinate to the lien of the Trust Deed, in order to secure financing obtained in the ordinary course of business, and c) leases entered into in the ordinary course of business, in the event that the Property or any part thereof, or any interest therein, is sold, agreed to be sold, conveyed or alienated by Buyer, or by the operation of law or otherwise, to any other person or entity, without the prior written consent of the City Manager, then all obligations secured by this Note, at the option of the City, and without demand or notice, shall immediately become due and payable.

12. **Assignment.** This Note may be assumed only by a Permitted Transferee, upon such terms and conditions as have been approved in writing in advance by the City Manager.

13. **Authority.** Where this Note requires or permits City to act and no officer of the City is specified, the City Manager or the designated representative of the City Manager has the authority to act on City’s behalf.

IN WITNESS WHEREOF, the Buyer and City have executed this Note as of the date first written above.

APPROVED AS TO FORM:

“CITY”
CITY OF SAN JOSE, a municipal corporation

KENNETH D. JOHNSON
Senior Deputy City Attorney

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

“BUYER”
MOVIMIENTO DE ARTE Y CULTURA
LATINO AMERICANA DE SAN JOSE,
INCORPORATED, a California non-profit
corporation

DANIEL S. GONZALES
Counsel for BUYER

By: _____
Name: _____
Title: _____

EXHIBIT "1"

Legal Description of Property

Lot 2, Block 5, Range 2 South, as shown on the Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which maps was filed for record in the office of the Recorder of the County of Santa Clara, State of California in Book "A" of Maps, at Pages 72 and 73.

EXHIBIT "2"

Description of Services

Each year of the Term of this Note, Buyer shall provide at the Property non-profit services benefitting residents of San Jose. The areas, types and minimum levels of such services shall be acceptable to the City Manager; provided, however, that such services: i) shall be a part of an overall minimum annual operating budget of Four Hundred Thousand Dollars (\$400,000.00) (subject to adjustment each fifth anniversary of the date of this Note by reference to the percentage increase in the U.S. Department of Labor Consumer Price Index, All Urban Consumers, published for the San Francisco-Oakland-San Jose area, all items included), the programs supported by which budget shall include, without limitation, substantial on-site cultural production amenities, and ii) shall not otherwise be the subject of subsidy or other assistance by City. Without limiting the generality of the foregoing, the services shall be rendered in accordance with the provisions set forth in City's standard form of grant agreement concerning compliance with laws, nondiscrimination, religious/political activities, employee/volunteer clearance verification, and such other matters as may be designated from time to time by the City Manager. Until otherwise directed by City, the provisions specifically enumerated above, as set forth in Buyer's grant agreement which is effective as of the date of this Note, shall apply to the services.

At least thirty (30) days prior to each anniversary of the date of this Note during the Term, Buyer shall submit to City, in form and content acceptable to the City Manager, a specific plan of services to be undertaken by Buyer during the upcoming year of the Term ("Annual Services Plan"), together with current financial reports of Buyer including all expenditures, sources of funding and any constraints on receivable or received funds, and with quantitative reports of Services provided during the preceding twelve months ("Annual Services Report"). Failure of Buyer to timely deliver to City either the Annual Services Plan or Annual Services Report, in form and content acceptable to the City Manager, shall constitute a default under this Note.

The Annual Services Plan for the first year of the Term is attached hereto as Exhibit 3.

In addition to the annual materials noted above, Buyer shall fully cooperate with any and all requests for information and inspection that City may make from time to time concerning such matters as are within the scope of such annual materials.

Should the City Manager determine that Buyer has deviated in any significant way from the quantity or quality of services described in the applicable Annual Services Plan, in addition to any other rights or remedies available to City, City may elect to declare Buyer in default under this Note. Such a determination may be made from time to time and at any time by City. Upon the City Manager's approval, if any, of an Annual Services Report, the Loan Credit for the Term year to which such report relates shall be provided.

Notwithstanding anything in this Note to the contrary, during the Term of this Note Buyer shall be permitted to make such additional uses of the Property as Buyer desires; provided, however, that such other uses do not interfere with the provision of the services.

EXHIBIT “3”

First Annual Services Plan

Overview

Buyer is a contemporary arts organization committed to supporting multicultural arts and artists. Programs offered by Buyer include visual arts, performing arts, as well as literary arts programs. Its contemporary arts programs are grounded in Chicano/Latino experience and aimed to engage people across cultures in civic dialogue and community transformation. A large portion of its programs are geared towards creating opportunities for interaction between cultures, experiences, audiences, new art forms, and emerging artists. It works extensively with at-risk youth, providing art training opportunities.

Through its acquisition and renovation of the Property, Buyer will provide local multicultural artists with a permanent place to create and showcase their art, and offer a “Creative Entrepreneur Incubator” space. Through its expansion, Buyer aims to serve the space and small business needs of the local creative sector, with a focus on creative entrepreneurs of color. Anticipated outcomes include an increase in small business activity and cultural vibrancy in the SoFA District.

