



OVERSIGHT BOARD

To the Community Development Agency of the City of Menlo Park

Meeting Date: November 26, 2012
Staff Report #: 12-007

Agenda Item #: 3

REGULAR ITEM: **Adopt a Resolution Approving Purchase and Sale Agreement with Greenheart Land Company for the Sale of Property Owned by the Former Menlo Park Redevelopment Agency Located at 777-821 Hamilton Avenue and Authorize Submittal of the Resolution to the State Department of Finance**

RECOMMENDATION

Successor agency staff recommends the Oversight Board of the former Menlo Park Community Development Agency approve a Purchase and Sale Agreement with Greenheart Land Company for the sale of property owned by the former Redevelopment Agency located at 777-821 Hamilton Ave for the total sum of \$8 million and authorize submittal of a resolution in support of the sale to the State Department of Finance for review as required.

BACKGROUND

In 2001, the City of Menlo Park Community Development Agency (Agency) purchased the various vacant and improved properties at 777 through 821 Hamilton Avenue with the intent of developing the consolidated property in order to implement the Amended and Restated Las Pulgas Project Area Plan and to eliminate blight in the Project Area.

The Hamilton Avenue East site is currently zoned M1 (light industrial). The site is approximately 2.1 acres and could potentially support up to 38 housing units in accordance with the site's current General Plan designation of R3 zoning density at 18.5 units per acre or up to 30 units per acre at the proposed density that is set forth in the preliminary draft Housing Element.

Industrial uses are present on both sides of the Hamilton Avenue East site. Most of the owners of those properties have expressed interest in selling to a developer so that most, if not the entire block, can be included in any potential project. With all parcels along the north side of Hamilton Avenue included in the process, the total size of the project area would be 7.1 acres.

Prior to the Supreme Court decision to dissolve redevelopment agencies, the City Council had directed staff to work toward encouraging the development of the site, along with the adjacent properties, as a market rate housing development with a Below Market Rate component (15% of all units) to address lower income affordability. Toward that end, City staff had released a Request for Qualifications to the development community to identify potential developers that would purchase the City's property and attempt to aggregate the adjoining lots for a larger development project. The City was in the middle of that effort when the court decision dissolved the Community Development Agency and forced the disposition of Agency assets.

The Oversight Board approved an appraisal of the property in April, 2012 and on June 27, 2012, directed the Successor Agency to release a Request for Proposals (RFP) to identify a commercial realtor to list the property for sale, the proceeds from which would be disbursed by the County. Three responses were received and reviewed by City/Successor Agency staff. Based on a comprehensive analysis and evaluation of the proposals, all submitting firms appeared qualified, however Cassidy / Turley Commercial Real Estate Services of Menlo Park was selected based on the comprehensiveness and thoroughness of their proposal and the favorable listing commission. Following approval of Cassidy / Turley's selection by the Oversight Board on August 8, 2012, the City Attorney negotiated a listing agreement and work began to determine an appropriate asking price for the site, communicate with adjacent property owners about the prospects for the sale of other properties on Hamilton Avenue, and to market the property for sale.

Cassidy/Turley developed marketing materials for the property and circulated them among prospective buyers, including well over 100 developers, the Silicon Valley brokerage community and through various online services. The marketing campaign for the property generated substantial interest and the Community Development Department addressed numerous questions regarding potential parking restrictions, zoning and potential densities for the property.

On October 18, 2012 bids for the property were opened and included 14 proposals ranging in price from \$3.1 million to \$7.8 million and proposing a variety of housing projects on the site and outlining various terms and contingencies. The top four proposers were then asked to respond to various questions, provide additional information about their proposed developments and submit their last, best and final offers. These proposals were reviewed by the Council sitting as the Board of the Successor Agency in closed session on October 30, and Council provided the City staff with direction to meet with the Oversight Board in closed session to obtain authority to negotiate a Purchase and Sale Agreement with Greenheart Land Company. The Oversight Board met in closed session on Monday, November 5, and authorized City staff to negotiate a Purchase and Sale Agreement for the sale of the property for the sum of \$8 million by the Successor Agency to Greenheart Land Company. The City Council (Successor Agency Board) approved the PSA at their regular meeting on November 13, 2012.

The Purchase and Sale Agreement must also be approved by the Oversight Board and then will be subject to review by the State Department of Finance (DOF). There is a 10 day notice requirement for the Oversight Board's formal action to approve the sale, and then State DOF has 5 days from receipt of the Oversight Board's resolution approving the sale to determine whether DOF wants to review the Purchase and Sale Agreement. If the DOF decides to review the Purchase and Sale Agreement, they have 40 days to act to affirm, modify or reject the sale transaction. Escrow is scheduled to close either seven days following completion of the Buyer's approval of its due diligence (within 60 days of execution of the Purchase and Sale Agreement) or notice of final action by the DOF, whichever is later.

