

**DEPOSIT RECEIPT – PURCHASE AND SALE AGREEMENT  
FOR 2211 MOORPARK MEDICAL OFFICE BUILDING  
A COMMERCIAL CONDOMINIUM PROPERTY**

Pursuant to the terms and conditions of this Deposit Receipt - Purchase and Sale Agreement (“Agreement”), VMC – San Jose , LLC, a California limited liability company (“Seller”), located at 465 California Street, Third Floor, San Francisco CA 94104 agrees to sell to

\_\_\_\_\_ (“Buyer”) \_\_\_\_\_  
and Buyer agrees to buy from Seller:

The Commercial Condominium shown as Unit \_\_\_ on the Condominium Plan for 2211 Moorpark (“Condominium Unit”), consisting of approximately \_\_\_\_\_ gross square feet [\_\_\_\_\_ useable square feet], located at 2211 Moorpark Avenue, in the City of San Jose, Santa Clara County, California as shown on the Site Plan as Exhibit “A” (the “Property”).

**1. DEFINED TERMS:** The following terms are used periodically throughout this Agreement, and their meanings are as follows:

- (a) “Articles” means the Articles of Incorporation of the 2211 Moorpark Commercial Condominium Association.
- (b) “Association” means the 2211 Moorpark Commercial Condominium Association.
- (c) “Building: means the building in which the Condominium Unit is situated, located at the Property.
- (D) “By-Laws of the 2211 Moorpark Commercial Condominium Association and any available financial statements for such Association.
- (d) “CC&Rs” means the 2211 Moorpark Declaration Establishing a Plan for Commercial Condominium Ownership for the Property.
- (e) “Condominium Plan” means the Condominium Plan for 2211 Moorpark.
- (f) “Escrow Holder” means:
  - First American Title Company
  - Attn: Terri Moralez
  - 1737 North First Street, Suite 500
  - San Jose CA
  - Office: (408) 451-7838
  - E-Fax: (714) 689-4173
- (g) “Scheduled Closing Date” means the earlier to occur of \_\_\_\_\_, 2017\_\_ or \_\_\_\_\_ days following the date that the conditions described in Paragraph 3(a), 3(b) and in Paragraph 4 for Buyer’s Contingency Period are satisfied or waived in writing by Buyer.
- (h) “Seller’s Broker” is: Rick Bell of Alain Pinel Realtors located at 167 S. San Antonio Road, Los Altos CA 94022.
- (i) “Buyer’s Broker” (if any) is of \_\_\_\_\_ located at \_\_\_\_\_.

**NOTICE - NOT NEW CONSTRUCTION:** Buyer acknowledges that construction of the Building and original installation of the fixtures, appliances and equipment in the Units was completed approximately 1985. Over time many of the Units and the Common Area have been partially renovated. The Units have been previously rented and occupied. Unless otherwise documented in writing between Buyer and Seller, Seller is not making any renovations or changes to the improvements or fixtures in the Units for the Buyer. Otherwise the Buyer is purchasing the Unit in its current "As-Is" condition. Seller did not construct the Building; however, it is believed that the Units were constructed in accordance with the building codes in effect at the time the Project was constructed. The Units are not being brought up to current codes.

**AS-IS Sale.** To the extent permitted by law, Seller is selling the property and Buyer is purchasing the property "AS-IS" AND "WHERE-IS", and without any representations or warranties by Seller except as expressly provided in the purchase agreement. Buyer may engage an independent inspector to inspect the Project and to provide Buyer with a report as to such inspector's findings with respect to the permitted uses, condition and useful life of the property. Seller agrees to cooperate with such inspector to the extent reasonably possible.

**2. PURCHASE PRICE AND PAYMENT:**

The "Purchase Price" shall be: \$ \_\_\_\_\_

The above Purchase Price does not include closing costs, loan fees or costs of interior improvement upgrades. The Purchase Price shall be paid as follows:

(a) Initial Deposit of 1.5% of Purchase Price (fully refundable to Buyer during the Buyer's Contingency Period described in Paragraph 3(b)): \$ \_\_\_\_\_

(b) Additional Deposit (to be provided by Buyer by the end of the Buyer's Contingency Period described in Paragraph 3(b)) of 1.5% of Purchase Price. The Initial Deposit plus the Additional Deposit equals 3% of the Purchase Price. \$ \_\_\_\_\_

(c) Cash balance on or before close of escrow: \$ \_\_\_\_\_

**Any changes to the terms stated above shall be stated in a signed Addendum and attached to this Agreement.**

The Additional Deposit is due by the end of the Buyer's Contingency Period described in Paragraph 3 and, together with the Initial Deposit, shall become non-refundable to Buyer after Buyer's conditions of purchase have been satisfied, as is provided in Paragraphs 3 and 4, below, but in no event later than the end of the Buyer's Contingency Period described in Paragraph 3(b) (unless Seller elects in writing, in its sole discretion, to extend such Buyer's Contingency Period).

In addition, Buyer shall pay at the close of escrow any fees, inspection fees and impounds required by its lender and, if requested by Buyer or Buyer's lender, the cost of any excess title insurance associated with any ALTA extended policy of title insurance. Buyer and Seller shall pay the recording fees, escrow fees and any other fees incurred in closing this purchase and sale transaction as is set forth in Paragraph 8 of this Agreement.

**3. CONDITIONS OF PURCHASE:** Buyer's obligation to purchase the Condominium Unit pursuant to the terms of this Agreement shall be conditioned upon Buyer reviewing and satisfying itself, in its sole discretion, within the Buyer's Contingency Period referred to in Paragraph 3 (b), below, of the following matters:

(a) Intended Use: Buyer shall have the right during the Buyer's Contingency Period to meet with the City of San Jose or any other parties to satisfy itself with respect to the zoning, governmental regulations, restrictions, parking limitations and requirements, laws, permits, fees and approvals that apply to the Property and the Condominium Unit and its intended use.

