

## **AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this “Agreement”) is made effective as of \_\_\_\_\_, 2021, by and between CITY OF SOUTH SAN FRANCISCO, a municipal corporation (“Seller”) and EDEN HOUSING, INC., a California nonprofit public benefit corporation (“Buyer”).

### **RECITALS**

A. Seller is the owner of certain real property located at 201 Baden Avenue, South San Francisco, San Mateo County (“**County**”) which contains an old firehouse structure that has been decommissioned (“**Old Firehouse**”) and known as County Assessor’s Parcel Numbers (“APN”) 012-335-100, 012-335-110, and the portion of Cypress Street that is to be vacated, with a combined lot size of 22,500 square feet, collectively and commonly known as the “**Old Firehouse Parcel**”.

B. On March 4, 2019, pursuant to a solicitation process, Seller entered into an Exclusive Negotiating Rights Agreement (“**ENRA**”) with a prior residential project developer and a separate commercial project developer (“**Commercial Component Developer**”), which authorized the parties to commence negotiating the terms of purchase agreements relating to the rehabilitation of the Old Firehouse and construction of a mixed-use residential and commercial development on the Old Firehouse Parcel.

C. To facilitate this proposal, the Old Firehouse Parcel is to be bifurcated into two separate parcels (to be identified as APNs 012-335-100 and 012-335-110), which are to be effectuated through a lot line adjustment and street vacation at Cypress Avenue to be completed by the Commercial Component Developer and Buyer, and approved by Seller as necessary, with one of the parcel being APN 012-335-110 containing an approximately 0.3-acre parcel as described more particularly on **Exhibit A-1** attached hereto (“**Property**”). These parcels will be sold to each developer in separate transactions for their respective projects, where the Property would be sold to the residential project developer. Each developer would be responsible for entitling and developing their respective projects.

D. Between 2019 and 2021 and most recently in May 2021, the ENRA was administratively extended and amended several times to extend its terms and, among other things, to replace Buyer as the developer for the residential component of the proposed development on the Old Firehouse Parcel.

E. Specifically, the proposed residential development will consist of approximately eighty-two (82) residential units that will all be deed restricted as Below Market Rate on the Property (the “**Residential Project**”). In addition, Buyer plans to acquire the adjoining property located at 199 Airport Boulevard, South San Francisco, where a KFC/Taco Bell business currently operates, in order to consolidate the two parcels for constructing the Residential Project.

G. The ENRA contemplates the Seller, Buyer and the Commercial Component Developer to negotiate two (2) separate purchase agreements in order for Buyer and the

Commercial Component Developer to pursue land use entitlements for the Residential Project and the proposed commercial development, respectively, and to acquire the bifurcated parcels respectively for such purposes.

H. Buyer agrees to purchase the Property to construct the Residential Project, and Seller agrees to sell the Property to Buyer, subject to the terms and conditions of this Agreement.

## AGREEMENT

NOW, THEREFORE, or and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree as follows:

1. Purchase and Sale of Real Property. Seller hereby agrees to sell, and Buyer hereby agrees to purchase, upon the terms and conditions contained herein, the Property from Seller.

2. Purchase Price. The purchase price for the Property (the "Purchase Price") shall be One Dollar (\$1.00) subject to Section 7.

(a) Approval; CEQA Compliance. The Parties acknowledge and agree that the execution of this Agreement does not constitute Seller's approval or issuance of any entitlements or permits for the development of the Property or construction of the Residential Project and does not relieve Buyer from its obligations to apply for and obtain all such approvals, entitlements and permits. Further, the execution of this Agreement is subject to compliance with the California Environmental Quality Act ("CEQA") and does not constitute any approval or determination by Seller thereunder. Buyer acknowledges that Seller is responsible as the lead agency as defined by CEQA to complete all environmental analysis and determination required by CEQA.

(i) Schedule of Performance. The Parties have collaborated on an anticipated project milestone schedule attached hereto and incorporated herein as Exhibit D ("Schedule of Performance"). The Parties agree this Schedule of Performance constitutes the reasonable estimates of the timing of performance for actions associated with this Agreement and development of the Property, and agree to adhere to the Schedule of Performance as much as reasonably possible. Any extension of time from the dates set forth in the Schedule of Performance shall require the approval of the City Council except as otherwise provided in Section 6(f)(iv) and Section 18(p). However, in no event shall a failure by either Party to meet any timeline under the Schedule of Performance constitute a default under this Agreement as long as diligent efforts were made towards meeting such timelines.

3. Escrow.

(a) Escrow Account. Buyer has opened an interest-bearing escrow account (the "**Escrow**"), at North American Title Company 21060 Redwood Road, Suite 110, Castro Valley, CA 94546, Attn: Suzanne Smith (the "Escrow Holder"), with interest accruing to the benefit of Buyer. Buyer shall be responsible for all Escrow fees and costs. Escrow Holder shall perform all escrow and title services in connection with this Agreement.

(b) Opening of Escrow. Within seven (7) business days after the Effective Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. Escrow shall not open until Seller and Buyer have satisfied all of their respective obligations as set forth below. The date that is the later of the following to occur shall be deemed the “**Opening of Escrow**”:

(i) Buyer shall have cooperated with the Commercial Component Developer to submit all documents, material and maps and undertaken all actions applicable and necessary for Seller to approve, and Seller shall have approved the vacation of Cypress Avenue.

(ii) Buyer shall have cooperated with the Commercial Component Developer to submit all documents, materials and maps and undertaken all actions necessary to complete a lot line adjustment bifurcating the Property into two parcels as contemplated in the ENRA.