General

1. The performance of all services shall be to the reasonable satisfaction of City.
2. Buyer shall coordinate all services with City, as necessary.
3. Buyer shall attend all meetings as reasonably requested by City, in order to supplement, further develop and implement the specific services to be provided to the reasonable satisfaction of City.
4. As specific services are planned and implemented, Buyer shall provide information, in form and content reasonably requested by City, evidencing the development of such planning and implementation.

Specific services

Services will further Buyer’s program to support creative entrepreneur or artist services that its acquisition of the Property will facilitate, as such program is generally described above. Specific services shall include, but are not limited to:

1. Buyer will plan for and develop a facility mixed-used model. Mixed use means a variety of facility uses on the ground or second floor that may involve, but not be limited to, artist production, exhibition, or retail. The model will

generate earned income and be financially stable for Buyer. The deliverable will be a written, professional quality report that results in the development of a business plan.

- a. Through research in the local market and review of comparable projects in a larger geographic region, buyer will identify target business types that are compatible with its programs and location and conduct a market feasibility study to determine the space and infrastructure needs of these types of businesses. There will be a minimum of five types analyzed including, but not limited to artist studios. Through research of business types as outlined above, Buyer will identify comparative models of facility programming for income generation and building uses that will support a sustainable model of operations.
- b. Buyer will prepare pro forma operating expense budget based on historic building operations and operations of other comparable projects.
- c. Buyer will conduct outreach with relevant industry leaders in the creative industries sector, performing and visual arts sector. The outreach will be done by survey or in person interviews. Outreach results will be documented in the written report. The research will inform the business plan and facility mixed-use model.
- d. Buyer will evaluate real estate market and determine a range of lease rates for prospective tenants. Buyer will also conduct outreach with real estate industry leaders to identify the elements of value for lease rates for its potential uses. Leaders will include commercial real estate agents, among others.
- e. Buyer will identify potential tenants, whether commercial retail businesses or businesses involved in cultural production. This will be accomplished through its research and outreach to the creative entrepreneur and small business sector field, and through outreach with commercial real estate professionals. Through discussions with entrepreneurs, business owners and real estate professionals, Buyer will develop pro forma rent levels that may be supported by the to .targeted tenants, given an understanding of their financial capacity..
- f. Buyer will identify compatible users of space based on projected rent levels, and space configuration, and capacity of potential tenants.
- g. Buyer will prepare operating cash flow pro forma based potential tenant market rents and other revenues identified above, projected vacancy rates, operating expense budget, reserve funding and other liabilities/expenses.

- h. Buyer will convene a facility design council comprised of arts and design professionals and stakeholders. Buyer will convene council two to four times. Council will provide input into architectural design decisions.
2. Buyer will provide fiscal sponsorship services to artists and creative entrepreneurs directed to support development of business skills. Fiscal sponsorship encourages funding agencies and contributors to financially supporting new projects and emerging artists that do not have a 501(c)3 nonprofit status, ensuring that money is well-managed and spent according to guidelines. Buyer will support at least three projects via fiscal sponsorship.

Additional services shall include Buyer's providing facility access at a nominal cost. Such access shall include facility use for a least 10 events which should reach a minimum of 500 people in total at a reduced rate. Buyer further agrees to provide complimentary meeting space for the Market Almaden Neighborhood Association to allow for reasonable use by that organization within a schedule that supports Buyer's ability to also generate revenue as required to meet the terms of this Note.

]

EXHIBIT F

Form of Trust Deed

[insert]

RECORDATION REQUESTED BY:
AND AFTER RECORDATION, RETURN TO:

The City of San Jose
Attention: City Attorney's Office
200 East Santa Clara Street, 16th Floor Tower
San Jose, California 95113

BY: MAIL (X) PICK-UP ()

THIS DOCUMENT IS RECORDED FOR THE BENEFIT OF THE CITY OF SAN JOSE
AND IS EXEMPT FROM FEE PER GOVERNMENT CODE SECTIONS 27383 AND 6103

DEED OF TRUST, SECURITY AGREEMENT
AND
FIXTURE FILING WITH ASSIGNMENT OF RENTS AND AGREEMENTS

THIS DEED OF TRUST (the "Deed of Trust") is made as of the ____ day, of _____, 2012, by and among MOVIMIENTO DE ARTE Y CULTURA LATINO AMERICANA DE SAN JOSE, INCORPORATED, a California non-profit corporation ("Trustor"), whose address is 500 North First Street, San Jose, CA 95113, Attn: _____, and First American Title Insurance Company ("Trustee"), whose address is 1737 N. First Street, #500, San Jose, CA 95112,, and the CITY OF SAN JOSE, a municipal corporation ("Beneficiary"), whose address is 200 E. Santa Clara Street, San Jose, California 95113, Attn: _____.

RECITALS

Pursuant to the Agreement for Sale of Surplus City-Owned Real Property entered into as of _____, 2012 between the Beneficiary and Trustor, Beneficiary concurrently herewith sells to Trustor certain real property located at 500 North First Street, in the City of San Jose, County of Santa Clara and more particularly described in **EXHIBIT 1**, attached hereto and incorporated herein by this reference (the "Property"). This Deed of Trust is being provided to Beneficiary, and recorded on Trustor's fee interest, to secure that certain promissory note described in Article II below.