(b) General Feasibility: Buyer shall have until the date\_\_\_\_\_ calendar days following the execution of this Agreement ("Buyer's Contingency Period") to (i) determine whether the Condominium Unit is suited to Buyer's intended purposes, (ii) determine in Buyer's sole discretion whether the acquisition of the Condominium Unit is feasible for the Buyer, and (iii) deliver to Seller its written notice of approval or disapproval of the feasibility of the Condominium Unit and the matters referred to in Paragraph 3(a) above. To assist Buyer in connection with its due diligence, Seller shall provide or make available to Buyer, within five (5) business days following the execution of this Agreement, a disclosure package which shall include, without limitation, the following documents, instruments, agreements or other writings: (1) Preliminary Title Report covering the Condominium Unit, (2) the CC&R's, (3) the Articles, (4) the Bylaws, (5) the Condominium Plan (6) The Association's Estimated Budget, (7) a Natural Hazard Disclosure Report and (8) Square Footage Analysis. The documents referred to in clauses (2) through (8) of the immediately preceding sentence may be downloaded by Buyer for review from the Seller's website located at [www.moorparkpc.com](http://www.moorparkpc.com).

Upon Buyer's satisfaction of the conditions set forth in Paragraphs 3(a), 3(b) and 4, below, Buyer shall deposit with the Escrow Holder the Additional Deposit described in Paragraph 2 above. The combination of the Initial Deposit and the Additional Deposit shall then become non-refundable to Buyer, except in the event of a default on the part of Seller, and shall be released to Seller upon Buyer's delivery

Delivery by Buyer to Escrow Holder of the Additional Deposit and to Seller of Buyer's written notice of approval within the Buyer's Contingency Period referred to herein shall demonstrate that (i) Buyer has approved the feasibility of the Condominium Unit and the matters referred to in Paragraph 3(a) above, (ii) the conditions set forth in Paragraphs 3(a) and 3(b) have been satisfied, (iii) Buyer has received, reviewed and approved all of the documents referred to in clauses (1) through (8) of this Paragraph 3(b) and that Buyer has satisfied the financing requirements of Paragraph 4, below.

The combination of the Initial Deposit and the Additional Deposit shall equal three percent (3%) of the Purchase Price and shall become non-refundable to Buyer at the conclusion of the Buyer's Contingency Period referred to above except in the event of a default on the part of Seller.

If Buyer does not give Seller written notice of approval within the Buyer's Contingency Period referred to above, then Seller shall have the right to terminate this Agreement by and upon written notice from Seller to Buyer, and upon such termination, all obligations of the parties hereunder (other than those that expressly survive the termination of this Agreement) shall cease and the Initial Deposit (less any charges paid out of escrow for appraisal fees, escrow charges)) shall be promptly refunded to Buyer.

If, within the Buyer's Contingency Period, the conditions set forth in Paragraph 3(a) or 3(b), or Paragraph 4, below, have not been satisfied, Seller shall have the right, but not the obligation, to give Buyer written notice of an additional period of time to be determined by Seller during which Buyer may satisfy itself of any of the matters set forth above. If Buyer has not delivered written notice to Seller and the Escrow Holder that its conditions of purchase have been satisfied within the stated additional time period, this Agreement shall be deemed to be terminated without further notice to Buyer, and the Initial

Deposit, less any charges paid out of escrow for fees or escrow charges, shall be promptly refunded to Buyer, and this Agreement will then have no further force or effect.

**4. FINANCING:** If Buyer intends to finance any part of the Purchase Price, then, within five (5) calendar days after Buyer's execution of this Agreement, Buyer shall conduct a discussion with a lender to pre-qualify for financing. Buyer shall provide to the lender such financial information as the lender may reasonably require to determine Buyer's ability to qualify for the financing needed to complete the purchase of the Condominium Unit. Within 10 calendar days of Buyer's execution of this Agreement, Buyer shall provide Seller with preliminary evidence, reasonably satisfactory to Seller, of Buyer's ability to qualify for financing needed to purchase the Condominium Unit.

**[Initial: Buyer intends to obtain financing [\_\_\_\_\_]]**

If Buyer does not intend to finance the purchase of the Condominium Unit, then, within 10 calendar days after Buyer's execution of this Agreement, Buyer shall provide Seller with satisfactory evidence of Buyer's ability to pay the Purchase Price and Buyer's share of closing costs.

**[Initial: Buyer does not intend to obtain financing [\_\_\_\_\_]]**

If Buyer fails to comply with the foregoing, as applicable, or if Buyer's prospective lender informs Seller that Buyer is not likely to be able to qualify for the financing needed to purchase the Condominium Unit, Seller shall have the right to terminate this Agreement. If, within the Buyer's Contingency Period referred to in Paragraph 3(b) above, Buyer delivers its written notice of approval to Seller as provided in such Paragraph 3 above, then Buyer shall be deemed to have obtained financing or a loan commitment satisfactory to Buyer (and/or Buyer shall be deemed to have sufficient funds of its own to acquire the Condominium Unit). If, within such Buyer's Contingency Period, Buyer does not deliver to Seller its written notice of approval as provided in Paragraph 3 above, then Buyer shall be deemed to have not have obtained financing or a loan commitment acceptable to Buyer, this Agreement shall terminate and Buyer's Initial Deposit less any charges paid out of escrow and escrow charges shall be immediately refunded to Buyer.

Seller may, from time to time, furnish Buyer with names of lenders as an accommodation only. Buyer acknowledges that Seller is not an agent of any such lender, that Buyer is free to choose any lender acceptable to Buyer and that Seller has not agreed to obtain any loan for Buyer.

**5. BUYER TO EXECUTE ALL DOCUMENTS:** Buyer shall execute promptly all documents and make all deposits required by this Agreement, title company, Escrow Holder, its lender or governmental agencies having jurisdiction over matters in question.

**6. ESCROW, CLOSING DATE, CLOSING COSTS, PRORATIONS AND TITLE:**

(a) Buyer's Initial Deposit shall be deposited with Escrow Holder within 3 business days after both Buyer and Seller have executed this Agreement. Unless Buyer elects not to proceed with the purchase of the Condominium Unit, as provided in Paragraph 3 or Paragraph 4, Buyer's Additional Deposit shall be deposited with Escrow Holder prior to the end of Buyer's Contingency Period.

