

**AGREEMENT FOR SALE OF  
SURPLUS CITY-OWNED REAL PROPERTY TO  
Z&C INVESTMENT LLC**

THIS AGREEMENT is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY") and Z&C Investment LLC a California limited liability company, (hereinafter "BUYER") upon execution by CITY (hereinafter "Effective Date").

**WITNESSETH:**

**WHEREAS**, CITY is the owner of that certain real property located in the City of San José, County of Santa Clara, State of California, more particularly described in **EXHIBIT "A"** and depicted in **EXHIBIT "B"** (hereinafter "PROPERTY") attached hereto and incorporated herein; and

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

**WHEREAS**, the CITY desires to sell the PROPERTY to BUYER pursuant to the terms and conditions set forth below, the City Council in conformance with Section 4.20.40 of the City of San Jose Municipal Code having previously authorized the sale of the PROPERTY pursuant to an alternative competitive process.

**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, and BUYER shall purchase and take from CITY all of CITY's right, title and interest in and to the PROPERTY.

**2. Purchase Price.**

BUYER shall pay to CITY, in consideration of CITY's conveyance to BUYER of PROPERTY the sum of **TWO HUNDRED THIRTY FIVE THOUSAND DOLLARS (\$235,000)**. Said sum shall hereinafter be referred to as the "Purchase Price".

**3. Tender and Acceptance of Payment.**

BUYER has deposited with CITY a \$10,000 non-refundable check made payable to the CITY OF SAN JOSE. BUYER shall deposit the remainder of the full Purchase Price with Stewart Title of California, located at 12820 Saratoga Sunnyvale Road, Saratoga, CA ("Escrow Holder") no later than two (2) business days prior to the "Closing Date". By its execution of this AGREEMENT, CITY accepts **TWO HUNDRED THIRTY FIVE THOUSAND AND NO/100 DOLLARS (\$235,000)** as full compensation for the PROPERTY. BUYER shall be responsible for the full payment of all title insurance, escrow, recording fees, documentary transfer taxes and other fees and charges associated with this transaction. CITY shall have no liability or responsibility for any such fees, costs, taxes, or expenses.

**4. Delivery and Recording of Deed and Real Property Taxes.**

No later than thirty (30) days from the Effective Date, CITY shall deliver, to the office of the Escrow Holder, a Quitclaim Deed to BUYER in BUYER's name, conveying all of CITY's right, title and interest in and to the PROPERTY and any such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow. The CITY and BUYER shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this AGREEMENT. The Escrow Holder will close the escrow and record the Quitclaim Deed on such date (the

“Closing Date”) as is directed by CITY in its escrow instructions, but in no event later than fifteen (15) days of delivery of the Quitclaim Deed to the Escrow Holder.

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

**5. 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, 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 5 or other right of action against CITY in regards to failure to convey fee title.

**6. 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.

**7. Condition of Property.**

BUYER is purchasing the PROPERTY and any improvements "as is" and in reliance on BUYER's own investigation which it has conducted prior to the Effective Date, and no representations or warranties of any kind whatsoever, express or implied, have been made by CITY. BUYER further acknowledges that BUYER is aware of all

zoning regulations, other governmental requirements, site and physical conditions and other matters affecting the use and condition of the property, and agrees to purchase the PROPERTY in the condition that it is in at the Closing Date. To the extent that CITY has provided to BUYER information or reports regarding the PROPERTY, CITY makes no representations or warranties with respect to the accuracy or completeness thereof.

BUYER acknowledges that modifications have been made to the PROPERTY, including construction of an addition, and that CITY has not confirmed whether or not such modifications were undertaken or completed pursuant to necessary permits. BUYER further acknowledges receipt of the results of a 2006 inspection of the PROPERTY which identified certain possible safety concerns regarding the condition of the PROPERTY, the present status of which has not been confirmed by CITY.