IMPACT

The development of the Hamilton Avenue East site was initially intended to address housing development requirements under the Redevelopment Implementation Plan. With the dissolution of the redevelopment agency, disposition of these properties is mandated. The actions described in this report will result in the sale of the Hamilton Avenue East site for the sum of \$8 million, the proceeds of which will be forwarded to the County and distributed to the appropriate taxing agencies of the former CDA.

ENVIRONMENTAL REVIEW

The disposition of the property to a private party is not a project under CEQA.

Signature on File

Dan K. Siegel
City Attorney

PUBLIC NOTICE: Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 10 days prior to the meeting.

ATTACHMENTS

- A: Resolution
Exhibit: Purchase and Sale Agreement with Greenheart Land Company

OB RESOLUTION NO. 12-006**RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MENLO PARK APPROVING A PURCHASE AND SALE AGREEMENT WITH GREENHEART LAND COMPANY FOR THE SALE OF PROPERTY OWNED BY THE FORMER COMMUNITY DEVELOPMENT AGENCY LOCATED AT 777-821 HAMILTON AVENUE**

WHEREAS, pursuant to the provisions of ABx1 26, enacted June 28, 2011 and AB 1484, enacted June 27, 2012 (collectively referred to as the "Redevelopment Dissolution Law"), the Oversight Board and Successor Agency are charged with the responsibility for expeditiously winding down the affairs of the former Community Development Agency of the City of Menlo Park; and

WHEREAS, the Oversight Board bears a fiduciary responsibility to the local taxing entities that benefit from distributions of property tax and other revenues pursuant to the Redevelopment Dissolution Law (Health & Safety Code Section 34179(i)); and

WHEREAS, the Oversight Board must direct the Successor Agency to dispose of all assets and properties of the former redevelopment agency (Health & Safety Code Section 34181(a)); and

WHEREAS, the Successor Agency shall dispose of assets and properties of the former redevelopment agency as directed by the Oversight Board, such property disposal shall be done expeditiously and in a manner aimed at maximizing value, and the proceeds of property sales shall be transferred to the County Auditor-Controller for distribution to the local taxing entities (Health & Safety Code Section 34177(e)); and

WHEREAS, the real property located at 777-821 Hamilton Avenue within the City of Menlo Park is the only real property asset owned by the former Community Development Agency; and

WHEREAS, at a public meeting on April 9, 2012, the Oversight Board received a report from Successor Agency staff on options for the disposition of the property located at 777-821 Hamilton Avenue and approved retention of a qualified appraiser to prepare an estimate of fair market value based on the highest and best use of the property; and

WHEREAS, at a public meeting on June 27, 2012, the Oversight Board received the appraisal report prepared by John R. Kaeuper MAI which concluded that the value of the property was in the range of \$2,925,000 to \$3,240,000 based on its highest and best use for multi-family residential development at a density of 30 to 35 dwelling units per acre, and the Oversight Board directed Successor Agency staff to issue a Request for Proposals establishing a competitive process for selecting a qualified real estate broker to handle the property sale in a manner aimed at maximizing its value; and

WHEREAS, at a public meeting on August 8, 2012, the Oversight Board received a report from the Successor Agency on its comprehensive analysis and evaluation of three proposals submitted by real estate brokers and adopted Resolution No. 12-001 approving the selection of Cassidy/Turley

Commercial Real Estate Services and authorizing the Successor Agency to negotiate and enter into a listing agreement with that firm; and

WHEREAS, Resolution No. 12-001 was transmitted to the State Department of Finance, which did not request review of that Oversight Board action; and

WHEREAS, on October 18, 2012, fourteen proposals for the property were opened ranging from \$3.1 Million to \$7.8 Million with a variety of housing projects and various terms and conditions; and

WHEREAS, almost all the proposals included contingencies regarding rezoning of the property, general plan amendments, and obtaining land use entitlements, as well as providing for an extended close of escrow; and

WHEREAS, on October 30, 2012, the Successor Agency met in Closed Session to review the proposals; and

WHEREAS, on November 5, 2012, the Oversight Board met in Closed Session and authorized the Successor Agency to negotiate a Purchase and Sale Agreement with Greenheart Land Company for the sale of property owned by the Former Redevelopment Agency located at 777-821 Hamilton Avenue; and

WHEREAS, the proposal from Greenheart Land Company of \$8 Million, was the only proposal that was not contingent upon any rezoning or land use entitlements; and

WHEREAS, the proposal from Greenheart Land Company allowed for short 60 day Due Diligence period starting on November 14, 2012, with no financing contingencies as a cash transaction; and

WHEREAS, on November 13, 2012, the Successor Agency approved a Purchase and Sale Agreement with Greenheart Land Company for the sale of property located at 777-821 Hamilton Avenue, which is attached hereto as Exhibit A and made a part hereof; and

WHEREAS, on November 26, 2012, the Oversight Board conducted a public meeting to consider approval of the disposition of the property located at 777-821 Hamilton Avenue, and the meeting was duly noticed pursuant to the requirements of Health & Safety Code Sections 34179(f) and 34181(f).