(c) Buyer’s Reimbursement for City Assistance Costs. During the term of this Agreement, Buyer shall reimburse Seller for all City Attorney and consultant time incurred in providing assistance relating to securing financing through obtaining or otherwise receiving a federal or state tax credit(s) for the development of the Property. If Buyer pursues such tax-credit financing, Buyer shall remit to Seller an initial payment in the amount of thirty-thousand dollars (\$30,000) in immediately available funds (“**Cost Recovery Deposit**”). The Cost Recovery Deposit shall be drawn down by Seller to reimburse City Attorney, staff and City consultant costs for completing the obligations that relate to securing tax credit financing for the Property, at the rates most recently approved by City Council in the City’s master fee schedule or under contract. Should the full amount of the Cost Recovery Deposit be exhausted prior to Closing or post-Closing obligations, Buyer shall replenish the Cost Recovery Deposit amount with additional funds necessary to reimburse such City Attorney and consultant costs. Documentation of City’s rate schedule for City Attorney and consultant costs shall be retained by Seller and provided to Buyer upon request. The Cost Recovery Deposit shall not be applied towards the Purchase Price at Closing and any unused portion of the Cost Recovery Deposit shall be refunded to Buyer within thirty (30) days after the completion of all Closing or post-Closing obligations, as applicable.

(i) The Purchase Price plus any additional amounts as hereinafter calculated shall be payable to Seller as follows: on or before the “Closing Date” (as defined below), Buyer shall deposit into Escrow cash or other immediately available funds in an amount equal to the balance of the Purchase Price as adjusted for closing costs and proration charges (the “Closing Amount”). If the Closing does not occur for any reason other than a default by Buyer, then Escrow Holder shall forthwith the Closing Amount and all interest earned thereon to Buyer (less any chargeable fees or costs of Escrow Holder and Title Company, as hereinafter set forth) and, neither party shall have any further rights or obligations with respect to the other Party in connection with this Agreement, except as otherwise expressly provided in this Agreement.

(ii) If (1) Buyer timely exercises a right to terminate this Agreement in accordance with this Agreement or as a result of a default by Seller, or (2) the Closing does not occur for any reason other than Buyer’s default, neither party shall have any further rights or obligations with respect to the other party in connection with this Agreement.

4. Title to the Property. At the Closing, Seller shall convey to Buyer marketable and insurable fee simple title to the Property by duly executed and acknowledged grant deed in the form attached hereto as Exhibit "C" (the "Deed"). As a condition to Buyer's obligations hereunder, North American Title Company (the "Title Company") will issue an ALTA extended coverage owner's policy of title insurance insuring fee simple title to the Property in an amount equal to the Purchase Price and subject only to such exceptions as Buyer shall have approved (or been deemed to have approved) pursuant to Section 5(a) (the "Title Policy"). The Title Policy shall provide full coverage against mechanics' and materialmen's liens and shall not contain an exception for any matters that would be disclosed by a survey of the Property. In any event, Seller covenants to cause to be released and reconveyed from the Property, and to remove as exceptions to title prior to the Closing the following (the "Pre-Disapproved Exceptions"): any exceptions regarding tenants or other possessory interests, mortgages, deeds of trust, or other monetary encumbrances, liens, assessments and/or indebtedness, other than those caused by Buyer, except for the current installment of non-delinquent real property taxes and assessments payable as a part of the real property tax bill. Seller's failure to deliver the Property in a condition free and clear of all of the Pre-Disapproved Exceptions shall be deemed a material default of Seller hereunder. Seller shall provide to Title Company an owner's affidavit in form and substance reasonably satisfactory to Title Company in order to allow the Title Company to issue the Title Policy at Closing, including any affidavits or indemnities allowing for a "gap" Closing.

5. Feasibility Review.

(a) Preliminary Title Report. If not previously delivered to Buyer by Seller, Buyer shall obtain within ten (10) business days of the Opening of Escrow a preliminary title report with respect to the Property containing such exceptions as the Title Company would specify in the Title Policy, legible copies of all documents of record identified as exceptions in such preliminary title report along with a plotting of all easements specified as exceptions in such Preliminary Report (collectively, the "Preliminary Report"). Buyer may, at its sole discretion and at its sole cost, obtain a new ALTA survey of the Property. On or before the date which is ten (10) days prior to the expiration of the Feasibility Review Period (defined in Section 5(d) below) (or within ten (10) days after Buyer's receipt of any supplemental preliminary title report or survey that is delivered to Buyer later than the date which is twenty (20) days prior to the expiration of the Feasibility Review Period containing exceptions or items not contained on the original Preliminary Report or survey), Buyer may give written notice to Seller disapproving any items identified as exceptions or items in such Preliminary Report or survey (or supplemental preliminary title report or survey), and identifying the items, exceptions and/or survey items disapproved (a "Title Disapproval"). If Buyer does not timely give a Title Disapproval, then Buyer shall be deemed to have approved the Preliminary Report and survey (or supplemental preliminary title report or survey, as applicable) other than (i) any title exceptions or survey items which Buyer has previously disapproved in writing, and (ii) the Pre-Disapproved Exceptions. Upon Buyer's delivery of a Title Disapproval (which disapproval may be given in its sole and absolute discretion), Seller may elect to remove said disapproved item or items at or prior to the Closing; by delivering written notice of such election to Buyer not later than five (5) days following the date Seller receives a Title Disapproval. If Seller does not notify Buyer in writing that Seller will eliminate such disapproved exceptions or items within such five (5) day period, Buyer shall have ten (10) days following the date Seller received the Title Disapproval to terminate this Agreement. Notwithstanding the foregoing, any Pre-Disapproved Exceptions shall be removed by Seller

through Escrow on or prior to the Closing. If Buyer does not timely terminate this Agreement following Seller's failure to elect to remove, modify or cure any disapproved item or items, as aforesaid, Buyer shall be deemed to have approved such item or items.