**8. Indemnification and Hold Harmless.**

BUYER agrees to protect, defend, indemnify and hold harmless, CITY, its officers, employees, or agents, from and against all claims, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (collectively, "claims") of any kind whatsoever paid, incurred, suffered or asserted, or related to, on or after the Closing Date directly or indirectly arising from or attributable to conditions on or BUYER's use of the PROPERTY (including BUYER's use of the PROPERTY before the Effective Date), including 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 shall apply to the fullest extent permitted by law, including

where such claim is the result of the act or omission of CITY, its officers, agents or employees. Without limiting the generality of this indemnity and hold harmless provision in any way, this provision is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order to indemnify, defend, protect and hold harmless CITY 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 "C"**, which is attached to this AGREEMENT and incorporated by reference. BUYER, for itself, its legal representatives and assigns, releases CITY from any and all claims and causes of action that it had, now has, or claims to have, or that any person claiming through them may have, or claim to have, arising out of any use of, or conditions on, the PROPERTY (including uses of or conditions on the property undertaken or caused by BUYER prior to the Effective Date).

**9. 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, 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 from all liability, unknown or unsuspected, arising out of any use of, or conditions on, the PROPERTY. The

provisions of Sections 6 through 9, and 13 shall survive the close of escrow or earlier termination of this AGREEMENT.

**10. Binding on Successors.**

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

**11. 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.

**12. Disclosures and Acknowledgements.**

CITY makes the following disclosures to BUYER:

- a. As of the close of escrow, the PROPERTY shall have operable smoke detectors as required by California Health & Safety Code Section 13113.8;
- b. It is certified that, as of the close of escrow, all water heaters on the PROPERTY will have been braced, anchored or strapped for earthquakes as required by California Health & Safety Code Section 19211; and
- c. Notice: Pursuant to Section 290.46 of the California Penal Code, information about specified registered sex offenders is made available to the public via an Internet web site maintained at the Department of Justice at

[www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and zip code in which he or she resides.

BUYER acknowledges that it has received:

- a. the informational pamphlets required to be delivered to BUYER pursuant to California Government Code Section 8897.1 (regarding earthquake safety), California Health & Safety Code Section 2079.7 (regarding environmental hazards), California Civil Code Section 2079.10(b) (regarding energy conservation retrofit and thermal insulation), and 42 U.S.C 4852d. (lead-based paint);
- b. the separate disclosure required by 42 U.S.C 4852d. (regarding lead-based paint), and has been provided an opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards at the PROPERTY;
- c. the separate notice required by California Civil Code Section 1057.6 (regarding title insurance);
- d. the separate disclosure required by SJMC Section 13.28.195 (regarding street trees);
- e. the separate disclosure required by Santa Clara County Ordinance NS-300.705 (regarding right to farm); and
- f. the separate disclosure required by California Government Code Section 8897.1 (regarding earthquake hazards).

Notwithstanding anything to the contrary in this AGREEMENT, all disclosures or certifications required by applicable law shall have such force and effect as is required by such applicable law.

**13. No Brokers.**

CITY and BUYER hereby warrant to each other that there are no brokers, finders or other persons entitled to a commission, finder's fee or other payment in connection with this AGREEMENT.

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

"CITY"

CITY OF SAN JOSE, a municipal corporation

APPROVED AS TO FORM:



KENNETH D. JOHNSON  
Senior Deputy City Attorney

By: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

"BUYER"