(b) Escrow shall close on \_\_\_\_\_, 2017, the "Scheduled Closing Date").

(c) The date that Seller's Grant Deed describing the Condominium Unit is recorded in favor of Buyer is referred to herein as the "Closing Date."

(d) Notwithstanding the foregoing, as a condition to Buyer's obligation to close escrow hereunder, the following events shall have occurred on or before such closing:

(i) All deeds of trust affecting the Property, if any, shall have been released from the Property or reconveyed or partially reconveyed so as to no longer encumber the Condominium Unit, or the holder(s) of the deeds of trust shall have executed a release agreement or reconveyance which agreement or reconveyance of the Condominium Unit shall have been deposited with Escrow Holder with instructions to record the same on or before the closing hereunder;

(ii) Buyer shall receive an ALTA Standard policy of title insurance for the Condominium Unit, consisting of a commercial condominium unit and an undivided interest in the common area, at the Closing Date insuring title in Buyer's name free and clear of liens and encumbrances (except those created by Buyer) and subject to the lien of current taxes and assessments (not delinquent), the recorded CC&R's, and any and all easements, reservations, rights and rights of way and other matters of record as shown on the Preliminary Title Report. The title insurance premium for such ALTA Standard title policy shall be borne by Seller. Buyer shall be responsible for additional title endorsements requested by Buyer, if any.

(e) If escrow does not close on the Scheduled Closing Date referred to above for any reason other than Seller's default, Escrow Holder is hereby authorized and instructed to debit or charge Buyer and credit Seller carrying charges at the rate of \$200 per day from the Scheduled Closing Date to the date that Buyer's funds are disbursed by Buyer or Buyer's lender to Seller, or the date that the deed transferring title to Buyer is recorded, whichever first occurs. Notwithstanding the foregoing sentence, nothing stated in this paragraph shall obligate Seller to extend the actual date for close of escrow beyond the Scheduled Closing Date referred to above.

(f) Real property taxes, insurance premiums, assessments and other customarily prorated items shall be prorated as of the Closing Date. If the amount of any installment of real property taxes or assessments applicable to the Condominium Unit is not known as of the Closing Date, then a proration of such real property taxes and assessments shall be made by the parties based on a good faith estimate by Seller of the real property taxes and assessments applicable to the Condominium Unit as set forth below, and a final adjustment shall be made within twelve (12) months after the Closing Date to the extent precise figures are determined or become available. All bonds and assessments that are part of or paid with the property tax bill will be assumed by Buyer. Current installments will be prorated as of the Closing Date. Pursuant to the custom in Santa Clara County, escrow fees and recording fees shall be paid by Seller. The Santa Clara County transfer tax shall be paid by Seller. The cost of city transfer tax shall be paid in equal parts by Buyer and Seller.

Buyer acknowledges that although a condominium map has been or will be recorded as of the Closing Date the County Assessor may not have segregated, as of the Closing Date, the assessed value of the Condominium Unit from the assessed value of the parcel(s) from which the Condominium Unit was created. To the extent the County Assessor has not segregated, as of the Closing Date, the assessed value of the Condominium Unit (or assessments allocable to the Condominium Unit) from the assessed value of (or assessments allocable to) the parcel(s) from which the Condominium Unit was created, Buyer hereby agrees that Seller may instruct Escrow Holder to prorate such real property taxes and assessments based upon Seller's good faith estimate of the real property taxes and assessments allocable to the Condominium Unit as of the Closing. To the extent that the actual real property taxes and assessments allocable to the Condominium Unit for the fiscal period in which the Closing occurs and any subsequent fiscal period(s) prior to the real property taxes and assessments being segregated are more than or less than the real property taxes and assessments estimated by Seller as provided above, then an appropriate adjustment shall be made so that Seller shall reimburse Buyer any amount of prorated real property taxes or assessments overpaid by Buyer at Closing or Buyer shall pay to Seller any amount of prorated real property taxes or assessments underpaid by Buyer at Closing. Such adjustment and payment shall be made by the parties within fifteen (15) days following the date the actual amount of real property taxes and assessments allocable to the Condominium Unit becomes known and written request of either party is made to the other. The obligation to adjust the real property taxes and assessments after the Closing Date,

and to make such payments based on such adjustments as described above, shall survive the Close of Escrow.

**7. OWNERS' ASSOCIATION:** Buyer acknowledges that the Association (defined in Paragraph 1(b) above) has been established for the purpose of operating and maintaining the common areas and facilities of the Condominium Project, and Buyer agrees to become a member of the Association and to abide by the By-Laws thereof. The Property is to subject to the Project's CC&R's to be recorded in the Official Records of Santa Clara County prior to the close of escrow. The monthly maintenance and operational assessments to be paid to the Association by the owner of each individual condominium unit (which assessments are set forth in the approved budget) are based upon Seller's best estimates. The budget may be revised annually.

**8. NOTICES:** Any notices shall be sent to Buyer and Seller at their addresses set forth below. If notice is sent by personal delivery or courier, such notice shall be deemed given when the notice actually received by Buyer, or by Seller, as the case may be. If sent by mail, notice shall be deemed given 48 hours after deposit in the United States mail, postage prepaid. Either party may change its address for the purposes of this Paragraph 8 by giving written notice in the manner set forth herein. BUYER UNDERSTANDS AND ACKNOWLEDGES THAT BUYER IS RESPONSIBLE FOR ADVISING SELLER OF ANY CHANGE IN BUYER'S ADDRESS FROM THE ADDRESS STATED IN THIS AGREEMENT, AND SELLER SHALL BE ENTITLED TO RELY UPON THE ADDRESS OF BUYER STATED IN THIS AGREEMENT UNLESS AND UNTIL IT HAS BEEN CHANGED BY BUYER IN THE MANNER SET FORTH IN THIS PARAGRAPH 8.

**9. POSSESSION:** Possession of the Condominium Unit shall be delivered to Buyer at the close of escrow. If for any reason Seller is unable to deliver possession of the Condominium Unit in accordance with this Agreement for any reason (other than Buyer's default hereunder or delays in completion of the construction of the Condominium Unit or the Building in which the Condominium Unit is located caused by Buyer or any of its agents, employees, contractors or other representatives), Buyer's sole remedy shall be rescission of this Agreement and the return of all Deposits made by Buyer pursuant hereto.

