



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
REDEVELOPMENT AGENCY

AGENDA ITEM NO. _____ July 27, 2010

Chris Bazar
Agency Director

July 13, 2010

Eileen Dalton
Redevelopment Director

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Honorable Board of Directors
Alameda County Redevelopment Agency
Administration Building
Oakland, CA 94612

Dear Board Members:

SUBJECT: APPROVE AND ADOPT A RESOLUTION MAKING FINDINGS AND AUTHORIZE AND ENTER INTO A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH KELLER INVESTMENTS, INC. FOR \$3,140,000 TO PURCHASE ONE PARCEL LOCATED AT 3295 CASTRO VALLEY BLVD; AND AUTHORIZE PAYMENT OF RELATED ESCROW, DUE DILIGENCE, POST-CLOSING FEES AND PROMISSORY NOTE PAYMENTS

RECOMMENDATION:

1. Adopt and approve a resolution that makes findings and authorizes entering into a real estate Purchase and Sale Agreement with Keller Investments, Inc. for the appraised price of \$3,140,000, for the purchase of one parcel totaling approximately 44,900 square feet and improvements totaling 39,375 square feet, located at 3295 Castro Valley Blvd, unincorporated Castro Valley community, located in the Castro Valley Sub-Area of the Eden Area Redevelopment Project;
2. Approve and authorize funding of related escrow fees estimated in an amount not to exceed \$10,000; and
3. Approve and authorize funding of related inspection, due diligence and post-closing fees in the amount not to exceed \$35,000.

DISCUSSION/SUMMARY:

The Redevelopment Agency (Agency) proposes to purchase one parcel for resale and future commercial development in accordance with the Castro Valley Redevelopment Strategic Plan, the Redevelopment Plan for the Castro Valley Sub-Area of the Eden Area Redevelopment Project and the related Five-Year Implementation Plan (collectively

referred to as the Redevelopment Plans). Acquisition of this property will allow the Agency to facilitate the redevelopment of a vacant building along Castro Valley Boulevard that needs physical upgrades and for more than a decade has been underutilized and intermittently leased. The Agency intends to market the site for resale to be rehabilitated and reused as a commercial building. The acquisition of the parcel will serve the goals and objectives for redevelopment of the Project Sub-Area that are set forth in the Redevelopment Plans. The intended commercial re-use is consistent with the guidelines set forth in the Castro Valley Central Business District Specific Plan (the "Specific Plan").

The Castro Valley Redevelopment Area Citizen Advisory Committee (CAC) supports the purchase and future re-sale of the property. The CAC members recognize the value of redevelopment of the site as a benefit to the local community in furthering the economic growth of the business district.

The Alameda County Planning Commission found on November 16, 2009, in accordance with Government Code Section 65402, that the acquisition of the parcel as contemplated in this Resolution and the Purchase and Sale Agreement conforms to the Eden Area General Plan. The Agency has complied with the requirements of the California Environmental Quality Action ("CEQA") in the following manner: The acquisition of the Parcel is exempt from CEQA review. The acquisition of the parcel pursuant to the Purchase and Sale Agreement is consistent with, and in furtherance with the Eden Area General Plan and the Specific Plan.

FINANCING:

The proposed purchase of land and related relocation costs will be funded through tax increment from the Castro Valley Sub-Area of the Eden Area Redevelopment Project. There will be no Net County Cost as a result of this action.

Very truly yours, ---



Chris Bazar, Executive Director
Alameda County Redevelopment Agency

Cc: Susan Muranishi, County Administrator
Richard Winnie, County Counsel
Patrick O'Connell, Auditor-Controller
Louie Martirez, County Administrator's Office
Brian Washington, Office of the County Counsel
U. B. Singh, CDA Finance Director
Eileen Dalton, Director, Redevelopment Agency

**RESOLUTION OF THE GOVERNING BOARD OF THE REDEVELOPMENT AGENCY OF
THE COUNTY OF ALAMEDA AUTHORIZING EXECUTION OF A PURCHASE AND SALE
AGREEMENT AND RESULTING ACQUISITION OF PROPERTY IN THE EDEN AREA
REDEVELOPMENT PROJECT, AND MAKING STATUTORY FINDINGS IN CONNECTION
THEREWITH**

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.: the "Redevelopment Law"), the Board of Supervisors of the County of Alameda has adopted and the Redevelopment Agency of the County of Alameda (the "Agency") is responsible for implementing the Redevelopment Plan for the Eden Area Redevelopment Project (the "Eden Plan"), as adopted by Ordinance No. 0-2001-1 dated June 8, 2000, pertaining to the Eden Redevelopment Project Area comprised of five non-contiguous Sub-Areas including the Castro Valley Sub-Area as described therein (the "Project Area"); and

WHEREAS, to assist in implementing the Eden Plan, the Agency adopted a five-year implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law; and,

WHEREAS, pursuant to the Redevelopment Plan and Section 33391 of the Redevelopment Law, the Agency is authorized to acquire real property within the Project Area for purposes of redevelopment; and

WHEREAS, the Agency desires to acquire from Keller Investments, Inc., (the "Property Owner") certain land in the Project Area located at 3295 Castro Valley Blvd. in Castro Valley, and consisting specifically of Assessors Parcel Number 084A-0040-018-04 (the "Parcel"); and

WHEREAS, for reasons set forth in the Board Letter accompanying this Resolution, acquisition of the Parcel from the Property Owner will serve the goals and objectives for redevelopment of the Project Area set forth in the Redevelopment Plan and is consistent with the Implementation Plan, the County's General Plan (the "General Plan"), and the Castro Valley Central Business District Specific Plan (the "Specific Plan") approved by the Board of Supervisors on January 7, 1993; and

WHEREAS, Agency staff has negotiated the acquisition of the Parcel from the Property Owner for the purchase price of Three Million One Hundred Forty Thousand Dollars (\$3,140,000) paid out within 30 months of the Closing pursuant to the terms of a Purchase and Sale Agreement (the "Purchase and Sale Agreement", which includes a legal description of the parcel), a copy of which is on file with the County Clerk; and

WHEREAS, as fully set forth in the Purchase and Sale Agreement, Agency staff has negotiated to pay the Property Owner a down payment of Two Million One Hundred Fifty Thousand Dollars (\$2,150,000), with the remaining balance of the purchase price, Nine Hundred Ninety Thousand (\$990,000) taken back as Seller financing, and annual interest only payments at 4.5% of Forty Four Thousand Five Hundred Fifty dollars (\$44,550) over 30 months; and

WHEREAS, in connection with acquisition of the Parcel by the Agency, staff anticipates escrow fee payments not to exceed \$10,000; and

WHEREAS, by action of July 6, 2010, the Planning Commission of the County of Alameda found and determined, in accordance with Government Code Section 65402, that the acquisition of the Parcel as contemplated in this Resolution and the Purchase and Sale Agreement conforms to the General Plan; and

WHEREAS, acquisition of the Parcel by the Agency will enable the Agency eventually to convey the Parcel to a qualified private developer pursuant to a disposition and development agreement or other suitable conveyance document, for rehabilitation of the improvements located thereupon and subsequent reuse in a manner consistent with the Redevelopment Plan, the Implementation Plan, the Specific Plan, and the General Plan (collectively, the "Plans"); and

WHEREAS, in considering approval of this Resolution and the Purchase and Sale Agreement, the Agency has complied with and will comply with the requirements of the California Environmental Quality Act and the accompanying state and local guidelines (collectively "CEQA") in the manner set forth below; and

WHEREAS, the Agency has determined that the acquisition of the Parcel as contemplated in this Resolution and the Purchase and Sale Agreement is exempt from CEQA review pursuant to Section 15301 of 14 California Code of Regulations; and

WHEREAS, the redevelopment of the Parcel in accordance with the Plans will not entail any relocation from the Parcel; and

WHEREAS, the Board Letter and the Purchase and Sale Agreement (collectively, the "Supporting Documents") have been presented to and considered by the Agency in support of the findings and approvals set forth in this Resolution; are hereby incorporated by reference in this Resolution; and, together with the above recitals (the "Recitals"), form the evidentiary basis and establish the analytical route for reaching the ultimate findings and conclusions contained in this Resolution.

NOW, THEREFORE, BE IT RESOLVED, by the Governing Board of the Redevelopment Agency of the County of Alameda, as follows:

Section 1. Recitals Correct. The Agency finds that the above Recitals are true and correct and have served, together with the Supporting Documents, as the basis for the findings and approvals set forth below.

Section 2. CEQA Actions.

a. For the reasons set forth above in the Recitals, the Agency finds and determines that the acquisition of the Parcel as contemplated in this Resolution and the Purchase and Sale Agreement is exempt from CEQA review.

b. If the Agency determines that the future reuse of the Parcel will involve other than the rehabilitation of the existing improvements on the Parcel, as currently contemplated, such that the future reuse will not be exempt from CEQA review pursuant to Section 15301 of 14 California Code of Regulations, then such future reuse shall be conditioned upon prior completion of any further CEQA compliance that is required under the circumstances of such reuse.

c. Based on the foregoing CEQA considerations, the Agency Executive Director is authorized and directed to file a notice of exemption and pay all applicable filing fees pursuant to CEQA in connection with the actions and approvals set forth in this Resolution.

Section 5. Additional Findings. Based on the information and analysis contained in the Recitals and the Supporting Documents, the Agency hereby finds that acquisition of the Parcel pursuant to the Purchase and Sale Agreement will serve the goals and objectives for redevelopment of the Project Area set forth in the Redevelopment Plan and is consistent with the Implementation Plan.

Section 6. Approval of Agreement; Execution of Documents. The Agency hereby approves the Purchase and Sale Agreement, and the obligations of the Agency under the Purchase and Sale Agreement, and authorizes the Agency Board President or the Agency Executive Director to execute the Purchase and Sale Agreement on behalf of the Agency, substantially in the form on file with the County Clerk. This Resolution constitutes the resolution of acceptance by the Agency of the Parcel from the Property Owner for purposes of Government Code Section 27281.

Section 7. Appropriation of Funds. The Agency hereby approves and appropriates (to the extent not already appropriated) the amounts necessary to fund the Agency's obligations under the Purchase and Sale Agreement as a lawful expenditure of Agency funds under the Redevelopment Law. The Agency's current fiscal year budget is hereby amended to the extent necessary to implement the foregoing appropriation.

Section 8. Further Actions and Documents. The Agency Executive Director or the Executive Director's designee, following consultation with County Counsel, is authorized to take all actions and execute all documents on behalf of the Agency necessary to effectuate the purpose of this Resolution and the Purchase and Sale Agreement.