ARTICLE I

PROPERTY IN TRUST

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND THE POWER OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all the Trustor's right, title and interest in the Property;

TOGETHER WITH:

(a) All minerals, oil, gas and other hydrocarbon substances on the Property, as well as all development rights, air rights, water rights, and water stock relating to the Property;

(b) Any and all rents, issues, profits, royalties, income and other benefits, monetary or otherwise, derived from the Property (collectively, the "Rents");

(c) Any and all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property and the Rents;

(d) Any and all easements, rights-of-way, licenses and rights now or hereinafter used or acquired in connection therewith or as a means of access thereto, including, without limiting the generality of the foregoing, all tenements, hereditaments and appurtenances thereof and thereto;

(e) Any and all buildings and other improvements of whatever nature or kind now or hereafter erected thereon, and all property of Trustor now or hereafter affixed to or placed upon the Property, including, without limitation, all fixtures and attachments (whether fixed or movable) and other articles (including, in each instance, improvements, restorations, replacements, repairs, additions, accessions or substitutions thereto or therefor) it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Deed of Trust, whether or not affixed to the real property (the "Improvements");

(f) Any and all leasehold estates, rights, title and/or interest of Trustor in and to all leases, subleases, rental agreements or other occupancy agreements of whatever nature or kind covering the Property or any portion thereof now or hereafter existing or entered into, and any and all right, title and interest of Trustor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

(g) And all rights, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

(h) Any and all rights, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks and alleys adjacent to or used in connection with the Property; and

(i) Any and all interests, estates, rights, title, other claims or demands, of every nature and kind, in and to any of the foregoing mentioned property, including the Property and Improvements, both in law and in equity, including, but not limited to, all

deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property and/or Improvements, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of the Property and/or Improvements, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages and all other causes of action and recoveries for any loss or diminution in the value of the Property or any Improvements.

The Trustor also hereby grants to the Beneficiary a security interest in all of the following described property, whether now or hereafter existing, and in which the Trustor now has or hereafter obtains any right, title, estate or interest:

(j) All general intangibles relating to the development or use of the Property, including but not limited to all governmental permits relating to construction and use of the Property, all names under or by which the Property or any of the Improvements may at any time be operated or known, all rights to carry on business under any such names and any variation thereof, and all trademarks and goodwill in any way relating to the Property;

(k) All of the right, title and interest of the Trustor in and to all sales contracts of any kind or nature whatsoever, now or hereafter executed covering any portion of the Property, together with all deposits or other payments made in connection therewith; and

(l) All existing and future goods located on the Property which are now or in the future owned by the Trustor and used in the operation or occupancy of the Property or Improvements thereon or in any rehabilitation on the Property, but which are not effectively made real property under clause (e) above, including but not limited to all appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment.

This Deed of Trust constitutes a security agreement, and constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of Santa Clara County with respect to all fixtures included within the term "Property" as used in this Deed of Trust and with respect to any goods, collateral, or other personal property that may now be or later becomes fixtures.

All of the foregoing, together with the Property, shall be hereinafter referred to as the "Security."

ARTICLE II

OBLIGATIONS SECURED

This Deed of Trust is given to secure the performance of the following:

- (a) Payment of the principal and interest as set forth in that certain promissory note of even date herewith, in the principal sum of One Million Three Hundred Eighty Thousand Dollars (\$1,380,000.00) (the "Note"), and other indebtedness of Trustor as provided in the Note, and any extension, modification or renewal of the Note;
- (b) The payment and performance of the Trustor's other obligations under the Note, including without limitation Trustor's obligation to provide the Services as described therein, and the Trustor's obligations under the Deed of Trust;
- (c) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon at the Default Rate, as defined in the Note;
- (d) To protect the security of the Deed of Trust, the Trustor agrees (1) to pay and perform all indebtedness and obligations that are secured by this Deed of Trust in accordance with their terms and (2) to perform all affirmative covenants and refrain from doing all negative covenants set forth in Articles III-VI of this Deed of Trust.

ARTICLE III

MAINTENANCE AND MODIFICATION OF THE PROJECT AND THE SECURITY; EASEMENTS

Section 3.1 Maintenance and Modification of the Security by Trustor. Trustor agrees that, at all times prior to the release of the lien of this Deed of Trust, Trustor shall, at Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained, preserved and kept in good order, condition and repair. Trustor shall from time to time make or cause to be made all repairs, reconstruction, replacements and renewals proper and necessary to perform its obligations hereunder. Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Property.

Section 3.2 Payment. Trustor shall pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with all or any portion of the Security, diligently to file or procure the filing of a valid notice of completion upon completion of construction of any part of the Security, diligently file or procure the filing of a notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of 30 days or more, and to take all other reasonable steps to forestall the assertion of claims of lien

against the Security or any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its attorney-in-fact (said appointment being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its rights and interests in or under the Security or the Note; provided, however, that Beneficiary shall exercise its rights as attorney-in-fact of Trustor only in the event that an Event of Default (as defined in Article VII) has occurred.

Within twenty (20) days of a recording of a claim of lien against all or any part of the Security or within twenty (20) days of service upon Beneficiary of a bonded stop notice, Trustor shall satisfy, pay, discharge or make provision satisfactory to Beneficiary in its sole discretion for full payment of such claim or stop notice.