NOW THEREFORE, BE IT RESOLVED, as follows:

1. The Oversight Board finds and determines that the prompt and successful conclusion of the sale of the property located at 777-821 Hamilton Avenue pursuant to the Purchase and Sale Agreement will further the goals of the Redevelopment Dissolution Law by facilitating the expeditious wind-down of the activities of the Community Development law and maximizing the value of the property, to the benefit of the affected taxing entities.
2. The Oversight Board hereby approves the Purchase and Sale Agreement with Greenheart Land Company in substantially the form attached to this Resolution as Exhibit A for the sale of the property owned by the former Redevelopment Agency located at 777 -821 Hamilton Avenue

and authorizes the Successor Agency to execute and take all reasonable and necessary steps to implement the Agreement; and

3. The Oversight Board strongly urges the Department of Finance to allow this transaction to move forward so that the sale proceeds may be transferred to the San Mateo County Auditor-Controller for distribution to the taxing entities.

I, Margaret S. Roberts, Secretary to the Oversight Board, do hereby certify that the above and foregoing Board Resolution was duly and regularly passed and adopted at a meeting by said Board on this twenty-sixth day of November, 2012, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand on this twenty-sixth day of November, 2012.

Margaret S. Roberts, MMC
City Clerk

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is entered into as of November 14, 2012 (the "Effective Date") by and between the Successor Agency to the Community Development Agency of The City of Menlo Park, a California public entity organized and existing under the provisions of ABx1 26, enacted June 28, 2011 ("Redevelopment Dissolution Act") and AB 1484, enacted June 27, 2012 ("Budget Trailer Bill") ("Seller"), and Greenheart Land Company, LLC, a California limited liability company ("Buyer").

1. **Agreement of Sale** Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase the real property which includes the real property commonly known as 777, 785, 787, 791, 801, 811 and 821 Hamilton Avenue, Menlo Park, CA, and which is more thoroughly described and/or depicted in attached Exhibit A, together with all appurtenant rights and benefits (collectively, the "Property").

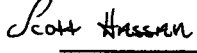
2. **Purchase Price**. The purchase price for the Property is EIGHT MILLION DOLLARS (\$8,000,000) (the "Purchase Price") and shall be paid by Buyer at the Closing (as defined in Section 7.1 below) in the form of cash, cashier's check or federal funds wire transfer, less the amount of the Deposit (as hereinafter defined).


3. **Deposit**.

3.1 **Application of Deposit**. Within three (3) business days after execution of this Agreement by both Buyer and Seller, Buyer shall deposit in escrow with First American Title Company, 1737 North First Street, Suite 500, San Jose CA 95112, Att'n: Dian Blair (the "Title Company") a deposit in the amount of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) (the "Deposit"). The Deposit shall be held in an interest-bearing account and interest shall accrue for the account of Buyer. If the sale of the Property is consummated, the Deposit, plus accrued interest, shall be applied to the Purchase Price. If the sale of the Property is not consummated for any reason except a default under this Agreement on the part of Buyer, the Deposit (other than the Independent Contract Consideration) plus accrued interest thereon shall immediately be returned to Buyer. The Deposit includes the amount of One Hundred Dollars (\$100.00) as independent consideration ("Independent Contract Consideration") for Seller's execution of this Agreement and the agreement to sell the Property to Buyer on and subject to the terms and conditions of this Agreement. The Independent Contract Consideration is applicable to the Purchase Price and shall be retained by Seller in event of any termination of this Agreement for any reason whatsoever.

3.2 **Liquidated Damages**. **IF BUYER DEFAULTS IN THE PERFORMANCE OF ANY OBLIGATION OF BUYER HEREUNDER, AND THE CLOSING FAILS TO OCCUR AS A RESULT OF SUCH DEFAULT, SELLER WILL SUSTAIN SUBSTANTIAL DAMAGES. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES SUSTAINED BY SELLER IN THE EVENT OF SUCH A DEFAULT HEREUNDER BY BUYER. THEREFORE, SELLER AND BUYER AGREE THAT IF BUYER COMMITS SUCH A DEFAULT, THE DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF THE AMOUNT OF DAMAGES FOR SUCH DEFAULT, AND SELLER SHALL BE ENTITLED TO RECOVER SUCH AMOUNT AS LIQUIDATED DAMAGES FOR SUCH DEFAULT. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT SAID AMOUNT IS PRESENTLY A REASONABLE SUM CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE**

RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SELLER THAT REASONABLY COULD BE ANTICIPATED, AND THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY AND EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. SELLER'S RIGHT TO RECOVER SUCH AMOUNT AS LIQUIDATED DAMAGES FOR SUCH DEFAULT SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY AT LAW AND IN EQUITY. SELLER WAIVES ALL OTHER LEGAL OR EQUITABLE REMEDIES AGAINST BUYER AND ANY RELATED OR AFFILIATED ENTITY, AGENT OR REPRESENTATIVE, INCLUDING ANY RIGHT OF SELLER TO OBTAIN SPECIFIC PERFORMANCE OF BUYER'S OBLIGATIONS UNDER THIS AGREEMENT.

