

NAPA COUNTY AGREEMENT NO. _____

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

("Agreement") is dated for reference purposes only, as of _____, 2021, by and between NAPA COUNTY, a political subdivision of the State of California (hereinafter referred to as "SELLER" or "COUNTY"), and (type or print name:) _____, a (type or print type of entity or state "individual":) _____ (hereinafter referred to as "BUYER"). SELLER and BUYER shall be referred to from time to time hereinafter individually as "Party" or together as "Parties."

RECITALS

WHEREAS, SELLER is the owner of an approximately 8.6 acre parcel of real property – located at 2344 Old Sonoma Road, Napa, California, identified as Napa County Assessor's Parcel No. 004-291-015-000, and more particularly described by the legal description that is attached hereto and incorporated herein by this reference as **Exhibit A** with all rights, privileges, easements and appurtenances thereto, including, without limitation, all mineral and water rights, all permanent improvements and SELLER's personal property, fixtures, furniture and/or furnishings located thereon at Close of Escrow, are hereinafter collectively referred to as the "Property;" and

WHEREAS, on March 24, 2020, the Board adopted Resolution 2020-42 designating the Property as surplus, declaring intent to sell the property pursuant to the Act, and establishing minimum price and other terms for sale of the property; and

WHEREAS, on March 30, 2020, the County provided the written offer to sell the surplus property required by the Act (Government Code Section 54222) to the entities specified therein; and

WHEREAS, County received one letter of interest to purchase the Property for affordable housing purposes from Related California; and

WHEREAS, County conducted good faith negotiations for a minimum of 90 days with Related California but was unable to reach an agreement; and

WHEREAS, on December 14, 2020, County notified Related California that it was concluding negotiations; and

WHEREAS, on January 4, 2021 County notified the Department of Housing and Community Development (HCD) of County's full compliance with the Act as required by newly-amended Government Code section 54230.5; and

WHEREAS, HCD's 30-day period to comment on County's compliance with the Act's notification process has expired with only one comment regarding the form of the restrictive covenant being received from HCD, thus allowing County to proceed with a request for proposals process to select the highest bidder pursuant to the process outlined in Government Code 25526 and following; and

WHEREAS, it is the Board's desire to sell the Property in a timely, expeditious manner to a purchaser whose proposed use of the Property will be subject to discretionary approvals that may be required from the City of Napa; and

WHEREAS, pursuant to Government Code Section 25526, the Board of Supervisors, by at least a two-thirds vote of all of its members, adopted on February 23, 2021 Resolution No. 2021-____ declaring the County's intention to sell the Property (the "Resolution of Intent"), which set forth all terms and procedures for sale by the County of the Property, including the issuance of a Request for Proposals ("RFP"); and

WHEREAS, on May 4, 2021 pursuant to Government Code Section 25535, the Board adopted Resolution No. 2021-__ selecting BUYER as the purchaser of the Property after completion of the RFP process and in accordance with the Resolution of Intent.

TERMS

NOW, THEREFORE, in consideration of the promises set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SELLER agrees to sell and BUYER agrees to purchase the Property according to the terms and conditions in this Agreement, as follows:

1. **RECITALS.** The foregoing recitals are true and correct. The Parties agree that this Agreement shall not be deemed invalid because the description of the Property is not exact or is incomplete as of the Effective Date. An exact legal description of the Property will be agreed upon by the Parties and insured by the Title Company (as defined below) at Closing as hereinafter described.
2. **EFFECTIVE DATE.** This Agreement shall be effective as of the last date of execution by SELLER or BUYER, as indicated on the signature page below (the "**Effective Date**").
3. **PURCHASE PRICE.** BUYER agrees to pay to SELLER, and SELLER agrees to accept, for BUYER's purchase of the Property, the amount of _____ Dollars (\$ _____) (the "**Purchase Price**") (both Parties' signatories to initial here: _____ / _____). In addition to the Purchase Price, BUYER shall also pay through escrow all amounts necessary to pay any and all real estate brokerage commissions or fees owed to any real estate brokers or agents retained by or representing BUYER, and any and all escrow, title and recording fees and costs.
4. **ENTIRE AGREEMENT.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT OF THIS AGREEMENT AND SUPERSEDES ALL PREVIOUS AGREEMENTS, PROMISES, REPRESENTATIONS, UNDERSTANDINGS AND NEGOTIATIONS, WHETHER WRITTEN OR ORAL, AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY WAIVER, MODIFICATION OR CONSENT WITH RESPECT TO ANY PROVISION OF THIS AGREEMENT MUST, IN ORDER TO BE ENFORCEABLE, BE SET FORTH IN WRITING AND DULY EXECUTED BY BOTH PARTIES AS AN

AMENDMENT OF THIS AGREEMENT. PERFORMANCE OF THIS AGREEMENT CONSTITUTES THE ENTIRE CONSIDERATION FOR THE CONVEYANCE OF THE PROPERTY.

5. **BUYER'S OBLIGATIONS.**

a. **DEPOSIT AND TERMS GOVERNING DEPOSIT.**

- i. BUYER has delivered to SELLER a deposit in the sum of Two Hundred Fifty Thousand Dollars (\$250,000) ("**Deposit**") in the form of a cashier's check made payable to Placer Title Company, whose address is 5 Financial Plaza, #205, Napa, California 94558, and whom the Parties agree will serve as escrow holder for the Property's purchase (the "**Escrow Holder**"). The Deposit shall be refundable to BUYER during the Due Diligence Period, as defined below. If BUYER elects to proceed with the transaction at the expiration of the Due Diligence Period, the remaining balance of the Deposit shall then be non-refundable to the BUYER except in the event of a SELLER's default that results in a termination of this Agreement or otherwise provided in Paragraphs 15 and 16.
- ii. BUYER and SELLER shall open escrow with Escrow Holder. Upon opening of escrow, SELLER shall deliver the Deposit to the Escrow Holder. Escrow Holder shall place the Deposit in a federally insured bank in an interest-bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall be deemed part of the Deposit and accrue to the benefit of BUYER until the earliest of the following events: Close of Escrow (as defined below), refund of the Deposit to BUYER if BUYER timely exercises the right to cancel the escrow as provided for below (or otherwise expressly provided for herein), or payment by the Escrow Holder of the Deposit amount to SELLER after the Deposit becomes non-refundable, including, as liquidated damages, if BUYER fails to consummate purchase of the Property and proceed to the Close of Escrow as provided for below. BUYER will provide to the Escrow Holder, at the time of the opening of escrow, BUYER's Federal Tax Identification Number. The interest bearing account for the purpose of holding the Deposit cannot be opened until BUYER's Federal Tax Identification Number is provided. Until then, the Escrow Holder shall hold the Deposit and no interest shall accrue or be payable to BUYER on the Deposit.
- iii. The Deposit shall become non-refundable upon the BUYER's waiver of contingencies to Close of Escrow or upon the date upon which the BUYER is deemed to have waived all contingencies as specified below, whichever occurs first, and the Deposit shall then be credited toward payment of the Purchase Price at the Close of Escrow. If, however, BUYER fails to consummate purchase of the Property and fails to close escrow in a timely manner after the Deposit becomes non-refundable, the Escrow Holder shall promptly pay the remaining Deposit funds in the amount of \$224,900 to SELLER (\$250,000 less the \$100 nonrefundable Independent Consideration and less the nonrefundable \$25,000

Earnest Money portions of the Deposit that will have already been paid to SELLER as provided for below). This Paragraph's non-refundability provision shall be inapplicable in the event of a material breach of this Agreement by SELLER or in the event that this Agreement is terminated and the escrow is cancelled pursuant to the provisions of Paragraph 15, below (Termination Due to Destruction, Damage or Loss). All days referenced in this Agreement shall mean calendar days unless otherwise specified.