Section 8. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the Governing Board of the Redevelopment Agency of the County of Alameda at a regular meeting of said Board on the 27th day of July 2010, by the following vote of said Board:

AYES:

NOES:

EXCUSED:

Alice Lai-Bitker
President, Board of Directors

ATTEST:

Crystal K. Hishida, Clerk

Board of Supervisors

By: _____
Deputy

Approved as to Form:
RICHARD E. WINNIE, County Counsel

By:  _____
Brian Washington

Date: _____

PURCHASE AND SALE AGREEMENT

(3295 Castro Valley Blvd., Castro Valley, California)

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made this _____ day of _____, 2010 (the "**Effective Date**") by and between the Redevelopment Agency of the County of Alameda, a public body corporate and politic (the "**Agency**"), and Keller Investments, Inc. (formerly Daughtrey Department Stores), a California corporation (the "**Owner**"), with reference to the following:

A. The Owner owns real property located in Castro Valley, Alameda County, California commonly known as 3295 Castro Valley Blvd., (Assessor's Parcel No. 084A-0040-018-04). The Owner desires to sell to the Agency all of Owner's interest in this real property, as more particularly described in the attached Exhibit A, together with all of Owner's interest in all rights, privileges, and easements appurtenant to the real property, including without limitation, all governmental and other approvals, permits, licenses, development rights and entitlements, air rights, water, water rights, minerals, mineral rights, oil, gas and other hydrocarbon substances, utility and other permits relating to the real property, as well as any other rights-of-way, easements, and appurtenances used in connection with the beneficial use and enjoyment of the real property (collectively, the "**Property**").

B. The Property is located within the unincorporated territory of the County, and within the Eden Area Redevelopment Project Area of the Agency (the "**Project Area**"), established under the Redevelopment Plan for the Eden Area Redevelopment Project approved by County of Alameda Board of Supervisors Ordinance No. O-2001-01 enacted on July 11, 2000, as amended by Ordinance No. O-2004-42 enacted January 6, 2004 (collectively, and as may be further amended, the "**Redevelopment Plan**").

C. The Agency is vested with responsibility pursuant to the Community Redevelopment Law (Part 1 of Division 24 of the Health and Safety Code of the State of California) to implement the Redevelopment Plan in and for the benefit of the Project Area.

D. The Agency desires to acquire the Property from the Owner for use in a manner consistent with the Redevelopment Plan and the Castro Valley Central Business District Specific Plan adopted by the Alameda County Board of Supervisors on January 7, 1993.

E. The County of Alameda has prepared and certified an Environmental Impact Report ("**EIR**") for the Castro Valley Central Business District Specific Plan.

F. The EIR for the Castro Valley Central Business District Specific Plan serves as the basis for the Agency to enter into this Agreement without conducting any further environmental review.

THEREFORE, the Agency and the Owner (the "**Parties**") agree as follows:

Section 1. PURCHASE AND SALE.

The Owner agrees to sell the Property to the Agency, and the Agency agrees to purchase the Property from Owner, subject to the terms and conditions set forth in this Agreement.

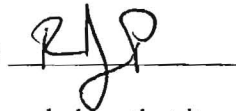
Section 2. PURCHASE PRICE.

The purchase price for the Property shall be Three Million One Hundred Forty Thousand Dollars (\$3,140,000) (the "**Purchase Price**"). The Owner understands and agrees that the amounts to be paid to the Owner pursuant to this Agreement are in full settlement of all claims the Owner could have made against the Agency in connection with or related to the Agency's acquisition of the Property, including but not limited to, claims for compensation for the Property, improvements thereon or interests therein, severance damages, any amounts for relocation benefits and/or assistance pursuant to Government Code Sections 7260 et seq., loss of goodwill, inverse condemnation, unreasonable pre-condemnation activities, interest, costs, litigation expenses, and owner participation rights. Except as provided in this Agreement, the Owner shall not be entitled to receive and hereby waives all rights to receive any compensation, damages, or other amounts by reason of such claims and releases the Agency from any claim or cause of action for any damage related to the Agency's acquisition of the Property.

The Owner hereby acknowledges that it has been advised by its attorney concerning, and is familiar with, the provisions of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Owner's Initials



The Owner acknowledges that it may have sustained damage, loss, or expenses which are presently unknown and unsuspected, and such damage, loss, costs, or expenses which may have been sustained may give rise to additional damage, loss, costs, or expenses in the future. The Owner also acknowledges that changes in law may occur in the future which may apply retroactively and may allow the Owner to be entitled to further claims for damage, loss, costs, or expenses which are presently unknown and unsuspected. Nevertheless, the Owner hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which it may have under California Civil Code Section 1542, or under any statute or common law or equitable principle of similar effect.

This acknowledgement and release shall survive the Closing.

Section 3. DEPOSITS; PAYMENT OF PURCHASE PRICE.

(a) Diligence Period Deposit. Upon execution of this Agreement, the Agency shall deposit into Escrow (as defined in Section 4) the amount of Thirty Thousand Dollars

(\$30,000) (the “**Diligence Period Deposit**”), of which One Thousand Dollars (\$1,000) shall become non-refundable and immediately payable out of Escrow to the Owner in consideration for the execution of this Agreement (the “**Non-Refundable Portion**”). If, prior to the expiration of the Diligence Period (as defined in Section 6(a)), the Agency provides the Owner with a Diligence Period Dissatisfaction Notice (as defined in Section 6(g)), such that this Agreement is terminated as further provided in Section 6(g), the Diligence Period Deposit, less the Non-Refundable Portion, shall be promptly returned to the Agency.

(b) Interest. The Diligence Period Deposit shall be deposited into an interest bearing account, and all interest earned thereon shall become part of the Diligence Period Deposit.

(c) Payment of Purchase Price. Two Million One Hundred Fifty Thousand Dollars (\$2,150,000) of the Purchase Price (the “**Initial Installment**”) shall be paid in cash to the Owner through the Closing (as defined in Section 5). The Diligence Period Deposit and any interest earned thereon shall be paid in cash to the Owner through the Closing and shall be credited towards the Initial Installment. The Owner shall provide “seller take-back” financing to the Agency for the balance of the Purchase Price (the “**Remaining Balance**”), and the Agency shall pay the Remaining Balance to the Owner, in the manner set forth as follows. Through the Closing, the Agency shall execute and cause to be delivered to the Owner a promissory note for the Remaining Balance (the “**Remaining Balance Note**”), substantially in the form of the attached Exhibit F, whereby the Agency agrees to pay the Remaining Balance of Nine Hundred Ninety Thousand Dollars (\$990,000) in a single lump sum payment on or before the thirtieth (30th) month following the Closing, and to make annual interest only payments with respect to the Remaining Balance, based on a simple interest rate of four and one half percent (4.5%) per annum, in the amount of Forty Four Thousand Five Hundred Fifty Dollars (\$44,550) per year prior to the payment of the Remaining Balance (each an “**Annual Interest Payment**”), all as fully set forth in the Remaining Balance Note. The Remaining Balance Note shall be secured by a first position deed of trust to be executed by the Agency and recorded against the Property at the Closing (the “**Deed of Trust**”), substantially in the form of the attached Exhibit G, all as more fully set forth in Section 9.

Section 4. OPENING ESCROW.

Promptly following execution of this Agreement, the Parties shall open an escrow (the “**Escrow**”) with the Oakland Office of Chicago Title Company (the “**Title Company**”) for conveyance of the Property to the Agency. The Parties shall provide escrow instructions to the Title Company consistent with this Agreement.

Section 5. CLOSE OF ESCROW AND CONDITIONS TO CLOSE OF ESCROW.

The Escrow for the conveyance of the Property shall close (the “**Closing**”), provided all conditions precedent to the Closing set forth in this Agreement have been met, at the later of the following dates: (i) thirty (30) days following the expiration of the Diligence Period (as defined in Section 6(a)) or (ii) ten (10) days after the termination of the Temporary Lease (as defined in Section 13) provided that the Temporary Tenant (as defined in Section 13) has vacated the Property, but not later than November 30, 2010; provided, however, at the written election of Agency, upon not less than five (5) days prior written notice to Owner, the Agency may elect to

accelerate the Closing date to an earlier date anytime after the expiration of the Diligence Period. At the Closing, the Owner shall convey the Property to the Agency, and the Agency shall pay the Initial Installment to the Owner, as more fully set forth in Section 3(c) and Section 9. At the Closing, the Property shall be conveyed to the Agency by grant deed substantially in the form attached to this Agreement as Exhibit B (the “**Grant Deed**”).

In the event the Agency fails to close on the scheduled Closing date through no fault of the Owner and the Agency requests an extension to the Closing date, the Owner may, in its sole discretion, agree to extend the Closing date.

The following are conditions to the Closing, which conditions may be waived solely by the Agency:

- (a) Title to the Property is in the condition described in Section 8 below;
- (b) The representations and warranties of the Owner set forth in Section 11 below remain true and correct;
- (c) The Agency does not deliver to the Owner a Diligence Period Dissatisfaction Notice prior to the expiration of the Diligence Period, as further provided in Section 6(g); and
- (d) The Owner has made all legally required disclosures in writing to the Agency within fifteen (15) calendar days after the Effective Date, and has promptly updated any such disclosures as necessary through the Closing.

Section 6. DILIGENCE PERIOD; RIGHT OF ENTRY.

- (a) The Agency’s obligation to purchase the Property is contingent on the Agency making a determination, within sixty (60) days following the Effective Date (the “**Diligence Period**”), that the Agency is satisfied with the results of any further elective environmental evaluation of the Property and its reuse potential as detailed in Subsection (f) below.
- (b) During the Diligence Period, the Agency shall have the right to:
 - (1) conduct such engineering, feasibility, seismic surveys and other studies regarding the condition of the Property which the Agency deems prudent; and
 - (2) conduct such environmental audits and studies regarding the environmental conditions of the Property which the Agency deems prudent.
- (c) Subject to the rights of the Temporary Tenant under the Temporary Lease (as defined in Section 13), if any such rights exist during the Diligence Period, the Owner hereby grants the Agency, and the Agency’s employees, representatives, agents, and licensees and permittees (including prospective buyers) a right of entry during the Diligence Period (and such other times mutually acceptable to the Parties) to enter the Property for the purposes of conducting tests and examinations and investigating the Property. During regular business

hours, the Owner shall provide the Agency reasonable access to the Property, including all improvements, for the purpose of conducting tests and examinations. The Agency shall notify the Owner and obtain the Owner's approval, which approval shall not be unreasonably withheld, prior to inspecting the Property or conducting any invasive testing of the Property. The Agency shall cooperate with the Owner and make diligent efforts to ensure that any such access results in a minimum of disruption of the Owner's ongoing operations on the Property. The Agency shall repair any damage to the Property caused by the Agency's inspections and tests and shall restore the Property to the condition existing as of the date of the inspection; provided, however, the Agency shall have no obligation to repair any damage to the Property which is revealed (but not caused by) such inspection. Upon the conclusion of such testing and studies, Agency shall provide to Owner any and all written reports and correspondence received by Agency concerning the results of any testing or the condition of the Property. Agency shall indemnify, defend and hold Owner free and harmless from all loss or liability (including, without limitation, attorneys' fees) arising from such activities of Agency and its contractors, agents and employees upon the Property and from all mechanic's, materialmen's and other liens resulting from any such conduct of Agency and its contractors, agents and employees, provided, however, that the Agency shall not have any liability to the extent incurred by the Owner as a result of the mere discovery by the Agency of any existing state of facts relating to the Property. Any reports generated pursuant to this Section shall be given to the Owner if the Agency elects to terminate this Agreement pursuant to Section 6(g).