Section 3.3 Granting of Easements. Trustor shall not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security (except those required or desirable solely for installation and maintenance of public utilities serving the Security including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law) without the prior written approval of Beneficiary. In the event such rights are granted following Beneficiary's approval, Trustor shall promptly so advise Beneficiary in writing.

ARTICLE IV

TAXES AND INSURANCE; ADVANCES

Section 4.1 Taxes, Other Governmental Charges and Utility Charges. Trustor shall pay, or cause to be paid, (i) at least fifteen (15) days prior to delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof including, without limitation, rent, royalties, profits, and income and (ii) all charges for labor, material and supplies that, if unpaid, might become a lien encumbering any part of the property of Trustor; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as:

(a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings after Trustor either (i) posts a bond or other security in amount and form satisfactory to Beneficiary, or (ii) in Beneficiary's sole discretion, Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section; or

(b) no part of the Security is subject to forfeiture or sale.

With respect to special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any

part of the Security unless Trustor has secured the prior written approval of Beneficiary to pay such amounts in installments over a period of years.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such item within three (3) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the Default Rate, shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust and Trustor agrees to pay all such amounts.

Section 4.2 Insurance. Trustor shall keep and maintain for the term of the Note the insurance coverages required by **EXHIBIT 2**, attached hereto and incorporated herein ("Property Insurance").

Section 4.3 Advances. In the event Trustor shall fail to maintain the full Property Insurance coverage required hereby or shall fail to keep the Security in good order, repair, and operating condition, Beneficiary may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by Beneficiary shall become an additional obligation of Trustor to Beneficiary (together with interest at the Default Rate from the date of the advance until the date paid by Trustor) and shall be secured by this Deed of Trust, which amounts Trustor agrees to pay on the demand of Beneficiary.

ARTICLE V

DAMAGE, DESTRUCTION OR CONDEMNATION

Section 5.1. Damage and Destruction. All proceeds of Property Insurance, all causes of action, claims, compensation, awards and recoveries for any damage of all or any part of the Security or for any damage or injury to it or for any loss or diminution in value of the Security, are hereby assigned to and shall be paid to the Beneficiary. The Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may join with the Trustor in adjusting any loss covered by insurance. The Beneficiary will apply any sums received by it under this paragraph first to the payment of all of its costs and expenses (including but not limited to reasonable legal fees and disbursements) incurred in obtaining those sums, and then to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired, as determined by Beneficiary in its sole discretion. If Beneficiary determines that restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, Property Insurance proceeds shall be applied to the

sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. If Beneficiary determines that restoration is economically feasible, then the Property Insurance proceeds and any other sums received under this paragraph shall be deposited as directed by Beneficiary. Trustor shall proceed to repair, reconstruct and restore the damaged portion of the Security to substantially the same or better condition as existed prior to the event causing the damage or destruction in accordance with plans and specifications and a cost breakdown approved by Beneficiary in writing. Beneficiary shall release the Property Insurance proceeds for payment or reimbursement of the costs of such repair and restoration upon presentation of original invoices, mechanic's lien waivers and other reasonable documentation in accordance with disbursement procedures established by Beneficiary. Any Property Insurance proceeds which remain after completion of the repairs, rehabilitation and restoration have been completed shall be applied, towards accrued interest, if any, due on the Note and then to reduce the principal balance on the Note. Any such application of proceeds to principal shall not extend or postpone the due date of the installments due under the Note or change the amount of such installments.

Section 5.2. Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Security or any portion thereof, Trustor shall notify Beneficiary of the pendency of such proceedings and the time and place of all meetings, hearings, trials or other proceedings relating thereto. Beneficiary may participate in any such proceedings, and Trustor shall from time to time deliver to Beneficiary all instruments required by it to permit such participation. Trustor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Beneficiary, its attorneys and experts, and cooperate with them in the conduct of or defense of any such proceedings. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Security, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary and shall be applied, first, to reimburse Beneficiary or Trustee for all costs and expenses, including reasonable attorneys' fees, reasonably incurred in connection with collection of such proceeds and, second, to restoration and repair of the Security, so long as the remaining uncondemned portion of the Security has an appraised market value, from an appraiser of Beneficiary's choice, of not less than the sum of (i) the outstanding balances of all encumbrances prior to the Note plus (ii) the Note balance (if it does not, then it shall be used in accordance with the third priority of application), and, third, at Beneficiary's option, may be applied to the reduction of the indebtedness secured hereby, or to the restoration or repair of the Security, or released to Trustor to make the necessary restoration or repairs. Beneficiary shall not be, in any event or circumstance, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees or awards. Any application of proceeds to principal shall not extend or postpone the due date of the installments due under the Note or change the amount of such installments.

ARTICLE VI

REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE TRUSTOR

Section 6.1 Defense of the Title. Trustor covenants that it is lawfully seized and possessed of title in fee simple to the Property, that it owns the remaining Security, that it has good right to sell, convey or otherwise transfer or encumber the Property and Security, and that Trustor, for itself and its successors and assigns, warrants and will forever defend the right and title to the foregoing described and conveyed Security unto Beneficiary, its successors and assigns, against the claims of all persons whomsoever, excepting only those otherwise approved in writing by Beneficiary.