- iv. Within five days after Escrow Holder receives the Deposit and places it in the interest-bearing account, Escrow Holder shall release One Hundred Dollars (\$100) of the deposited funds (the “**Independent Consideration**”) to SELLER as and for independent consideration for SELLER's execution of this Agreement and the granting of the contingency period to BUYER as herein provided. Such Independent Consideration is non-refundable to BUYER and shall not be considered part of the Deposit after the Deposit is received by Escrow Holder, but the Independent Consideration shall be credited toward the BUYER's payment of the Purchase Price at Close of Escrow, if such occurs.
- v. If BUYER has not provided a Cancellation Notice any time prior to 30 days from the Effective Date, Escrow Holder shall release Twenty-Five Thousand Dollars (\$25,000) of the deposited funds (the “**Earnest Money**”) to SELLER which shall be non-refundable to BUYER in the event BUYER later provides a Cancellation Notice after 30 days from the Effective Date. Earnest Money shall be credited toward the BUYER's payment of the Purchase Price at Close of Escrow, if such occurs.

b. **PAYMENT OF PURCHASE PRICE AND OTHER CHARGES.**

- i. Prior to, and as a condition of Close of Escrow, BUYER shall pay into escrow the amount of money necessary to yield net funds payable by the Escrow Holder to SELLER at the Close of Escrow in the amount of the Purchase Price, and BUYER shall also pay into escrow the amount of money necessary to pay any and all real estate commissions or fees owed to any real estate broker or agent retained by BUYER (which shall be the sole responsibility of BUYER), and any and all escrow fees, title insurance premiums, and real property transfer or other taxes necessary for consummation of the purchase (which shall also be the sole responsibility of BUYER). If, however, escrow is terminated as a result of SELLER's default of this Agreement then SELLER shall pay any Title Company and Escrow Holder cancellation fees and costs.
- ii. BUYER shall deposit such additional funds necessary to satisfy its obligation to pay the Purchase Price with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. Pacific Time on the business day prior to the Expected Closing Date; provided, however, that BUYER shall not be required to deposit such monies into Escrow if, at the time set for the deposit of such monies, SELLER is in default or has indicated that it will not perform any of its

obligations hereunder. Instead, in such circumstances in order to reserve its rights to proceed, BUYER need only provide the Escrow Holder with evidence establishing that the required monies are available.

6. **SELLER'S OBLIGATIONS.** Prior to, and as a condition of the Close of Escrow, SELLER shall deposit into escrow a Grant Deed in the form attached hereto as **Exhibit B** (the "**Grant Deed**"), which shall convey from SELLER to BUYER fee title to the Property subject only to the Permitted Exceptions (as defined below). Prior to the Expected Closing Date, SELLER shall execute and submit to the Escrow Holder an affidavit to the effect that (a) SELLER is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes, and (b) that SELLER is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes.
7. **ESCROW INSTRUCTIONS.** Promptly following the Effective Date, the Parties shall deposit with Escrow Holder a copy of this Agreement. By its execution and delivery of this Agreement, Escrow Holder agrees to be bound by the terms and conditions of this Agreement to the extent applicable to its duties, liabilities and obligations as "Escrow Holder" hereunder. Escrow Holder shall hold and dispose of the Deposit in accordance with the terms of this Agreement. The Escrow Holder's General Provisions are attached hereto as **Exhibit C** and made a part hereof. This Agreement shall constitute not only the agreement of purchase and sale between BUYER and SELLER, but also instructions to Escrow Holder for the consummation of the purchase and sale through the escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by both Parties. Buyer and Seller may execute and deliver such supplemental escrow instructions and closing documents consistent with this Agreement as they may deem necessary or desirable ("**Supplemental Instructions**"). The Supplemental Instructions shall not modify or amend the provisions of this Agreement unless otherwise set forth in a separate written document signed by duly authorized representatives of both Buyer and Seller, including each Party's respective attorneys. In the event that there is any conflict between the provisions of this Agreement and the provisions of any Supplemental Instructions, the provisions of this Agreement shall prevail and control as to the Parties and the Escrow Holder.
8. **DUE DILIGENCE PERIOD AND TITLE REVIEW.**
 - a. Subject to the terms of Paragraph 12, BUYER shall have one hundred twenty (120) days from the Effective Date (the "**Due Diligence Period**"), to review all entitlements for BUYER's intended use and make any and all inspections, investigations, tests, surveys and appraisals of the Property as BUYER deems necessary or desirable including, without limitation, title matters, studies relating to environmental and soil conditions of the Property, and whether the Property is suitable for BUYER's intended use of the Property, and any other matters BUYER determines relate to the Property; provided, however, Purchaser shall not undertake any Phase II environmental testing or any destructive testing on the Property or of any buildings or other structures thereon, without SELLER's written consent, which consent may be withheld or granted in SELLER's sole and absolute discretion. BUYER may terminate this Agreement and receive a refund of the remaining Deposit by providing notice of such termination to Seller and Escrow

Holder thereof at any time prior to expiration of the Due Diligence Period as specified more fully in Paragraph 10.

- b. Within the time periods set forth below, BUYER shall have the right to approve, in its sole and absolute discretion, a preliminary report or title commitment for the Property (the "**Title Commitment**") and all exceptions and other title matters referenced therein, or disclosed by any ALTA survey of the Property that BUYER may elect to obtain (the "**Survey**"). (All such exceptions and title matters are referred to herein as the "**Exceptions**"). Immediately following the Effective Date, Escrow Holder shall at BUYER'S expense order the Title Commitment with copies of all Exceptions to title set forth on such report, which Title Commitment and Exceptions Escrow Holder shall deliver to Buyer with a copy to Seller. BUYER at its expense may order a Survey. The Survey (if any), Title Commitment, and copies of all Exceptions to title set forth on the Title Commitment are collectively referred to below as the "**Title Documents.**" BUYER shall have until 5:00 p.m. (Pacific Time) sixty (60) days from the Effective Date ("**Title Inspection Period**") to give Seller written notice of Buyer's objections to or disapproval of any Exception(s) disclosed by the Title Documents (the "**Objection(s)**"). The failure of BUYER to so object to an Exception set forth on the Title Commitment or any Survey within the specified time period shall be deemed BUYER's approval of said Exception. Within ten (10) days after its receipt of the Objections, with respect to each Objection, SELLER shall notify BUYER whether SELLER (i) will cure or eliminate such Objection from title on or prior to Closing or (ii) is unwilling or unable to cure or have such Objection eliminated from title to the Property on or prior to Closing ("**Seller's Title Notice**"), and SELLER shall cure or eliminate from title to the Property prior to Closing any such Objection Seller has agreed to so cure or eliminate. If SELLER fails to timely deliver such a Seller's Title Notice as to a particular Objection within such ten (10) day period, then Seller shall be deemed to have made the election in clause (ii) above. If SELLER elects not to remove any Objection or is deemed to have made an election not to remove an Objection, then BUYER shall have until the end of the Due Diligence Period to notify SELLER that either (1) BUYER is willing to purchase the Property subject to such Objection(s), upon the satisfaction of the remaining conditions to the Closing or (2) BUYER elects to terminate this Agreement. Any such Objection(s) that BUYER has elected to take title to the Property subject to, shall be deemed to be a Permitted Exception. Any failure by BUYER to so terminate this Agreement shall constitute BUYER's election to proceed as specified in subclause (1) above. Any termination of this Agreement pursuant to this Paragraph 8(b) shall have the same effect as termination pursuant to Paragraphs 8(a) and Paragraph 10.
- c. As used herein, "**Permitted Exceptions**" means any and all Exceptions (a) approved in writing by BUYER or deemed approved pursuant to the terms of this Agreement, (b) all real estate taxes and assessments for the Property not yet due and payable, and/or (c) any Exceptions caused by Buyer or any employee, agent or contractor thereof.
- d. No extension of the Due Diligence Period shall be granted.