(d) Within ten (10) days following the Effective Date (and in addition to the documents previously provided to the Agency or otherwise required by law to be provided to the Agency by the Owner), the Owner shall deliver or make available to the Agency the following information, to the extent such information is in Owner's possession or control or can be reasonably obtained or controlled by the Owner, related to the Property (all of which may be duplicated by the Agency in its discretion) for the Agency's review and approval:

(1) any and all third party reports, studies and investigations related to the Property's physical condition or the physical condition of any structure on the Property including environmental reports, soils reports, engineering studies, seismic reports or inspection reports, and any other report or study pertinent to the property which Owner has performed or that may have been performed by others upon the Property;

(2) any architectural plans and drawings, record of survey, and specifications for the Property (if available);

(3) all service and maintenance contracts with respect to the Property;

(4) any public sector notices related to the Property; and

(5) any records relating to any lawsuits pending against the Owner, its agents or employees in connection with the ownership, operation, or management of the Property.

The Owner's obligation to promptly provide such documents to the Agency shall be ongoing through the Closing.

(e) The Owner shall complete and deliver, within fifteen (15) days after the Effective Date, all legally required disclosures regarding the Property. The Owner shall promptly update any such disclosures as necessary through the Closing. With respect to disclosures made under the Natural Hazard Disclosure Statement for the Property, Agency agrees that (i) Owner has relied solely and exclusively on the Title Company to make the determinations set forth in such Statement, and (ii) the release set forth in Section 19 below shall include any failure of Owner to provide the disclosure required by California Civil Code Section 1103 due to an error or omission of the Title Company.

(f) The Agency, acting in its sole discretion, may use the Diligence Period to complete such studies and investigations as it deems appropriate, including, without limitation, any and all actions it reasonably determines to be required by the California Environmental Quality Act ("CEQA"), pursuant to California Public Resources Code Sections 21000 *et seq.* and California Code of Regulations Sections 15000 *et seq.*, with respect to acquisition, demolition, and potential redevelopment of the Property in accordance with the Redevelopment Plan and the Castro Valley Central Business District Specific Plan. The Owner shall cooperate with the Agency in providing information required by CEQA. Actions taken during the Diligence Period with respect to CEQA and other related studies above are intended to help the Agency better define the potential reuse and redevelopment of the Property and as such will help define future development of the Property for any necessary further CEQA review.

(g) The Agency, acting in its sole discretion, shall have until 5:00 p.m. (Pacific Time) on the expiration date of the Diligence Period to notify the Owner of the Agency's dissatisfaction with the Property by providing written notice to the Owner pursuant to this Section (a "**Diligence Period Dissatisfaction Notice**"). If the Agency fails to timely give such Diligence Period Dissatisfaction Notice, the contingency set forth in this Section 6 shall be deemed satisfied. If the Agency does provide a timely Diligence Period Dissatisfaction Notice, then the Agency may terminate this Agreement in its sole discretion, the Diligence Period Deposit shall be promptly returned to the Agency, and thereafter neither Party shall have any further rights or obligations under this Agreement, except that any provision of this Agreement that is specified to survive termination of this Agreement shall remain in effect and binding on the Parties.

(h) The Agency may, at its election, extend the Diligence Period for up to thirty (30) days by delivering to the Owner and the Title Company written notice of its intention to so extend the Diligence Period prior to the then-scheduled expiration of the Diligence Period. If the Agency elects to extend the Diligence Period it shall meet with the Owner within five (5) days of such giving notice of such extension and the Parties shall thereafter confer in good faith to discuss and resolve any impediments to Closing.

Section 7. AS-IS PURCHASE.

(a) No Reliance on Documents. Except as expressly set forth in this Agreement, Owner makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Owner to Agency in connection with the transaction contemplated hereby. Agency acknowledges and agrees that all materials, data and information delivered by Owner to Agency in connection with the transaction contemplated hereby are provided to Agency as a convenience only and that any reliance on or

use of such materials, data or information by Agency shall be at the sole risk of Agency, except as otherwise expressly stated herein. Without limiting the generality of the foregoing provisions, Agency acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by Owner to Agency shall be for general informational purposes only, (b) Agency shall not have any right to rely on any such report delivered by Owner to Agency, but rather will rely on its own inspections and investigations of the Property and any reports commissioned by Agency with respect thereto, and (c) neither Owner nor any affiliate of Owner shall have any liability to Agency for any inaccuracy in or omission from any such report.

(b) Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT OWNER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF OWNER TO AGENCY, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. AGENCY ACKNOWLEDGES AND AGREES THAT UPON CLOSING OWNER SHALL SELL AND CONVEY TO AGENCY AND AGENCY SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. AGENCY HAS NOT RELIED AND WILL NOT RELY ON, AND OWNER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY OWNER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT OWNER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. AGENCY REPRESENTS TO OWNER THAT AGENCY HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS AGENCY DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF OWNER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. EXCEPT FOR THE REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT FOR WHICH OWNER MAY BE

LIABLE PURSUANT TO THIS AGREEMENT, (A) UPON CLOSING, AGENCY SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY AGENCY'S INVESTIGATIONS, (B) AGENCY, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED OWNER (AND OWNER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH AGENCY MIGHT HAVE ASSERTED OR ALLEGED AGAINST OWNER (AND OWNER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY, AND (C) AGENCY AGREES THAT SHOULD ANY CLEAN-UP, REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED AFTER THE DATE OF CLOSING, SUCH CLEAN-UP, REMOVAL OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF AGENCY.

(c) Effect and Survival of Disclaimers. Owner and Agency acknowledge that the Purchase Price to be paid to Owner for the Property takes into account that the Property is being sold subject to the provisions of this Section 7. Owner and Agency agree that the provisions of this Section 7 shall survive Closing.

(d) The Agency is responsible for the cost of ordering all inspections and reports and repairing any damages resulting from these inspections and reports. Agency is responsible for confirming the accuracy of all disclosures by Owner and determining the actual condition of the Property. The Owner is responsible for maintaining the Property in the same quality condition, normal wear and tear excepted, between the Effective Date and the Closing.

Section 8. STATUS OF TITLE.

The Owner covenants and agrees to cause the title to the Property to be such that, at the Closing, the Title Company is prepared to deliver to the Agency a standard coverage CLTA policy of title insurance in the amount of the Purchase Price insuring fee title to the Property vested in the Agency free and clear of any liens, encumbrances and interests, or other clouds on title except the following ("**Approved Exceptions**"):

(a) Non-delinquent general, special and supplemental taxes (including, without limitation, any community facilities district assessments), bonds and assessments;

(b) Items 4, 5 and 6 as shown on the Title Company's preliminary title report, Order No. 09-58202776-B-MG, dated January 25, 2010 and the Title Company's preprinted standard exclusions;

(c) All matters which a correct survey and inspection of the Property would disclose.

(d) The rights of the parties to the Temporary Lease.

(e) All applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Property.

(f) Any liens or encumbrances created by or at the request of the Agency with the Owner's prior written consent; and

(g) Any other matter approved by the Agency in writing.

The Agency agrees to cooperate with the Owner, without cost to the Agency, to ensure that title to the Property is in the above condition at the Closing.

Section 9. ESCROW; COSTS AND PRORATIONS.

(a) Prior to the Closing, the Owner and the Agency shall make the deliveries into Escrow set forth in this Section 9.

(b) The Owner hereby covenants and agrees to deliver or cause to be delivered to the Title Company, on or prior to the Closing, the following instruments and documents:

(1) a good and sufficient Grant Deed, substantially in the form set forth in the attached Exhibit B, properly executed and acknowledged by the Owner in favor of the Agency, the delivery and recordation of which shall vest in the Agency fee title in and to the Property;

(2) a FIRPTA certificate, duly and validly executed by the Owner in favor of the Agency, certifying that the Owner is not a "foreign person", as that term is defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended;

(3) a certificate duly and validly executed by the Owner in favor of the Agency as required under California Revenue and Taxation Code Sections 18805 and 26131;

(4) such proof of the Owner's authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivery any instruments, documents or certificates on behalf of the Owner to act for and bind the Owner as may be reasonably required by the Title Company; and

(5) if the Temporary Lease has not been terminated as of the Closing, proof of Temporary Tenant Insurance Coverage as set forth in Section 13(b) below.

(c) The Agency hereby covenants and agrees to deliver or cause to be delivered to the Title Company, on or prior to the Closing, the following instruments and documents:

(1) such proof of the Agency's authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Agency to act for, bind the Agency and accept conveyance of the Property as may be reasonably required by the Title Company;

(2) the Initial Installment (net of the Diligence Period Deposit and the interest earned thereon that is already held in Escrow), and any additional funds necessary for the Agency's share of the Closing costs;

(3) a good and sufficient Remaining Balance Note, substantially in the form set forth in the attached Exhibit F, properly executed by the Agency in favor of the Owner, the delivery of which shall evidence the Agency's obligation to pay the Remaining Balance and interest due thereon;

(4) a good and sufficient Deed of Trust, substantially in the form set forth in the attached Exhibit G, properly executed and acknowledged by the Agency in favor of the Owner, the delivery and recordation of which shall encumber the Property to secure the Agency's obligations to the Owner under the Remaining Balance Note; and

(5) a duly executed letter substantially in the form of the attached Exhibit C (the "**Letter**").

(d) At the Closing, the Title Company shall:

(1) record the Grant Deed conveying the Property to the Agency and issue to the Agency the title policy referred to in Section 8;

(2) deliver cash in the amount of the Initial Installment, less Owner's share of Closing costs under Section 9(e), to the Owner; and

(3) deliver the Letter to the Owner.

(e) The following costs and expenses shall be borne or prorated as follows at the Closing:

(1) Property taxes and special assessments shall be prorated at the Closing based on the most current real property tax bill available, including any escaped property taxes which may be assessed after the Closing pertaining to the period prior to transfer of title to the Agency, regardless of when notice thereof is delivered or who receives such notice. In the event the Property is subject to property taxes that have not yet been assessed but that are

attributable to the period of time prior to the Agency's acquisition of the Property, the Owner agrees that the reasonable estimate of the property taxes as determined by the Owner and the Agency shall be deducted from the proceeds of sale paid to the Owner at the Closing and deposited in an escrow account to be held by the Title Company. The funds in the escrow account shall be released to pay any property tax bills that may be received after the Closing but that are attributable to the period of time prior to the Agency's acquisition of the Property.

(2) All installments of any bond or assessment that is a lien (determined as of the Closing) which installments become due before Closing shall be paid by Owner on or before Closing. In no event will Owner be required to prepay any bonds or assessments on the Property.

(3) All title insurance costs and premiums charged in connection with the issuance of the title policy referred to in Section 8 shall be paid by Agency.

(4) All property transfer taxes, if any, shall be shared equally between the Owner and the Agency.

(5) All Escrow fees shall be shared equally between the Owner and the Agency.

(6) The Owner and the Agency shall each pay their own legal fees and expenses incurred in connection with the transaction contemplated by this Agreement.

(7) The Owner shall bear all costs of causing the condition of title to the Property to be as set forth in Section 8.

Section 10. POSSESSION.