Section 6.2 Inspection of the Security. Trustor covenants and agrees that at any and all reasonable times, Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 6.3 Waste. Trustor shall not commit any waste on the Security or take any actions that might invalidate any insurance carried on the Security. The Trustor shall maintain the Security in good order, condition, and repair. No Improvements shall be removed, demolished or materially altered without the prior written consent of the Beneficiary; provided however that, without waiving or affecting any other rights under the Note or this Deed of Trust and acting solely in its capacity as beneficiary under this Deed of Trust, Beneficiary hereby consents to the phased capital improvement project contemplated to be undertaken by Trustor with regard to the Improvements now on the Property, as such project has been previously disclosed to Beneficiary in writing. Trustor shall provide written notice to Beneficiary prior to commencement of such contemplated project or any phase thereof, and Trustor shall comply with any and all additional requirements Beneficiary may impose as a condition to Trustor's commencement thereof. No personal property in which the Beneficiary has a security interest may be removed from the Security unless it is immediately replaced by similar property of at least equivalent value on which the Beneficiary shall immediately have a valid lien and security interest.

Section 6.4 Zoning and Other Conditions of Use. Without the prior written consent of the Beneficiary, the Trustor shall not seek, make or consent to any change in the zoning or conditions of use of the Security. The Trustor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Security. The Trustor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Security.

Section 6.5 Subdivision Requirements. If this Deed of Trust covers a subdivision, as defined under any California law relating to the development or sale of subdivision property, the Trustor shall obtain, comply with and keep in effect all present

and future permits, maps, bonds and other agreements required by applicable laws and regulations for the lawful construction or sale of the subdivision lots and units.

Section 6.6 Records. The Trustor shall keep adequate books and records of account of the Security and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. The Beneficiary shall have the right to examine, copy and audit the Trustor's records and books of account at all reasonable times.

Section 6.7 Trustor's Estoppel. The Trustor shall promptly furnish, upon the Beneficiary's request made at any time and from time to time during the term of this Deed of Trust, a duly acknowledged written statement setting forth all amounts due on the indebtedness secured by this Deed of Trust and stating whether any offsets or defenses exist, and containing such other matters as the Beneficiary may reasonably require.

ARTICLE VII

AGREEMENTS AFFECTING THE PROJECT; FURTHER ASSURANCES; PAYMENT OF PRINCIPAL

Section 7.1 Other Agreements Affecting Security. Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Note and/or any other agreements affecting the Security and/or any other deed of trust or other instrument or agreement encumbering the Property or Security and/or any lease or any other agreement of any kind or nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 7.2 Further Assurances; After Acquired Property. At any time, and from time to time, upon the request of Beneficiary, Trustor shall make, execute and deliver, or cause to be made, executed and delivered, to Beneficiary and, where appropriate, cause to be recorded and/or filed, and from time to time thereafter to be re-recorded and/or refiled, at such time and in such offices and places as shall be deemed desirable by Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements and continuation statements, instruments of further assurance, and other certificates and documents as may be, in the opinion of Beneficiary, reasonably necessary to effectuate, complete or perfect, or to continue and preserve, (a) the obligations of Trustor under this Deed of Trust, (b) the lien of this Deed of Trust, and/or (c) any right, title or interest of Beneficiary in or to the Security. Upon any failure by Trustor to do so, Beneficiary may make, execute, record, file, re-record and/or refile any and all such deeds of trust, security agreements, financing statements respecting personal property, instruments, certificates and documents for and in the name of Trustor, and Trustor hereby irrevocably appoints Beneficiary its agent and attorney-in-fact (such appointment coupled with an interest) for the purpose of accomplishing such acts. The lien hereof shall automatically attach, without further act, to all after-acquired property deemed to be a part of the Security as defined herein.

Section 7.3 Additional Powers of Beneficiary and Trustee. Trustor shall, at its own expense, appear in and defend any action or proceeding that might affect the Beneficiary's security or the rights or powers of the Beneficiary or the Trustee or that purports to affect any of the Security. If the Trustor fails to perform any of its covenants or agreements contained in this Deed of Trust, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect the Beneficiary's or the Trustee's interest in the Security or the Beneficiary's right to enforce its security, then the Beneficiary and/or the Trustee may, at their option, make any appearance, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust or to remedy the failure of the Trustor to perform its covenants (without, however, waiving any default of the Trustor) including without limitation, action to pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of Beneficiary either appears to be prior or superior hereto (except as such lien or charge is approved in writing by Beneficiary and Trustor is not in default hereunder), Beneficiary or Trustee being hereby authorized to enter upon said Property for such purposes. The Trustor agrees to pay all reasonable out-of-pocket expenses of the Beneficiary and the Trustee thus incurred. Any sums disbursed or advanced by Beneficiary or the Trustee will be additional indebtedness of the Trustor secured by this Deed of Trust, and shall be payable by Trustor upon demand. Any sums disbursed or advanced by the Beneficiary will bear interest at the Default Rate. This paragraph shall not be construed to require the Beneficiary or the Trustee to incur any expenses, make any appearances, or take any actions.

