

**PURCHASE AND SALE AGREEMENT  
(251 8<sup>th</sup> Street, Oakland, CA 94607)**

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 2021 (the "Effective Date") and is entered into by and between East Bay Community Energy Authority, a Joint Powers Authority formed pursuant to California Government Code § 6500, et seq., by the County of Alameda and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro, Union City, Newark, Pleasanton, and Tracy ("Buyer"), and 360 VENTURES VIII LLC, a California limited liability company ("Seller").

Seller is the owner of certain improved real property located in the City of Oakland, County of Alameda, commonly known as 251 8<sup>th</sup> Street, Oakland, CA 94607, and more particularly described on the attached Exhibit A (the "Land"). As used in this Agreement, "Property" means collectively the following: (A) the Land and all rights, privileges and appurtenances belonging or pertaining thereto (the "Real Property"); (B) all improvements and fixtures located on the Land, including, without limitation, a three story building (the "Improvements"); (C) all personal property owned by Seller with respect to the Real Property and Improvements (the "Personal Property"); and (D) all assignable continuing business licenses, utility contracts, plans and specifications, warranties, governmental approvals and development rights related to the Real Property or the Improvements or any part thereof (the "Contracts"). Seller wishes to sell the Property to Buyer and Buyer wishes to purchase the Property from Seller, all on the terms, covenants and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other valuable consideration, Seller and Buyer agree as follows:

1. Purchase and Sale. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the Property for the price and in accordance with the terms and conditions set forth in this Agreement.

2. Purchase Price and Payment. The purchase price of the Property (the "Purchase Price") shall be Eight Million Five Hundred Thousand Dollars (\$8,500,000.00). The Purchase Price shall be paid for at closing by cash. Within three (3) business days of full execution of this Agreement, Buyer and Seller shall deliver a copy of this fully executed Agreement to and open an escrow with Chicago Title Company (the "Title Company"), 1676 North California Boulevard, Suite 117, Walnut Creek, CA 94596, Attention: Hannah Anayat, Phone (510) 350-4590; Email Hannah.anayat@ctt.com. Within three (3) business days after receiving the wire transfer instructions for the escrow, Buyer shall deposit cash (the "Earnest Money") into the escrow in the amount of One Hundred Thousand Dollars (\$100,000.00). The Earnest Money shall be nonrefundable on the date Buyer waives (or is deemed to have waived) the Due Diligence Contingencies (as defined below), subject to the issuance of the owner's title policy described in Section 6.1 below and except that the Earnest Money will be refunded if Buyer terminates this Agreement due to a default by the Seller, and within three (3) business days of such date, Buyer shall increase the amount of the nonrefundable Earnest Money on deposit with the Title Company by One Hundred Thousand Dollars (\$100,000.00) for a total amount of Two Hundred Thousand Dollars (\$200,000.00). The Earnest Money shall be deposited into a federally-insured interest-bearing account by the Title Company. At Closing, the Earnest Money, together with all interest accrued thereon, shall be credited against the Purchase Price. If the Closing does not occur due to a termination of this Agreement by Buyer based on a Seller default or failure of a condition to closing, then the Earnest Money (less the Independent Consideration described below) shall be returned to Buyer together with any interest accrued thereon.

Seller and Buyer hereby acknowledge that \$100.00 of the Earnest Money is independent consideration for this Agreement (the "Independent Consideration"). The parties have bargained for such amount as consideration for Buyer's exclusive option to purchase the Property pursuant to the terms of this Agreement and for Seller's execution of this Agreement, in addition to other consideration described in this Agreement. The Independent Consideration is not refundable

and, upon Closing or upon any termination of this Agreement, the Title Company must disburse the Independent Consideration to Seller. If the Title Company returns the Earnest Money to Buyer in accordance with this Agreement for any reason, the Title Company must deliver the Independent Consideration to Seller notwithstanding any other provision of this Agreement.