9. **SELLER DOCUMENTS.** SELLER has provided BUYER opportunities prior to execution of this Agreement to receive information relevant to the Property. Various County agencies may have additional information regarding the Property. BUYER may request specific information and SELLER shall respond within fourteen (14) days from the request date with any relevant requested documents (collectively “**Seller’s Documents**”), if any. All Seller’s Documents are being provided to BUYER by SELLER without any representation or warranty as to the completeness or accuracy of any information set forth therein.
10. **TIME FOR BUYER TO WAIVE CONTINGENCIES TO CLOSE OF ESCROW.** As specified above, BUYER shall have until 5:00 p.m. Pacific Time on the last day of the Due Diligence Period in which to cancel escrow and withdraw from the purchase of the Property or to waive all contingencies set forth in Paragraphs 8(a) and (b) and proceed to Close of Escrow on BUYER's purchase of the Property on the terms and conditions specified herein. To exercise the right to cancel the escrow and this Agreement pursuant Paragraphs 8(a) and 8(b), BUYER must take steps to ensure actual receipt by the Escrow Holder and by SELLER of the BUYER's written Notice of Cancellation of this Agreement and escrow resulting therefrom (the “**Cancellation Notice**”) prior to 5:01 P.M. on the last day of the Due Diligence Period. To be effective, the Cancellation Notice must be signed by an authorized representative of BUYER.

IF BUYER DOES NOT PROVIDE THE CANCELLATION NOTICE, WHICH IS ACTUALLY RECEIVED BY ESCROW HOLDER AND SELLER NO LATER THAN 5:00 P.M. PACIFIC TIME ON THE LAST DAY OF THE DUE DILIGENCE PERIOD, IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS WAIVED ALL CONTINGENCIES TO CLOSE OF ESCROW AS SET FORTH IN PARAGRAPHS 8(a) and 8(b).

Unless the Parties otherwise agree in writing, and except as provided in Paragraph 15 below [Termination of Agreement Due to Destruction, Damage or Loss of the Property], and/or Paragraph 16(c) [Closing Conditions], if and only if BUYER provides such written notice to the Escrow Holder and SELLER, no later than 5:00 P.M. Pacific Time on the last day of the Due Diligence Period, that BUYER is withdrawing from the purchase and cancelling escrow and this Agreement, then BUYER shall receive a return from the Escrow Holder of the remaining Deposit (subject to BUYER's obligations under Paragraph 13 [BUYER’s Delivery of Reports] below), less only: (a) the Independent Consideration paid to SELLER as consideration for SELLER’s execution of this Agreement and the granting of the contingency period to BUYER as provided above, (b) the Earnest Money paid to SELLER after 30 days from the Effective Date, and (c) any and all Title Company and Escrow Holder cancellation fees and costs, all of which shall be BUYER's obligation. Upon any such termination of this Agreement, neither BUYER nor SELLER shall have any further duties or obligations hereunder, except for those obligations that are expressly stated to survive such termination.

11. **DURATION AND CLOSE OF ESCROW.** For purposes of this Agreement and any other escrow instructions, the Close of Escrow shall occur fifteen (15) days from the expiration of the Due Diligence Period or the waiver of BUYER’s contingencies, whichever occurs earliest (the “**Expected Closing Date**”). Subject to satisfaction of the contingencies and obligations set forth in this Agreement as set forth or summarized in Paragraph 16(c) below, Escrow Holder shall

close the escrow (the "**Closing**" or "**Close of Escrow**") by recording the Grant Deed executed by SELLER and the other documents required to be recorded, including the Restrictive Covenant (as defined below) attached hereto as **Exhibit D** and by disbursing the funds and documents in accordance with this Agreement. Notwithstanding the above, BUYER may elect to purchase one (1) thirty (30) day extension of the Expected Closing Date for a total Close of Escrow Period of forty-five (45) days. In consideration for the extended Closing Period, BUYER shall pay SELLER outside of escrow in the form of a cashier's check made payable to SELLER Two Hundred Fifty Thousand Dollars (\$250,000) (the "Extension Fee") which shall be nonrefundable and non-applicable to the Purchase Price. BUYER shall notify SELLER in writing of its desire to extend the Expected Closing Date and simultaneously provide the Extension Fee to SELLER no later than five (5) days prior to the expiration of the original Expected Closing Date. If the Closing does not occur by the Expected Closing Date and said date is not extended by mutual agreement and instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and SELLER's Broker, in writing that, unless the Closing occurs within five (5) business days following said notice, the Escrow shall be deemed terminated without further notice or instructions (the "**Grace Period**").

12. **BUYER'S ENTRY UPON PROPERTY DURING ESCROW.** Subject to compliance with the insurance requirements set forth below and the limitations set forth in Paragraph 8(a), at any time during the Due Diligence Period, BUYER and its agents and representatives shall have the right, at reasonable times and with reasonable advance written notice, in a way that does not disturb SELLER's use of the Property, to enter upon the Property for the purpose of making inspections and tests. No destructive or Phase II testing shall be conducted, however, without SELLER's written prior approval as specified in Paragraph 8(a). Following any such entry or work, unless otherwise directed in writing by SELLER, BUYER shall return the Property to the condition it was in prior to such entry or work, including the recompaction or removal of any disrupted soil or material as SELLER may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for BUYER shall be paid for by BUYER as and when due and BUYER shall indemnify, defend (with counsel reasonably acceptable to SELLER), protect and hold harmless SELLER, any and all agents, employees and contractors of its agent, and the Property of and from any and all claims, liens, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of BUYER, its agents or employees in connection therewith. BUYER and any and all agents, employees and contractors of BUYER who enter upon the Property for purposes of conducting any inspections or tests (collectively "**BUYER and its Agents**") shall have, and continue to have, the following insurance coverage in full force and effect as a condition of any entry or continued entry onto the Property or any portion thereof, and such insurance shall be maintained in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement:

- a. **Workers' Compensation Insurance.** To the extent required by law, BUYER and its Agents shall provide Workers' Compensation insurance for the performance of any of BUYER's and its Agents' duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability, and a waiver of subrogation.

- b. Liability Insurance. The following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance:
- i. General Liability. Commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, either issued by a company admitted to do business in the State of California and having an A.M. Best Rating of no less than A:VII or by self-insurance satisfactory to SELLER's Risk Manager, or by a combination thereof, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of that Party under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.
 - ii. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that Party's activities under this Agreement of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.
- c. Certificates of Coverage, Waiver of Subrogation and Additional Insureds. Insurance coverages referenced in 12(a) and (b), above, shall be evidenced by one or more certificates of coverage and copies of applicable endorsements or, with the consent of SELLER's Risk Manager, demonstrated by other evidence of coverage acceptable to SELLER's Risk Manager, which shall be delivered by BUYER to SELLER prior to each of BUYER and its Agents entry onto the Property, or any one of them (and anytime thereafter as may be requested by SELLER).
- i. The certificate(s) or other evidence of coverage shall reference this Agreement by its SELLER number or title and department shall be kept current during the term of this Agreement; shall provide that SELLER shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.
 - ii. For the commercial general liability insurance coverage referenced in 12(b)(i) and, for the comprehensive automobile liability insurance coverage referenced in 12(b)(ii) where the vehicles are covered by a commercial policy rather than a

personal policy, BUYER shall also deliver to SELLER with the evidence of coverage an endorsement from the insurance provider naming SELLER and its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers' Compensation insurance coverage, BUYER shall deliver to SELLER with the evidence of coverage an endorsement waiving subrogation.

- iii. The certificate or other evidence of coverage shall provide that if the same policy applies to activities of BUYER not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of SELLER shall pertain only to liability for activities of BUYER under this Agreement, and that the insurance provided is primary coverage to SELLER with respect to any insurance or self-insurance programs maintained by SELLER.
- d. Upon request by SELLER's Risk Manager, BUYER shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the actual insurance policies or relevant portions thereof.
- e. Deductibles/Retentions. Any deductibles or self-insured retentions shall be disclosed to SELLER's Risk Manager.
- f. Inclusion in Subcontracts. BUYER agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other entity or person who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and BUYER shall require compliance of said persons or entities with such insurance requirements set forth in this Paragraph 12.