**10. PARKING ASSIGNMENTS AND USE PROVISIONS:** Buyer will be assigned exclusive use of \_\_\_\_ parking spaces shown as Parking Spaces \_\_\_\_\_ on the Parking Plan attached as Exhibit "B" to this Purchase Agreement, and shall have the non-exclusive right to the use of \_\_\_\_ other unassigned parking spaces in the Project's Common Area.

Buyer acknowledges Buyer's understanding that the quantity of parking spaces may be an important factor in any future changes or modifications of the use of the Condominium Unit, and that Buyer has the responsibility to determine if any change or modification of use or layout of the Condominium Unit can be accomplished based upon the number of parking spaces assigned to Buyer.

**INITIALS:** BUYER \_\_\_\_\_ SELLER \_\_\_\_\_

**11. LIQUIDATED DAMAGES:** THE PARTIES HERETO AGREE THAT SELLER'S ECONOMIC DETRIMENT RESULTING FROM THE REMOVAL OF THE CONDOMINIUM UNIT FROM THE REAL ESTATE MARKET FOR AN EXTENDED PERIOD OF TIME AND ANY CARRYING AND OTHER COSTS INCURRED AFTER THE REMOVAL OF THE CONDOMINIUM UNIT FROM THE REAL ESTATE MARKET ARE IMPRACTICABLE OR EXTREMELY DIFFICULT TO ASCERTAIN. THE PARTIES HERETO AGREE THAT THE AMOUNT OF THE INITIAL DEPOSIT, ADDITIONAL DEPOSIT AND ANY OTHER DEPOSIT(S) MADE BY BUYER PURSUANT TO ANY ADDENDUM OR AMENDMENT HERETO (COLLECTIVELY, THE "DEPOSITS") IS A REASONABLE ESTIMATE OF THE DAMAGES THAT WILL BE INCURRED BY SELLER IN THE EVENT OF A BREACH OR DEFAULT OF THIS AGREEMENT BY BUYER. BUYER AGREES THAT IN THE EVENT OF SUCH BREACH OR DEFAULT BY BUYER, SELLER,

AS ITS SOLE REMEDY, SHALL BE ENTITLED TO RECEIVE AND RETAIN THE DEPOSITS (INCLUDING ANY INTEREST ACCRUED THEREON WHILE IN ESCROW) AS LIQUIDATED DAMAGES AND NOT AS A PENALTY. SUCH RECEIPT OF THE DEPOSITS (INCLUDING ANY INTEREST ACCRUED THEREON WHILE IN ESCROW) BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR SECTION 3369 OF THE CALIFORNIA CIVIL CODE, OR ANY SIMILAR PROVISION. SELLER HEREBY WAIVES THE REMEDY OF SPECIFIC PERFORMANCE WITH RESPECT TO ANY DEFAULT BY BUYER OF ITS OBLIGATION TO PURCHASE THE CONDOMINIUM UNIT, AND AGREES THAT THE LIQUIDATED DAMAGES SET FORTH HEREIN SHALL BE SELLER'S SOLE REMEDY IN THE EVENT BUYER BREACHES OR DEFAULTS IN ITS OBLIGATION TO PURCHASE THE CONDOMINIUM UNIT HEREUNDER. THIS LIQUIDATED DAMAGES PROVISION SHALL NOT BE APPLICABLE TO ANY BREACH BY BUYER OF ANY INDEMNIFICATION, DEFENSE OR HOLD HARMLESS OBLIGATION OF BUYER UNDER THIS AGREEMENT, OR ANY OTHER OBLIGATION OF BUYER THAT EXPRESSLY SURVIVES THE TERMINATION OF THIS AGREEMENT. THIS LIQUIDATED DAMAGES PROVISION ALSO SHALL NOT SERVE AS A LIMITATION ON THE AMOUNT OF ATTORNEYS' FEES THAT SELLER MAY PURSUE OR COLLECT FROM BUYER IN THE EVENT SELLER INCURS ATTORNEYS' FEES IN ATTEMPTING TO COLLECT OR RETAIN THE LIQUIDATED DAMAGES REFERRED TO HEREIN. BY INITIALING THIS PARAGRAPH 11 BELOW, SELLER AND BUYER AGREE TO THE TERMS OF THIS PARAGRAPH 11.

INITIALS:     **BUYER** \_\_\_\_\_                    **SELLER** \_\_\_\_\_

**12. ARBITRATION OF DISPUTES:** IT IS AGREED THAT ANY CLAIM OR DISPUTE BETWEEN THE BUYER AND THE SELLER, OR GENERAL CONTRACTOR OR BROKER, ARISING OUT OF THIS AGREEMENT OR RELATING IN ANY WAY TO THE CONDOMINIUM UNIT BEING PURCHASED HEREUNDER AND EVERY OTHER DISPUTE BETWEEN SELLER AND BUYER THAT HAS ARISEN UNDER THIS AGREEMENT, SHALL BE DETERMINED BY SUBMISSION TO BINDING ARBITRATION WITH THE AMERICAN ARBITRATION ASSOCIATION, OR SUCH OTHER ARBITRATOR THAT THE PARTIES MUTUALLY SELECT, PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, OR PROCEDURES THAT ARE EQUIVALENT IN SUBSTANCE. ANY ARBITRATION SHALL INCLUDE EVERY CAUSE OF ACTION THAT HAS ARISEN BETWEEN THE BUYER AND THE SELLER UNDER THIS AGREEMENT.