### 3. Due Diligence Deliveries.

3.1 Title Report. Within five (5) business days of the Effective Date, Seller shall provide a preliminary title report for the Property (the "Title Report") from the Title Company. Within forty-five (45) days after Buyer's receipt of the Title Report, Buyer may disapprove of any exception listed in the Title Report, as updated by survey exceptions based on any ALTA survey obtained by Buyer, by delivering written notice to Seller ("Buyer's Title Notice") specifying each title defect or matter for which Buyer is requesting a cure by Seller ("Title Defect"). Buyer's failure to deliver Buyer's Title Notice to Seller within the time period specified above shall be a conclusive presumption that Buyer has approved the Title Report. Within five (5) business days after receiving Buyer's Title Notice, Seller shall deliver to Buyer written notice ("Seller's Title Notice") of those Title Defects which Seller covenants and agrees to either eliminate or cure by the Closing Date. Seller's failure to deliver Seller's Title Notice to Buyer within the time period specified above shall be deemed to constitute Seller's election not to eliminate or cure any such Title Defect. If Seller elects (or is deemed to have elected) not to eliminate or cure any Title Defects, Buyer shall have the right, by written notice delivered to Seller within ten (10) business days after receipt of Seller's Title Notice or within ten (10) business days after the expiration of the time period during which Seller is entitled to deliver Seller's Title Notice, whichever occurs first, to either: (i) waive in writing its prior notice as to the Title Defects which Seller has elected not to cure or (ii) terminate this Agreement in writing as provided later in this section. Buyer's failure to deliver written notice or termination or waiver, as applicable, within such ten (10) business day period shall be a conclusive presumption that Buyer has approved the Title Documents and this Agreement shall remain in full force and effect. All title and survey matters approved or deemed approved by Buyer are hereinafter referred to as "Permitted Exceptions", except that in no event shall any deed of trust, mortgage, judgement lien, mechanics lien, lien for delinquent taxes or other monetary lien (except for liens for prorated assessments not yet payable) constitute a Permitted Exception (and the obligations secured by any such deed of trust or other lien shall be paid at closing by the Title Company as escrow holder from proceeds of the sale).

3.2 Delivery of Documents. Within five (5) business days of the Effective Date, Seller shall deliver to Buyer copies of all material documents regarding the Property in Seller's possession or control, including all statutory disclosures to the extent required by state or local law, and if required, a Federal Lead-Based Paint Disclosure Statement and pamphlet, a completed Real Estate Transfer Disclosure Statement in compliance with Sec. 1102 of the California Civil Code, a Natural Hazard Disclosure Statement or the Local Option Real Estate Transfer Disclosure Statement, if so required by the local jurisdiction where the Property is located, notice or actual knowledge of the release of illegal controlled substance, and notice of special tax and/or assessments (or, if allowed, a substantially equivalent notice regarding the Mello-Roos Community Facilities and Improvement Bond Act of 1915). Notwithstanding the foregoing, Seller shall not be required to deliver any of the following documents: (i) any proposals, letters of intent, draft contracts and the like prepared by or for other prospective purchasers of the Property, or (ii) Seller's internal memoranda, attorney-client privileged documents or privileged communications or appraisals. Although Seller has agreed to make available to Buyer information regarding the Property, Seller and its agents shall have no responsibility or liability for the completeness or accuracy of such information, Seller is making no representation with respect to such documents and information, Buyer assumes and accepts the entire responsibility for interpreting and assessing the information provided, and Buyer will rely solely on Buyer's own judgment in making Buyer's decision to purchase the Property.

Seller shall be responsible for compliance with EBMUD Regional Private Sewer Lateral Program. Seller is to confirm Property is currently in compliance and will forward Buyer a copy of a compliance certificate, as a condition to closing.

3.3 Buyer's Due Diligence Documents. If this Agreement terminates but only if requested in writing by Seller, Buyer shall promptly deliver to Seller all studies, reports, surveys, and other information and materials Buyer has received, prepared or obtained pertaining to the Property.

4. Inspection and Cooperation.

4.1 Inspection, Site Work. Seller shall allow Buyer and its consultants access to the Property, following the mutual execution of this Agreement until the Due Diligence Deadline Date, for purposes of inspecting the Property. With respect to any inspection or testing that is invasive or involves removing or demolishing any portion of the Property, Buyer must first submit to Seller a written plan for any such invasive testing which shall include a plan to deal with any hazardous materials that may be encountered during such testing, and Buyer may not proceed with any such invasive testing unless Seller has approved of Buyer's plan in writing (which approval may be withheld by Seller in its sole discretion). Buyer shall conduct any such invasive testing in strict accordance with the plan approved by Seller.

4.2 Indemnity. Buyer shall protect, defend, indemnify, and hold Seller and Seller's agents and employees harmless for, from and against any claims, liabilities, damages, liens, attorneys' fees, penalties, demands, causes of actions and suits of any nature whatsoever arising out of the inspection of and/or entry onto the Property by Buyer, its agents, employees or contractors. This indemnity includes an obligation of Buyer to reimburse Seller for any and all damage Buyer may cause to the Property in connection with Buyer's inspection and this indemnity shall survive the closing or termination of this Agreement.