13. **BUYER'S DELIVERY OF COPIES OF REPORTS AND INVESTIGATION/DUE DILIGENCE AND ANALYSIS MATERIALS REGARDING THE PROPERTY AS A CONDITION TO RETURN OF DEPOSIT FUNDS.** If the purchase of the Property is not consummated for any reason other than SELLER's default, then at SELLER's request, and as a condition to BUYER's right to receive a return of Deposit funds as provided for above, BUYER shall, within five (5) business days after written request from SELLER, deliver to SELLER, at no charge, copies of all surveys, engineering studies, analysis, soil reports, maps, master plans, feasibility studies and other similar items ("**Reports**") prepared by or for BUYER that pertain to the Property.

14. **BUYER'S PURCHASE OF PROPERTY IN AS-IS CONDITION WITHOUT RELIANCE ON ANY REPRESENTATIONS OR WARRANTIES FROM SELLER, AND WITHOUT ANY RIGHT OF CONTRIBUTION OR INDEMNITY FROM SELLER.**

- a. BUYER agrees and acknowledges that it is purchasing the Property and any and all improvements located on the Property at Close of Escrow in "as-is", "where-is" condition with all faults. All structures, improvements, furniture, fixtures, and equipment including all personal property located within the structures will remain at Close of Escrow and be

deemed part of the Property.

- b. BUYER further agrees, acknowledges and represents that in purchasing the Property, it is not relying at all on any representations or warranties by SELLER relating in any manner to the Property, and that SELLER is not and shall not be required to remove, pay for, contribute to the payment for, or to indemnify or hold BUYER or anyone else harmless against the costs of any removal or cleanup of improvements, fixtures, personal property, Hazardous Materials (as defined below), or dangerous conditions located on or affecting the Property. BUYER further acknowledges and agrees that Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, including but not limited to, warranties with respect to the fitness of the Property for a particular purpose or the suitability of the Property for BUYER's intended use thereof.
- c. BUYER acknowledges that by the time for waiver of all contingencies to the Closing as provided above, BUYER must and will have either waived or caused to be conducted all inspections and investigations of the Property that BUYER believes are necessary to protect its own interests in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Materials laws, or any other act, ordinance or law, have been made by either Party or SELLER's Broker, or relied upon by either Party hereto. Any environmental reports, soils reports, surveys, and other similar documents which were prepared by third party consultants and provided to BUYER by SELLER or SELLER's representatives, have been delivered as an accommodation to BUYER and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which BUYER relies on at its own risk.
- d. Notwithstanding anything to the contrary in this Paragraph, in the event any Hazardous Materials found on, under or incorporated into the ground portion of the Property are determined to have been placed or discharged thereon by predecessors of SELLER or by tenants of SELLER or other third parties without the consent of SELLER, BUYER and SELLER agree to cooperate with each other in the pursuit of all reasonably available remedies to ensure that financial responsibility for the costs of any required cleanup by SELLER or BUYER is borne by such third parties to the extent such third parties are legally responsible. As used herein, "**Hazardous Materials**" means any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as such terms are used in any applicable environmental laws and/or regulations.
- e. Except for matters arising from Seller Parties' (as defined below) intentional fraud or misrepresentation, BUYER, for itself and its agents, affiliates, successors and assigns,

hereby releases and forever discharges SELLER and its directors, officers, principals, consultants, representatives, attorneys, agents and employees, successors and assigns (collectively with Seller, the "**Seller Parties**"), from and against any and all claims, actions, causes of action, demands, liabilities, damages, costs and expenses (including attorneys' fees and costs), whether known or unknown at the time of this Agreement, which BUYER has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. For the foregoing purposes, BUYER hereby specifically waives the provisions of Section 1542 of the California Civil Code ("**Section 1542**") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

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

**BUYER'S
INITIALS:** _____

BUYER hereby specifically acknowledges that BUYER has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement. The provisions of this Paragraph 14 shall survive Closing.

15. TERMINATION OF AGREEMENT AND CANCELLATION OF ESCROW DUE TO DESTRUCTION, DAMAGE OR LOSS OF THE PROPERTY.

- a. If, prior to the Closing, SELLER becomes aware that all or any material portion of the Property has been destroyed, lost or substantially damaged, or has been condemned, subsequent to the Effective Date, SELLER shall promptly give BUYER written notice of the event. If the destruction, loss or damage occurs due to any cause other than a cause attributable to the actions or omissions of BUYER or its agents, and would cost more than \$250,000.00 to repair or cure or the condemnation affects a material portion of the Property as reasonably determined by BUYER, then BUYER may, within ten (10) days after becoming aware of such destruction, damage, loss or condemnation (but prior to the Expected Closing Date), withdraw from the Purchase by giving written notice to the Escrow Holder and SELLER of BUYER's termination of this Agreement and cancellation of the escrow. If any such termination notice is timely provided, BUYER shall receive a return of the remaining Deposit (exclusive of the Independent Consideration and Earnest Money released to Seller). The existence of any Hazardous Materials on or under the Property that preexisted the Effective Date shall not be grounds for such termination of the Agreement and the cancellation of escrow, and subsequent return of the Deposit, pursuant to this Paragraph 15.

- b. If BUYER does not provide timely notice of its cancellation of escrow, then BUYER will be deemed to have elected to proceed with the purchase of the Property and with the Closing. In that case, notwithstanding any destruction, loss, damage or condemnation affecting the Property, this Agreement shall remain in full force and effect and the purchase of the Property shall be consummated with no adjustment, reduction of the Purchase Price or other modification. In the event that BUYER proceeds with the Closing notwithstanding some occurrence of loss, damage, destruction or condemnation, BUYER shall be entitled to any insurance proceeds or condemnation award applicable to such loss, destruction, damage or condemnation award (other than insurance payments or portion of any award paid to reimburse SELLER for its costs or expenses incurred in addressing such loss, destruction, damage, or condemnation). At the Close of Escrow, SELLER shall assign and transfer to BUYER the right to any such insurance proceeds or condemnation award.

16. DOCUMENTS REQUIRED AT OR BEFORE CLOSING; CLOSING CONDITIONS AND CLOSING PROCEDURES.

- a. SELLER's Deliveries. The following documents shall be submitted by SELLER to Escrow Holder at or prior to the Expected Closing Date:
 - i. the Grant Deed duly acknowledged and executed by SELLER;
 - ii. an original of the Restrictive Covenant duly acknowledged and executed by SELLER;
 - iii. an affidavit certifying that Seller is not a foreign entity under the Foreign Investment in Real Property Act as specified in Paragraph 6;
 - iv. a California Form 593-C in the current form as established by the California Franchise Tax Board as specified in Paragraph 6;
 - v. a commercially reasonable owner's affidavit as may be requested by Title Company;
 - vi. an executed Closing statement reasonably acceptable to Seller;
 - vii. any other document or agreement required by this Agreement and/or such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.
- b. BUYER's Deliveries. The following documents and sums shall be submitted by SELLER to Escrow Holder at or prior to the Expected Closing Date:
 - i. sufficient immediately available wire transfer funds which, when added to the Deposit and accrued interest are sufficient to pay the (x) Purchase Price and (y) BUYER's share of closing costs;

- ii. an original of the Restrictive Covenant duly acknowledged and executed by SELLER;
- iii. to the extent reasonably required by Escrow Holder, proof of BUYER's authority and authorization to enter into this Agreement;
- iv. an executed closing statement reasonably acceptable to BUYER; and
- v. any other document or agreement required by this Agreement and/or such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

c. Closing Conditions.