The Owner shall deliver possession of the Property with all improvements existing on the Property to the Agency at the Closing. If the Owner delivers possession of the Property with any personal property remaining on the Property, the Owner shall provide the Agency with a bill of sale for such personal property and upon Closing such personal property will become the property of the Agency. The Owner shall deliver possession subject only to the Approved Exceptions described in Section 8 and the Temporary Lease described in Section 13.

Section 11. OWNER'S REPRESENTATIONS AND WARRANTIES.

Notwithstanding any other provision contained in this Agreement, the Owner hereby represents and warrants the matters set forth below to be true to the best of Owner's knowledge as of the date of this Agreement and as of the Closing.

(a) The Owner has provided to the Agency, or will provide within the time set forth in Section 6(d), all of the reports, documents and information described in Section 6(d), to the extent they are in Owner's possession, regarding the Property (the "**Property Documents**").

(b) Except as set forth in the Property Documents, Owner has not received a written notice from any governmental agency or any other person that the Property has been, or

is, in violation of any "Environmental Laws." The term "**Environmental Laws**" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any "Hazardous Substance" (as defined below) or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances or regulations relate to Hazardous Substances in, on or under the Property). For the purposes of this Agreement, the term "Hazardous Substances" shall include, without limitation any hazardous or toxic materials, substances or wastes, such as:

(1) substances defined as "hazardous substances", "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601, et seq.) and/or the Hazardous Materials Transportation Act (49 USC Section 1801, et seq.), as either of such acts are amended from time to time;

(2) those materials identified in Sections 66680 through 66685 and Sections 66693 through 66740 of Title 22 of the California Administrative Code, Division 4, Chapter 30, as amended from time to time;

(3) those materials defined in Section 25501(j) of the California Health and Safety Code, as amended from time to time;

(4) any materials, substances or wastes which are toxic, ignitable, corrosive or reactive and which are regulated by any local governmental authority, any city of the State of California or any agency of the United States Government;

(5) asbestos, petroleum and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls (PCBs), and freon and other chlorofluorocarbons; and

(6) those substances defined as any of the foregoing in the regulations adopted and publications promulgated pursuant to each of the aforesaid laws.

(c) The Owner has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced in this Agreement, and to consummate the transaction contemplated hereby.

(d) Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Owner is a party or by which the Owner or the Property may be bound.

(e) There is no claim, action, litigation, arbitration or other proceeding pending or threatened against the Owner which relates to the Property or the transaction contemplated hereby or which could result in the imposition of a lien against the Property or have an adverse effect on the Property or its operation. If the Owner receives notice of any such

claim, litigation, arbitration or proceeding prior to the Closing, the Owner shall promptly notify the Agency of the same in writing.

(f) Except for any action by the Agency, there is no pending or threatened condemnation or similar proceeding affecting the Property, or any portion thereof, nor does the Owner have any knowledge that any such action is contemplated.

(g) Except for the Temporary Lease described in Section 13, there will be no management agreements, contracts, warranties, guaranties, bonds or other agreements which will affect or will be obligations of the Agency or the Property which cannot be terminated on thirty (30) days prior notice, including without limitation, maintenance contracts, design services contracts, construction contracts, architects agreements, parking agreements other than as disclosed to Agency or as specifically approved by Agency.

(h) As of the Effective Date and the Closing, the Temporary Lease (as defined in Section 13) with the Temporary Tenant (as defined in Section 13) is on the terms set forth in the Temporary Lease delivered to the Agency pursuant to Section 13. As of the date of this Agreement and continuously through the Closing, there are or will be no leases or other occupancy agreements with respect to the Property other than the Temporary Lease and there are or will be no tenants or occupants on the Property other than the Temporary Tenant. In the event any of the representations or warranties contained in this Subsection (h) is breached, the Agency's damages shall include recovery from the Owner of any compensation or benefits that the Agency is required to pay to the person or entity in connection with the Agency's acquisition of that person or entity's interest in the Property and relocation from the Property, including but not limited to payments under the Relocation Law (Government Code Sections 7260 et seq.), but only to the extent that the amount so paid exceeds the amount the Agency would have paid absent the breach of warranty or representation.

(i) Neither the Property nor the Owner is in violation of, and the Owner has not received any written notice of any violation of, any law, ordinance, regulation, order or requirement applicable to the Property including without limitation, requirements imposed under any recorded covenants, conditions, restrictions, easements or other rights affecting the Property. If the Owner receives such a notice prior to the Closing, the Owner shall immediately notify Agency.

(j) Prior to the Closing, the Owner shall maintain the Property in its current condition, subject to reasonable wear and tear or normal operations of the Property.

During the term of this Agreement, the Owner shall have a continuing duty to notify the Agency of any material facts in the Owner's knowledge which would render any of the representations or warranties set forth above false. Such duty shall not, however, abrogate nor limit the Agency's independent obligation to perform its own investigation into the Property. In the event that the Agency discovers at any time prior to the Closing that any of the representations or warranties set forth above are false, the Agency's sole remedy (except in the event of intentional fraud on the Owner's part) shall be the right to terminate this Agreement and recover the total amount of the Diligence Period Deposit, notwithstanding any other provision to the contrary in this Agreement. In the event that the Agency learns that an Owner representation or warranty might be untrue prior to the Closing, and the Agency elects to purchase the Property

anyway, then, and in that event, the Agency shall conclusively be deemed to have waived any right it may have to bring an action or proceeding against the Owner regarding said representation or warranty.

Buyer acknowledges and agrees that the phrase "to the best of Owner's knowledge" as used in this Section 11 means the actual knowledge, and not any implied, imputed or constructive knowledge, of Randal Papierniak, the President of Owner, without any independent investigation having been made.

Section 12. REPRESENTATIONS AND WARRANTIES OF AGENCY.

Notwithstanding any other provision contained in this Agreement, Agency hereby represents and warrants the matters set forth below to be true as of the date of this Agreement and as of the Closing:

(a) Agency duly organized and validly existing under the laws of the State of California, and this Agreement and all documents executed by Agency in connection herewith are, or at the time of the Closing will be, duly authorized, executed and delivered by Agency, and are, or at the time of the Closing will be, legal, valid and binding obligations of Agency, and do not, and at the time of Closing will not, violate any provisions of any judicial order to which Agency is subject.

(b) Neither this Agreement nor anything provided to be done by Agency hereunder, including the acceptance of title to the Property, violates, or shall violate, any agreement to which Agency is a party or that affects the Property, and the acceptance of title to the Property as contemplated hereby does not require the consent of any party that is not a signatory hereto.

(c) To the best of Agency's knowledge, there is no pending or threatened litigation that would materially adversely affect Agency's ability to perform its obligations hereunder.

During the term of this Agreement, the Agency shall have a continuing duty to notify the Owner of any material facts in the Agency's knowledge which would render any of the representations or warranties set forth above false.

Section 13. TEMPORARY LEASE; NO OTHER TENANTS OR OCCUPANTS.

(a) The Parties understand and agree that as of the Effective Date and the Closing date, the Property is not and will not be subject to any tenancies or leaseholds of any nature except for that certain Temporary Lease, a copy of which is attached as Exhibit D (the "**Temporary Lease**"), between the Owner and Summit Halloween Superstores LLC (the "**Temporary Tenant**") dated as of March 9, 2010 and granting occupancy of the Property to the Temporary Tenant for the limited and exclusive period of August 1, 2010 through November 15, 2010. The Owner shall not, prior to the Closing, rent out or otherwise allow to be occupied any space in the Property except as expressly provided in the Temporary Lease. The Owner shall not modify the Temporary Lease in any way or allow the Temporary Tenant to sublet or assign the Temporary Lease in any way without the prior consent of the Agency in its sole discretion.

(b) In the event that the Temporary Lease has not terminated as of the Closing, the Owner shall ensure that the Temporary Tenant names the Agency, its officers, agents, and employees as additional insureds on the insurance policies required under Section 11 of the Temporary Lease (the “**Temporary Tenant Insurance Coverage**”). The Owner will provide proof of the Temporary Tenant Insurance Coverage prior to the Closing.

Section 14. Indemnification.

(a) The Owner hereby agrees to defend, indemnify and hold the Agency and its board members, employees, representatives, agents, and attorneys harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys’ fees and costs of experts and consultants) arising from:

- (1) any obligation of the Owner not expressly assumed by the Agency;
- (2) personal injury or property damage relating to the Property which occurred prior to the Closing and not caused by the acts or omissions of the Agency or the Agency’s agents, employees, or invitees;
- (3) the breach of any of the Owner’s representations made under this Agreement; and

(b) The Agency hereby agrees to defend, indemnify, and hold the Owner harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys’ fees and costs of experts and consultants) arising from:

- (1) personal injury or property damage relating to the Property which occurs after the Closing or as a direct result of the Agency’s acts or omissions;
- (2) the breach of any of the Agency’s representations, warranties and covenants made under this Agreement;

(c) The indemnifications contained in this Section 14 shall survive the termination of this Agreement.

Section 15. CASUALTY.

If, prior to the Closing, the Owner becomes aware that all or any material portion of the Property has been destroyed or substantially damaged, then the Owner shall promptly give the Agency notice thereof, and the Agency, at its option, may terminate this Agreement upon written notice to Owner not later than fifteen (15) days after receipt of Owner’s notice thereof, which notice shall contain an estimate of the repair costs and an estimate of insurance payments to be

made to Owner. If this Agreement is terminated pursuant to this Section 15, the Parties shall be relieved and released of and from any further duties, obligations, rights, or liabilities under this Agreement, and notwithstanding any other provision of this Agreement, the Diligence Period Deposit shall be returned to the Agency. If the Agency fails to deliver timely notice of its election to terminate this Agreement pursuant to this Section 15, then this Agreement shall remain in full force, the transfer of the Property shall be consummated as contemplated by this Agreement without adjustment in the Purchase Price, and at the Closing the Owner shall assign to the Agency all of the Owner's right, title, and interest in and to any insurance proceeds resulting from any casualty.

Section 16. BROKER'S COMMISSION; BROKER DISCLOSURE.

The Agency and Owner each represent to the other that neither has dealt with any real estate broker or agent in relation to this transaction. The Agency and the Owner (each, reciprocally, as an "**Indemnitor**") agree to indemnify and hold the other (as "**Indemnitee**") harmless from all expense, loss, damage and claims, including the Indemnitee's attorneys' fees, if necessary, arising out the Indemnitor's breach of the foregoing representation and covenant. The indemnifications set forth in this Section 16 shall survive termination of this Agreement.

Randal Papierniak, the President of Owner, is a licensed real estate broker; however, he is performing no brokerage services, and claiming no commission or other compensation in connection with the transactions that are the subject of this Agreement.

Section 17. NOTICES.

All notices required or permitted under this Agreement shall be in writing. Unless otherwise provided herein, any notice, tender or delivery to be given pursuant to this Agreement by either party may be accomplished by personal delivery, by first class certified mail, return receipt requested, by delivery via an overnight courier which guarantees next day delivery. Any notice delivered by certified mail, return receipt requested shall be deemed received on the date of delivery reflected on the return receipt. Any notice delivered by overnight shall be deemed received one (1) business day after deposit thereof with the overnight courier. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this Section 17, on not less than ten (10) days prior written notice.