5. Buyer's Due Diligence Contingency. Buyer's obligation to close this transaction shall be subject to Buyer's approval in its sole and absolute discretion of all aspects of the Property, including without limitation the physical, environmental, governmental and zoning condition of the Property (the "Due Diligence Contingencies") and the satisfaction or waiver by Buyer of such conditions on or before the date that is thirty (30) days after the Effective Date (the "Due Diligence Deadline Date"). Without limiting the foregoing, if Buyer obtains a Phase I environmental report that recommends additional inspections/studies, such as a Phase II environmental report, then Buyer may terminate this Agreement based on the inability to complete such studies within the Due Diligence Period (it being understood the parties may, but are not obligated to, agree on an extension of such time period). If Buyer does not deliver to Seller a written notice terminating this Agreement on or before the Due Diligence Deadline Date, then Buyer shall be deemed to have waived the Due Diligence Contingencies and the Earnest Money shall be non-refundable except as otherwise expressly provided herein.

6. Closing; Title Insurance.

6.1 Time of Closing; Title Insurance Condition. The purchase of the Property shall be closed in escrow at the Title Company. The time for closing (the "Closing Date") shall be on or before the date that is thirty (30) days after the date Buyer waives (or is deemed to have waived) the Due Diligence Contingencies. However, it shall be a condition to Buyer's obligations to close that the Title Company is irrevocably committed to issue to Buyer an extended coverage owner's title policy in the amount of \$8,500,000 insuring that Buyer is the owner of the Property, subject only to the Permitted Exceptions; however, consistent with Section 6.3.2 below, property taxes shall not constitute a Permitted Exception.

6.2 Events of Closing.

6.2.1 Seller's Deposits. At least one (1) business day prior to the Closing Date, Seller shall deliver to the Title Company, the following: (a) an executed and acknowledged statutory special warranty deed (the "Deed") conveying fee simple title to the Real Property to Buyer subject only to the Permitted Exceptions; (b) an executed Assignment of Service Contracts, Warranties and Intangible Property in the form of the attached Exhibit B (the "Contract Assignment"), assigning to Buyer Seller's interest in the Contracts, Warranties and Intangible Property; (c) a

certificate from Seller certifying the information required by §§ 18662 of the California Revenue and Taxation Code and the regulations issued thereunder to establish that the transaction contemplated by this Agreement is exempt from the tax withholding requirements of such provisions (the "California Certificate"); and (d) a certification that Seller is not a "foreign person" as such term is defined in the Internal Revenue Code and the Treasury Regulations promulgated thereunder.

6.2.2 Buyer's Deposits. On or before the Closing Date, Buyer shall pay into escrow the Purchase Price less any credit to Buyer pursuant to this Agreement (including the credit for the Earnest Money deposits in the amount of \$199,900.00 and any interest thereon as described in Section 2 above and the Buyer Broker Commission Credit of \$42,500.00 described in Section 10.7 below) and shall deliver to escrow an executed Contract Assignment.

### 6.3 Income and Expenses.

6.3.1 General. The following items in this Section 6.3 shall be adjusted and prorated between Seller and Buyer as of 12:01 a.m. on the Closing Date (the "Adjustment Time"). Such adjustments and prorations shall be calculated on the actual days of the applicable month and all annual prorations based upon a 365-day year.

6.3.2 Property Taxes and Assessments. Assessments for the current tax year levied or assessed against the Property shall be prorated as of the close of escrow. If the amount of assessments for the current tax year has not been fixed by the Closing, the proration shall be based upon the taxes paid for the previous year and re-prorated at the time the amount of assessments for the current tax year has been fixed. Buyer is exempt from property taxes; consequently, no property taxes shall be allocated to Buyer by proration; Seller shall pay all property taxes for the six month property tax billing period in which the closing occurs, and Buyer shall cooperate in good faith with Seller in connection with Seller's obtaining a refund of any such property taxes allocable to the Buyer's period of ownership after Closing.