IF THE CONTROVERSY IS REFERRED TO ARBITRATION, THE FOLLOWING SHALL APPLY:

(A) COSTS AND FEES, INCLUDING ONGOING COSTS AND FEES OF THE ARBITRATION SHALL BE PAID AS AGREED BY THE PARTIES, AND, IF THE PARTIES CANNOT AGREE, AS DETERMINED BY THE ARBITRATOR, WITH THE COSTS AND FEES OF THE ARBITRATION TO ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR;

(B) A NEUTRAL AND IMPARTIAL INDIVIDUAL SHALL BE APPOINTED TO SERVE AS ARBITRATOR, WITH THE ARBITRATOR TO BE APPOINTED WITHIN A PERIOD OF TIME, WHICH IN NO EVENT SHALL BE MORE THAN 60 DAYS FROM THE ADMINISTRATOR'S RECEIPT OF A WRITTEN REQUEST FROM A PARTY TO ARBITRATE THE CLAIM OR DISPUTE. IN SELECTING THE ARBITRATOR, THE PROVISIONS OF §1297.121 OF THE CODE OF CIVIL PROCEDURE SHALL APPLY. AN ARBITRATOR MAY BE CHALLENGED FOR ANY OF THE GROUNDS LISTED IN §1297.121, OR IN §1297.124 OF THE CODE OF CIVIL PROCEDURE;

(C) VENUE OF THE ARBITRATION TO BE IN THE COUNTY WHERE THE CONDOMINIUM UNIT IS LOCATED, UNLESS THE PARTIES AGREE TO SOME OTHER LOCATION;

(D) THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF ARBITRATION; PROVIDED HOWEVER THAT THERE SHALL IN NO EVENT BE ANY AWARD OF PUNITIVE DAMAGES.

(E) A JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION. BY PLACING THEIR INITIALS HERE,

(BUYER \_\_\_\_\_) (SELLER \_\_\_\_\_) THE PARTIES AGREE TO ARBITRATION.

IF THE MATTER PROCEEDS TO ARBITRATION, DISCOVERY SHALL BE ALLOWED PURSUANT TO CODE OF CIVIL PROCEDURE §1283.05. ARBITRATION OF ANY MATTER PURSUANT TO THIS CLAUSE SHALL NOT BE DEEMED A WAIVER OF THE ATTORNEY / CLIENT OR ATTORNEY / WORK PRODUCT PRIVILEGE IN ANY MANNER.

**13. PERSONAL PROPERTY AND LIABILITY INSURANCE:** The Association will maintain a master hazard insurance policy that covers the shell building in which the condominium properties will be located. This policy does not cover the personal property and effects of the occupants and does not cover personal liability for injuries or damages occurring within the condominium properties. It is the responsibility of each owner and occupant to obtain his or her own insurance in this regard.

**14. REASSESSMENT NOTICE:** The Condominium Unit may be reassessed on the change of ownership. The reassessment will be effective as of close of escrow and a supplemental tax bill may be sent to the Buyer requiring the payment of additional property taxes based upon the purchase price of the Condominium Unit. It shall be the responsibility of the Buyer to pay this supplemental tax bill. If an impound account for the payment of property taxes is used, the amount of impound payments may increase.

**15. PROPERTY INSPECTION:** Buyer agrees to participate in a walk-through inspection of the Unit together with a representative of Seller before the close of escrow to verify the condition of the Unit. In the event that Buyer claims that there is a visible concern with the condition of the Unit claimed by Buyer after close of escrow, and said concern was not noted in writing on the walk-through inspection report, Buyer shall have the burden of overcoming a presumption in favor of the accuracy and



completeness of the walk-through inspection report in any arbitration or litigation, should Seller reject Buyer's claim.

**16. FIRPTA:** The Foreign Investment and Real Property Tax Act ("FIRPTA") requires a buyer purchasing real property from a foreign person to withhold tax from the sale proceeds unless an exemption applies. Seller agrees to provide Buyer with a certification establishing that Seller is not a foreign person and that no federal income tax is required to be withheld under FIRPTA, or to consent to the withholding of tax from the proceeds of sale, as required.

**17. MEASUREMENTS:** All measurements are approximate. The square footage stated in published materials includes the allocation of the Common Area square footage to the Units.

**18. BROKERAGE COMMISSION:** Seller represents and warrants to Buyer that it has not dealt with any real estate broker, agent or salesperson in connection with this transaction other than Seller's Broker (as defined in Paragraph 1(h) above). Buyer represents and warrants to Seller that it has not dealt with any real estate broker, agent or salesperson in connection with this transaction other than any Buyer's Broker (as defined in Paragraph 1(i) above). If and when escrow closes hereunder, Seller shall pay to Seller's Broker a real estate commission pursuant to the terms of a separate written agreement. Any commission to be paid to Buyer's Broker in connection with its representation of the Buyer in this transaction shall be paid out of the commission that Seller pays to Seller's Broker, and shall be based upon a written sharing arrangement between Seller's Broker and Buyer's Broker. In no event shall Seller be liable to Seller's Broker or Buyer's Broker for the payment of any commission or other fee in connection with this Agreement if escrow fails to close for any reason. Each party shall indemnify, defend and hold harmless the other on account of any claims, demands, causes of action or judgments respecting payment of any sales commission, brokerage commission or finder's fee, including attorneys' fees and court costs, arising from or brought by any third party (other than Seller's Broker and Buyer's Broker) who has dealt or claims to have dealt with such indemnifying party pertaining to the Property. The obligations to indemnify, defend and hold harmless as provided in this Paragraph 18 shall survive the close of escrow or termination of this Agreement.

**19. REPRESENTATIONS, WARRANTIES AND COVENANTS:**

(a) Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, which representations and warranties shall survive the Close of Escrow for a period of six (6) months (at which time these representations and warranties shall expire) and during which time, any legal action based thereon shall be commenced, if at all, or forever thereafter be barred under all circumstances:

(i) Litigation; Government Action. To Seller's Knowledge, except as otherwise as disclosed to Buyer in writing, there is no claim, litigation, proceeding, or governmental investigation regarding the Property presently pending with respect to which Seller has been served with process or other written notice thereof.

(ii) Condemnation. To Seller's Knowledge, except as disclosed to Buyer in writing, there is presently no pending condemnation of the Property or any part thereof with respect to which Seller has been served with process or other written notice thereof.

(iii) Authority. Seller has full power to enter into this Agreement; the execution, delivery, and performance of this Agreement have been duly authorized and approved by all requisite action; the consummation of the transactions contemplated hereby will be duly authorized and approved by all requisite action of Seller; and except for the approval of Seller's Lender, no other authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order to enable Seller to enter into or to comply with the terms of this Agreement. Seller is duly qualified to transact business in California.