To Agency: Redevelopment Agency of the County of Alameda
224 West Winton Avenue, Room 110
Hayward, CA 94544
Attn: Executive Director

To Owner: Keller Investments, Inc.,
926 Escondido Court
Alamo, CA 94507
Attn: Randal Papierniak

With Copy to: Greenan, Pepper, Sallander & Lally LLP
6111 Bollinger Canyon Road, Suite 500
San Ramon, CA 94583-0010
Attn: H. Ray Pepper, Esq.

Section 18. MEMORANDUM OF PURCHASE AGREEMENT.

Within thirty (30) days of the Effective Date, the Parties shall record a Memorandum of this Agreement substantially in the form attached as Exhibit E.

Section 19. OWNER'S RELEASE FROM LIABILITY.

Without limiting, and preserving, Agency's rights to bring a claim against Owner for Owner's default or breach of the representations and warranties of Owner contained herein, Agency and anyone claiming by, through or under Agency waives its right to recover from and fully and irrevocably releases Owner, and its employees, officers, directors, representatives, agents, servants, attorneys, successors and assigns (the "**Released Parties**") from any and all claims, responsibility and/or liability that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise, and the presence in the soil, air, structures and surface and subsurface waters of materials or substances that have been or may in the future be determined to be Hazardous Substances or otherwise toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, and (ii) any information furnished by the Released Parties under, or in connection with, this Agreement. This release includes claims of which Agency is presently unaware or that Agency does not presently suspect to exist that, if known by Agency, would materially affect Agency's release to Owner, but excludes matters arising from Owner's fraud or intentional misrepresentation or breach of any of the warranties or representations contained in this Agreement. In this connection and to the extent permitted by law, Agency agrees, represents and warrants that Agency realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses that are presently unknown, unanticipated and unsuspected, and Agency further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Agency nevertheless intends to release, discharge and acquit Owner from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses.

Section 20. AGENCY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("**SECTION 1542**"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

AGENCY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS THAT ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

Section 21. REMEDIES.

In the event the Closing does not occur by reason of a breach of the terms of this Agreement by Owner, Agency shall be entitled, as its sole and exclusive remedy, to either (i) terminate this Agreement, and receive a return of the Diligence Period Deposit in such event neither party shall have any further rights or obligations hereunder, except that the repair and indemnity obligations of Agency set forth in Section 6(c) shall survive any such termination, or (ii) pursue specific performance of this Agreement. If the Agency first elects remedy (ii) but is unsuccessful in obtaining that remedy, then the Agency shall thereafter be allowed to pursue remedy (i). Agency shall be deemed to have elected to terminate this Agreement and receive a return of the Diligence Period Deposit if Agency fails to file suit for specific performance against Owner in Alameda County Superior Court on or before sixty (60) days following the date upon which the Closing was to have occurred.

In the event the Closing does not occur due to a breach of the terms of this Agreement by the Agency, the liquidated damages payable to Owner shall be the amount of the Diligence Period Deposit, and any remedies available to Owner under the provisions of Section 6(c) above, as further set forth below.

IN THE EVENT THE CLOSING DOES NOT OCCUR AND AGENCY IS IN MATERIAL DEFAULT IN THE PERFORMANCE OR OBSERVANCE OF ANY COVENANT, CONDITION, OR AGREEMENT OF AGENCY CONTAINED IN THIS AGREEMENT, THE SOLE AND EXCLUSIVE REMEDY OF THE OWNER AGAINST THE AGENCY SHALL BE THE OWNER'S RETENTION OF THE DILIGENCE PERIOD DEPOSIT BECAUSE IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGE, SUCH SUM IS THE AMOUNT OF DAMAGE THAT THE OWNER WOULD SUSTAIN BY REASON OF ANY SUCH DEFAULT BY THE AGENCY, AND THE AGENCY DESIRES TO LIMIT ITS LIABILITY HEREUNDER TO SUCH SUM. THE OWNER AGREES TO LOOK SOLELY TO SUCH SUM FOR SATISFACTION OF ANY OF THE OWNER'S REMEDIES FOR THE COLLECTION OF A JUDGMENT OR OTHER JUDICIAL PROCESS REQUIRING THE PAYMENT OF MONEY BY AGENCY TO THE OWNER IN THE EVENT OF A DEFAULT BY THE AGENCY HEREUNDER. PROVIDED, HOWEVER, NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, OWNER SHALL

RETAIN ALL RIGHTS AND REMEDIES AVAILABLE TO IT
UNDER SECTION 6(c) OF THIS AGREEMENT.


Owner's Initials

Agency's Initials

Section 22. MISCELLANEOUS PROVISIONS.

(a) This Agreement represents the entire agreement of the Parties and supersedes any and all agreements and understandings between the parties hereto, whether oral or written. No statement, representation or other inducement made prior hereto, whether written or oral, unless included as a part of this Agreement, shall be of any force or effect or may be relied upon by the Agency.

(b) If any provisions of this Agreement shall be prohibited by or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(c) No waiver or any breach of any covenant or provision contained in this Agreement shall be deemed a waiver of any other covenant or provision contained in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving Party. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(d) No person or entity other than the Parties is intended to be a beneficiary of the provisions of this Agreement.

(e) Headings at the beginning of each section and subsection are solely for the convenience of the Parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared the same. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to and incorporated in this Agreement by this reference.

(f) Each and every representation, warranty, covenant and obligation of Owner and Agency shall not merge with transfer of title, but shall survive the Closing.

(g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by the Owner and the Agency.

(h) Time is of the essence of each and every condition, and of each term, date, and provision in this Agreement and any addenda, riders, or amendments thereto. This means that all deadlines are intended to be strict and absolute.

(i) The prevailing party in connection with any litigation arising out of this Agreement shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees, which reasonable attorneys' fees shall include but not be limited to paralegal and legal assistant fees and those reasonable attorneys' fees incurred by such prevailing party for the services of such prevailing party's attorney(s) at all judicial levels.

(j) This Agreement shall be governed and construed in accordance with California law.

(k) If the day for performance under any time period specified in this Agreement shall fall on a Saturday, Sunday or holiday observed by the federal government or the State of California, then the time for performance under such time period shall automatically be extended to the next business day; provided, however, that the term "days" as used to compute time periods in this Agreement shall not be construed to mean "business days." Further, if either Party so requests after the complete execution of this Agreement, the Parties shall reduce to writing those dates related to performance under this Agreement capable of being ascertained upon such execution.

(l) From and after the Closing date, the Agency shall have sole and absolute control of the Property and may develop and use the Property in accordance with the Redevelopment Plan including, without limitation, the demolition and removal of any improvements on the Property.

(m) This Agreement shall be binding upon the Parties and their respective heirs, executors, administrators, legal representatives, successors and, as permitted hereunder, assigns.

(n) The Owner's insurance policies are not transferable, and will not be prorated at Closing.

[SIGNATURES ON FOLLOWING PAGE]

WHEREFORE, the Parties have executed this Agreement on the date first written above.

AGENCY:

ATTEST:

REDEVELOPMENT AGENCY OF THE
COUNTY OF ALAMEDA

Agency Secretary

By: _____

Alice Lai-Bitker,
President of the Board of Directors

OWNER:

KELLER INVESTMENTS, INC. (FORMERLY
DAUGHTREY DEPARTMENT STORES), a
California corporation

By: Randal Papierniak

Name: Mr. Randal Papierniak

Title: President

APPROVED AS TO FORM
Richard E. Winnie, County Counsel

By Brian Washington
Brian Washington

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 3 IN BLOCK "A", AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF "CASTRO VALLEY GARDENS", FILED JANUARY 13, 1914, IN BOOK 28 OF MAPS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERN CORNER OF SAID LOT 3; AND RUNNING THENCE ALONG THE SOUTHERN LINE OF SAID LOT 3, NORTH 88° 39' EAST, 163.53 FEET TO THE EASTERN LINE OF SAID LOT 3; THENCE ALONG THE LAST NAMED LINE, NORTH 1° 21' WEST, 237 FEET; THENCE SOUTH 88° 38' WEST, 38.53 FEET; THENCE NORTH 1° 21' WEST, 3 FEET; THENCE SOUTH 88° 39' WEST, 125 FEET TO SAID WESTERN LINE OF SAID LOT 3; AND THENCE ALONG THE LAST NAMED LINE, SOUTH 1° 21' EAST, 240 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION THEREOF WHICH LIES WITHIN THE LINES OF THE LAND DESCRIBED IN THE DEED FROM THOMAS LITCH AND EVA LITCH, HIS WIFE, TO THE STATE OF CALIFORNIA, DATED AUGUST 13, 1930, RECORDED SEPTEMBER 23, 1930, IN BOOK 2426 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 344, INSTRUMENT NO. (AA/57760).

APN: 084A-0040-018-04

EXHIBIT B

FORM OF GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Redevelopment Agency of the County of Alameda
224 West Winton Avenue, Room 110
Hayward, CA 94544
Attention: Executive Director

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE SECTION 27383

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is acknowledged, Keller Investments, Inc. (formerly Daughtrey Department Stores), a California corporation (GRANTOR), grants, by execution and delivery of this Grant Deed, to the Redevelopment Agency of the County of Alameda, a public body, corporate and politic (GRANTEE), the real property in the unincorporated area of the County of Alameda, State of California, described on the attached Attachment No. 1, subject to:

1. Non-delinquent real estate taxes, supplemental taxes and assessments.
2. All other covenants, conditions, restrictions, reservations, rights, rights of way, easements, leases, encumbrances, liens and title matters of record or visible from an inspection of the Property and all matters which an accurate survey of the Property would disclose.

Dated: _____

GRANTOR:

KELLER INVESTMENTS, INC. (FORMERLY
DAUGHTREY DEPARTMENT STORES),
a California corporation

By: _____
Name: Mr. Randal Papierniak
Title: President

By: _____
Name: _____
Title: _____

SIGNATURES MUST BE NOTARIZED

STATE OF CALIFORNIA)
) ss
COUNTY OF ALAMEDA)

On _____, 2010 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss
COUNTY OF ALAMEDA)

On _____, 2010 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT NO. 1
LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 3 IN BLOCK "A", AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF "CASTRO VALLEY GARDENS", FILED JANUARY 13, 1914, IN BOOK 28 OF MAPS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERN CORNER OF SAID LOT 3; AND RUNNING THENCE ALONG THE SOUTHERN LINE OF SAID LOT 3, NORTH 88° 39' EAST, 163.53 FEET TO THE EASTERN LINE OF SAID LOT 3; THENCE ALONG THE LAST NAMED LINE, NORTH 1° 21' WEST, 237 FEET; THENCE SOUTH 88° 38' WEST, 38.53 FEET; THENCE NORTH 1° 21' WEST, 3 FEET; THENCE SOUTH 88° 39' WEST, 125 FEET TO SAID WESTERN LINE OF SAID LOT 3; AND THENCE ALONG THE LAST NAMED LINE, SOUTH 1° 21' EAST, 240 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION THEREOF WHICH LIES WITHIN THE LINES OF THE LAND DESCRIBED IN THE DEED FROM THOMAS LITCH AND EVA LITCH, HIS WIFE, TO THE STATE OF CALIFORNIA, DATED AUGUST 13, 1930, RECORDED SEPTEMBER 23, 1930, IN BOOK 2426 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 344, INSTRUMENT NO. (AA/57760).