DocuSigned by:
BUYER:

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SELLER:


4. Title.

4.1 Permitted Title Exceptions; Title Policy. The obligation of Buyer to purchase the Property shall be conditioned on the Title Company being prepared to issue an ALTA (2006) extended coverage owner's policy of title insurance ("Title Policy") insuring that fee title in the Property is vested in Buyer, subject only to the Permitted Title Exceptions, as defined below, and including any endorsements requested by Buyer and approved by the Title Company during the Due Diligence Period (as herein defined). The Title Policy shall insure title subject only to a lien for local real estate taxes and assessments not yet due or payable, and such other exceptions as may be approved in writing by Buyer pursuant to Section 6.1(c) below ("Permitted Title Exceptions").

5. Documents to be Delivered to Buyer. Seller shall provide to Buyer, or make available for inspection and copying at a reasonably convenient location, all documents, reports, plans, Leases (as herein defined), Contracts (as herein defined) and other documents in the possession or control of Seller and relating to the use, ownership, management and operation of the Property, within five (5) days from the Effective Date.

6. Conditions to Closing.

6.1 Conditions. Buyer's obligation to purchase the Property is conditioned upon the satisfaction of each of the following conditions:

(a) The performance by Seller of every obligation of Seller hereunder, and the truth of each representation and warranty made in this Agreement by Seller as of the Effective Date and as of the Closing.

(b) Buyer's review and approval of any documents or other items provided to Buyer by Seller in accordance with Section 5 hereof.

(c) Buyer's review and approval of a preliminary title report, all title exceptions, and an ALTA survey, if obtained by Buyer. Buyer shall notify Seller in writing of any objections Buyer has to the preliminary title report and the title exceptions within ten (10) days of Buyer's receipt of the preliminary title report and exceptions referenced therein. If Seller is not willing to remove the objectionable exceptions, or is unable to do so, prior to the Closing,

Seller will advise Buyer thereof in writing and Buyer may either waive its objections and proceed with the purchase or terminate this Agreement.

(d) Buyer's inspection and approval of the present physical condition and status of the Property, including the soil, drainage, and the existence of any hazardous materials on the Property.

(e) The feasibility of the Property for Buyer's intended use, including the economic viability of any development which Buyer may intend to perform on the Property.

(f) The Title Company's commitment at Closing to issue to Buyer the Title Policy.

The parties expressly acknowledge that the obligation of Buyer to proceed hereunder is not conditioned on any of the following:

- (i) obtaining financing, or a commitment for financing, for acquisition or development of the Property. The parties acknowledge that a material and substantial inducement to Seller's agreement to proceed with the transaction contemplated herein is the understanding that Buyer intends to acquire the Property with internal resources, and will not require third party funds to acquire the Property. Buyer may elect to obtain third party financing to develop the Property, but obtaining that financing, or a commitment for that financing, will not be a condition to Buyer's obligations hereunder;
- (ii) re-zoning of the Property. Buyer represents that Buyer is familiar with ongoing efforts by the City of Menlo Park to adopt a revised Housing Element to comply with applicable state law, and acknowledges that Seller undertakes no obligation under this Agreement to complete the adoption of the Housing element or to undertake any other action in connection with the adoption of new zoning, modification of existing zoning, updating the applicable general plan or otherwise with respect to the Property; or
- (iii) acquisition of, or any commitment or other obligation by a third party to sell or convey, all or any portion of additional property on Hamilton Avenue in Menlo Park, or any rights in such additional property.

6.2 Conditions - Seller. The parties understand and agree that this Agreement and the sale and transfer of the Property to Buyer is subject to the provisions of the California Redevelopment Dissolution Law (AB1x 26, enacted June 28, 2011, as modified by AB 1484, enacted June 27, 2012). Among other statutory requirements, the Agreement for the sale of the Property must be approved by the Board of the Successor Agency to the Menlo Park Community Development Agency and the Oversight Board for the Successor Agency (the "Oversight Board") following compliance with applicable public notice and public meeting requirements (such approval, the "Board Approval"). Promptly following the Effective Date, Seller shall initiate the process for obtaining Board Approval and shall diligently pursue such process until the Board Approval is obtained. Promptly following receipt of the Board Approval, Seller shall submit this Agreement to the State Department of Finance (the "DOF") for approval pursuant to Health & Safety Code Sections 34179 and 34181 (the "DOF Approval"). The DOF Approval shall be deemed to have been obtained upon the earlier of the date when (i) the DOF actually gives its approval of this Agreement, or (ii) the DOF approval period as set forth in Health & Safety Code Sections 34179 and 34181 has expired without modification or

disapproval by the DOF. Promptly following the DOF Approval, Seller shall provide to Buyer written notice (the "Confirmation Notice") that both Board Approval and DOF Approval have been obtained (or deemed obtained in the case of the DOF). If Seller has not provided the Confirmation Notice to Buyer within one hundred twenty (120) days following the Effective Date (the "Final Notice Date"), either party may terminate this agreement upon written notice to the other, provided that such termination notice shall be provided to the other no more that fifteen (15) days following the Final Notice Date, in which event the Deposit shall be immediately returned to Buyer. If any of the approvals are conditional upon revisions or modifications of the terms of sale, Buyer shall have the right to accept or reject such revisions or modifications, in its sole discretion. If Buyer rejects such revisions or modifications, this Agreement shall terminate and the Deposit shall be immediately returned to Buyer.