(b) Examination of Documentation. Seller shall deliver to Buyer all materials in Seller's possession or control relating to the Property, including but not limited to (i) copies of the most recent property tax bills and assessments for the Property; (ii) a copy of any and all leases, service contracts, easements, licenses, development approvals and/or other agreements related to the Property; (iii) any and all existing surveys of the Property; (iv) any and all soils reports, reports pertaining to hazardous materials or other environmental conditions or other reports relating to the physical condition of the Property; (v) any and all architectural or engineering documents relating to the Property; (vi) any entitlements, permits, approvals, consents or waivers from any governmental or quasi-governmental agency or authority relating to the Property, including, without limitation, general plan approvals, zoning approvals, planned development permits, use permits, variances, tentative maps or final maps; and (vii) any and all other correspondence, reports, studies, permits, approvals, or documents relating to the Property (collectively, the "Documents"). In addition, Seller shall promptly deliver to Buyer such other information relating to the Property that is reasonably requested by Buyer of Seller in writing, to the extent such information is in the possession or control of Seller, and notify Buyer in writing of any material changes to any existing Documents of which Seller becomes aware during the term of this Agreement.

(c) Investigations. At any time prior to the end of the Feasibility Review Period, Buyer may conduct, review and analyze any such feasibility studies, inspections, environmental audits, soils and geological studies, engineering reports, topographic surveys, grading plans, environmental impact reports, right of way and easement agreements, zoning and master plan issues, bond feasibility, acoustics, hazardous materials studies, land plans, market studies, and other investigations (collectively, the "Investigations") as Buyer deems appropriate, including, without limitation, contacting all governmental authorities and persons having jurisdiction over or an interest in the planned development. Upon twenty-four (24) hours advance oral or written notice to Seller, Seller shall permit Buyer, its engineers, contractors, consultants, employees and agents, to enter onto the Property and conduct, at Buyer's expense, any such Investigations. In conducting such Investigations, Buyer shall repair any material damage to the Property caused by Buyer's Investigations, but excluding any latent defects or hazardous materials discovered by Buyer during its investigation of the Property. Buyer shall be insured for One Million Dollars (\$1,000,000) per occurrence. Buyer agrees to indemnify and hold harmless Seller from any claims, damages, liabilities, losses, costs or expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Claims") which result from any damage to persons or property caused by Buyer's Investigations; provided, however, that Buyer shall have no obligation to indemnify, defend and hold Seller harmless from and against any Claims resulting from (A) Seller's acts or omissions, or (B) Buyer's mere discovery of adverse physical conditions affecting the Property, including, without limitation, any "Hazardous Materials" (as defined below). Notwithstanding any contrary provision of this Agreement, the foregoing indemnity shall survive any termination of this Agreement and the Closing.

(d) Feasibility Review Period. The "Feasibility Review Period" shall terminate at 5:00 p.m. on the date that is one hundred twenty (120) days after the Opening of Escrow. On

or before the expiration of the Feasibility Review Period, Buyer may disapprove of its review of its Investigations and the Documents by giving written notice to Seller of its election (the “Disapproval Election”) to proceed with the transaction in its sole and absolute discretion. If Buyer does not timely give the Disapproval Election, then Buyer shall be deemed to have waived such election to terminate this Agreement pursuant to this Section 5(d).

6. The Closing

(a) The Closing Date. The recordation of the Deed and the delivery of the other documents and funds contemplated hereby (the “Closing”) shall occur through Escrow and shall occur no later than December 31, 2022. The date on which the Closing occurs is herein referred to as the “Closing Date”. Buyer shall give Seller fifteen (15) days prior notice of Buyer’s intended Closing Date.

(b) Buyer’s Conditions to Closing. Buyer’s obligation to consummate the purchase of the Property is subject to and conditioned upon the satisfaction of each of the following conditions (unless otherwise waived in writing by Buyer) on or before the Closing Date which conditions are for the sole benefit of Buyer:

(i) The Title Company shall have given Buyer its unconditional and irrevocable commitment to issue the Title Policy in favor of Buyer insuring Buyer as the fee owner of the Property with liability in the amount of the Purchase Price, subject only to those title exceptions as have been approved by Buyer pursuant to Section 5(a) and including the Endorsements requested by Buyer pursuant to Section 4 hereof; and

(ii) Seller shall have fully performed all of its obligations in this Agreement which Seller has agreed to perform on or prior to the Closing Date, Seller shall not be in material breach or default under this Agreement on the Closing Date, and each representation and warranty made by Seller contained herein shall be true and correct as of the Closing Date.

(iii) Seller shall have approved the vacation of Cypress Avenue and the lot line adjustment bifurcating the Property into two parcels.

(iv) Seller and Buyer shall have negotiated and executed a license agreement-in form reasonably satisfactory to Buyer and Seller to permit public parking on the Property until not less than thirty (30) days prior to the date Buyer is ready to close its construction financing.

(v) Buyer shall have negotiated and executed a Purchase and Sale Agreement with the owner of the KFC/Taco Bell site at 199 Airport Blvd., South San Francisco for the acquisition of such property.

(vi) There shall be no moratoria or other governmental action that would prevent Buyer from developing the Property as an affordable multifamily apartment complex.

If the conditions to Buyer’s obligation to consummate the transaction contemplated in this Agreement are not satisfied (or waived by Buyer) on the Closing Date, then, provided this

Agreement was not previously terminated pursuant to the terms of this Agreement, Buyer may (A) terminate this Agreement, or (B) if a Seller default has occurred, exercise its rights and remedies under Section 14. The conditions set forth in this Section 6(b) are for the sole benefit of Buyer.

(c) Seller's Conditions To Closing. Seller's obligation to consummate the sale of the Property is subject to and conditioned upon the satisfaction of the following condition (unless otherwise waived in writing by Seller) on or before the Closing Date:

(i) Buyer shall have fully performed all of its obligations in this Agreement which Buyer has agreed to perform on or prior to the Closing Date, and Buyer shall not be in material breach or default under this Agreement on the Closing Date.

(ii) Buyer shall have negotiated and executed any agreements for the shared maintenance, construction or access between Buyer and the Commercial Component Developer that are reasonably determined by Buyer to be necessary.