APN: 084A-0040-018-04

CERTIFICATE OF ACCEPTANCE

PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 27281

This is to certify that the interest in the real property conveyed by the GRANT DEED, attached, dated _____, 2010, from Keller Investments, Inc. (formerly Daughtrey Department Stores), a California corporation (the "Owner"), to the Redevelopment Agency of the County of Alameda (the "Agency") is hereby accepted by the undersigned authorized official or officer on behalf of the Agency pursuant to authority conferred by the Board of Directors of the Agency which consents to the recordation of said document or documents in the Office of the Recorder of Alameda County, State of California.

Date: _____

By: _____

Name: _____

Title: _____

SIGNATURE MUST BE NOTARIZED

STATE OF CALIFORNIA)
) ss
COUNTY OF ALAMEDA)

On _____, 2010 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT C

LETTER

[On Agency Letterhead]

_____, 2010

Keller Investments, Inc. (formerly Daughtrey Department Stores), a California corporation

Re: Acquisition of 3295 Castro Valley Boulevard, Castro Valley, Alameda County, California

Dear Mr. Papierniak:

I write to confirm that the Redevelopment Agency of the County of Alameda (the "Agency") is authorized to exercise the power of eminent domain under both the California Community Redevelopment Law and the Redevelopment Plan for the Eden Area Redevelopment Project adopted by the Board of Supervisors of the County of Alameda by Ordinance No. 2001-1, dated July 11, 2000 (as amended, the "Redevelopment Plan"). The property located at 3295 Castro Valley Boulevard, Castro Valley, Alameda County, California (the "Property") is located within the redevelopment project area that is subject to the Redevelopment Plan (the "Project Area").

The Redevelopment Plan contemplates that the Agency might acquire properties for redevelopment purposes including by eminent domain. The Agency has determined that redevelopment of the Property will further the goals of the Redevelopment Plan and assist the Agency in continuing to eliminate blight in the Project Area. To accomplish the Agency's redevelopment goals, the Agency is prepared to acquire the Property pursuant to the terms of that certain purchase and sale agreement between the Agency and you. If you had not entered into a contract to sell the Property to the Agency, then the Agency could have acquired the Property for the purpose of redeveloping the Property consistent with the Redevelopment Plan, including by exercise of the Agency's eminent domain powers and the Agency Board could have considered a resolution of necessity to initiate the eminent domain action, if necessary.

The Agency makes no representation and assumes no liability as to the tax treatment that may be received by you under the circumstances described in this letter.

Sincerely,

Chris Bazar
Agency Executive Director

EXHIBIT D
TEMPORARY LEASE

TEMPORARY LEASE AGREEMENT

This Lease is made and entered into this 9 day of MARCH 2010, by and between **KELLER INVESTMENT, INC.** with an address at 926 Escondido Court, Alamo, CA 94507 ("Landlord"), and **SPIRIT HALLOWEEN SUPERSTORES LLC** ("Tenant"), Suite 205, 6826 Black Horse Pike, Egg Harbor Township, NJ 08234.

1. **Premises.** In consideration of the mutual covenants, conditions and agreements in this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the following described premises ("Premises"): 3295 Castro Valley Blvd., Castro Valley, CA

2. **Term.** The term of this Lease ("Term") shall begin on August 1, 2010 ("Commencement Date") and end November 15, 2010 ("Expiration Date"). Landlord shall deliver possession of the Premises to Tenant for preparation, cleaning, and general setup on or before August 1, 2010. Tenant shall open and conduct its business at the Premises from approximately September 1, 2010 through November 1, 2010.

In the event Landlord enters into a permanent lease for the Premises (permanent lease being defined as having a lease term of at least 12 consecutive months) and such permanent tenant requires possession of the Premises prior to the expiration date of this Lease, then Landlord shall have the right to terminate this Lease by giving written notice to Tenant not later than July 1, 2010. In the event Landlord fails to so notify Tenant of its election to terminate this Lease, Landlord shall be deemed to have waived such right of termination.

Condition Of Premises At Commencement Date: Prior to entering into this Lease, Tenant shall conduct an inspection of the Premises, together with Landlord, to determine the condition of the Premises as of the date of this Lease (the "First Inspection"). Not earlier than ten (10) days prior to the Commencement Date, Tenant and Landlord shall conduct a second inspection of the Premises to determine the condition of the Premises as of that date (the "Second Inspection"). In the event Tenant determines, in its sole judgment that the condition of the Premises at the time of the Second Inspection has changed to the detriment of Tenant from the condition of the Premises that existed at the time of the First Inspection, Tenant shall provide written notice to Landlord identifying such deficiencies. Landlord agrees to correct such deficiencies on or before the Commencement Date. In the event Landlord fails to complete such work by the Commencement Date, Tenant shall have the right to terminate this Lease by giving written notice to Landlord, and Landlord agrees to promptly refund to Tenant all rent (and security deposit, if any) paid to Landlord prior to the date this Lease terminates.

3. **Rent.** Total rent ("Rent") for the Term is \$32,000 (Thirty-Two Thousand Dollars) payable to Landlord at the above address as follows: \$16,000 (Sixteen Thousand Dollars) due upon signing, and \$16,000 (Sixteen Thousand Dollars) due on or before October 1, 2010

4. **Personal Property.** Tenant shall furnish at his own expense all personal property to be used by Tenant on the Premises.

5. **Permitted Use.** Tenant shall use the Premises only for the retail sale of Halloween related merchandise, including but not limited to, costumes, masks, wigs, makeup, accessories, decorations, party goods, home decorations, and any other item then being sold in a majority of Tenant's other stores operated under the same trade name as the Premises. Tenant shall carry on no other business on said Premises without the prior written consent of Landlord. Tenant's business in the Premises shall be conducted under the trade name "Spirit Halloween Superstores," or any other trade name under which Tenant operates.

6. **Utilities.** Tenant agrees to pay for all electric, power, gas, telephone, fire alarm monitoring fees, garbage or trash collection supplied to the Premises during the Term of this Lease. In the event any such utility is disrupted so that Tenant cannot operate the Premises, and such disruption is caused by the acts or negligence of Landlord, its agents, employees or contractors, then all Rent shall abate thereafter until such utility service is restored.

7. **Subletting.** Tenant shall not sublet the whole or any part of the Premises without first obtaining the prior written consent of Landlord.

8. **Maintenance and Repairs.** Landlord represents that the electrical system, HVAC system, plumbing system, fire sprinkler and alarm systems (if required by local fire code), lighting fixtures, and physical structure of the Premises are in good working order. Landlord shall at all times at its sole cost and expense keep and maintain the Premises in good condition, order and repair, including the parking lot, roof, foundation and structural portions of the Premises, as well as the mechanical, electrical, HVAC or other utility systems servicing the Premises, unless such repairs are necessitated by the intentional acts or omissions of Tenant.

9. **Liens.** Tenant shall not permit any liens to be filed against the Premises on account of the furnishing of any labor, material or supplies, or for any other cause or reason. In the event liens are filed, then Tenant shall promptly cause the same to be released, bonded or satisfied in full within ten (10) days of the date of such filing.

10. **Indemnification.** Tenant shall indemnify and hold harmless Landlord from and against any and all claims, actions, damages, liability and expenses in connection with loss of life or personal injury arising from or out of Tenant's occupancy or use of the Premises or any part thereof, occasioned wholly or in part by an negligent act or omission of Tenant, its agents, contractors or employees. Notwithstanding the foregoing, Tenant shall have no obligation to indemnify or hold Landlord harmless against claims for loss of life or personal injury sustained as a consequence of the acts or omissions of Landlord or of its agents, servants, or employees.

11. **Tenant's Insurance.** Tenant shall carry, at his own expense, (i) commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence, with a \$2,000,000 general aggregate for bodily injury and property damage, and (ii) all risk property insurance covering Tenant's trade fixtures, inventory and other personal property for the full replacement cost thereof. Landlord shall be named as an additional insured on the aforesaid liability insurance and shall be provided with evidence confirming such coverage.

12. **Landlord's Insurance.** Landlord shall carry commercial property insurance, including special form perils endorsement, insuring the building of which the Premises is a part, in an amount not less than the full replacement cost. In addition, Landlord shall carry commercial general liability insurance for the property of which the Premises is a part, in at least the same amounts required of Tenant.

13. **Hazardous Materials.** Tenant agrees not to maintain, keep, store or permit the maintenance or storage of any dangerous, flammable or hazardous material on the Premises (other than reasonable and customary amounts as permitted under existing fire and safety rules and regulations) and further agrees to comply with all fire and safety rules and regulations, provided such compliance does not require Tenant to install or modify any fire protection, fire detection or fire alarm systems in the Premises. Any such installations or modifications shall be the sole responsibility of the Landlord.

14. **Casualty.** If all or any part of the Premises shall be damaged or destroyed by fire, earthquake or other casualty so as to render the Premises untenable in Tenant's sole opinion, then this Lease shall terminate, at the written option of Landlord or Tenant, from the date of such casualty, and upon such notice Tenant shall at once surrender the Premises and all interest therein to the Landlord, and shall not be liable for any further payments of Rent as of the date of such casualty. Any portion of the Rent applicable to the time period after the date of such casualty shall be refunded to Tenant.

15. **Quiet Enjoyment.** Landlord represents and warrants that Landlord has the right, power and lawful authority to enter into this Lease for the full Term hereof. Tenant, upon paying the Rent required under this Lease, shall peaceably and quietly hold and enjoy the Premises during the full Term hereof.

16. **Signage.** Beginning August 1st (or upon the mutual execution and delivery of this Lease if such date is later than August 1st), Tenant shall have the right to place temporary professionally prepared banner signs containing Tenant's trade name on the front facade and sides (if applicable) of the building of which the Premises is a part and on any available monument or pylon sign located on the shopping center property, such signage to comply with the terms contained in Exhibit "A" attached hereto. Upon the removal of the signs at the end of the Term, Tenant will make all necessary repairs to return the building and monuments to their original conditions prior to the installation of signs, reasonable wear and tear excepted.

In addition to the above banner signs, Tenant shall have the right to place at the Premises signage stating "Halloween Store Opening Soon" (or similar language) immediately upon the mutual execution and delivery of this Lease.

Upon Landlord's written request, Tenant agrees to display a single "For Lease" or "For Sale" sign, not to exceed 24" x 24" (such sign to be provided by Landlord), and further agrees to make the Premises available for showing upon not less than 24 hours prior notice.

17. **Governmental Approvals.** In the event any governmental authorities require Tenant to (i) make modifications to the Premises so that Tenant can conduct business at the Premises, or

(ii) obtain licenses or permits, and the costs for such modifications or licenses and permits exceed a cumulative total of \$2,000.00, then Tenant shall have the right to terminate this Lease by giving written notice to Landlord. In the event Tenant so elects to terminate this Lease, Landlord shall refund to Tenant all Rent and deposits (if any) paid to Landlord. Landlord may, however, elect to pay all costs above the amount of \$2,000.00, in which event Tenant's notice of termination shall be void, provided Landlord notifies Tenant in writing of such election no later than two (2) days following Landlord's receipt of Tenant's notice of termination.