- i. Conditions to BUYER's Obligations: BUYER will have no obligation to purchase the Property and consummate the Closing unless each of the following conditions precedent has been satisfied or waived by BUYER as of the Expected Closing Date:
 - 1. Title Company shall issue or be unconditionally and irrevocably committed to issue to BUYER the Title Policy (as defined below);
 - 2. SELLER and Escrow Holder, respectively, shall have performed all of their covenants and obligations set forth in this Agreement;
 - 3. BUYER shall not have terminated this Agreement pursuant to the contingencies set forth in Paragraph 8; and

If any of the conditions precedent in favor of BUYER set forth in Section 16(c)(i) are neither satisfied nor waived by BUYER by the Expected Closing Date, then, BUYER (at its option) may terminate this Agreement by giving a notice of termination to SELLER as and to the extent provided in Paragraph 10. In the case any such termination, (i) the escrow shall terminate, (ii) BUYER will have no further obligation to purchase the Property from Seller, (iii) Seller will have no further obligation to sell the Property to BUYER, and (iv) the Parties will have no further obligation to one another, except as otherwise expressly provided herein. In the event of such a termination, the Deposit (exclusive of the Independent Consideration) shall be returned to BUYER. Notwithstanding anything to the contrary contained herein, in the event of a failure of any condition precedent specified in this Paragraph 16(c)(i) that is caused by a default hereunder on the part of SELLER, then in lieu of terminating this Agreement and escrow pursuant to this Paragraph, then BUYER shall be entitled to exercise its rights pursuant to the provisions of Paragraph 22(c).

- ii. Conditions to SELLER'S Obligations: SELLER will have no obligation to sell

the Property and consummate the Closing unless each of the following conditions precedent has been satisfied or waived by Seller as of the Expected Closing Date:

1. BUYER and Escrow Holder, respectively, shall have performed all of its covenants and obligations set forth in this Agreement;
2. BUYER shall not have terminated this Agreement pursuant to the contingencies set forth in Paragraph 8; and

If any of the conditions precedent in favor of Seller set forth in this Paragraph 16(c)(ii) are neither satisfied nor waived by Seller by the Closing Date, then Seller (at its option) may terminate this Agreement by giving a notice of termination to BUYER as and to the extent provided in Paragraph 11. In the case of any such termination, (i) the escrow shall terminate, (ii) SELLER will have no further obligation to sell the Property to BUYER, (iii) BUYER will have no further obligation to purchase the Property from Seller, and (iv) the Parties will have no further obligation to one another, except as otherwise expressly provided herein. In the event of such a termination, the remaining Deposit shall be returned to Buyer. Notwithstanding anything to the contrary contained herein, in the event of a failure of any condition precedent specified in this Paragraph 16(c)(ii) that is caused by a default hereunder on the part of BUYER, then in lieu of terminating this Agreement and escrow pursuant to this Paragraph 16(c)(ii), SELLER shall be entitled to exercise its rights pursuant to the provisions of Paragraph 22(b).

- d. Closing Procedures. On the Expected Closing Date, Escrow Holder will close escrow as follows:
 - i. record the Grant Deed (marked for return to BUYER) with the County Recorder of the County, which will be deemed delivered to BUYER;
 - ii. record the Restrictive Covenant with the County Recorder of the County and provide copies thereof with the recordation contained thereon to BUYER and SELLER;
 - iii. record the Access Easement with the County Recorder of the County and provide copies thereof with the recordation contained thereon to BUYER and SELLER;
 - iv. issue the Title Policy, and cause it to be delivered to BUYER;
 - v. pay the commission due the Seller's Broker identified herein pursuant to instructions from Seller;
 - vi. charge BUYER for those costs and expenses to be paid by BUYER pursuant to this Agreement and disburse any net funds remaining after the preceding disbursements to BUYER;

- vii. disburse to SELLER the Purchase Price remaining after payment of the commission and any prorated amounts and charges to be paid by or on behalf of Seller, and disburse to BUYER the balance of any remaining funds in Escrow;
- viii. prepare and deliver to both Purchaser and Seller one signed copy of Escrow Holder's closing statement showing all receipts and disbursements of the Escrow;
- ix. deliver to BUYER the FIRPTA Affidavit and the California Form 593-C (or any successor thereto);
- x. deliver any other documents and complete such other acts as required of Escrow Holder hereunder; and
- xi. close escrow within the meaning of Section 6045 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and promptly file all necessary information reports and returns regarding this transaction as required by the Code, including, without limitation, the returns required pursuant to Section 6045 of the Code.

17. **TITLE INSURANCE.** At Closing, Escrow Holder shall cause to be issued to BUYER a standard coverage owner's form policy of title insurance effective as of the Closing, issued by Placer Title Company or any national title insurance company, such as Stewart Title, which underwrites policies for escrows handled by Escrow Holder, ("**Title Company**") in the full amount of the Purchase Price, insuring title to the Property vested in BUYER, subject only to the Permitted Exceptions (the "**Title Policy**"). At its own costs, to the extent available, BUYER may elect to obtain ALTA extended coverage owner's title policy and/or any endorsements BUYER deems appropriate, but such extended coverage shall not be a condition of Closing.
18. **INSURANCE.** Any insurance which SELLER may have maintained for the Property or any insurance thereon will terminate on the Closing. It is BUYER's sole responsibility to obtain appropriate insurance to cover the Property after Closing.
19. **COVENANT OF AFFORDABILITY.** If 10 or more dwelling units are developed on the property, at least fifteen percent (15%) of the total dwelling units to be developed on the Property shall be sold at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or rented at affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or very low income households, as defined in Section 50105 of the Health and Safety Code. These affordability requirements shall be set forth in a Restrictive Covenant ("**Restrictive Covenant**") recorded against the Property concurrently at the Close of Escrow or prior to receipt of discretionary entitlements for development of the Property, whichever occurs first. The affordability requirement shall restrict the affordable housing cost or affordable rent of the dwelling unit for a term of 55 years from the date a certificate of occupancy is issued for the dwelling units and shall be enforceable as described in Government Code Section 54233 and 54222.5 against any owner who violates a covenant or restriction and each successor in interest who continues the violation. The Parties agree that the covenants and restrictions set forth in such Restrictive Covenant shall run with the land, shall not be subordinated to any deed of trust, and shall bind all successors in title to the Property, provided, however, that on the expiration of

the 55-year term, said covenants and restrictions shall expire.

20. **NO LEASES.** SELLER warrants that there are currently no oral or written leases on all or any portion of the Property.
21. **INTEGRITY OF PROPERTY.** Except as otherwise provided herein or by express written permission granted by BUYER, SELLER shall not, after the Effective Date until the Close of Escrow, alienate, lien, encumber or transfer the Property or any interest therein or allow the same to occur, intentionally cause or allow any physical changes on the Property, or enter into a lease or contract with respect to the Property or any portion thereof, which would survive the Close of Escrow and otherwise materially impair BUYER's use of the Property.
22. **DEFAULT.**
- a. **Notice of Default; Cure Period.** With respect to a default or breach by either Party hereunder, neither Party will be in default under this Agreement unless and until the other Party gives the defaulting Party written notice specifying the default or defaults and such default or defaults have not been cured within two (2) business days from the defaulting Party's receipt of such notice.
 - b. **Liquidated Damages.** **IF BUYER FAILS TO COMPLETE THE PURCHASE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATION TO SELL THE PROPERTY TO BUYER. FURTHER, BY INITIALING THIS PARAGRAPH 22(b) BUYER AND SELLER AGREE AND UNDERSTAND THAT IN EVENT OF DEFAULT BY BUYER, (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; (B) AN AMOUNT EQUAL TO THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES IF THE CLOSING DOES NOT OCCUR BY REASON OF BUYER'S DEFAULT HEREUNDER AND SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER; (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE AND SOLE REMEDY OF SELLER AT LAW OR IN EQUITY; (D) SELLER MAY RETAIN THAT PAYMENT ON ACCOUNT OF THE PURCHASE PRICE FOR THE PROPERTY AS LIQUIDATED DAMAGES; AND (E) PAYMENT OF THOSE SUMS TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. THE PARTIES HAVE FREELY NEGOTIATED THE FOREGOING LIQUIDATED DAMAGES PROVISION IN GOOD FAITH. NOTHING SET FORTH IN THIS PARAGRAPH 22(b) SHALL SERVE TO LIMIT ANY INDEMNITY OBLIGATION OF BUYER UNDER THIS AGREEMENT OR ANY POST-CLOSING OBLIGATION OF BUYER.**