6.3 Due Diligence Period. Buyer's obligation to purchase the Property is subject to Buyer's being satisfied, in its sole discretion, with the Property after the review and inspections described in Section 6.1 above. Buyer shall have until sixty (60) days after the Effective Date (the "Due Diligence Approval Date"), to notify Seller in writing that the conditions described in Section 6.1 are satisfied or waived and that Buyer wishes to proceed to Closing under this Agreement (the "Due Diligence Period"). If Buyer fails to deliver such notice to Seller within the required period, this Agreement shall terminate and the Deposit and all interest thereon shall be returned to Buyer. If such notice is timely delivered to Seller, the relevant conditions shall be deemed waived or satisfied. Promptly following any termination under this Section 6.3, Buyer shall return all documents delivered to Buyer by Seller.

6.4 Waiver. Buyer may, at any time or times before the Closing, waive any of the foregoing conditions. Any such waiver must be in writing and signed by Buyer.

6.4 Access. Beginning on the Effective Date, Seller shall afford authorized representatives of Buyer reasonable access to the Property, upon reasonable advance notice and during normal business hours, for the purposes of satisfying any conditions precedent to the Closing contained herein. Buyer shall have the right to conduct or cause to be conducted soils tests, structural tests, tests for hazardous materials or any other tests Buyer determines are necessary or desirable to evaluate the condition of the Property. In performing its examinations and inspections of the Property, Buyer shall use commercially reasonable efforts to minimize any interference with the use of the Property and Buyer shall indemnify Seller against and hold Seller harmless from any and all losses, costs, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and costs (collectively, "Loss"), resulting from or related to the entry upon the Property by Buyer or its representatives, except for any Loss due to Seller's negligence or the mere discovery of a pre-existing condition, and Buyer shall restore any damage done during such inspection to the condition that existed prior to such inspection, and shall remove any materials brought by Buyer onto the Property in the course of the investigation. Buyer shall not conduct any Phase II testing for the presence of Hazardous Materials, or any other physically invasive testing, without Seller's prior written consent, which shall not be unreasonably withheld or delayed.

7. Closing.

7.1 Closing Date. The consummation of the purchase and sale of the Property (the "Closing") shall occur on the date that is seven (7) days after the later of (i) the Due Diligence Approval Date, or (ii) the date Buyer receives the Confirmation Notice.

7.2 Deposits Into Escrow.

(a) On or before the Closing date, Seller shall deposit the following documents and items into escrow, each of which shall be executed by Seller, if necessary, and shall be in form reasonably satisfactory to Buyer: (i) a grant deed conveying the real property to Buyer; (ii) a bill of sale conveying the personal property, if any, to Buyer; (iii) an assignment of leases, contracts and intangible property (the "Assignment"); (iii) an affidavit stating that Seller is not a "foreign person" under U.S.C.A. Section 1445(f)(3); (iv) Seller's share of the closing costs; and (v) such other documents as may reasonably be required to complete the Closing.

(b) On or before the Closing date, Buyer shall deposit the following into escrow: (i) the Purchase Price in accordance with the provisions of Section 2 above; (ii) Buyer's share of the closing costs; (iii) an executed counterpart of the Assignment; and (iv) such other documents as may reasonably be required to complete the Closing.

7.3 Prorations. All rents and other sources of income and all expenses for the Property will be prorated as of the Closing date and the Purchase Price will be adjusted on the following basis:

(a) Accounts Receivable. Any income of the Property earned and attributable to the period prior to the Closing date will be paid to Seller to the extent that such income has been collected on or before the Closing date. Any income earned and attributable to the period beginning on the Closing date and thereafter will be paid to Buyer. Upon receipt by Buyer after the Closing of any income earned prior to the Closing date, the same will be paid to Seller.

(b) Accounts Payable. All sums due for accounts payable which were owing or accrued by the Property prior to the Closing will be paid by Seller. Buyer will furnish Seller any bills for such period received after the Closing for payment, and Buyer will have no further obligation with respect thereto. Payments due under any Contracts which Buyer does not assume shall not be prorated and Seller shall be liable for all payments due thereunder. Buyer shall be deemed to have elected not to assume any Contracts except for those Contracts, if any, identified by Buyer for assumption in a written notice delivered to Seller during the Due Diligence Period.

(c) Property Taxes. All real property ad valorem taxes and special assessments, if any, whether payable in installments or not, for the tax year in which the Closing occurs will be prorated to the Closing date, based on the latest available tax rate and assessed valuation. The amount of any personal property taxes shall be paid by Seller.

(d) Utility Charges. All utility charges (including, without limitation, electricity, gas, water, sewer and telephone, as applicable) will be prorated to the Closing date and Seller will obtain a canceled bill therefor. All utility security deposits, if any, will be retained by Seller.