6.3.3 Operating Expenses. All sums due for operating expenses payable that were owing or incurred by the Property or the Seller prior to the Adjustment Time will be paid by the Seller. All operating expenses payable incurred after the Adjustment Time will be paid by Buyer. If invoices or bills for any of such costs and expenses are unavailable on or before the Closing, such costs and expenses shall be estimated and prorated at Closing based upon the latest information available (including prior bills and operating history) and a final and conclusive readjustment of any cost and expense item shall be made upon receipt of the actual invoice or bill, but in all events no later than sixty (60) days following the Closing. Buyer shall take all steps necessary to effectuate the transfer of all utilities to Buyer's name as of the date of Closing, and where necessary, open a new account in Buyer's name and post deposits with the utility companies. If Buyer and Seller are unable to obtain final meter readings as of the Closing from all applicable meters, such expenses shall be estimated at Closing based upon the operating history of the Property subject to the final adjustment in all events no later than sixty (60) days following the Closing. Seller shall be entitled to recover any and all deposits held by any utility companies as of the date of Closing, and if any such deposits are not returned to Seller on or before the Closing and are assigned to Buyer, such amounts shall be credited to Seller's account and increase the amount of funds payable by Buyer at Closing.

6.3.4 Closing Costs. Seller shall pay: (i) any county documentary transfer or transaction taxes or fees due on the transfer of the Property, (ii) fifty percent (50%) of any city documentary transfer or transaction taxes or fees due on the transfer of the Property, and (iii) the premium for a standard form owner's policy of title insurance (but only for a liability amount equal to the Purchase Price). Buyer shall pay: (a) balance of the premium for the Policy (including costs of endorsements, extended coverage and related survey costs), (b) fifty percent (50%) of any city documentary transfer or transaction taxes or fees due on the transfer of the Property, (c) any escrow fee and recording fees charged by the Title Company. Any costs and expenses of closing that are not expressly identified above shall be allocated between the parties in accordance with prevailing custom in Oakland, California.

7. Risk of Loss.

7.1 Damage. In the event that, prior to the Closing Date, the Property, or any part thereof, is destroyed or suffers damage in excess of five percent of the Purchase Price, Buyer shall have the right, exercisable by giving notice of such decision to Seller within ten (10) business days after receiving written notice of such damage or destruction, to terminate this Agreement. If the damage is greater than five percent of the Purchase Price and Buyer does not timely elect to terminate this Agreement, Buyer shall accept the Property in its then condition, and all proceeds of insurance awards payable to Seller by reason of such damage or destruction shall be paid or assigned to Buyer. In the event of damage to the Property and the immediately preceding two sentences are not applicable, Buyer shall accept the Property in its then condition and proceed with the purchase and Seller shall assign to Buyer all applicable insurance proceeds.

7.2 Condemnation. If after the Effective Date, and prior to the Closing Date, all or any substantial portion of the Property (where the value of the condemned Property is in excess of five percent of the Purchase Price), being subjected to a bona fide threat of condemnation by a body having the power of eminent domain, or being taken by eminent domain or condemnation (or sale in lieu thereof), Buyer may by written notice to Seller within ten (10) business days after receiving notice of such event, elect to cancel this Agreement prior to the closing hereunder, in which event both parties shall be relieved and released of and from any further liability hereunder, and any consideration paid hereunder shall forthwith be returned to Buyer and thereupon this Agreement shall become null and void and be considered canceled. If no such election is made, this Agreement shall remain in full force and effect and, upon closing, the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected and the Purchase Price for the Property shall not be reduced by the amount of any awards that have been or that may thereafter be made for the taking of the Property (but the condemnation award shall be paid to Buyer).

8. Default; Remedies.

8.1 Time of Essence. Time is of the essence of the parties' obligations under this Agreement.

8.2 Buyer's Failure to Close. In the event that Buyer is obligated to pay the Purchase Price and fails to do so, then Seller, as Seller's sole remedy, shall be entitled to retain the Earnest Money deposited by Buyer (and all interest earned thereon) as liquidated damages.

**BUYER AND SELLER HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL DAMAGES THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AN AMOUNT EQUAL TO ALL OF THE EARNEST MONEY. SUCH AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BUYER'S DEFAULT OR FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY. IF THE EARNEST MONEY IS DEEMED NON-REFUNDABLE, THE ENTIRE AMOUNT OF THE EARNEST MONEY PLUS ACCRUED INTEREST, SHALL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT SELLER'S DAMAGES IN THE EVENT OF SUCH A BREACH OF THIS AGREEMENT BY BUYER WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT THE AMOUNT OF THE EARNEST MONEY PLUS ACCRUED INTEREST IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES SELLER WOULD SUFFER IN THE EVENT THE TRANSACTION PROVIDED FOR IN THIS AGREEMENT FAILS TO CLOSE, AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT. BUYER AND SELLER AGREE THAT SELLER'S RIGHT TO RETAIN THE EARNEST MONEY PLUS ACCRUED INTEREST SHALL BE THE SOLE REMEDY OF SELLER AT LAW IN THE EVENT OF A BREACH OF THIS AGREEMENT BY BUYER, AND AFTER PAYMENT THEREOF TO SELLER, NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATION TO OR RIGHTS AGAINST THE OTHER.**