(b) Specific Matters About Which Seller Makes No Representation or Warranty. Except as disclosed by the Natural Hazards Disclosure Report For Commercial Property, if any, and except as otherwise expressly provided herein, Seller makes no representation or warranty with respect to all or any of the following specific matters (the non-inclusion of any matter in this Section shall not give rise to any express and/or implied warranty with respect to such omitted matter):

(i) Seller makes no representation or warranty as to whether the Property is or ever was located in an Earthquake Fault Zone, Special Studies Zone or Geologic Hazard Zone (Alquist-Priolo Earthquake Fault Zoning Act; Public Resources Code §§ 2621 et seq.), Seismic Hazard Zone (Seismic Hazards Mapping Act; Public Resources Code §§ 2690 et seq.) or in any locally designated geologic, seismic, or other hazard zone or area where disclosure is required by law, all or any of which could or might limit or preclude construction on and/or other development of the Property. Buyer confirms that it will rely on its own independent investigation and evaluation and not on Seller or Seller's agents in determining all such matters.

(ii) Seller makes no representation or warranty as to whether the Property is or ever was located in a Special Flood Hazard Area designated by the Federal Emergency Management Agency (FEMA) or other Federal or California governmental agency or department, or in a 100-year flood plain area, or in a coastal flood area, all or any of which could or might limit or preclude construction on and/or other development of the Property. Buyer confirms that it will rely on its own independent investigation and evaluation and not on Seller or Seller's agents in determining all such matters.

(iii) Seller makes no representation or warranty as to whether the Property is or ever was located in a State Responsibility Area (Public Resources Code §§ 4102 and 4125 et seq.), Wildland Area or Wildland Fire Area which could or might limit or preclude construction on and/or other development of the Property. Buyer confirms that it will rely on its own independent investigation and evaluation and not on Seller or Seller's agents in determining all such matters.

(iv) Seller makes no representation or warranty as to whether the Property is or ever was located in an area shown on a Dam Failure Inundation Map pursuant to Government Code §8589.5, which could or might limit or preclude construction on and/or other development of the Property. Buyer confirms that it will rely on its own independent investigation and evaluation and not on Seller or Seller's agents in determining all such matters.

(v) Seller makes no representation or warranty as to whether the Property is or ever was located in an area shown on a Very High Fire Hazard Severity Zone pursuant to Government Code §51175 through Government Code §51188, which could or might limit or preclude construction on and/or other development of the Property. Buyer confirms that it will rely on its own independent investigation and evaluation and not on Seller or Seller's agents in determining all such matters.

(vi) Seller makes no representation or warranty as to whether the Property includes or ever included wetlands and/or is or ever was located in wetland area or endangered and/or protected species, flora, fauna or habitat areas, any or all of which could or might limit or preclude construction on and/or other development of the Property. Buyer confirms that it will rely on its own independent investigation and evaluation and not on Seller or Seller's agents in determining all such matters.

(vii) Seller makes no representation or warranty regarding the environmental condition of the Property including, without limitation, the presence or absence of Hazardous Material in, on, under or about the Property and/or the adjoining or neighboring property(ies) at any time; whether the Property and/or the adjoining or neighboring property(ies) now are, ever were, or in the future will be in compliance with the Environmental Laws, and Buyer confirms that it will rely on its own independent investigation and evaluation and not on Seller or Seller's agents in determining all such matters.

(viii) Seller makes no representation or warranty regarding the accuracy of the legal description of the Property, the Preliminary Report, the Grant Deed, or the Title Policy. Buyer confirms that it will rely on its own independent investigation and evaluation, and on the Title Company and not on Seller or Seller's agents in determining all such matters.

(ix) Seller makes no representation or warranty regarding whether the Property is in compliance with the Americans with Disabilities Act of 1990, as amended (the “ADA”). Buyer confirms that it will rely on its own independent investigation and evaluation, and not on Seller or Seller’s agents in determining all such matters.

(c) Buyer’s Representations and Warranties. Buyer hereby makes the following representations and warranties to Seller, which representations and warranties shall survive the Close of Escrow for a period of six (6) months (at which time these representations and warranties shall expire), and during which time, any action based thereon shall be commenced, if at all, or forever thereafter be barred under all circumstances:

(i) Authority. Buyer has full power to enter into this Agreement; the execution, delivery, and performance of this Agreement have been duly authorized and approved by all requisite action; the consummation of the transactions contemplated hereby will be duly authorized and approved by all requisite action of Buyer; and no other authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order to enable Buyer to enter into or to comply with the terms of this Agreement. Buyer is duly qualified to transact business in California.

(ii) Binding Effect of Documents. This Agreement and the other documents to be executed by Buyer hereunder, upon execution and delivery thereof by Buyer, will have been duly entered into by Buyer, and will constitute legal, valid and binding obligations of Buyer; and neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement, or instrument to which Buyer is a party or by which it is bound.

(iii) OFAC List. Buyer and each of its subsidiaries, predecessors, direct and indirect owners (collectively, the “Buyer Parties”) have at all applicable times been, are now and will in the future be, in compliance with all laws, statutes, rules and regulations or any federal, state or local governmental authority in the United States of America applicable to the Buyer Parties and all beneficial owners of the Buyer Parties, including, without limitation, the requirements of Executive Order No. 13324, 66 Fed Reg. 49079 (September 25, 2001) (the “Order”) and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury (“OFAC”) and in any enabling legislation in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the “Orders”). Buyer has no knowledge or notice of any fact, event, circumstance, situation or condition which could reasonably be expected to result in (i) any action, proceeding, investigation, charge, claim, report or notice being filed, commenced or threatened against any of them alleging any failure to comply with the Orders, or (ii) the imposition of any civil or criminal penalty against any of them for any failure to so comply. None of the Buyer Parties are owned or controlled by, nor acts for or on behalf of, any person or entity on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (collectively the “Lists”) or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