Z&C Investment LLC, a California limited liability company

By:  \_\_\_\_\_

Title: CEO

Its: \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description**

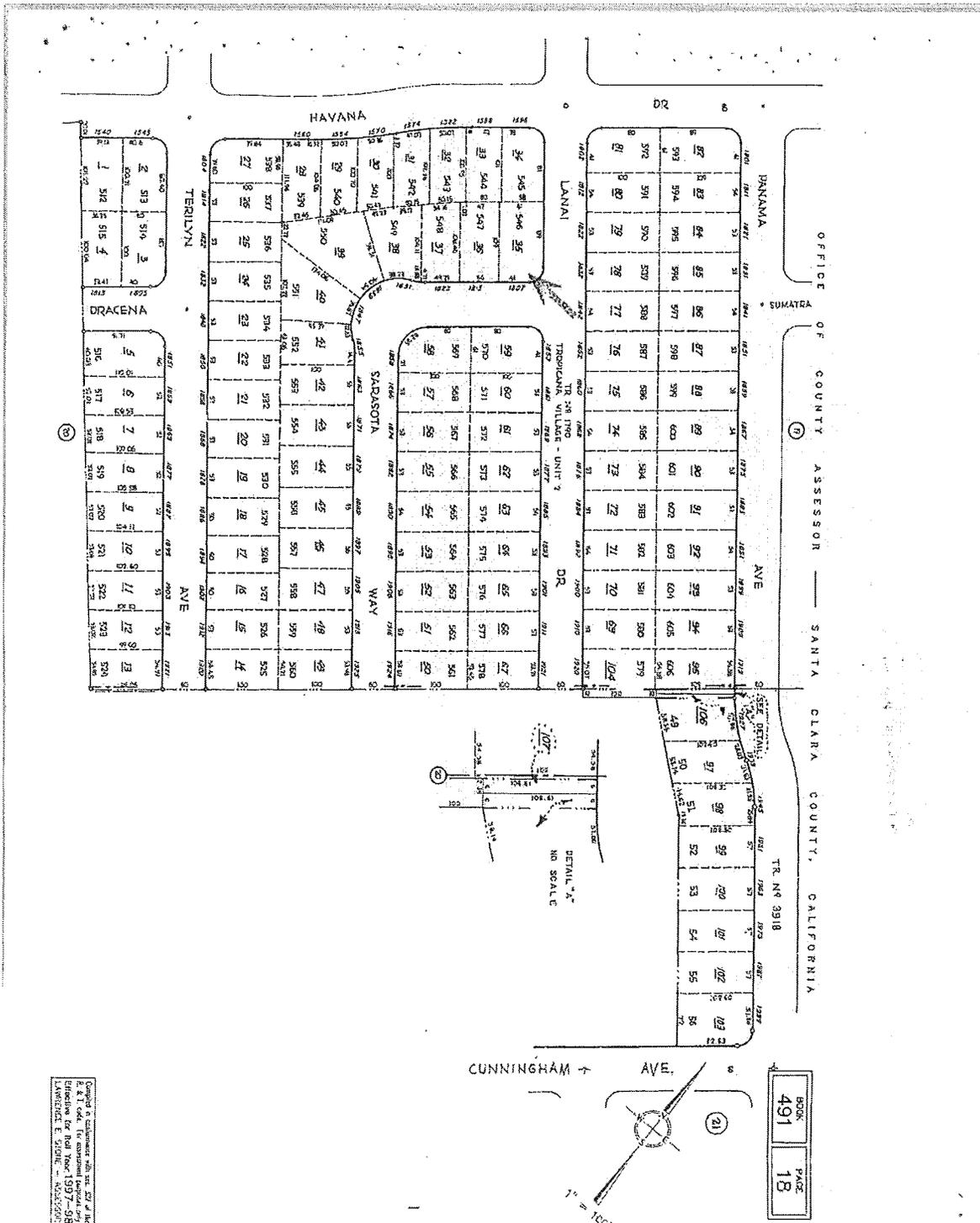
All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

Lot 546, as shown on that certain Map of TRACT NO. 1790, TROPICANA VILLAGE, UNIT NO. 2, which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on September 18, 1958, in Book 97 of Maps, Page(s) 38, 39 and 40.

EXCEPTING THEREFROM the underground water or rights thereto with no right of surface entry, as granted to San Jose Water Works, a California Corporation by Instrument recorded October 6, 1958 in Book 4198, Page 273, Official Records.

EXHIBIT "B"

Plat of Property



Order: maps Description: 491.16 Page 1 of 1 Comment:

## EXHIBIT "C"

### Hazardous Substances.

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

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