Section 7.4 Payment of the Principal and Interest. Trustor shall promptly pay to Beneficiary the principal, interest and other sums as set forth in the Note in the amounts and by the times set out therein.

Section 7.5 Subrogation; Payment of Claims. Beneficiary shall be subrogated to the claims and liens of all parties, whose claims or liens are discharged or paid by Beneficiary pursuant to the provisions hereof. If this Deed of Trust is subject to a prior lien, (approved in writing by Beneficiary), as permitted by law, Beneficiary shall have the right to pay and discharge the obligations secured by said lien.

Section 7.6 Operation of the Security. Trustor agrees and covenants to operate the Security in full compliance with this Deed of Trust and the Note.

Section 7.7 Transfer. Trustor agrees, except for: a) a sale of the Property to a Permitted Transferee, as defined in the Note, b) the creation of liens which are subordinate to the lien of this Deed of Trust, in order to secure financing obtained in the ordinary course of business, and c) leases entered into in the ordinary course of business, neither the Property nor any part thereof, or any interest therein, shall be sold, agreed to be sold, conveyed or alienated by Trustor, or by the operation of law or otherwise, to any other person or entity without the prior written consent of the Beneficiary.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default Defined. The following events shall constitute a default under this Deed of Trust (each such event is referred to herein from time to time as an "Event of Default"):

(a) **Monetary Defaults.** Trustor's failure to make any payments in the amounts and at the times required under the Note or this Deed of Trust, where such failure shall continue for a period of ten (10) days after written notice to cure such failure from Beneficiary to Trustor;

(b) **Defaults in Performance of other Obligations.** Trustor's failure of performance or default of any non-monetary obligation under the Note or this Deed of Trust, where such failure or default shall continue for a period of thirty (30) days after written notice to cure such failure or default from Beneficiary to Trustor, provided, however, that if the nature of such failure or default is such that more than thirty (30) days is reasonably required for its cure, then such failure or default shall not be deemed to be an Event of Default if Beneficiary commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion, but in no event longer than ninety (90) days; or

(c) **Other Default.** Trustor's failure of performance or default under any other obligation secured by a lien or encumbrance against the Security and/or the Property, where such failure or default shall continue for a period of thirty (30) days after written notice to cure such failure or default from Beneficiary to Trustor, provided, however, that if the nature of such failure or default is such that more than thirty (30) days is reasonably required for its cure, then such failure or default shall not be deemed to be an Event of Default if Beneficiary commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion, but in no event longer than ninety (90) days; or

(d) **Voluntary Bankruptcy; Insolvency; Dissolution.** (1) Trustor's filing of a petition for relief under the Bankruptcy Reform Act of 1978 as amended and recodified ("**Bankruptcy Act**"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "**Debtor Relief Law**"); or (2) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Act or other Debtor Relief Law, which admits the jurisdiction of the court or the petition's material allegations regarding Borrower insolvency; or (3) Borrower's making a general assignment for the benefit of creditors; or (4) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (5) filing by Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate, dissolve or terminate Borrower; or

(e) **Involuntary Bankruptcy.** Trustor's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Act or any other Debtor Relief Law, that is filed against Trustor or in any way restrains or limits Trustor or the Beneficiary regarding the Note or this Deed of Trust, the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition, or thirty (30) days after such petition is filed.

Section 8.2 Acceleration of Maturity. If any Event of Default shall have occurred, then the entire indebtedness secured hereby shall, at the option of Beneficiary, immediately become due and payable, without notice or demand (which are hereby expressly waived), and no omission on the part of Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 8.3 Beneficiary's Right to Enter and Take Possession. If any Event of Default shall have occurred and be continuing, Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Property or any part thereof, and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Security or any part thereof, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Security, the collection of such rents, issues and profits and the application thereof, as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Security or the collection, receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, at law or in equity upon occurrence of any Event of Default, including the right to exercise the power of sale; or

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Santa Clara County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which Trustor acquires title to the Property, or in any other document or agreement

now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

Section 8.4 Foreclosure by Power of Sale. In connection with the exercise of the power of sale granted by this Deed of Trust:

(a) The Beneficiary may elect to cause the Security or any part thereof to be sold under the power of sale herein granted in any manner permitted by applicable law. In connection with any sale or sales hereunder, the Beneficiary may elect to treat any of the Security which consists of a right in action or which is property that can be severed from the real property covered hereby or any improvements thereon without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of real property. Any sale of any personal property hereunder shall be conducted in any manner permitted by Section 9501 or any other applicable section of the California Commercial Code. Where the Security consists of real and personal property or fixtures, whether or not such personal property is located on or within the real property, the Beneficiary may elect in its discretion to exercise its rights and remedies against any or all of the real property, personal property, and fixtures in such order and manner as is now or hereafter permitted by applicable law.

(b) Without limiting the generality of the foregoing, the Beneficiary may, in its sole and absolute discretion and without regard to the adequacy of its security, elect to proceed against any or all of the real property, personal property and fixtures in any manner permitted under Section 9501(4)(a) of the California Commercial Code or successor statute; and if the Beneficiary elects to proceed in the manner permitted under Section 9401(4)(a)(ii) of the California Commercial Code or successor statute, the power of sale herein granted shall be exercisable with respect to all or any of the real property, personal property and fixtures covered hereby, as designated by the Beneficiary, and the Trustee is hereby authorized and empowered to conduct any such sale of any real property, personal property and fixtures in accordance with the procedures applicable to real property.