(e) Post Closing. If the amount of any of the adjustments to be prorated cannot be determined on the date of Closing, these adjustments will be made between the parties as soon after Closing as possible.

7.4 Closing Costs. Closing costs shall be paid as follows: (i) Buyer will pay the premium for owner's title insurance coverage, and escrow fees, and (ii) Seller will pay county

transfer taxes, if any. Any other closing costs will be paid in accordance with custom in San Mateo County, as determined by the Title Company.

7.5 Escrow Instructions. On or before the Closing date, each party shall deliver escrow instructions and other instruments as are required by the Title Company to close the escrow for this transaction.

7.6 Possession. Seller shall deliver possession of the Property to Buyer on the Closing date.

8. Representations and Warranties.

8.1 Representations and Warranties of Seller. Seller represents and warrants the following to Buyer as of the date hereof and as of the Closing date. Each representation and warranty shall survive the Closing date for a period of one (1) year, and shall expire unless a claim for breach of such representation or warranty is properly filed and served on Seller within that one (1) year period.

(a) Seller has full power and authority to enter into this Agreement. Upon delivery of the Confirmation Notice described in Section 6.2 above, subject to any applicable statutes of limitation for a legal challenge, Seller will have full power and authority to consummate the transaction contemplated herein, and any and all approvals or other authorization required to be obtained will have been obtained as of the date of the delivery of the Confirmation Notice.

(b) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the United States Internal Code of 1986, as amended, or under Section 18805 of the California Revenue and Taxation Code.

(c) There is no existing claim, litigation, or other proceeding which has been filed against the Property or against Seller in its capacity as owner of the Property which would prevent or delay the performance by Seller of its obligations hereunder or affect the use or value of the Property.

(d) There are no leases, tenancies or occupancy agreements relating to or affecting the Property (the "Leases").

(e) There are no service, maintenance, management, repair, parking, construction or other contracts (collectively, "Contracts") relating to the ownership or operation of the Property.

(f) Seller has not received any written notice of any violation of any law, ordinance, regulation, order or requirement applicable to the Property which has not been cured and Seller is unaware of any such uncured violation.

If Seller discovers that any representation or warranty set forth above is not accurate before the Closing date, Seller will give Buyer written notice of that fact within three (3) business days after obtaining knowledge of such fact, and in any event before the Closing. If Seller delivers any such notice or Buyer discovers the inaccuracy of a representation or warranty, Buyer may, at its election, terminate this Agreement, in which event the Deposit shall be immediately returned to

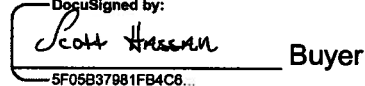
Buyer. If Buyer elects to proceed with the Closing after receipt of such notice or after having discovered the inaccuracy of the representation or warranty in question, Buyer shall be deemed to have waived any claim with respect to the representation or warranty in question to the extent of the additional information.

8.2 Sale Made "As Is"; Release of Seller. Buyer will perform an investigation in order to become familiar with the Property, and has made or will make such independent investigations as it deems necessary or appropriate concerning the Property. Except as expressly set forth herein: (i) Buyer is relying solely upon its own familiarity with the Property and is not relying in any way upon any representations, information, appraisals, statements, agreements, warranties, studies, surveys, reports, descriptions, guidelines or other information or material furnished by Seller, and (b) Buyer acknowledges that it is acquiring the Property for the Purchase Price stated herein "AS IS", in its present state and condition, without representation or warranty by Seller or its representatives as to any matter. Except with respect to Seller's representations, warranties and indemnities contained herein, from and after the Closing, Buyer, on behalf of itself and its successors and assigns, waives its right to recover from and forever releases and discharges Seller, its agents, employees and representatives from any and all demands, claims, costs, damages, losses or causes of action whether known or unknown, that may arise on account of or in any way be connected with the physical condition, use, operation or ownership of the Property. In connection with the foregoing release, Buyer hereby consents to inclusion of this waiver and release in the grant deed conveying the Property to Buyer, and expressly waives the benefits of Section 1542 of the California Civil Code, 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."



Seller

DocuSigned by:


Buyer
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8.3. Limitation of Liability.

The total aggregate liability of Seller for any and all injuries, damages, claims, losses, expenses or claims (including attorneys' fees) in connection with the sale of the Property will be limited to the Purchase Price for the Property. Buyer acknowledges that neither the City of Menlo Park or any of the taxing entities receiving proceeds from the dissolution of the Community Development Agency are parties to this Agreement and neither the City of Menlo Park nor any of the taxing entities entitled to receive proceeds shall have any liability for the actions of Seller, nor any financial liability or responsibility except as may be imposed pursuant to the provisions of State law with respect to proceeds received by the City or any of such taxing entities from the sale of the Property. Buyer shall notify all parties who may claim through Buyer, including the agents, employees or representatives of Buyer, as well as future occupants, purchasers or other users of the Property, of this limitation of Seller's liability to them and shall require them to abide by this limitation of liability. In no event shall Seller be liable in contract, tort, strict liability, warranty, or otherwise, for any special, incidental or consequential damages, including, but not limited to, delay, disruption, or loss of anticipated profits or revenue.