(iii) Buyer shall have submitted to Seller for review a proposed insurance, business and financing plan for the development of the Property, which shall include a pro forma reasonably acceptable to Seller and anticipated source and/or proof of construction loan necessary to reasonably complete the development of the Property. Such proof of construction loan may be a letter of interest from a bank referencing interest in the project and verifying interest rates for the project ("**Developer's Financing Plan**").

(iv) Buyer shall have negotiated and executed a Purchase and Sale Agreement with the owner of the of the KFC/Taco Bell site at 199 Airport Blvd., South San Francisco for the acquisition of such property

(v) Seller and Buyer shall have negotiated and executed a license agreement in form reasonably satisfactory to Buyer and Seller to permit public parking on the Property until not less than thirty (30) days prior to the date Buyer is ready to close its construction financing.

(vi) Seller shall have approved the vacation of Cypress Avenue and the lot line adjustment bifurcating the Property into two parcels.

If the conditions to Seller's obligation to consummate the transaction contemplated in this Agreement are not satisfied (or waived in writing by Seller) on the Closing Date, then, provided Seller is not in default hereunder and this Agreement was not previously terminated pursuant to the terms of this Agreement, Seller may terminate this Agreement. The conditions set forth in this Section 6(c) are for the sole benefit of Seller.

(d) Deliveries at Closing. At least one (1) business day prior to the Closing Date, Seller and Buyer shall each deliver to the Escrow Holder such instruments and funds as are necessary to consummate the purchase and sale of the Property, including the following:

- (i) Buyer shall deliver:
  - (1) The Closing Amount;

(2) Such other items, documents, and instruments as may be reasonably required by Title Company, Escrow Holder, or otherwise to fulfill the covenants and obligations to be performed by Buyer at the Closing pursuant to this Agreement.

(ii) Seller shall deliver:

(1) an original of the Deed executed and acknowledged by Seller, as grantor;

(2) the originals of all Documents pertaining to the Property and all files pertaining to the Property;

(3) an affidavit directed to Buyer giving Seller's taxpayer identification number and confirming that Seller is not a "foreign person," which affidavit shall be, in form and substance, sufficient to relieve Buyer of any withholding obligation under §1445 of the Internal Revenue Code ("Seller's Foreign Person Affidavit"), together with a duly executed California Franchise Tax Board Form 593-C (the "Cal FIRPTA");

(4) a closing statement in form and content satisfactory to Buyer and Seller duly executed by Seller;

(5) a release, reconveyance and termination of all monetary encumbrances affecting the Property including any mechanics' liens;

(6) any other items necessary to consummate the transaction contemplated hereby, including, without limitation, a customary owner's affidavit sufficient to delete the exceptions for parties in possession and mechanics' liens on the Title Policy.

(iii) After the Escrow Holder has confirmed that all conditions and closing requirements set forth herein have been satisfied, the Escrow Holder shall: (A) cause the Deed to be recorded in the Official Records; (B) pay from Buyer's funds Buyer's share of any closing costs and prorations; (C) pay from funds held for Seller's account Seller's share of any closing costs and prorations and any deeds of trust, mortgages or other monetary liens; (D) remit to Seller the remaining funds held for Seller's account; (E) deliver an original of the General Assignment, Seller's Foreign Person Affidavit, the Cal FIRPTA and the Title Policy to Buyer; and (F) deliver copies of all documents to both Buyer and Seller.

(e) Concurrent Deliveries. All requirements with respect to the Closing shall be considered as having taken place simultaneously, and no delivery or payment with respect to the Closing shall be considered as having been made until all deliveries, payments and closing transactions have been accomplished with respect to the Closing.

(f) Post-Closing Obligations. The following obligations shall survive the Close of Escrow:

(i) Seller shall have the right to approve (which approval shall not be unreasonably withheld, conditioned or delayed) Developer's Financing Plan submitted by Buyer pursuant to Section 6(c)(iii) above.



(ii) Seller shall have the right to approve (which approval shall not be unreasonably withheld, conditioned or delayed) the construction contract for Buyer's development of the Property (the "Construction Contract").

(iii) Buyer shall have secured all financing for the development of the Property prior to issuance of building permits for the Residential Project.

(iv) Buyer shall apply for any additional financing (including grant funds) for the development of the Property within eighteen (18) months after obtaining entitlements for the Residential Project. Such timeline may be extended for four (4) six (6) month administrative extensions. Any additional extension of time shall require the approval Seller's City Council pursuant to Section 18(p).

(g) In the event that Buyer is unable to construct the Residential Project, including but not limited to unable to secure sufficient financing beyond the timeline set forth in this Agreement, unable to secure entitlements, or unable to commence construction, the Property shall revert to the City and the City may re-enter and take possession of the Property or any portion thereof with all improvements thereon without payment or compensation to Buyer, and revert in the City the estate theretofore conveyed to the Buyer. The interest created pursuant to this subsection (g) shall be a "power of termination" as defined in California Civil Code Section 885.010. Upon reversion occurring, the City may require Buyer to complete a lot split for the Property, if the Property has been merged at the time of the reversion, at City's sole discretion and at Buyer's sole expense.

7. Costs and Prorations.

(a) Costs. Costs of the Closing and Escrow shall be allocated as follows: (i) Buyer shall pay the costs of recording the Deed; (ii) Buyer shall pay all documentary and other transfer taxes imposed in connection with recording the Deed including, without limitation, any applicable City and County transfer taxes; (iii) Buyer shall pay the premium for the "standard" Title Policy, the mechanics' lien endorsement and curative endorsements, if applicable, and Buyer shall pay the additional premium related to the "extended coverage" Title Policy and any endorsements which Buyer requires, (iv) Buyer shall pay the cost of any endorsements and survey costs, if any; (v) Buyer shall each pay the fees of the Escrow Holder, including any cancellation costs, and the costs of the Escrow; and (vi) Buyer and Seller shall each pay their respective attorneys' fees.