(c) Where the Security consists of real property and personal property, any reinstatement of the obligation secured hereby, following default and an election by the Beneficiary to accelerate the maturity of said obligation, which is made by the Trustor or any other person or entity permitted to exercise the right of reinstatement under Section 2924c of the California Civil Code or any successor statute, shall, in accordance with the terms of California Commercial code Section 9501(4)(c)(iii) or successor statute, not prohibit the Beneficiary from conducting a sale or other disposition of any personal property or fixtures or from otherwise proceeding against or continuing to proceed against any personal property or fixtures in any manner permitted by the California Commercial Code; nor shall any such reinstatement invalidate, rescind, or otherwise affect any sale, disposition or other proceeding held, conducted or instituted with respect to any personal property or fixtures prior to such reinstatement or pending at the time of such reinstatement. Any sums paid to the Beneficiary in effecting any

reinstatement pursuant to Section 2924c of the California Civil Code shall be applied to the secured obligation and to the Beneficiary's and the Trustee's reasonable costs and expenses in the manner required by Section 2924c.

(d) Should the Beneficiary elect to sell any portion of the Security which is real property or which is personal property or fixtures that the Beneficiary has elected under Section 9501(4)(a)(ii) of the California Commercial Code or successor statute to sell together with real property in accordance with the laws governing a sale of real property, the Beneficiary or the Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on the Trustor, the Trustee, at the time and place specified in the notice of sale, shall sell said real property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. The Trustee may, and upon request of the Beneficiary shall, from time to time, postpone any sale hereunder by public announcement thereof at the time and place noticed therefor.

(e) If the Security consists of several lots, parcels or items of property, the Beneficiary may: (i) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (ii) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner the Beneficiary deems in its best interest. Any person, including the Trustor, the Trustee or the Beneficiary, may purchase at any sale hereunder, and the Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness hereby secured. Should the Beneficiary desire that more than one sale or other disposition of the Security be conducted, the Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as the Beneficiary may deem to be in its best interest, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Security not sold until all indebtedness secured hereby has been fully paid. In the event the Beneficiary elects to dispose of the Security through more than one sale, the Trustor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein the same may be made, including reasonable compensation to the Trustee and the Beneficiary, their agents and counsel, and to pay all expenses, liabilities and advances made or incurred by the Trustee in connection with such sale or sales, together with interest on all such advances made by the Trustee at the lower of the interest rate set forth in the Note or the maximum rate permitted by law to be charged by the Trustee.

(f) Upon any sale hereunder, the Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of acts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be

conclusive proof of the truth of such facts and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

Section 8.5 Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 8.6 Application of Sales Proceeds. The proceeds of any sale under this Deed of Trust will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to the Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Trustee, together with interest on all advances made by the Trustee at the maximum rate permitted to be charged by the Trustee under applicable law.

SECOND: Payment of all sums expended by the Beneficiary under the terms of this Deed of Trust and not yet repaid, together with interest on such sums at the rate set forth in the Note payable after maturity thereof.

THIRD: Payment of the indebtedness and obligations of the Trustor secured by this Deed of Trust.

FOURTH: The remainder, if any, to the person or persons legally entitled to it.

Trustor waives all rights to direct the order in which any of the Security will be sold in the event of any sale under this Deed of Trust and also any right to have any of the security marshaled upon any sale.

Section 8.7 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 8.8 No Waiver.

(a) No delay or omission of Beneficiary to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to Beneficiary may be exercised from time to time and as often as may be deemed expeditious by Beneficiary. No consent or waiver, expressed or implied, by Beneficiary to or of any breach by Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of Trustor hereunder. Failure on the part of Beneficiary to complain of any act or failure to act or to declare a default, irrespective of how long such failure continues, shall not constitute a waiver by Beneficiary of its right hereunder or impair any rights, powers or remedies consequent on any breach or Event of Default by Trustor.

(b) If Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted herein or in the Note, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements of this Deed of Trust or the Note (v) consents to the filing of any map, plat or replat affecting the Security, (vi) consents to the granting of any easement or other right affecting the Security, or (vii) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien of this Deed of Trust be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Security, Beneficiary, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Security (or a part thereof) or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with Trustor, and without in any way releasing or discharging any liabilities, obligations or undertakings of Trustor.

Section 8.9 Suits to Protect the Security. Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security (and the rights of Beneficiary as secured by this Deed of Trust) by any acts which may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the

enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interests of Beneficiary.

Section 8.10 Trustee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings for the entire amount due and payable by Trustor under this Deed of Trust at the date of the institution of such proceedings including, without limitation, any additional amount which may become due and payable by Trustor hereunder after such date.