9. **Indemnification.** Each party hereby agrees to indemnify the other party and hold it harmless from and against any and all claims, demands, liabilities, costs and damages, including without limitation, reasonable attorneys' fees, resulting from any misrepresentations or breach of warranty or covenant made by such party in this Agreement.

10. **Eminent Domain.** If, prior to the Closing, all of the real property is taken by eminent domain, this Agreement shall terminate and the Deposit shall be immediately returned to Buyer. If only part of the real property is so taken, Buyer shall have the option of (a) proceeding with the Closing and acquiring the Property as affected by such taking, together with all compensation and damage awarded or the right to receive same, or (b) terminating this Agreement, in which event the Deposit shall be immediately returned to Buyer. From the Effective Date and until the Closing date, Seller agrees that it shall not commence or threaten to commence any condemnation or eminent domain proceedings against all or any portion of the Property.

11. **Actions During Contract Period.** Between Seller's execution of this Agreement and the Closing, or earlier termination of this Agreement as permitted hereunder, Seller shall maintain the Property in good order, condition and repair, reasonable wear and tear excepted. From and after the Effective Date, Seller shall not (a) execute, modify, terminate and/or approve any Leases or Contracts affecting the Property or any interest therein without Buyer's written approval; or (b) encumber the Property with any liens, encumbrances or other instruments creating a cloud on title or securing a monetary obligation with the Property. Seller shall terminate prior to Closing, at no cost or expense to Buyer, any and all Contracts affecting the Property that are not designated by Buyer during the Due Diligence Period to be assumed by Buyer at Closing.

12. **[Section intentionally omitted.]**

13. **Miscellaneous.**

13.1 **Notice.** Any notice, demand or communication required or permitted hereunder shall be given in writing and may be delivered personally, by facsimile, by email, by private courier, or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the following addresses or to such other addresses as any party may hereafter designate by written notice:

<p>Seller: Successor Agency to the Community Development Agency of the City of Menlo Park 701 Laurel Street Menlo Park, CA 94025 Att'n: Alex D. McIntyre Ph: 650-330-6610 Email: admcintyre@menlopark.org</p> <p>With a copy to: William L. McClure, Esq. City Attorney 1100 Alma Street, Suite 210</p>	<p>Buyer: Greenheart Land Company, LLC 921 East Charleston Road Palo Alto, CA 94303 Att'n: Steve Pierce Ph: 650-323-5305 Email: spierce@greenheart.bz</p> <p>With a copy to: Morrison & Foerster LLP 755 Page Mill Road Palo Alto, CA 94304 Attn: Philip J. Levine, Esq.</p>
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Menlo Park, CA 94025 Ph: (650) 324-9300 Email: wlm@jsmf.com	Ph: (650) 813-5613 Email: PLevine@mofo.com
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Notice shall be deemed given upon the earlier of: (i) actual receipt, including, if notice is sent by email, confirmation of receipt of the message in question; or (ii) three (3) days after posting in the U.S. Mail as provided above.

13.2 Covenant of Further Assurances. The parties hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Agreement.

13.3 Tax Deferred Exchange. The parties acknowledge that Buyer may identify the Property as a replacement property in connection with an attempt to qualify the acquisition of the Property as part of an exchange eligible for deferred tax treatment under Federal and State law. Seller shall cooperate with Buyer as reasonably necessary, and as instructed in writing by Buyer, in connection with such exchange, subject to the following: (i) Seller shall not be obligated to take title to any property other than the Property, (ii) Buyer shall pay all costs associated with the exchange; (iii) the exchange shall not affect the times for performing the various obligations set forth herein; and (iv) Seller shall have no responsibility to ensure that the transaction does in fact qualify as a tax-deferred exchange.

13.4 Severability. If any provision of this Agreement as applied to either party or to any circumstance shall be ruled by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) that provision as applied to other permissible parties or circumstances or any other provision of this Agreement or the validity or enforceability of the Agreement as a whole.

13.5 Assignment. Neither party may assign its rights or delegate its obligations hereunder without the prior written consent of the other party, and any such assignment or delegation without the other party's prior consent shall be void and of no effect. Notwithstanding the foregoing, Buyer may assign its rights and delegate its obligations to an entity owned or controlled by Buyer or Buyer's principals, provided, however such assignment shall not relieve Buyer of any obligations provided in this Agreement.

13.6 Successors and Assigns. Subject to the provisions of Section 13.5 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, devisees, legal representatives, successors and assigns.

13.7 Attorneys' Fees. In the event of any controversy, claim or action being filed between the parties respecting this Agreement or in connection with the Property, the prevailing party shall be entitled, in addition to all expenses, costs or damages, to reasonable attorneys' fees, whether or not such controversy was litigated or prosecuted to judgment, and any such attorneys' fees and other costs and expenses shall be recoverable separately from and in addition to any other amount included in such judgment or award, and such obligation is

intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment or award.