(b) Prorations. At the close of escrow, the Escrow Agent shall make the following prorations: (i) property taxes will be prorated as of the close of escrow based upon the most recent tax bill available, including any property taxes which may be assessed after the close of escrow but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered; and (ii) any bond or assessment that constitutes a lien on the Property at the close of escrow will be assumed by Buyer. Seller does not pay ad valorem taxes.

8. Escrow Holder. The Escrow Holder shall comply with the terms of this Agreement and any additional instructions jointly executed by Buyer and Seller. The Escrow Holder is

designated the “real estate reporting person” for purposes of section 6045 of title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by the Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall file Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation. The Escrow Holder’s rights and obligations may be further specified by supplemental escrow instructions; provided, however, that if any conflict shall arise between this Agreement and such additional escrow instructions, the terms and provisions of this Agreement shall prevail. The Escrow Holder and the parties shall comply with any and all Federal and State of California withholding requirements.

9. Interim Period Covenants and Agreements.

(a) Seller shall act with respect to the Property in accordance with its preexisting practices as if the Property were not to be sold, including, without limitation, by maintaining at least the same levels of insurance in effect as of the Effective Date, and shall not enter into or modify any lease, agreement or contract relating to the Property without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

(b) Seller shall not take any action which would adversely affect the zoning, entitlements, tentative or final tract maps affecting the Property or the processing by Buyer of any plans or necessary approvals for the contemplated development of the Property.

(c) Seller shall not place or permit any lien, deed of trust or other monetary encumbrance on the Property nor take any action to impose any other title exceptions on the Property (other than those reflected in the Preliminary Report). Seller shall not convey, assign or otherwise transfer any of its right, title or interest in and to the Property, except to Buyer in the manner provided in this Agreement.

(d) Seller shall cause to be released and reconveyed from the Property, and to remove as exceptions to title prior to the Closing all mortgages, deeds of trust or other monetary encumbrances, liens, assessments and/or indebtedness, other than those caused by Buyer.

10. Conveyance AS IS. Buyer specifically acknowledges that the Seller is selling the Property on an “AS IS”, “WHERE IS” and “WITH ALL FAULTS” basis and that, subject to Seller’s representations, warranties, covenants and obligations set forth in this Agreement, and all exhibits attached hereto and incorporated herein, and any obligations arising under applicable law, and any document or instrument executed and delivered in connection with Closing, Buyer is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, or its employees, appointed or elected officials, agents, or brokers as to any matters concerning the Property. Subject to Seller’s representations, warranties, covenants and obligations set forth in this Agreement, and all exhibits attached hereto and incorporated herein, and any obligations arising under applicable law, and any document or instrument executed and delivered in connection with Closing, Seller makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical

condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the property for any particular purpose, (v) except as otherwise provided in this Agreement, the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Materials, substances or wastes on, under or about the Property or the adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Property, (ix) the condition of title to the Property, (x) the leases, service contracts, or other agreements affecting the Property, or (xi) the economics of the operation of the Property.

11. Representations, Warranties and Covenants.

(a) Seller represents, warrants and covenants as of the date of this Agreement and as of the Closing Date, and such representations, warranties and covenants shall survive the Closing:

(i) Seller is a municipal corporation, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(ii) Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, and there are no liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as disclosed in the Preliminary Report. Seller will not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, as long as this Agreement is in force.

(iii) There are no agreements affecting the Property except those which have been disclosed by Seller. There are no agreements which will be binding on the Buyer or the Property after the Close of Escrow, which cannot be terminated on thirty (30) days prior written notice.

(iv) There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller, which is in conflict with this Agreement. There is no action, suit, arbitration, unsatisfied order or judgment, governmental investigation or proceeding pending or, to Seller's knowledge, threatened against the Property or the transaction contemplated by this Agreement.

(v) There are no leases of space in the Property, subleases, licenses, franchise agreements or other agreements to occupy or utilize all or any portion of the Property that will be in force after the Closing. At Closing, Seller shall deliver the Property to Buyer vacant of any occupants.

(vi) Seller has not received any written notice from any governmental authority that the Property is not in material compliance with all applicable laws and regulations (including environmental and zoning laws and regulations), other than such violations as have been fully cured. To Seller's knowledge, neither Seller nor the Property are in default or breach of any material obligation under any encumbrances, covenants or easement agreements recorded against the Property.

(vii) Except as otherwise disclosed by the Documents, neither Seller nor, to the actual knowledge of Seller, any prior owner or occupant of the Property, has engaged in or permitted any activity on the Property involving the handling, manufacture, treatment, storage, use, release, or disposal of any toxic or hazardous waste, material or substance, including, without limitation, asbestos, petroleum, petroleum products, underground storage tanks now or previously containing any other hazardous materials or substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and hazardous substances in applicable laws and/or in any regulations and publications promulgated pursuant to said laws (collectively, "Hazardous Materials"). To Seller's knowledge, removal or other remedial action with respect to Hazardous Materials in, on, under or about the Property is not required by any governmental authority having jurisdiction over the Property.

(viii) There are no outstanding rights of first refusal, rights of first offer, purchase options or similar purchase rights with respect to the Property.

(ix) There are no management agreements, leasing agreements, brokerage agreements or similar agreements which affect the Property and will survive Closing.

(x) To Seller's knowledge, there are no impositions of new special assessments with respect to the Property.

(xi) The Property does not contain any wetlands, endangered species or protected habitat, flora or fauna.

(xii) Seller is in compliance with all laws, statutes, rules and regulations and any federal, state or local governmental authority in the United States of America applicable to Seller and all beneficial owners of Seller, with respect Executive Order No. 133224, 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 of the Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"). Seller agrees to make its policies, procedures and practices regarding compliance with the Orders available to Buyer for its review and inspection during normal business hours and upon reasonable prior notice. Neither Seller nor any beneficial owner of Seller: (1) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Orders 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 (such lists are

collectively referred to as the “Lists”); (2) has been determined by competent authority to be subject to the prohibitions contained in the Orders; (3) is owned or controlled by, nor acts for or on behalf of, any person or entity on 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; or (4) shall transfer or permit the transfer of any interest in Seller or any beneficial owner in Seller to any person who is or whose beneficial owners are listed on the Lists.