**BUYER'S
SIGNATURE:** _____

**SELLER'S
SIGNATURE:** _____

- c. SELLER Default. IF, AT CLOSING, SELLER IS IN DEFAULT OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND SUCH DEFAULT CONTINUES BEYOND THE PERIOD SPECIFIED IMMEDIATELY ABOVE, THEN BUYER SHALL HAVE THE RIGHT, TO ELECT, AS ITS SOLE AND EXCLUSIVE REMEDY, TO TAKE ONE (1), BUT NOT MORE THAN ONE (1), OF THE FOLLOWING ACTIONS: (i) terminate this Agreement by written notice to Seller, promptly after which the Deposit shall be returned or released to Buyer and neither Seller nor Buyer shall have any liability hereunder except for those obligations which expressly survive the termination of this Agreement or (ii) waive the default and proceed to Closing. EXCEPT AS EXPRESSLY PROVIDED ABOVE, AND EXCEPT FOR SELLER'S POST-CLOSING OBLIGATIONS UNDER THIS AGREEMENT, BUYER HEREBY WAIVES AND RELEASES ANY RIGHT BUYER OTHERWISE POSSESSES TO RECOVER OR SEEK TO RECOVER ANY DAMAGES ARISING OUT OF THIS AGREEMENT AND/OR ESCROW, INCLUDING, WITHOUT LIMITATION, ANY CONSEQUENTIAL (INCLUDING LOST PROFITS), SPECIAL OR GENERAL DAMAGES OF ANY NATURE OR KIND (EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR FOR ANY PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES, AND ALL SUCH DAMAGES CLAIMS ARE HEREBY WAIVED BY BUYER TO THE FULLEST EXTENT PERMITTED BY LAW.

23. **FURTHER ASSURANCES AND CONTINGENCIES.** The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties. Such acts shall include, but not be limited to, compliance by BUYER and SELLER with California Government Code Section 65402.
24. **LOT LINE ADJUSTMENT.** Concurrently with the Close of Escrow, the Parties shall record an access easement on the Property for the benefit of the Juvenile Justice Center parcel (APN 004-291-016) for the purposes of retaining access to an electrical generator which serves the Juvenile Justice Center. The access easement shall be in similar form and substance as shown in **Exhibit E**. At the time BUYER or future owners of the Property record a parcel map or subdivision map, such map shall also contain a requirement to record a lot line adjustment at the time the BUYER records a parcel map with the same description as the access easement for the purposes of eliminating the access easement and transferring that area of the access easement to APN 004-291-016.
25. **GENDER, NUMBER.** As used herein, the singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.
26. **GOVERNING LAW; VENUE.** This Agreement shall be governed, interpreted, construed and

enforced in accordance with the laws of the State of California and any litigation brought hereunder in state court shall be brought in the Superior Court of California, County of Napa, a unified court.

27. **HEADINGS.** The captions and paragraph and subparagraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
28. **CONSTRUCTION.** This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.
29. **WAIVER OF BREACH.** No waiver by any Party of any breach of this Agreement shall be deemed a waiver of any other or subsequent breach.
30. **NO OTHER INDUCEMENT.** The making, execution and delivery of this Agreement by the Parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
31. **SEVERABILITY.** If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall be severable and shall not be affected thereby, and each of the remaining terms, provisions, covenants or conditions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
32. **SUCCESSORS.** All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
33. **TIME.** Time is of the essence of each provision of this Agreement. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.
34. **WAIVER OF PERFORMANCE.** The waiver by one Party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such Party of any other term, provision, covenant or condition. Delay by any Party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such Party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
35. **ATTORNEYS' FEES.** Should any litigation be commenced between the Parties to this Agreement concerning the sale or the rights or duties of the Parties in relation thereto, the Party prevailing in such litigation shall be entitled, in addition to such other relief as may be provided by this Agreement, to a reasonable sum as and for attorneys' fees and costs in such litigation, or

in a separate action brought for that purpose. For purposes of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the prevailing Party, which may also include printing, photostating, duplicating, air freight charges and other expenses, as well as the fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney.

36. **NOTICES.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given and effective: (i) on the date of delivery if served personally on the Party to whom notice is to be given or, unless otherwise specifically provided or required by this Agreement; (ii) if sent by overnight delivery, such as by Federal Express, on the date said notice or other writing is delivered or on which delivery is refused; (iii) if mailed, five (5) calendar days after mailing by first class, registered or certified mail, postage prepaid; or (iv) if by electronic mail, in which case it will be deemed delivered on the date sent or the next business day after the date sent, and properly addressed as follows:

Any Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

BUYER: (Buyer to fill in the following information at time of Bid:)

(Name:)

(Address:)

ATTN:

SELLER: Napa County
Department of Public Works
1195 Third Street, Suite 101
Napa, California 94559
ATTN: Director of Public Works

With a copy to:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
Attention: County Counsel

37. **CLOSING COSTS, FEES AND PRORATIONS.** BUYER shall pay all closing costs including but not limited to real property taxes, assessments, documentary transfer taxes, title insurance desired by BUYER (including the premiums for the Title Policy), escrow and recording fees, except that SELLER shall pay a real estate commission for SELLER's broker. Additionally, with respect to the costs of curing any Exception, which Seller has agreed to cure, if any, as specified in Paragraph 8 above, Seller shall pay for all costs thereof. Each Party will be responsible for and bear all of its own costs and expenses incurred in connection with the

proposed purchase and sale, including without limitation, all accounting, legal and other fees and expenses.

38. **REAL ESTATE BROKERS.** The following real estate broker(s) (“Brokers”) and brokerage relationships exist in this transaction and are consented to by the Parties:

Colliers Parrish International, Inc. represents SELLER (“SELLER’s Broker”)

The Parties acknowledge that other than the Brokers listed above, there are no other brokers representing the Parties or due any fees and/or commissions under this Agreement. BUYER and SELLER each represent and warrant to the other that they have had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein other than the Brokers identified above in this Paragraph, and that no broker or other person, firm or entity, other than said Brokers is or are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. BUYER and SELLER do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party, other than said named Brokers by reason of any dealings or act of the indemnifying Party.

39. **COUNTERPARTS AND .PDF / FACSIMILE SIGNATURES.** This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, and all of which when together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement. In order to expedite the transaction contemplated herein, facsimile and/or .pdf signatures may be used in place of original signatures on this Agreement. SELLER and BUYER intend to be bound by the signatures on the electronically transmitted document, are aware that the other Party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.
40. **RELATIONSHIP OF BUYER AND SELLER.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the Parties hereto partners or joint venturers, or to render either Party liable for any of the debts or obligations of the other, it being the intention of the Parties to merely create the relationship of SELLER and BUYER with respect to the Property to be conveyed hereby.
41. **AUTHORITY TO SIGN.** Each Party and the signatories for that Party represent and warrant that the Party's signatories to this Agreement are authorized to enter into this Agreement on behalf of that Party and that no other authorizations are required to implement this Agreement on behalf of that Party. The Parties agree that written evidence of such authorization shall be submitted by each Party to the other Party prior to the Close of Escrow. Such evidence may be in the form of a certified copy of the minutes of the governing board of the Party approving such

Agreement and authorizing signature thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the last date of execution below.