Section 8.11 Expenses. The Trustor will pay all of the Beneficiary's and the Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust, (save for legal fees, which each party agrees to bear separately), including, but not limited to, disbursements, foreclosure costs and title charges.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 9.2 Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. Such person or persons to pay all recording fees. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

Section 9.3 Notices. Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by certified mail, postage prepaid, return receipt requested, or by telegram, addressed to the address set forth in the first paragraph of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

Section 9.4 Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Beneficiary may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by Beneficiary and duly acknowledged and recorded in the office of the Santa Clara County Recorder, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

Section 9.5 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 9.6 Invalidity of Certain Provisions. Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain as binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 9.7 No Merger. Any interest the Beneficiary may hold in the Security shall be freely alienable separate and apart from any other such interest. In the event that Beneficiary acquires an interest, whether as beneficiary under a deed of trust or otherwise, in any lease or reversion in the Security, or any part thereof, and if both the lessor's and lessee's estate under any such lease or any portion thereof shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the estates of lessor and lessee. In addition, upon foreclosure under this Deed of Trust pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Security shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice of termination to such tenant or subtenant.

Section 9.8 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 9.9 Gender and Number. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 9.10. Statute of Limitations. The Trustor waives all present and future statutes of limitations as defense to any action to enforce the provisions of this Deed of Trust or to collect any indebtedness secured by this Deed of Trust to the fullest extent permitted by law.

Section 9.11 Trustor and Beneficiary Defined. The term “the Trustor” includes both the original Trustor and any subsequent owner or owners of any of the Security, and the term “the Beneficiary” includes the original Beneficiary and also any future holder of the Note, including pledges and participants, or any interest therein.

Section 9.12 Successors. The terms of this Deed of Trust will bind and benefit the heirs, legal representatives, permitted successors and assigns of the Trustor and the Beneficiary and the successors in trust of the Trustee. If the Trustor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of the Trustor.

Section 9.13 Authority. Where this Deed of Trust requires or permits Beneficiary to act and no officer of Beneficiary is specified, the City Manager or the designated representative of the City Manager has the authority to act on Beneficiary’s behalf.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

APPROVED AS TO FORM:

DANIEL S. GONZALES
Counsel for TRUSTOR

“TRUSTOR”

MOVIMIENTO DE ARTE Y CULTURA
LATINO AMERICANA DE SAN JOSE,
INCORPORATED, a California non-profit
corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

State of California
County of _____

On _____ before me, _____
(insert name and title of officer)

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

Signature _____ (Seal)

EXHIBIT 1

DESCRIPTION OF THE PROPERTY

Lot 2, Block 5, Range 2 South, as shown on the Map entitled, "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which maps was filed for record in the office of the Recorder of the County of Santa Clara, State of California in Book "A" of Maps, at Pages 72 and 73.

EXHIBIT 2

INSURANCE REQUIREMENTS

Trustor, at Trustor's sole cost and expense, shall procure and maintain for the term of the Note insurance against damage to the Improvements and claims for injuries to persons or damages to property which may arise from, or in connection with, ownership or use of the Property by Trustor, its officers, employees, agents or contractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. Commercial Property insurance providing "all risk" coverage of the Improvements, furniture, fixtures, equipment and other items included in the Security. Commercial property insurance policy must contain "Replacement Cost" coverage to 100% of the replacement value with an "Agreed Amount" endorsement; and
3. Flood Insurance (if applicable)

B. Minimum Limits of Insurance

Trustor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Property Insurance: Full replacement cost with no coinsurance penalty provision; and
3. Flood Insurance (if applicable) written in the maximum amount available by FEMA and as required by Federal Law.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by Beneficiary's Risk Manager. At the option of Beneficiary, either; the insurer shall reduce

or eliminate such deductibles or self-insured retentions as respects Beneficiary, its officers, employees, agents and contractors; or Trustor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by Beneficiary.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability Coverage

a. Beneficiary, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Trustor; products and completed operations of Trustor; premises owned, leased or used by Trustor; and automobiles owned, leased, hired or borrowed by Trustor. The coverage shall contain no special limitations on the scope of protection afforded to Beneficiary, its officers, employees, agents and contractors.

b. Trustor's insurance coverage shall be primary insurance as respects Beneficiary, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by Beneficiary, its officers, employees, agents or contractors shall be excess of Trustor's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Trustor shall not affect coverage provided Beneficiary, its officers, employees, agents or contractors.

d. Coverage shall state that Trustor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of Beneficiary, its officers, employees, agents and contractors.

2. Property policies shall contain, or be endorsed to contain, the following provisions:

a. Beneficiary shall be named as Mortgagee/Loss Payee.

b. Coverage shall contain a waiver of subrogation in favor of Beneficiary, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Deed of Trust shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to Beneficiary.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to Beneficiary's Risk Manager.

F. **Verification of Coverage**

Trustor shall furnish Beneficiary with certificates of insurance and with original endorsements affecting coverage required by this Deed of Trust. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose - Finance
Risk & Insurance Program
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113-1905

G. **Subcontractors**

Trustor shall include all contractors or subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. **Review of Coverage**

These insurance requirements shall be subject to review by Beneficiary's Risk Manager. Should the Risk Manager require any change in coverage, any such change shall be noticed in writing by Beneficiary to Trustor and Trustor shall comply with the change within thirty (30) days of the date of receipt of the notice.