(xiii) Seller is not a “foreign person” within the meaning of Section 1445(e)(3) of the Internal Revenue Code of 1986, as amended.

Each of the representations and warranties of Seller contained in this Section 11 (i) is true in all material respects as of the date hereof, (ii) shall be deemed remade by Seller, and shall be true in all material respects, as of the date of Closing, and (iii) shall survive the Closing. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement are conditions precedent to the Close of Escrow. Seller shall immediately notify Buyer of any fact or circumstance that becomes known to Seller, which would make any of the foregoing representations or warranties untrue. If Seller becomes aware of any fact or circumstance after the date hereof which results in any representation, warranty or covenant set forth in Section 11 becoming inaccurate in any material respect, Seller will give prompt notice to Buyer. If such change arises through the actions of Seller, the change shall constitute a default by Seller if Seller fails to cure the default within fifteen (15) days after receipt of written notice of default. If, however, such change does not arise through the actions of Seller, then the change shall constitute only the failure of a condition to Closing but shall not constitute a default by Seller; provided, however, that Buyer must elect to terminate the Agreement as a result of such failed condition within fifteen (15) days following delivery of written notice to Buyer describing such change. Buyer’s failure to elect to terminate this Agreement within such fifteen (15) day period shall be deemed Buyer’s election to waive the failed condition and proceed with the transaction contemplated herein.

(b) Buyer hereby represents and warrants to Seller that as of the date of this Agreement and as of the Closing Date and such representations, warranties and covenants shall survive the Closing:

(i) Buyer is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California; this Agreement is, and all documents executed by Buyer which are to be delivered to Seller at the Closing will be duly authorized, executed and delivered by Buyer; this Agreement is, and all documents executed by Buyer which are to be delivered to Seller at the Closing will be, legal, valid and binding obligations of Buyer, and do not, and at the time of Closing will not, violate any provisions of any agreement or judicial order to which Buyer is subject.

(ii) Buyer has not, and as of the Closing Buyer shall not have, (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer’s creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Buyer’s assets, which remains pending as of such time, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer’s assets, which remains pending as of such time, (v) admitted in writing its inability to pay

its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

12. INDEMNIFICATION; ENVIRONMENTAL INDEMNITY.

(a) Indemnification. To the fullest extent allowed by law, Buyer agrees to unconditionally and fully indemnify, protect, defend (with counsel satisfactory to Seller), and hold Seller, and its respective elected and appointed officers, officials, employees, agents, consultants, contractors (collectively “**Seller Indemnitees**”), harmless from any and all third party claims, liabilities, damages and costs (including reasonable attorney’s fees) arising out of or in connection with Buyer’s performance under this Agreement, except to the extent that such claims, liabilities, damages and costs are attributable to Seller’s negligence or willful misconduct or to a condition of the Property in existence prior to Closing.

(b) Environmental Indemnity. In addition, to the fullest extent allowed by law, Buyer agrees to unconditionally and fully indemnify, protect and defend (with counsel satisfactory to Seller) the Seller Indemnitees harmless from and against any and all claims (including without limitation third party claims for personal injury, real or personal property damage, or damages to natural resources), actions, administrative proceedings (including without limitation both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs (including without limitation any and all costs relating to investigation, assessment, analysis or clean-up of the Property), liabilities (including without limitation sums paid in settlements of claims), interest, or losses, including reasonable attorneys’ and paralegals’ fees and expenses (including without limitation any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), together with all other costs and expenses of any kind or nature (collectively, the “**Costs**”) that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release, of any Hazardous Materials in, on or under the Property or in or into the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under or within the Property, or any portion thereof, except those Costs that arise solely as a result of actions by Seller, or Seller’s agents, employees, or contractors. The indemnification provided pursuant to this Section shall specifically apply to and include claims or actions brought by or on behalf of employees of Buyer or any of its predecessors in interest and Buyer hereby expressly waives any immunity to which Buyer may otherwise be entitled under any industrial or worker’s compensation laws. In the event the Seller suffers or incurs any Costs, Buyer shall pay to Seller the total of all such Costs suffered or incurred by the Seller upon demand therefore by Seller. The indemnification provided pursuant to this Section shall include, without limitation, all loss or damage sustained by the Seller due to any Hazardous Materials (a) present or suspected by a governmental agency having jurisdiction to be present in the Property or in the air, soil, soil gas, groundwater, or surface water at, on, about, above, under, or within the Property (or any portion thereof) or to have emanated from the Property, or (b) that migrate, flow, percolate, diffuse, or in any way move onto, into, or under the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under, or within the Property (or any portion thereof), after the date of this Agreement, as a result of Seller’s or its predecessors’ activities on the Property, or those of Seller’s agents, employees, or contractors. The provisions of this Section 10 shall survive the termination of this Agreement and the Close of Escrow.

13. RELEASE BY BUYER. Effective upon the Close of Escrow, except with respect to the representations and warranties of Seller under Section 6 of this Agreement, Buyer waives releases, remises, acquits and forever discharges Seller, and its officers, directors, board members, managers, employees and agents, and any other person acting on behalf of Seller, from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer now has or which may arise in the future on account of or in any way arising from or in connection with the physical condition of the Property or any law or regulation applicable thereto including, without limiting the generality of the foregoing, any federal, state or local law, ordinance or regulation pertaining to Hazardous Materials. This Section 13 shall survive the termination of this Agreement and the Close of Escrow.