18. **Zoning.** Landlord represents and warrants that the Premises is zoned for retail. In the event Tenant is unable to obtain the necessary governmental approvals to operate its business at the Premises, this Lease shall be considered null and void and Landlord shall refund to Tenant all Rent and deposits (if any) paid to Landlord.

19. **Default.** In the event Tenant shall be in default in the payment of any installment of Rent herein reserved more than five (5) days after the due date of such installment, or in the event Tenant shall be default in the performance of any other of the terms, covenants, conditions or provisions herein contained binding upon Tenant after Landlord has given Tenant fifteen (15) days prior written notice of such non-performance, Landlord shall have the right (in addition to all other rights and remedies provided by law) to terminate this Lease, to re-enter and take possession of the Premises, peaceably or by force, and to remove any property therein, without liability for damage to, and without obligation to store, such property.

20. **Notices.** Any notice required or permitted under this Lease shall be in writing and, except as specifically provided otherwise herein, shall be deemed to have been duly given and delivered (a) one (1) business day after the date on which the same has been delivered prepaid to a national courier service guaranteeing next day service, or (b) three (3) days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, in each case addressed to the party to whom such notice is given at the address set forth herein.

21. **Attorneys' Fees.** If either Landlord or Tenant institutes any action or proceeding against the other to enforce any provision of this Lease, the non-prevailing party shall reimburse the prevailing party for all reasonable costs and expenses incurred by the prevailing party in the performance of this Lease, including court costs, expenses and reasonable attorneys' fees.

22. **Entire Agreement.** There are no oral or written agreements or representations between Landlord and Tenant except as expressly set forth in this Lease. No modifications of this Lease will be binding upon Landlord or Tenant unless in writing and signed by each party. The terms, covenants and conditions contained herein shall inure to the benefit of, and be binding upon, Landlord and Tenant, and their respective heirs, successors and assigns.

23. **Severability.** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

24. **Governing Law.** This Lease shall be construed in accordance with the laws of the state in which the Premises is located.

25. **Force Majeure.** Neither the Landlord nor the Tenant shall be liable for failure to perform any obligation under this Lease in the event it is prevented from so performing by strike, lockout, breakdown, accident, act of terrorism, order or regulation of or by any governmental authority or failure to supply or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control.

26. **Time of the Essence.** Time is of the essence with respect to the performance of each, every and all of the terms, conditions, promises and provisions of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

KELLER INVESTMENT, INC.

By: Randal Papierniak

Name: Randal Papierniak

Title: President

Date: 3/9/10

Landlord's Federal Tax ID#: 94-1319905

TENANT:

SPIRIT HALLOWEEN SUPERSTORES LLC

By: Anthony Detzi, Vice President

Date: 3-1-10

EXHIBIT E

FORM OF MEMORANDUM OF PURCHASE AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Redevelopment Agency of the County of Alameda
224 West Winton Avenue, Room 110
Hayward, CA 94544
Attention: Executive Director

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE SECTION 27383

THIS SPACE FOR RECORDER'S USE ONLY

MEMORANDUM OF PURCHASE AGREEMENT

THIS MEMORANDUM OF PURCHASE AGREEMENT is dated as of _____, 2010, and is by and between the Redevelopment Agency of the County of Alameda, a public body, corporate and politic (the "Agency") and Keller Investments, Inc. (formerly Daughtrey Department Stores), a California corporation (the "Owner").

The Owner and the Agency have entered into that certain Purchase and Sale Agreement (the "Purchase Agreement") for certain real property and the improvements thereon (the "Property") located in the unincorporated area of Alameda County, California, more fully described in the attached Attachment No. 1, and by recordation of this Memorandum of Purchase Agreement give notice of the unrecorded Purchase Agreement and place on public record the following information:

Pursuant to the terms of the Purchase Agreement, the Owner intends to sell to the Agency and the Agency intends to acquire from the Owner all of Owner's right, title and interest in the Property.

Attachment No. 1 attached hereto and referenced herein shall be deemed incorporated herein by this reference.

This Memorandum of Purchase Agreement in no way modifies or amends the provisions of the Purchase Agreement.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Purchase Agreement as of the date first set forth above.

AGENCY

OWNER

REDEVELOPMENT AGENCY OF THE
COUNTY OF ALAMEDA, a public body,
corporate and politic

KELLER INVESTMENTS, INC. (FORMERLY
DAUGHTREY DEPARTMENT STORES), a
California corporation

By: _____

By: _____
Randal Papierniak, President

Name: _____

By: _____
[insert name], [insert title]

Title: _____

THIS DOCUMENT MUST BE NOTARIZED

[illegible]

On _____, 2010 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[illegible]

On _____, 2010 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____ (Seal) _____

[illegible]

On _____, 2010 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT NO. 1
LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 3 IN BLOCK "A", AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF "CASTRO VALLEY GARDENS", FILED JANUARY 13, 1914, IN BOOK 28 OF MAPS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERN CORNER OF SAID LOT 3; AND RUNNING THENCE ALONG THE SOUTHERN LINE OF SAID LOT 3, NORTH 88° 39' EAST, 163.53 FEET TO THE EASTERN LINE OF SAID LOT 3; THENCE ALONG THE LAST NAMED LINE, NORTH 1° 21' WEST, 237 FEET; THENCE SOUTH 88° 38' WEST, 38.53 FEET; THENCE NORTH 1° 21' WEST, 3 FEET; THENCE SOUTH 88° 39' WEST, 125 FEET TO SAID WESTERN LINE OF SAID LOT 3; AND THENCE ALONG THE LAST NAMED LINE, SOUTH 1° 21' EAST, 240 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION THEREOF WHICH LIES WITHIN THE LINES OF THE LAND DESCRIBED IN THE DEED FROM THOMAS LITCH AND EVA LITCH, HIS WIFE, TO THE STATE OF CALIFORNIA, DATED AUGUST 13, 1930, RECORDED SEPTEMBER 23, 1930, IN BOOK 2426 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 344, INSTRUMENT NO. (AA/57760).

APN: 084A-0040-018-04

EXHIBIT F

FORM OF REMAINING BALANCE NOTE

REMAINING BALANCE PROMISSORY NOTE

\$990,000

Castro Valley, California
_____, 2010

FOR VALUE RECEIVED, the undersigned REDEVELOPMENT AGENCY OF THE COUNTY OF ALAMEDA, a public body corporate and politic ("Borrower") hereby promises to pay to Keller Investments, Inc. (formerly Daughtrey Department Stores), a California corporation (the "Lender") or order, at 926 Escondido Court, Alamo CA 94507 (Attention: Randal Papierniak), the principal sum of Nine Hundred Ninety Thousand Dollars (\$990,000) ("Principal Amount"), together with interest thereon, and other charges all as hereinafter provided. This Remaining Balance Promissory Note ("Note") is entered into by Borrower in accordance with the terms of that certain Purchase and Sale Agreement between Borrower and Lender dated as of _____, 2010 (the "Agreement"). Capitalized terms used but not defined in this Note shall have the meanings set forth in the Agreement.

1. Background.

(a) Pursuant to the Agreement, Lender has conveyed certain real property to Borrower ("Property") for redevelopment in accordance with the Redevelopment Plan. The legal description of the Property is set forth in the Agreement. The date of close of escrow and conveyance of the Property by Lender to Borrower pursuant to the terms of the Agreement was _____, 2010, and is referred to in this Note as the "Closing Date."

(b) Pursuant to the Agreement, the Borrower has executed and delivered this Note to evidence the Borrower's obligation to pay the Remaining Balance for the Property as provided herein.

2. Interest. The Principal Amount under this Note shall bear simple interest at four and one half percent (4.5%) per annum, and such interest shall be payable by Borrower to Lender in two (2) equal annual payments of Forty Four Thousand Five Hundred Fifty Dollars (\$44,550) (each an "Annual Interest Payment"). The first Annual Interest Payment shall be due one (1) year after the Closing Date. The second Annual Interest Payment shall be due two (2) years after the Closing Date. All remaining accrued but unpaid interest shall be payable on the Maturity Date (as defined below). Upon the occurrence of any Event of Default (as defined below) under this Note the remaining Principal Amount under this Note and any accrued but unpaid interest shall thereafter bear simple interest at ten (10%) per annum.

3. Principal Repayment. The Principal Amount shall be payable in full by Borrower to Lender on the date that is thirty (30) months following the Closing Date (the "Maturity Date"). The Principal Amount may be prepaid in the Borrower's sole discretion.

4. Payment Method. All sums hereunder will be due and payable in lawful money of the United States of America without set-off, deduction, or counterclaim.

5. Late Fee. Should Borrower fail to pay any amount payable under this Note when due, a late charge of five percent (5%) of the overdue and unpaid amount shall be charged by Lender for the purpose of defraying the additional expenses incurred by Lender incident to handling such delinquent payment. Borrower acknowledges that this late charge represents a reasonable sum considering all of the circumstances existing on the date of this Note, and represents a fair and reasonable approximation of the cost that will be incurred by Lender due to the failure of Borrower to make timely payment. Borrower further agrees and acknowledges that proof of actual damages would be costly and inconvenient. Any such late charge shall be due and payable without further notice and without prejudice to Lender's rights to collect all other amounts provided to be paid hereunder, including, without limitation, attorney's fees, or to declare a default under this Note or from exercising any other rights and remedies Lender may have in law or equity.

6. Waivers By Borrower. Borrower and any endorsers or guarantors hereof severally waive diligence, presentment, protest and demand and also notice of protest, demand, dishonor and nonpayment of this Note, and expressly agree that this Note or any payment hereunder may be extended from time to time, and consent to the acceptance of further security or the release of any security from this Note, all without in any way affecting the liability of Borrower and any endorsers or guarantors hereof.

In addition, the right to plead any and all statutes of limitations as a defense to any demand on this Note or any guaranty hereof, or any agreement to the same, or any and all obligations or liabilities arising out of or in connection with this Note, is expressly waived by Borrower and each and every endorser or guarantor to the fullest extent permitted by law.

7. Borrower's Warranties and Representations. Borrower hereby makes the following representations and warranties to Lender, which will remain effective until payment in full of all amounts owing under this Note:

(a) This Note is a legal, valid and binding instrument, and is enforceable against Borrower in accordance with its terms.

(b) Borrower expressly warrants and represents that his obligations under this Note are unconditional, and are not subject to diminution, forgiveness, modification or extension, absent an express written agreement signed by Lender.

(c) Borrower and the individual signing on its behalf have the power and authority to execute and deliver this Note and all other documents and instruments required or executed by Borrower in connection with this Note.

(d) There is no action, proceeding or investigation pending or threatened (or any basis therefore) which materially adversely affects, or would substantially interfere with, Borrower's ability to repay the Note as herein contemplated.

8. No Usury. Borrower expressly agrees, warrants and represents that this Note is exempt from the usury laws of the State of California, and further acknowledges that absent Borrower's warranty in this regard, Lender would not have entered into this transaction. If however, the performance of any provision of this Note shall involve exceeding the limit of validity presently prescribed by any applicable usury statute or any other law, then the obligation to be fulfilled shall be reduced ipso facto to the limit of such validity, provided however, that to the extent permitted by law, Borrower waives any right Borrower may now or hereafter have to assert that any amounts due under this Note violate applicable usury laws.