**20. Condition of Property.**

**(a) CONDITION OF UNIT AT CLOSE OF ESCROW. AT CLOSING, BUYER SHALL ACCEPT THE CONDOMINIUM UNIT AND THE COMMON AREA IN ITS “AS IS” CONDITION AS OF THE EFFECTIVE DATE OF THIS AGREEMENT.**

**[ ] Buyer as Current Tenant: Buyer has been a tenant in occupancy of the Building and the Unit being sold to Buyer prior to entering into this Agreement and based upon that occupancy Buyer acknowledges that Buyer is familiar with the Building, the Unit and the surroundings of the property in which the Building and Unit are located.**

(b) No Representations by Seller. Except as expressly provided in this Agreement, neither Seller nor Brokers make any representations or warranties of any kind, express or implied, written

or oral, as to the size or configuration of the Property or the improvements included within the Property; the physical condition of the Property; the uses of the Property or any limitations thereon, including, without limitation, zoning, environmental or other laws, regulations or governmental requirements; the compliance of the Property with laws, codes, ordinances, regulations or governmental requirements; the status of, the availability or location of utilities or other physical equipment and fixtures on the Property; the costs of operating the Property or any other aspect of the economic operations on the Property; the possibility of future assessments or charges being levied against the Property or imposed as a condition to development or construction; the condition of the soils or groundwater of the Property; or any natural hazards affecting the Property. Buyer hereby releases and forever discharges Seller, its agents, affiliates, subsidiaries, successors and assigns (collectively the "Releasees") from any and all rights, claims and demands at law or in equity, whether known or unknown, which Buyer has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property, including, without limitation, all claims in tort or contract and any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.) or any similar federal, state or local statute, rule or regulation. The provisions of this Section shall survive indefinitely any closing or termination of this Agreement and shall not merge into the closing documents.

(c) Buyer to Conduct Own Inspections. Buyer will be provided the right to inspect the Property and all factors relevant to its use, including, without limitation, the building and lot size; the absence or presence of any notices from any governmental agency that the Property might violate any applicable law, rule, regulation, code, condition, or restriction; the physical condition of the Property, including the interior and exterior, the roof, the structure, condition of soils, the presence or absence of fungi or wood destroying organisms and the presence or absence of Hazardous Materials; all utilities and all physical and functional aspects of the Property including but not limited to, the heating, plumbing, any HVAC and/or air conditioning units or systems, and electrical systems; the location of flood zones, hazardous special study zones or earthquake hazard zones which may be near or at the Property; operating records for the period of time that the Property has been held by the Seller; Leases, documents, agreements, and all other material affecting or relating to the operation of the Property; all matters relating to title; together with all municipal and other legal requirements such as taxes, assessments, zoning, use permits, and building codes, including but not limited to (i) the legality of the present or any possible future use of the Property under any federal, state, or local law, (ii) ADA requirements, and (iii) pending or possible future action by any governmental agency or entity which may affect the Property.

(d) No Reliance on Documents. Seller and its Broker and other agents make no representation or warranty as to the accuracy or correctness of any materials, data, or information delivered by Seller to Buyer in connection with the Agreement; provided, however, that Seller represents that to Seller's Knowledge, all copies of documents delivered to Buyer by Seller are true and correct copies of the originals. It shall be Buyer's obligation to review (or have its consultants review) all of said documents and materials for Buyer's purposes, and to draw their own conclusions as to whether the information contained therein is correct.

(e) Insurance. Buyer specifically acknowledges that, except as otherwise specifically provided herein, Seller shall have no obligation to provide insurance for the Unit after the Close of Escrow, and that Buyer must make its own arrangements for any insurance coverage that it desires or is required to maintain. The Association is to maintain insurance coverage for the Common Areas of the Building.

(f) Release. Except for those obligations of Seller which, by the express terms of this Agreement, survive Closing, Buyer, on behalf of itself, its shareholders, officers, directors, employees, partners, investors, members, managers, parents, subsidiaries, affiliates, agents, servants, attorneys, representatives, successors and assigns and anyone claiming by, through or under Buyer (collectively, "Buyer's Representatives") fully, unconditionally and irrevocably releases Seller and its shareholders, officers, directors, employees, partners, investors, members, managers, parents, subsidiaries, affiliates, agents, servants, attorneys, representatives, successors and assigns (collectively, the "Indemnitees") from any and all claims that Buyer or any of Buyer's Representatives may now have or hereafter acquire against any of the Indemnitees for any costs, fees, loss, liability, damage, expenses, demand, fine, penalty, action or cause of action arising from or related to any conditions existing or events occurring on, in or about the Property whether occurring before, after or at the Closing, including without limitation (a) any construction defects, errors, omissions or other conditions, latent or otherwise, including, without limitation, environmental matters, affecting the Property, or any portion thereof, (b) any defaults by the prior owner and/or Seller under any governmental approvals, conditions and/or entitlements or with any third parties relating to the Property or its development, and (c) the use, release or disposal on, in or under

the Property of any Hazardous Substance and the environmental condition of the Property. This provision shall survive (a) the Close of Escrow and the recordation of the Deed, and shall not be deemed merged into the Deed upon its recordation; and (b) any termination of this Agreement.

IN CONNECTION WITH THE RELEASE AND WAIVERS SET FORTH IN THIS SECTION 42, BUYER, ON BEHALF OF ITSELF, AND BUYER'S REPRESENTATIVES, WAIVES THE BENEFIT OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS 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."

BUYER'S INITIALS \_\_\_\_\_

**21. 1031 EXCHANGE:** Buyer and Seller agree to reasonably cooperate with each other in the event that either or both wish to participate in a 1031 exchange provided that such exchange shall not delay any of the time periods described in this Agreement. The party initiating an exchange shall bear all costs of such exchange(s). The exchanging party agrees to indemnify and hold harmless the cooperating party from any claim, damage, liability, loss, cost or expense including, without limitation, reasonable attorney's fees that the cooperating party may suffer or incur as a result of this participation or cooperation in the exchange(s).