Buyer acknowledges that Buyer is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

BY INITIALING BELOW, BUYER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Buyer's initials: \_\_\_\_\_

14. HAZARDOUS MATERIALS; DEFINITION.

(a) Hazardous Materials. As used in this Agreement, "**Hazardous Materials**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "Hazardous Materials" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

(b) "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health,

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

15. Condemnation; Casualty.

(a) In the event a governmental entity commences or threatens eminent domain proceedings to take any part of the Property or any adjacent or neighboring real property which would affect access to the Property after the date hereof and prior to the Closing Date then Buyer shall have the right to either (i) terminate this Agreement and receive a return of the Deposit, or (ii) proceed with the Closing as scheduled notwithstanding such proceeding; provided, however, that Seller's interest in all awards arising out of such proceedings shall be assigned to Buyer as of the date of Closing or credited to Buyer if previously received by Seller, and Seller hereby agrees to execute any separate assignment agreement, as Buyer may reasonably request, to evidence or effectuate the assignment of such awards. Seller's obligations pursuant to the immediately preceding sentence shall survive the Closing. In the event Buyer elects to proceed with Closing despite such proceeding, Seller and Buyer shall cooperate with each other in agreeing upon the award amount with the applicable governmental agency.

(b) Risk of loss or damage to the Property from fire or other casualty until the Deed is recorded is assumed by Seller. If any portion of the Property or any adjacent or neighboring real property which would affect access to the Property is damaged or destroyed by fire or other casualty prior to the Closing Date, Buyer shall have the right, upon written notice to Seller to either (i) terminate this Agreement and receive a return of the Deposit, or (ii) proceed with the Closing as scheduled notwithstanding such damage or destruction; provided, however, that Buyer shall have the right to receive on the Closing Date (and on the Closing Date Seller shall assign to Buyer its right to receive) the insurance proceeds payable as a result of such loss, damage or other casualty to the extent that such proceeds have not been applied to any repair work performed prior to the Closing Date, which was approved by Buyer, and otherwise Seller shall reimburse Buyer for any policy deductibles or self-insured retentions to the extent the same remain unpaid as of Closing. Seller's obligations pursuant to the immediately preceding sentence shall survive the Closing.

16. Possession. Possession of the Property shall be delivered to Buyer as of Closing free of any and all tenancies and/or occupancy rights.



17. Remedies. In the event of a breach or default under this Agreement by Seller, if such breach or default occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance and the Closing Date until Seller is able to perform; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder. IN THE EVENT OF A BREACH OR DEFAULT HEREUNDER BY BUYER AND THE CLOSING DOES NOT OCCUR DUE TO SUCH DEFAULT, SELLER'S SOLE REMEDY SHALL BE TWENTY-FIVE THOUSAND DOLLARS (\$25,000) AS LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IN SUCH INSTANCE, THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000) REPRESENT A REASONABLE APPROXIMATION OF SELLER'S DAMAGES AND ARE NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ. IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL DAMAGES AS A RESULT OF THE OTHER PARTY'S BREACH OF THIS AGREEMENT. SELLER HEREBY WAIVES ANY AND ALL REMEDIES OF SPECIFIC PERFORMANCE IT MAY HAVE AGAINST BUYER TO PURCHASE THE PROPERTY.

Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

18. Miscellaneous.

(a) Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors, heirs, administrators and permitted assigns. Neither Buyer nor Seller shall assign its rights and interests under this Agreement to any party without the other party's prior written consent; provided, however, that Buyer shall be permitted to transfer its rights and interests under this Agreement without obtaining Seller's consent, to an affiliate of Buyer, limited partnership or limited liability company in which Buyer, or affiliates of Buyer is a partner or member.

(b) Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, telegraphed, delivered or sent by same day or overnight courier, telex, telecopy, cable, or email, and shall be deemed received upon the earlier of (i) if personally delivered or delivered by same day or overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three business days after the date of postage by the United States post office, (iii) upon facsimile transmission or e-mail transmission (except that if the date of such transmission is not a business day, then such notice shall be deemed to be given on the first business day following such transmission), addressed as follows:.

If to Seller:

City of South San Francisco

400 Grand Avenue  
South San Francisco, CA 94080  
Attn: City Manager, Mike Futrell  
Email: mike.futrell@ssf.net  
Telephone No.: (650) 829 6620  
Fax (650) 829-6609

With Copy To:

City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080  
Attn: Project Manager, Julie Barnard  
Email: Julie.barnard@ssf.net  
Fax No.: (650) 829 6623

With Copy To:

Meyers Nave  
1999 Harrison St. 9th Fl.  
Oakland, CA 94612  
Attn: Sky Woodruff  
Email: sky@meyersnave.com  
Fax No.: (510) 444-1108

If to Buyer:

Eden Housing, Inc.  
22645 Grand Street  
Hayward, CA 94541  
Attn: Chris Arthur  
Fax: (510) 582-0122

With a copy to:

Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attention: Lisa Weil  
lweil@coxcastle.com  
Fax: (415) 262-5199

If to Escrow Holder:

North American Title Company  
21060 Redwood Road, Suite 110  
Castro Valley, CA 94546  
Attn: Suzanne Smith  
ssmith@natco.com  
Fax: (510) 537-0928

(c) Brokers. Seller and Buyer each represents to the other that it has employed no broker or finder in connection with the transaction contemplated hereby. Buyer agrees to indemnify, defend and hold harmless Seller and its successors and assigns from all claims and liabilities, including attorneys' fees and costs incurred by Seller and its successors and assigns as a result of anyone's claiming by or through Buyer any fee, commission or compensation on

account of this Agreement, its negotiation or the sale hereby contemplated. Seller agrees to indemnify, defend and hold harmless Buyer and its successors and assigns from all claims and liabilities, including attorneys' fees and costs incurred by Buyer and its successors and assigns as a result of anyone's claiming by or through Seller any fee, commission or compensation on account of this Agreement, its negotiation or the sale hereby contemplated. The provisions of this Section 15(c) shall survive the Closing or termination of this Agreement.

(d) California Law. This Agreement shall be construed under and in accordance with the laws of the State of California without reference to choice of law principles which might indicate that the law of some other jurisdiction should apply.