**ACCEPTED AND AGREED TO:**

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

8.3 Seller's Failure to Close. In the event that Seller is obligated to convey the Property to Buyer but fails to do so, then Buyer, as Buyer's sole remedy, shall be entitled to either: (i) a return of the Earnest Money deposited by Buyer (and all interest earned thereon), or (ii) seek specific performance of this Agreement.

9. Representations and Covenants.

9.1 Seller's Representations. Seller's representations contained in this Section 9.1 are true and accurate in all material respects, and shall survive the closing for a period of one (1) calendar year. Seller's representations contained in this Section 9.1 shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by Seller in a separate certificate at that time; provided, however, if Seller becomes aware after the date of this Agreement that any representation by Seller is untrue in any material respect, Seller may give Buyer written notice of such change in Seller's representation and Buyer shall have seven (7) business days to terminate this Agreement by written notice to Seller and receive a refund of the Earnest Money, but the failure of Buyer to timely terminate this Agreement shall be deemed a modification of such representation and Seller shall only be obligated to remake such representation at Closing as so modified. Seller's representations are based on Seller's actual knowledge (as used herein, "Seller's actual knowledge" means the actual and present knowledge of Jerome Smith without investigation or inquiry). In no event shall Jerome Smith have any personal liability under this Agreement. In no event shall the foregoing affect Seller's disclosure obligations under California law as a seller of real property.

9.1.1 Seller has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Seller in connection with the execution of this Agreement and the transactions contemplated hereby.

9.1.2 Seller has not received written notice of any asbestos, radioactive material, hazardous waste, material, or substance, toxic substance, pollutant, oil, or contaminant, as defined by any federal, state, or local law, rule, order, ordinance, requirement, or regulation ("Hazardous Substances") stored or disposed on the Property in violation of any applicable law.

9.1.3 There is no condemnation proceeding, litigation, action, suit, or proceeding pending, or threatened in writing within twelve (12) months prior to the date of this Agreement, which affects the Property.

9.1.4 Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

9.1.5 Seller has not received any written notice of violation of any law or ordinance affecting the Property.

9.1.6 On the Closing Date, there shall be no leases or occupancy agreements effecting the Property.

9.2 Seller's Covenants. Seller covenants that, until this transaction is closed or escrow is terminated, whichever comes earlier, Seller shall operate and maintain the Property in a manner consistent with Seller's past practices. Seller shall not execute any new lease for the Property that is not terminable on the Closing Date without the prior written consent of Buyer, which consent may be withheld or conditioned in Buyer's sole discretion.

9.3 As-Is Sale and Purchase. Buyer acknowledges, by its initials as set forth below,

that the provisions of this Section 9.3 have been required by Seller as a material inducement to enter into the contemplated transactions, and the intent and effect of such provisions have been explained to Buyer by Buyer's counsel and have been understood and agreed to by Buyer subject, however, to Seller's disclosure obligations under California law as a seller of real property. As a material inducement to Seller to enter into this Agreement and to convey the Property to Buyer, Buyer hereby acknowledges and agrees that, subject to Seller's disclosure obligations under California law as a seller of real property:

9.3.1 AS-IS. Except as otherwise expressly set forth in this Agreement (including, without limitation, Section 9.2) or in any certificate, instrument or other document executed by Seller pursuant to this Agreement (the "Closing Documents"), and subject to Seller's representation and warranties set forth in this Agreement or in any Closing Documents, Buyer is purchasing the Property in its existing condition, "AS-IS, WHERE-IS, WITH ALL FAULTS," and upon the Closing Date has made or has waived all inspections and investigations of the Property and its vicinity which Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property.