13.8 Brokers and Finders. Seller is represented in this transaction by Cassidy Turley Northern California, Inc. ("Seller's Broker"), and Seller shall pay a commission to Seller's Broker upon close of escrow in accordance with a separate written agreement. Seller and Buyer represent that they have not engaged the services of any other real estate broker to represent them and that no commission will be due from either party to any broker other than Seller's Broker. The party through whom any broker or finder (other than Seller's Broker) makes a claim shall indemnify, defend and hold harmless the other from such claim. Nothing herein shall make any person, including the brokers representing the parties to this Agreement, a third party beneficiary of this Agreement. The provisions of this Section 13.8 shall survive Closing or the termination of this Agreement.

13.9 Time of the Essence. Time is of the essence of this Agreement. However, if the final date of any period designated for performance of any act under this Agreement falls on a Saturday, Sunday or statewide legal holiday as defined in California Government Code sections 6700 and 6701, then the time for such performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

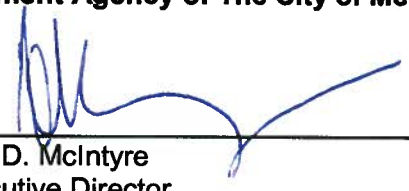
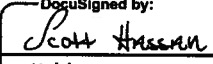
13.10 Governing Law. This Agreement is entered into and shall be governed by and construed in accordance with the laws of the State of California.

13.11 Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose. The parties hereto contemplate that they may be executing counterparts of this Agreement transmitted by facsimile or email in PDF format and agree and intend that a signature by facsimile machine or email in PDF format shall bind the party so signing with the same effect as though the signature were an original signature.

13.12 Exhibits. All recitals and exhibits referred to in this Agreement are incorporated herein by reference and shall be deemed part of this Agreement.

13.13 Entire Agreement. This document represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements, representations and covenants, oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

SELLER	BUYER
Successor Agency to the Community Development Agency of The City of Menlo Park	Greenheart Land Company, LLC, a California limited liability company
By:  _____ Alex D. McIntyre Executive Director	DocuSigned by: By:  _____ Scott Hesse Managing Member

Attachments:

EXHIBIT A - Legal Description

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL I:

LOTS 3 AND 4, BLOCK 10, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "NEWBRIDGE PARK, MAP NO. 2, SAN MATEO COUNTY, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON NOVEMBER 17, 1926 IN BOOK 14 OF MAPS AT PAGES 51, 52 AND 53.

PARCEL II:

PORTION OF SEVIER AVENUE, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "NEWBRIDGE PARK, MAP NO. 2, SAN MATEO COUNTY, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON NOVEMBER 17, 1926 IN BOOK 14 OF MAPS AT PAGES 51, 52 AND 53, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 4 IN BLOCK 10 AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING, ALONG THE NORTHERN LINE OF LOT 3 AND SAID LOT 4, NORTH 85° 01. 00" EAST, 103.31 FEET TO THE NORTHEASTERN CORNER OF SAID LOT 3; THENCE LEAVING SAID LINE NORTH 22° 05. 00" EAST, 44.92 FEET TO THE SOUTHERN LINE OF THE SOUTHERN PACIFIC COMPANY RIGHT OF WAY; THENCE ALONG SAID LINE SOUTH 85° 01' 00" WEST, 103.31 FEET; THENCE SOUTH 22° 05. 00" WEST, 44.92 FEET TO THE POINT OF BEGINNING.

SAID PARCEL WAS VACATED BY THAT CERTAIN RESOLUTION NO. 5132 RECORDED OCTOBER 26, 1999 AS RECORDER'S INSTRUMENT NO. 1999-178851 OF OFFICIAL RECORDS.

PARCEL III:

LOT 2 IN BLOCK 10, AS SHOWN ON THAT CERTAIN MAP ENTITLED "NEWBRIDGE PARK, MAP NO. 2, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON NOVEMBER 17, 1926 IN BOOK 14 OF MAPS AT PAGES 51, 52 AND 53.

PARCEL IV:

LOT 1, BLOCK 9, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "NEWBRIDGE PARK, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON JUNE 10, 1926 IN BOOK 14 OF MAPS AT PAGES 6 AND 7.

PARCEL V:

LOT 1, BLOCK 10, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "NEWBRIDGE PARK NO. 2, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON NOVEMBER 17, 1926 IN BOOK 14 OF MAPS AT PAGES 51, 52 AND 53.

PARCEL VI:

LOTS 2, 3 AND 4 IN BLOCK 9, AS SHOWN ON THAT CERTAIN MAP ENTITLED "NEWBRIDGE PARK SAN MATEO COUNTY CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON JUNE 10, 1926 IN BOOK 14 OF MAPS AT PAGE(S) 6 AND 7.

APN: 055-398-020 (Parcel I); 055-398-030 (Parcel II); 055-398-040 (Parcel V); 055-398-050 (Parcel III); 055-398-060, 055-398-070 and 055-398-080 (Parcel IV)