(e) Severability; Waiver. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereto, and the remainder of the provisions of this Agreement shall continue in full force and effect without impairment. The waiver by either party of a breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach whether of the same or another provision of this Agreement.

(f) No Obligation to Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the parties hereto to, any person or entity not a party to this Agreement.

(g) Further Acts. Buyer and Seller shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement.

(h) Time of Essence; Business Days. Time is of the essence of each provision of this Agreement of which time is an element. Any reference in this Agreement to time for performance of obligations or to elapsed time means consecutive calendar days, months or years, as applicable, unless otherwise indicated. Wherever the time for performance of any obligation hereunder falls upon a day other than a business day, the time for the performance of such obligation or the doing or effectiveness of such act shall be extended to the next succeeding business day.

(i) Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire agreement between Seller and Buyer pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of Seller and Buyer, oral or written, including without limitation the letter of intent previously executed, are hereby superseded and merged herein. The provisions of this Agreement may not be amended or altered except by a written instrument duly executed by Seller and Buyer.

(j) Rights Unique to Buyer. The rights of Buyer to acquire the Property are unique to the Property and may be specifically enforced without posting bond in the event of any breach by Seller in conveying the Property.

(k) Attorneys' Fees. If legal action is commenced to enforce or to declare the effect of any provision of this Agreement or in connection with the Property or any matters related

to the transactions contemplated in this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and other litigation costs. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement. This provision shall survive Closing or termination of this Agreement.

(l) Exclusivity. Until the Closing or the date that this Agreement is terminated, Seller shall not enter into any contract, or enter into or continue any negotiations, to sell the Property to any person or entity other than Buyer.

(m) No Offer or Binding Contract. The parties hereto agree that the submission of an unexecuted copy of this Agreement by one party to another is not intended by either party to be, or be deemed to be a legally binding contract or an offer to enter into a legally binding contract. The parties shall be legally bound pursuant to the terms of this Agreement only if and when the parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the parties in their respective sole discretion, and both Seller and Buyer have fully executed and delivered this Agreement.

(n) Counterparts. This Agreement may be signed in counterparts and taken together the counterparts when fully executed will constitute a single agreement. Facsimile or PDF signatures submitted by Seller or Buyer will be accepted as originals on behalf of that party.

(o) Incorporation of Recitals and Exhibits. The Recitals set forth in this Agreement and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

(p) Approvals. Except with respect to entitlements, permits, regulatory and governmental approvals, including but not limited to street vacations contemplated in this Agreement, whenever this Agreement calls for Seller approval, consent, extension or waiver, the written approval, consent, or waiver of the City Manager or his or her designee(s) shall constitute the approval, consent, extension or waiver of the Seller, without further authorization required from the City Council. However, except for the time extensions set forth in Section 6(f)(iv) above, the Schedule of Performance may be administratively extended for two (2) six (6) month periods and any subsequent extensions shall require approval by the City Council. The Seller hereby authorizes the City Manager and his or her designee(s) to deliver any such approvals, consents, or extensions or waivers as are required by this Agreement, or that do not otherwise reduce Seller's rights under this Agreement, and to waive requirements under this Agreement, on behalf of the Seller.

(q) Merger, Survival. The provisions of this Agreement shall not merge with the delivery of the Deed or any other instrument delivered at Closing, but shall, except as otherwise provided in this Agreement, survive the Closing.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Seller and Buyer have set their hands on the day and year first above written.

**SELLER:**

**CITY OF SOUTH SAN FRANCISCO**

By: \_\_\_\_\_  
Mike Futrell  
City Manager

**BUYER:**

**EDEN HOUSING, INC.,**  
a California nonprofit public benefit  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Rosa Govea Acosta  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Sky Woodruff  
City Attorney

**Acceptance by Escrow Holder:**

North American Title Company hereby acknowledges that it has received a fully executed original (which may be via facsimile or email) of the foregoing Agreement and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 2021

NORTH AMERICAN TITLE COMPANY

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION OF LARGER PARCEL

[INSERT]

EXHIBIT A-2  
PROPERTY



EXHIBIT B

SCHEDULE OF PERFORMANCE

1	Purchase & Sale Agreements executed and become effective	Within 30 days of Council approval
2	Entitlement and Planning Application Submittal	Within 120 days of PSA agreement executed and effective
3	Receive Entitlement Approvals from City	9 months following entitlement application
4	Submit Construction Drawings and Permitting Application	4 months following entitlement approvals
5	Eden and Harman to enter into PSA for KFC Site	Prior to December 31, 2022
	Close of Escrow	December 31, 2022
6	Apply for all other soft funding sources	18 months following entitlement approvals
7	Apply for tax credit funding	First and all subsequent rounds following securement of all soft funding sources – assuming that these funding sources are still adequate to complete the project along with the tax credit award.
8	Start Construction	6 months following securing all funding
9	Certificate of Occupancy for residential units	30 months following construction commencement
10	Lease Up/ Move-In	3 months following issuance of final certificate of occupancy

EXHIBIT "C"

GRANT DEED

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

(see below)

**MAIL TAX STATEMENTS TO:**

\_\_\_\_\_

\_\_\_\_\_

=====

(Space Above Line for Recorder's Use Only)

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_. CITY TAX \$ \_\_\_\_\_.

“ Computed on full value of property conveyed, or ” Computed on full value less value of liens or encumbrances remaining at time of sale,

“ Unincorporated area: ” City of \_\_\_\_\_,

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, \_\_\_\_\_ (“**Grantor**”), does hereby grant to \_\_\_\_\_, a \_\_\_\_\_, the real property in the County of \_\_\_\_\_, State of California, described on Exhibit "A" attached hereto and by this reference incorporated herein (the "**Property**").

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of \_\_\_\_\_, 20\_\_.

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

Name: \_\_\_\_\_

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



EXHIBIT "A" TO GRANT DEED

LEGAL DESCRIPTION

[INSERT]

5011539.2