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Buyer's Initials

9.3.2 No Representations. Other than the express representations and warranties and covenants of Seller contained in this Agreement or in any Closing Documents, neither Seller, nor any person or entity acting by or on behalf of Seller, nor any direct or indirect member, partner, officer, director, or employee of Seller, nor any agent, affiliate, successor or assign of Seller (collectively, the "Seller Group") has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Buyer upon which Buyer is relying, or in connection with which Buyer has made or will make any decisions concerning the Property or its vicinity including, without limitation, its use, condition, value, compliance with "Governmental Regulations" (as hereinafter defined), existence or absence of Hazardous Substances, or the permissibility, feasibility, or convertibility of all or any portion of the Property for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing. As used herein, the term "Governmental Regulations" means any laws (including Environmental Laws), ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, Hazardous Substances, occupational health and safety, handicapped access, water, earthquake hazard reduction, and building and fire codes) of any governmental or quasi-governmental body or agency claiming jurisdiction over the Property. As used in this Agreement, the following definitions shall apply: "Environmental Laws" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, whether statutory or common law, as amended from time to time, and all federal and state court decisions, consent decrees and orders interpreting or enforcing any of the foregoing, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., and the Clean Water Act, 33 U.S.C. § 1251, et seq. "Hazardous Substances" shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws, and includes asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum-based products and petroleum additives and derived substances, lead-based paint, mold, fungi or bacterial matter, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

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Buyer's Initials

9.3.3 No Implied Warranties. Excluding any representation or warranty or covenant set forth herein or in any Closing Documents, and subject to Seller's disclosure obligations under California law, Seller hereby specifically disclaims: (a) all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Property, or the performance of Seller's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose; and (b) any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Property or other items conveyed hereunder, including, without limitation, the water, soil, and geology, the suitability thereof and of the Property or other items conveyed hereunder for any and all activities and uses which Buyer may elect to conduct thereon, the existence of any environmental hazards or conditions thereon (including but not limited to the presence of asbestos or other Hazardous Substances) or compliance with applicable Environmental Laws; (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iii) the compliance of the property or other items conveyed hereunder or its operation with any governmental regulations.

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Buyer's Initials

9.3.4 Information Supplied by Seller. Buyer specifically acknowledges and agrees that, except as expressly contained in this Agreement or in any Closing Documents, the Seller has made no representation or warranty of any nature concerning the accuracy or completeness of any documents delivered or made available for inspection by Seller to Buyer, including, without limitation, the Due Diligence materials, and that Buyer has undertaken (or will undertake) such inspections of the Property as Buyer deems necessary and appropriate and that, Buyer is relying solely upon such investigations and not on any of the Due Diligence materials or any other information provided to Buyer by or on behalf of Seller. As to the Due Diligence materials, Buyer specifically acknowledges that they have been prepared by third parties with whom Buyer has no privity and Buyer acknowledges and agrees that no warranty or representation, express or implied, has been made, nor shall any be deemed to have been made, to Buyer with respect thereto, either by the Seller Group or by any third parties that prepared the same.

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Buyer's Initials

9.3.5 Release. As of the Closing Date, and subject to and except for Seller's disclosure obligations under California law as a seller of real property, Buyer hereby fully and irrevocably releases Seller and the Seller Group from any and all claims that the Buyer Parties may have or hereafter acquire prior to the Closing Date against the Seller Group for any cost, loss, liability, damage, expense, demand, action or cause of action ("Claims") arising from or related to any matter of any nature relating to the Property including, without limitation, the physical condition of the Property, any latent or patent construction defects, errors or omissions, compliance with law matters, Hazardous Substances and other environmental matters within, under or upon, or in the vicinity of the Property, including, without limitation, any Environmental Laws; provided, however, the foregoing release shall not apply to any of Seller's representations, warranties or covenants under this Agreement. Subject to the preceding proviso and except for Seller's disclosure obligations under California law as a seller of real property, the foregoing release by Buyer and the Buyer Parties shall include, without limitation, any Claims Buyer and/or the Buyer Parties may have prior to the Closing Date pursuant to any statutory or common law right Buyer may have to receive disclosures from Seller, including, without limitation, any disclosures as to the Property's location within areas designated as subject to flooding, fire, seismic or earthquake risks by any federal, state or local entity, the presence of Hazardous Substances on or beneath the Property, the need to obtain flood insurance, the certification of water heater bracing and/or the advisability of obtaining title insurance, or any other condition or circumstance affecting the Property, its financial viability, use or operation, or any portion thereof. This release includes Claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist in its favor which, if known by Buyer, would materially affect Buyer's release of the Seller and/or the Seller Group. In connection with the general release set forth in this



Section 9.3.5 Buyer specifically waives 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."