"BUYER"

Date: _____, 2021

(Name of BUYER:)_____

By: _____
(Print Name:) _____
(Its:) _____

(2nd signature for corporations)

By: _____
(Print Name:) _____
(Its:) _____

"SELLER"

Date: _____, 2021

NAPA COUNTY, a political subdivision of
the State of California

By: _____
ALFREDO PEDROZA, Chair of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Chris R.Y. Apallas</u> Deputy County Counsel Date: February 2, 2021	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors By: _____
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2021 OSR PSA2-2-21 Final AATF

Exhibit A
Legal Description

"That parcel of land conveyed to the Board of Directors of the Napa County Infirmary by deed filed February 8, 1869 and recorded in Book "L" of Deeds at Page 304 in Office of the Recorder of Napa County, California,

EXCEPTING therefrom the following:

COMMENCING at the southwesterly corner of the above mentioned parcel of land conveyed to the Board of Directors of the Napa County Infirmary; thence along the west line of said parcel North 30.00 feet to a point on the northerly line of the road known as "Old Sonoma Road", said point being THE TRUE POINT OF BEGINNING of this description; thence continuing along said west line of the parcel of land conveyed to the Board of Directors of the Napa County Infirmary North 367.80 feet; thence leaving said west line of the parcel of land conveyed to the Board of Directors of the Napa County Infirmary East 130.49 feet; thence South 50.38 feet; thence East 235.56 feet; thence South 317.42 feet to the northerly line of the road known as "Old Sonoma Road" ("...the road leading by P. Guessford's lands..." per "L" Deeds 304, N.C.R.), thence along said northerly line West 366.05 feet to THE TRUE POINT OF BEGINNING."

APN: 004-291-015

**Exhibit B
Grant Deed**

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

MAIL TAX STATEMENTS TO:

(Space Above This Line For Recorder's Use Only)

DOCUMENTARY TRANSFER TAX IS \$ _____, COMPUTED ON THE FULL VALUE OF
PROPERTY CONVEYED. THE PROPERTY IS LOCATED IN NAPA, CALIFORNIA. APN(S):
004-291-015.

GRANT DEED

For valuable consideration, NAPA COUNTY, a political subdivision of the State of California hereby grants to _____, all that certain real property located in the City of Napa, County of Napa, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by reference, together with all rights and privileges appurtenant thereto, subject to all matters of record and all matters that would be shown by an accurate survey of the Property.

Dated this ____ day of _____, 2021.

GRANTOR:

NAPA COUNTY, a political subdivision of the State
of California

By: _____
ALFREDO PEDROZA, Chair of the
Board of Supervisors

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, the undersigned, a notary public for the state, personally appeared _____, proved to me to be the person(s) whose name(s) is/are subscribed to the within instrument, as a witness thereto, on the oath of _____, a credible witness who is known to me and provided a satisfactory identifying document. _____, being by me duly sworn, deposed and said that he/she/they was present and saw/heard _____, the same person(s) described in and whose name(s) is/are subscribed to the within, or attached, instrument in his/her/their authorized capacity(ies) as a party(ies) thereto, execute or acknowledge executing the same, and that said affiant subscribed his/her/their name(s) to the within instrument as a witness at the request of _____.

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Legal Description

That certain land situated in the City of Napa, County of Napa, State of California, and described as follows:

“That parcel of land conveyed to the Board of Directors of the Napa County Infirmary by deed filed February 8, 1869 and recorded in Book “L” of Deeds at Page 304 in Office of the Recorder of Napa County, California,

EXCEPTING therefrom the following:

COMMENCING at the southwesterly corner of the above mentioned parcel of land conveyed to the Board of Directors of the Napa County Infirmary; thence along the west line of said parcel North 30.00 feet to a point on the northerly line of the road known as “Old Sonoma Road”, said point being THE TRUE POINT OF BEGINNING of this description; thence continuing along said west line of the parcel of land conveyed to the Board of Directors of the Napa County Infirmary North 367.80 feet; thence leaving said west line of the parcel of land conveyed to the Board of Directors of the Napa County Infirmary East 130.49 feet; thence South 50.38 feet; thence East 235.56 feet; thence South 317.42 feet to the northerly line of the road known as “Old Sonoma Road” (“ . . .the road leading by P. Guessford’s lands...” per “L” Deeds 304, N.C.R.), thence along said northerly line West 366.05 feet to THE TRUE POINT OF BEGINNING.”

APN: 004-291-015

Exhibit C
Escrow Holder's General Provisions

1. All funds received in this escrow shall be deposited in a separate escrow fund account or accounts of Placer Title Company (for the benefit of the Parties hereto) with one or more state or national banks duly qualified to do business in the State of California, so that each such account shall be fully insured at all times by the Federal Deposit Insurance Corporation, to the maximum extent permitted by law. All disbursements shall be made by check of Placer Title Company.
2. Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order to be issued at Close of Escrow the policy of title insurance as called for in these instructions. "Close of escrow" shall mean the date instruments are recorded, unless otherwise specified by the Parties.
3. All adjustments and prorations shall be made on the basis of a 365-day year and the actual number of days in the month in which the Close of Escrow occurs.
4. If applicable, Escrow Holder is instructed to assign any fire and casualty insurance policy delivered to you and to secure any endorsements required in the performance of these instructions. Escrow Holder may assume that said policy is in full force and effect and that all premiums due have been paid.
5. Escrow Holder shall have no responsibility of notifying any of the Parties to this escrow of any sale, resale, loan, exchange or other transaction involving any property herein described or of any profit realized by any person, firm or corporation in connection therewith, regardless of the fact that such transaction(s) may be handled by you in this escrow or in another escrow.
6. No notice, demand or change of instruction shall be of any effect in this escrow unless given in writing by all parties affected thereby and except as otherwise specifically provided in the Agreement to which these General Provisions are attached.
7. If the conditions of this escrow have not been complied with at the time herein provided, Escrow Holder is nevertheless to complete the same as soon as the conditions (except as to time) have been complied with, unless any Party hereto has made written demand upon you for the return of money and instruments deposited by it.
8. Unless the Agreement otherwise provides or unless otherwise instructed by either Buyer or Seller, Escrow Holder is authorized to furnish copies of these instructions, any supplements or amendments thereto, notices of cancellation and closing statements to the attorneys, real estate broker(s) and lender(s), if any, named in this escrow.
9. Any funds abandoned or remaining unclaimed, after good faith efforts have been made by the Escrow Holder to return same to the Party(ies) entitled thereto, shall be assessed a holding fee of \$50.00 annually.

10. All documents, closing statements, and balances due the Parties to this escrow are to be wire transferred to said Parties pursuant to separate wire transfer instructions to be delivered to escrow, or if no such separate wire transfer instructions are given to escrow, by Priority U.S. Mail or FEDEX at the addresses set forth in the Agreement of the parties for notices, unless otherwise instructed.
11. Notwithstanding the foregoing, if Escrow Holder is also acting as Title Insurer under the Agreement, nothing set forth in these General Provisions shall limit any liability set forth in the Title Policy(ies) provided in the Agreement.
12. For purposes of complying with Internal Revenue Code Section 6045(e), as amended effective January 1, 1991, escrow holder is hereby designated as the “person responsible for closing the transaction” and also as the “reporting person,” for purposes of filing any information returns with the Internal Revenue Service concerning this transaction, as required by law.
13. Escrow Holder shall assist the Parties in obtaining a waiver of withholding from the Franchise Tax Board with respect to the transactions contemplated by the Agreement in accordance with Section 18662 of the Revenue and Taxation Code of California.
14. Escrow Holder shall assist the Parties in complying with the provisions of Internal Revenue Code Section 1445 (FIRPTA withholding).

Exhibit D
Restrictive Covenant

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Napa
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: Director of Housing and Homeless Services

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

**AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS**

(Restrictive Covenant Required by the Surplus Lands Act, Government Code Section 54233)

This Affordable Housing Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into this _____ day of _____ 20__ (the "Effective Date"), by and between **Napa County**, a political subdivision of the State of California (the "County"), and _____, a _____ (the "Developer"), with reference to the following facts:

RECITALS

- A. COUNTY is the owner of an approximately 8.6 acre parcel of real property located at 2344 Old Sonoma Road, Napa, California, identified as Napa County Assessor's Parcel No. 004-291-015-000, and more particularly described by the legal description that is attached hereto and incorporated herein by this reference as **Exhibit A**, which together with all rights, privileges, easements and appurtenances thereto, including, without limitation, all mineral and water rights, all permanent improvements and County's personal property, fixtures, furniture and/or furnishings located thereon at close of escrow, are hereinafter collectively referred to as the "Property." The Property is located in the City of Napa, and all entitlements for use will be granted by the City of Napa.
- B. On March 24, 2020, the Napa County Board of Supervisors ("Board") adopted Resolution No. 2020-42 declaring the Property as surplus.
- C. On March 30, 2020, County provided the Notice of Availability of surplus property required by the Surplus Land Act (the "Act" (Government Code section 54222 *et seq.*)) to the entities specified therein. County received one timely notice expressing interest in purchasing the Property from an entity required by the Act to receive notice. County entered into a period of good faith negotiations with the interested party but after several months was unable to agree to mutually satisfactory terms to complete a sale. The County complied fully with the Act and

on December 14, 2020 notified the interested party that County was ending negotiations thereby concluding the Surplus Land Act process.