9. Default/Remedies. Upon the happening of any of the following events, Lender may, at its option and without advance notice, declare immediately due and payable the entire unpaid Principal Amount together with all interest thereon plus any other amounts due and payable at the time of such declaration pursuant to this Note. Such events are the following (each an "Event of Default"):

(a) The failure to pay in full, on or before the date due, any payment of principal, interest, late charge or other monetary payment required under this Note or the Deed of Trust.

(b) The failure of Borrower to keep, perform or observe any of the other terms or provisions of this Note or the Deed of Trust.

(c) The filing of a voluntary or involuntary petition in bankruptcy or other comparable relief from creditors by or against Borrower or any of its related entities or any corporation or partnership which he manages or in which he owns or controls the majority or controlling interest.

Upon occurrence of an Event of Default, Lender may additionally exercise any remedy available at law or in equity and, may exercise the remedies set forth in the Deed of Trust.

The failure to exercise any of the foregoing remedies shall not constitute a waiver of the right to exercise the same or any other remedy. The acceptance by Lender of any payment hereunder which is less than the payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies at that time or any subsequent time or nullify any prior exercise of any such remedies without the express consent of Lender except as and to the extent otherwise provided by law.

10. Deed of Trust; Note Cancellation. This Note is secured by a Deed of Trust of even date herewith (the "Deed of Trust") executed by Borrower in favor of Lender and recorded against the Property.

This Note shall be deemed fully satisfied, and Lender shall cancel and return this Note to Borrower and shall cause full release and reconveyance of the Deed of Trust upon the full payment

by Borrower of any interest in accordance with Section 2 above, the Principal Amount in accordance with Section 3 above, and any late fee in accordance with Section 5 above.

11. General.

(a) Assignment. Lender may, without Borrower's consent, sell, assign or otherwise transfer this Note in whole or in part. Lender shall notify Borrower of any sale, assignment or other transfer of this Note promptly upon completion of such sale, assignment, or other transfer.

(b) Successors and Assigns. This Note shall be binding on and inure to the benefit of the parties and their respective successors, heirs and assigns.

(c) Governing Law/Interpretation. This Note shall be interpreted and enforced under the laws of the State of California in accordance with its fair meaning, and neither for or against either party. The captions of the sections or paragraphs herein are for convenience only, and not intended to describe or define the provisions in the portions of this Note to which they pertain. Whenever required by the context of this Note, the singular shall include the plural and vice-versa. The masculine, feminine and neuter gender shall each include the other.

(d) Modification. This Note may not be modified unless done pursuant to a written amendment signed by Lender and Borrower.

(e) Remedies Cumulative. The rights, powers and remedies of Lender under this Note shall be in addition to all rights, powers and remedies given to Lender by virtue of any statute or rule of law, all of which rights, powers and remedies shall be cumulative and may be exercised successively or concurrently.

(f) Collection. Borrower agrees to pay all costs and expenses of collection of this Note when incurred, including without limitation, reasonable attorney's fees, whether or not any action shall be instituted to enforce this Note, and specifically including but not limited to any post-judgment proceedings or any collection efforts that may be made through a bankruptcy court. This provision shall survive the merger of this Note into any judgment.

(g) Severability. The provisions of this Note are intended by Borrower to be severable and divisible and the invalidity or unenforceability of a provision or term herein shall not invalidate or render unenforceable the remainder of this Note or any part hereof.

(h) Notices. All notices and other communications shall be in writing, and shall be delivered to the parties at the following addresses:

Borrower: Redevelopment Agency of the County of Alameda
224 West Winton Avenue, Room 110
Hayward, CA 94544
Attn: Executive Director

Lender: Keller Investments, Inc.
926 Escondido Court
Alamo, CA 94507
Attn: Randal Papierniak

With Copy to:

Greenan, Pepper, Sallander & Lally LLP
6111 Bollinger Canyon Road, Suite 500
San Ramon, CA 94583-0010
Attn: H. Ray Pepper, Esq.

All payments hereunder shall be delivered to Lender at the address set forth above, or to such other place as Lender may from time to time direct in writing to Borrower. Notices may be sent by personal delivery, United States mail, or Federal Express. Notices shall be effective upon actual delivery or three (3) days after mailing.

(i) Interpretation. This Note is the result of the joint efforts of both parties, and shall be construed as a whole and in accordance with its fair meaning and not for or against any party.

Borrower has carefully read this Note in its entirety, and fully understands its contents and legal effect.

BORROWER

**REDEVELOPMENT AGENCY OF THE COUNTY OF
ALAMEDA**, a public body, corporate and politic

By: _____
Alice Lai-Bitker, President of the Board of Directors

EXHIBIT G

FORM OF DEED OF TRUST

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

Keller Investments, Inc.
926 Escondido Court
Alamo, CA 94507
Attn: Randal Papierniak

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

J.P.N.

A.P.N.

This Deed of Trust, made this ____ day of _____, 2010, between the Redevelopment Agency of the County of Alameda, herein called **Trustor**,

whose address is 224 West Winton Avenue, Room 110 Hayward, CA 94544

Chicago Title Company, a California corporation, herein called **Trustee**, and Keller Investments, Inc. (formerly Daughtrey Department Stores), a California corporation, herein collectively called **Beneficiary**,

Witnesseth: That Trustor **IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE**, That property in the unincorporated area of the County of Alameda, California, described as follows:

SEE ATTACHMENT NO. 1

TOGETHER WITH the rents, issues and profits thereof, **SUBJECT, HOWEVER**, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing:

1. Performance of each agreement of Trustor incorporated by reference or contained herein.
2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of Nine Hundred Ninety Thousand Dollars (\$990,000) executed by Trustor in favor of Beneficiary or order.
3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Protect the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that: (a) provisions (2) to (14), inclusive, of the fictitious deed of trust (the "Fictitious Deed of Trust") recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of the county,

viz.:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	435	6	Kings	792	8	Placer	895	31	Sierra	29	335
Alpine	1	2	Lake	362	1	Plumas	151	3	Siskiyou	468	181
Amador	104	2	Lassen	171	4	Riverside	3005	5	Solano	1105	182
Butte	1145	1	Los Angeles	T2055	8	Sacramento	4331	6	Sonoma	1851	689
Calaveras	145	1	Madera	810	1	San Benito	271	31	Stanislaus	1715	456
Colusa	296	6	Marin	1508	3	San Bernardino	5567	4	Sutter	572	297
Contra Costa	3978	1	Mariposa	77	2	San Francisco	A332	91	Tehama	401	289
Del Norte	78	4	Mendocino	579	5	San Joaquin	2470	3	Trinity	93	366
El Dorado	568	4	Merced	1547	5	San Luis Obispo	1151	1	Tulare	2294	275
Fresno	4626	5	Modoc	184	8	San Mateo	4078	4	Tuolumne	135	47
Glenn	422	1	Mono	52	4	Santa Barbara	1878	8	Ventura	2062	386
Humboldt	657	5	Monterey	2194	5	Santa Clara	5336	3	Yolo	653	245
Imperial	1091	5	Napa	639	1	Santa Cruz	1431	4	Yuba	334	486
Inyo	147	5	Nevada	305	3	Shasta	684	5			
Kern	3427		Orange	5889	6	San Diego	Series2 Book				

(A)
(B) Page

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(which provisions, identical in all counties, are printed on attached herewith) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; (b) that provision (1) of the Fictitious Deed of Trust is also hereby adopted and incorporated and made a part hereof as fully set forth herein at length, except that the phrase "not to remove or demolish any building thereon" is expressly and intentionally deleted from such provision (1), so that Trustor shall have the right and power under this Deed of Trust to remove or demolish any building on the property that is the subject of this Deed of Trust (all as further provided in Section 19(l) of that certain Purchase and Sale Agreement for the property entered into between Trustor and Beneficiary as of May __, 2010); (c) that Trustor will observe and perform said provisions; and (d) that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

TRUSTOR:

REDEVELOPMENT AGENCY OF THE
COUNTY OF ALAMEDA

By:

Alice Lai-Bitker, President of the Board of Directors

SIGNATURES MUST BE NOTARIZED

[illegible]

On _____, 2010 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT NO. 1
LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 3 IN BLOCK "A", AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF "CASTRO VALLEY GARDENS", FILED JANUARY 13, 1914, IN BOOK 28 OF MAPS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERN CORNER OF SAID LOT 3; AND RUNNING THENCE ALONG THE SOUTHERN LINE OF SAID LOT 3, NORTH 88° 39' EAST, 163.53 FEET TO THE EASTERN LINE OF SAID LOT 3; THENCE ALONG THE LAST NAMED LINE, NORTH 1° 21' WEST, 237 FEET; THENCE SOUTH 88° 38' WEST, 38.53 FEET; THENCE NORTH 1° 21' WEST, 3 FEET; THENCE SOUTH 88° 39' WEST, 125 FEET TO SAID WESTERN LINE OF SAID LOT 3; AND THENCE ALONG THE LAST NAMED LINE, SOUTH 1° 21' EAST, 240 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION THEREOF WHICH LIES WITHIN THE LINES OF THE LAND DESCRIBED IN THE DEED FROM THOMAS LITCH AND EVA LITCH, HIS WIFE, TO THE STATE OF CALIFORNIA, DATED AUGUST 13, 1930, RECORDED SEPTEMBER 23, 1930, IN BOOK 2426 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 344, INSTRUMENT NO. (AA/57760).

APN: 084A-0040-018-04

FOR RECONVEYANCE SEND TO THE NEAREST OFFICE OF CHICAGO TITLE COMPANY

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

Dated _____

TO CHICAGO TITLE COMPANY, Trustee:

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

MAIL RECONVEYANCE TO:

(By) _____

(By) _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.

Both must be delivered to the Trustee for cancellation before reconveyance will be made.

DO NOT RECORD/FOR INFORMATION PURPOSES

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS (INDIVIDUAL)

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein; provided, however, that provision (1) below has expressly and intentionally been modified from the provision contained in the fictitious deed of trust to delete the phrase "not to remove or demolish any building thereon", so that Trustor shall have the right and power under this Deed of Trust to remove or demolish any building on the property that is the subject of this Deed of Trust (all as further provided in Section 19(1) of that certain Purchase and Sale Agreement for the property entered into between Trustor and Beneficiary as of May __, 2010).

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) To keep said property in good condition and repair; to complete or restore promptly in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon: not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default hereunder or invalidated any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such actions or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, the Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any incumbrance, charge or lien which in the judgment of either appears to be prior to or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at amount allowed by law in effect at the date hereof, and to pay for any

statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

That any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him/her/them in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(6) That any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him/her/them in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, beneficiary does not waive his right either to require prompt payment when due all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may; reconvey any part of said property, consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy this document (unless directed in such request to retain it).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to adequacy of any security for the indebtedness hereby secured enter upon and take possession of said property or any part thereof, in his/her/their own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed

for record. Beneficiary also shall deposit with Trustee this Deed, said Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not the repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.