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Buyer's Initials

10. Miscellaneous Provisions.

10.1 Notices. Notice may, unless otherwise provided herein, be given or served (a) by certified mail, return receipt requested, (b) by email, if the time of email delivery is confirmed by sender's receipt of an email report which confirms that the email was successfully transmitted in its entirety and provided the email was forwarded prior to 5:00 P.M., or (c) by depositing the same into custody of a nationally recognized overnight delivery service for next business day delivery. Notice given in any manner shall be effective only if and when received by the party to be notified between the hours of 8:00 A.M. and 5:00 P.M. of any business day with delivery made after such hours to be deemed received the following business day. For the purposes of notice, the addresses of Seller and Buyer shall, until changed as hereinafter provided, be as set forth below. The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party.

If to Seller: PO Box 490  
Lake Park Avenue, Number 10570  
Oakland, CA 94610  
Attn: Jerry Smith  
Email: jsmith@citrineadvisors.com

with copy to: Brad Miller  
Brix Law LLP  
75 SE Yamhill, Suite 202  
Portland, OR 97214  
Email: bmiller@brixlaw.com

If to Buyer: East Bay Community Energy Authority  
1999 Harrison Street, Suite 800  
Oakland, CA 94612  
Attn: Nick Chaset  
Email: nchaset@ebce.org

10.2 Construction. If the date for any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day. "Business day" means a day that both national banks and Title Company are open for business in Oakland, California.

10.3 Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

10.4 Amendment. This Agreement may not be modified or amended except by the written agreement of the parties. No modification or amendment or attempted waiver of any provision of this Agreement shall be binding unless in writing and signed by the party to be bound. This Agreement may not be modified or amended orally.

10.5 Attorneys' Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

10.6 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and 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 or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.7 Brokers. Seller warrants and represents to Buyer that except for Lee & Associates which represents Seller, no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement; Buyer has engaged Newmark Knight Frank whose commission of 2.5% of the Purchase Price (i.e., the \$8,500,000 purchase price without the credit for .5% of Newmark's 3% commission, which credit is \$42,500, it being understood that Newmark is "waiving" one sixth of its typical 3% commission so that Buyer will receive a credit against such purchase price of .5% of such \$8,500,000 purchase price; such credit being referred to herein as the "Buyer Broker Commission Credit") shall be paid for by Seller, and any commissions due to Lee & Associates shall also be payable by Seller pursuant to a separate written agreement with Lee & Associates. Buyer warrants and represents to Seller that no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement except for Newmark Knight Frank; however, in the event any other claims for brokers' or finders' fees or commissions are made in connection with the negotiation, execution, or consummation of this Agreement based upon any statement, representation or agreement made by Buyer, then Buyer shall indemnify, hold harmless, and defend Seller from and against such claims, and similarly Seller shall indemnify, hold harmless, and defend Buyer if such claims shall be based on any statement, representation or agreement made by Seller.

10.8 Integration. This Agreement contains the entire agreement and understanding of the parties with respect to the purchase and sale of the Property and supersedes all prior and contemporaneous agreements between them with respect to such purchase and sale.

10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.10 Assignment. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns; provided, however, Buyer may not assign its interest in this Agreement without the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole discretion; provided, further, that without being relieved of any liability under this Agreement, Buyer reserves the right to take title to the Property in the name of an entity that is controlled by Buyer.

10.11 1031 Exchange. Seller and Buyer shall have the right to convey all or a portion of the Property in exchange for real property or properties of like kind pursuant to Section 1031 of the Internal Revenue Code, either in a simultaneous exchange or in a deferred exchange. Buyer agrees to cooperate with Seller in effecting such an exchange and, if requested by Seller, Buyer shall execute any exchange agreement reasonably requested by Seller and consistent with the above. Seller agrees to cooperate with Buyer in effecting such an exchange, and if requested by Buyer, Seller shall execute any exchange agreement reasonably requested by Buyer and consistent with this Section. Neither party shall be required to take title to any property, incur any costs or be subject to any liability whatsoever in connection with such cooperation.

10.12 Notice of Supplemental Property Tax Bill. California property law requires the Assessor to revalue real property at the time the ownership of the Property changes. Because of this law, Buyer may receive one or two supplemental tax bills, depending upon when the purchase of the Property closes. The supplemental tax bills are not mailed to Buyer's lender. If Buyer has arranged for property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by Buyer's lender. It is Buyer's responsibility to pay these supplemental bills directly to the Tax Collector. If Buyer has any questions concerning this matter, please call the local Tax Collector's Office.