**22. ASSIGNMENTS:** Buyer may not assign its rights or obligations under this Agreement prior to close of escrow without the prior written consent of Seller (which consent may be granted or withheld by Seller in Seller's sole discretion). The preceding notwithstanding, Buyer may assign its rights and obligations hereunder without Seller's consent (but upon written notice to Seller) to an entity controlled by, controlling or under common control with Buyer; provided, however, that the "original" Buyer shall not be released from any of its obligations under this Agreement. Any permitted assignee of Buyer's rights or obligations under this Agreement shall expressly assume in writing Buyer's obligations under this Agreement. Subject to the foregoing, this Agreement shall bind heirs, executors, administrators, successors, and assigns of the parties.

**23. MODIFICATIONS:** All modifications to this Agreement must be in writing and signed by the parties hereto. Unless modifications, upgrades or construction of interior improvements of any kind are described on addenda or an addendum signed by both Buyer and Seller and attached to this Agreement, no such modifications, upgrades or interior improvements shall be deemed to have been agreed upon between the parties.

**24. INVALIDITY OF ANY PROVISION:** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**25. NO WAIVER:** The waiver by Seller of any term, condition or provision of this Agreement shall not be considered a waiver of any other term, condition or provision hereof.

**26. DESTRUCTION OF IMPROVEMENTS:** If the improvements in the Property are destroyed or materially damaged prior to close of escrow, Buyer may terminate this Agreement by written notice delivered to Seller and the Escrow Holder, and all Deposits will be immediately returned; provided, however, Buyer shall not have the right to terminate this Agreement and receive back its Deposits if such destruction or damage is caused by Buyer or any of its agents, employees, contractors or other representatives. In the event that Buyer does not elect (or is not permitted) to terminate this Agreement, Buyer will be entitled to receive, in addition to the Property, at closing any insurance proceeds payable on account of the damage or destruction allocable to the Property only (less any costs incurred by Seller in restoring the Property or any improvements constructed therein). For purposes of

this Paragraph 26, the improvements in the Property shall not be deemed materially damaged if the cost to repair or restore the same is less than \$50,000.

**27. BUYER'S OFFER:** Buyer has read and understood the provisions contained herein and offers and agrees to purchase the Property on these terms. Buyer further understands that this Agreement initially is an offer only and will not become a binding contract until accepted by Seller, and, until executed by Seller, is subject to the possible acceptance by Seller of an offer from another buyer.

**28. GOVERNING LAW:** The laws of the State of California shall govern this Agreement.

**29. ENTIRE AGREEMENT: NO OTHER REPRESENTATIONS:** This Agreement constitutes the sole and entire agreement between Buyer and Seller with respect to the subject matter contained herein. Buyer understands that no employee or agent of Seller has authority to modify the terms hereof or to make any representations, warranties or inducements other than as set forth in this Agreement. No representations, warranties or inducements, express or implied, have been relied upon by Buyer except as set forth in this Agreement.

**30. TIME:** Time is of the essence in the performance of each of the parties' respective obligations contained herein.

**31. ATTORNEYS' FEES:** If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

**32. COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Signed copies of this Agreement transmitted by facsimile shall be deemed the same as an original and shall be binding on such party signing the same.

**33. SELLER'S SALES CONTINGENCY:** The parties hereto acknowledge and agree that this Agreement is subject to a lenders' precondition of Seller having sold and being in a condition to close the sales of a certain number of Units. If Seller has not been able to effectuate the required number of sales and closings within sixty (60) days of the making of this Agreement between Buyer and Seller, Seller shall have the right to terminate this Agreement by and upon written notice from Seller to Buyer, and upon such termination, all obligations of the parties hereunder (other than those that expressly survive the termination of this Agreement) shall cease and the Initial Deposit (less any charges paid out of escrow for appraisal fees, escrow charges) shall be promptly refunded to Buyer. The inability of Seller to reach such number of sales shall not be a default or breach of this Agreement by Seller.

**34. REMEDIES FOR SELLER DEFAULT:** If Seller defaults under or breaches this Agreement and fails to sell the Property in accordance with this Agreement, Buyer shall have the right, as its sole remedy, either (a) to terminate this Agreement by giving written notice to Seller and receive the return of the Deposit, which return shall operate to release Seller from any and all liability hereunder, or (b) to enforce specific performance of Seller's obligation to sell the Property to Buyer in accordance with this Agreement. Buyer expressly waives all rights to obtain damages in the event of Seller's failure to close the sale of the Property hereunder. Buyer shall be deemed to have elected to terminate this Agreement and receive the return of the Deposit if Buyer fails to initiate an arbitration action for specific performance against Seller within thirty (30) days following the date upon which Closing was to have occurred.

**35. INTERPRETATION OF AGREEMENT:** The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties hereto, or their respective attorneys, and that, although this Agreement has been drafted by Seller, this Agreement shall be construed or interpreted in accordance with its fair meaning. The doctrine that ambiguities in an agreement should be interpreted against the drafting party shall not be employed in connection with this Agreement.

**36. ADDENDUM:** \_\_\_\_\_ If initials of Seller and Buyer appear here, this Agreement is hereby amended by the terms of an Addendum attached hereto and executed on even date herewith. (INITIAL ONLY IF ADDENDUM IS ATTACHED.)

**SELLER HAS NO OBLIGATION TO MAKE ANY CHANGES OR OTHER IMPROVEMENTS TO THE UNIT FOR THE BUYER UNLESS SPECIFICALLY LISTED ON AN OPTIONAL ITEMS ADDENDUM SIGNED BY BUYER AND SELLER AND BUYER HAS PAID THE UPGRADE DEPOSIT REQUIRED IN THE OPTIONAL ITEMS ADDENDUM INTO ESCROW.**

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SIGNATURES APPEAR ON THE FOLLOWING PAGE**

**SIGNATURES**

**BUYER:**

\_\_\_\_\_  
\_\_\_\_\_

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER'S ADDRESS & TELEPHONE:**

\_\_\_\_\_ Office: \_\_\_\_\_

\_\_\_\_\_ Fax: \_\_\_\_\_

\_\_\_\_\_ Mobile: \_\_\_\_\_

**SELLER'S ACCEPTANCE:**

**VMC – San Jose LLC, a California limited liability company**

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT "A"**

**SITE PLAN**

**EXHIBIT "B"**  
**PARKING PLAN**