10.13 Statutory Disclosure. Buyer and Seller acknowledge that Seller is required to disclose if any of the Property lies within the following natural hazard areas or zones: (i) a special flood hazard area designated by the Federal Emergency Management Agency; (ii) an area of potential flooding; (iii) a very high fire hazard severity zone; (iv) a wild land area that may contain substantial forest fire risks and hazards; (v) an earthquake fault or special studies zone; or (vi) a seismic hazard zone. Buyer acknowledges that Seller will employ the services of Disclosure Source ("Natural Hazard Expert") to examine the maps and other information specifically made available to the public by government agencies and to report the results of its examination to Buyer in writing. The written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges Seller from its disclosure obligations referred to herein, and, for the purposes of this Agreement, the provisions of Civil Code Section 1103.4 regarding the non-liability of Seller for errors and/or omissions not within its personal knowledge shall be deemed to apply, and the Natural Hazard Expert shall be deemed to be an expert dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. Buyer acknowledges and agrees that Seller has indicated to Buyer that the sole inquiry and investigation Seller conducted in connection with the environmental condition of the Property is to obtain the environmental report(s) which are part of the Due Diligence materials and that, for purposes of California Health and Safety Code Section 25359.7, Seller has acted reasonably in relying upon said inquiry and investigation, and the delivery of this Agreement constitutes written notice to Buyer under such code section.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement effective as of the Effective Date.

Seller: 360 VENTURES VIII LLC, a California limited liability company

By: 360 Ventures Managing Member LLC, a California limited liability company, its Managing Member

By: \_\_\_\_\_  
Jerome Smith, Managing Member

Buyer: East Bay Community Energy Authority, a Joint Powers Authority formed pursuant to California Government Code § 6500, et seq., by the County of Alameda and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro, Union City, Newark, Pleasanton, and Tracy

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

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

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**

**ASSIGNMENT OF  
SERVICE CONTRACTS, WARRANTIES AND INTANGIBLE PROPERTY**

This Assignment of Service Contracts, Warranties and Intangible Property (this "Assignment") is made and entered into \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_ ("Assignee").

For good and valuable consideration paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged by Assignor, Assignor does hereby assign, transfer, set over and deliver unto Assignee all of Assignor's right, title, and interest in: (i) those certain service contracts (the "Contracts") listed on Exhibit A, if any, attached hereto and made a part hereof for all purposes, (ii) those certain warranties held by Assignor (the "Warranties") listed on Exhibit B, if any, attached hereto and made a part hereof for all purposes, (iii) all assignable continuing business licenses, utility contracts, plans and specifications, governmental approvals and development rights related to the Property, and (iv) all other intangible property owned by Seller pertaining to the Property (the "Intangible Property").

ASSIGNEE ACKNOWLEDGES AND AGREES, BY ITS ACCEPTANCE HEREOF, THAT THE CONTRACTS, WARRANTIES AND INTANGIBLE PROPERTY ARE CONVEYED "AS IS, WHERE IS" AND IN THEIR PRESENT CONDITION WITH ALL FAULTS, AND THAT ASSIGNOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE NATURE, QUALITY OR CONDITION OF THE CONTRACTS AND THE WARRANTIES, THE INCOME TO BE DERIVED THEREFROM, OR THE ENFORCEABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE CONTRACTS OR THE WARRANTIES.

Except as otherwise expressly provided in that certain purchase and sale agreement between Assignor and Assignee dated as of \_\_\_\_\_, 20\_\_, by accepting this Assignment and by its execution hereof, Assignee assumes the payment and performance of, and agrees to pay, perform and discharge, all the debts, duties and obligations to be paid, performed or discharged from and after the date hereof, by the owner under the Contracts, Warranties and Intangible Property.

The obligations of Assignor are intended to be binding only on the property of Assignor and Assignor shall not be personally binding upon, nor shall any resort be had to, the private properties of any of its officers, directors, members, or shareholders, or any employees or agents of Assignor.

All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be executed on the date and year first above written.

Assignor: \_\_\_\_\_

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

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

Assignee: \_\_\_\_\_

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

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

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

All of Lots 15 and 16, and the Northern 24 feet of Lot 17, Block 80, Kellersberger's Map of Oakland, filed September 2, 1853, Map Book 7, Page 3, Alameda County Records, described as follows:

BEGINNING at the point of intersection of the Southern line of 8th Street, with the Western line of Alice Street, as said streets are shown on said Map, and running thence Westerly along said line of 8th Street 75 feet; thence at right angles Southerly 74 feet, thence at right angles Easterly 75 feet to said Western line of Alice Street and thence Northerly along said line of Alice Street, 74 feet to the point of beginning.