- D. On January 4, 2021 County staff notified the Department of Housing and Community Development (HCD) of County's compliance with the Act as required by Government Code section 54230.5.
- E. HCD's 30-day period to comment on County's compliance with the Act process has expired with only one comment regarding the form of the restrictive covenant being received from HCD, thus allowing County to proceed with this RFP process.
- F. Pursuant to Government Code section 25526, the County's Board of Supervisors (the "Board"), by at least a two-thirds vote of all of its members, adopted on February 23, 2021 Resolution No. 2021-___ declaring the County's intention to sell the Property (the "Resolution of Intent"), which set forth all terms and procedures for sale by the County of the Property, including the issuance of a Request for Proposals ("RFP")
- G. On May ___, 2021, pursuant to Government Code section 25535, the Board adopted Resolution No. 2021-___ selecting DEVELOPER as the purchaser of the Property after completion of the RFP process and in accordance with the Resolution of Intent. Developer's bid proposed to construct dwelling units to be sold or rented at sales prices or rents affordable to lower income households (the "Affordable Units").
- H. Section 54233 of the Act requires that if the County does not agree to price and terms with an entity to which notice and an opportunity to purchase or lease are given and disposes of the Property to an entity that uses the Property for ten or more residential units, the County shall record a covenant or restriction against the Property prior to approval of any land use entitlements that requires that not less than fifteen (15) percent of any residential units be Affordable Units. This Agreement is intended to comply with the requirements of Section 54233 and to implement the policies and programs of the County's adopted Housing Element of the General Plan, in particular Program H-2j, which states that the County will seek proposals to construct affordable housing on underutilized County-owned properties.

TERMS

NOW, THEREFORE, in consideration of the promises set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows. The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 **Definitions.** In addition to those terms defined in the Recitals, the terms listed here have the following meanings in this Agreement:

- (a) "Affordable Ownership Price" means a sales price that includes a reasonable down payment and results in a Monthly Housing Payment during the first calendar year of a household's occupancy that (i) for Low Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of seventy percent (70%) of Area Median Income, as adjusted for Assumed Household Size; and (ii) for Very Low Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%)

of fifty percent (50%) of Area Median Income, as adjusted for Assumed Household Size, as calculated consistent with Health & Safety Code Section 50052.5.

(b) "Affordable Rent" means monthly Rent that (i) for Low Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Area Median Income, as adjusted for Assumed Household Size; and (ii) for Very Low Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, as adjusted for Assumed Household Size, as calculated consistent with Health & Safety Code Section 50053. If a tenant receives Section 8 housing assistance payments, the "Affordable Rent" requirement shall apply to the portion of such amount paid by the tenant.

(c) "Area Median Income" means the median income applicable to Napa County, adjusted for actual household size, as published annually by the California Department of Housing and Community Development in Title 25, Section 6932 of the California Code of Regulations (or successor provision) pursuant to California Health and Safety Code Section 50093(c).

(d) "Assumed Household Size" means one person in a studio dwelling unit, two persons in a one bedroom dwelling unit, three persons in a two bedroom dwelling unit, and one additional person for each additional bedroom thereafter.

(e) "Eligible Household" means a household that is a Low Income Household or a Very Low Income Household.

(f) "Low Income Household" means a household whose annual household income does not exceed the low income limits applicable to Napa County as published annually pursuant to Title 25, Section 6932, of the California Code of Regulations (or its successor provision) by the California Department of Housing and Community Development.

(g) "Monthly Housing Payment" includes monthly payment of mortgage interest and principal, property taxes, mortgage insurance, homeowner's insurance, homeowners' association dues, assessments paid by homeowners, and a reasonable allowance for utilities (excluding telephone service and cable television).

(h) "Rent" means the total of monthly payments required to be paid by a tenant for the following: use and occupancy of an Affordable Unit and associated facilities, including parking; any separately charged fees or service charges assessed by Developer and required to be paid by the tenant other than security deposits; utilities paid by the tenant, if any, which may include garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, excluding telephone service or cable television; and any other interest, taxes, fees or charges paid by the tenant in connection with the use of the Affordable Unit or associated facilities and assessed by a public or private entity other than Developer.

(i) "Term" is the period of time beginning on the date that a permanent certificate of occupancy is issued for all of the Affordable Units and ending fifty-five (55) years following that date.

(j) "Very Low Income Household" means a household whose annual household income does not exceed the very low income limits applicable to Napa County as published annually pursuant to Title 25, Section 6932, of the California Code of Regulations (or its successor provision) by the California Department of Housing and Community Development.

Section 1.2 Exhibits. The following Exhibit is attached and incorporated into this Agreement:

ARTICLE 2
AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Affordable Housing Requirements.

(a) Affordable Units. If 10 or more dwelling units are developed on the property, at least fifteen percent (15%) of the total dwelling units to be developed on the Property shall be constructed on the Property and shall be Affordable Units that shall be sold at an Affordable Ownership Price to Eligible Households or rented at Affordable Rent to Eligible Households. The Affordable Units shall be used only as residences for the Term of this Agreement.

(b) Satisfaction of Affordable Housing Requirements. The affordable housing requirements contained in this Agreement shall be satisfied with respect to the Property when: (a) the Developer constructs, or causes to be constructed, and completes the construction of the Affordable Units meeting the requirements of this Agreement; and (b) for the Term of this Agreement, Developer sells or rents all Affordable Units to Eligible Households at an Affordable Ownership Price or Affordable Rent, as applicable, in compliance Section 2.1(a) above.

(c) Recordation of Agreement. Concurrently with close of escrow on sale of the Property to the Developer, or prior to receipt of any entitlement for use from the City of Napa, whichever occurs first, this Agreement shall be duly executed by the County and the Developer and recorded against the Property in the Official Records of the County of Napa, consistent with the requirements of Section 54233 of the Act.

Section 2.2 Term and Release of Property from Agreement.

(a) Term. The provisions of this Agreement shall apply to the Property for the entire Term unless released as described in subsection (c) below. This Agreement shall bind any successor, heir, or assign of the Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County intends to sell the Property to the Developer on the condition, and in consideration of, this provision, and would not do so otherwise.

(b) Covenant Running with the Land. The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownership, Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title, or interest in or to any part of the Property, whether by operation of law or in any manner whatsoever, and shall run with and burden the Property for the Term of this Agreement until terminated in accordance with this Section. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including without limitation Section 1468 of the California Civil Code. Each covenant to do, or to refrain from doing, some act on the Property hereunder (a) is for the benefit of the Property and is a burden on the Property, (b) runs with the Property, and (c) is binding upon each party and each successive owner during its ownership of the Property or any portion thereof, and shall be a benefit to and a burden upon each party and the Property hereunder and each other person or entity succeeding in an interest to the Property.

(c) Release of Agreement.

(i) Upon completion of all of the Affordable Units and the sale or rental of all of the Affordable Units at Affordable Ownership Price or Affordable Rent, as applicable, to Eligible Households, the County shall release all portions of the Property except the parcels occupied by the

Affordable Units from the burdens of this Agreement within thirty (30) days following written notice from the Developer, if at the time the Developer is in compliance with all terms of this Agreement.

(ii) Prior to the expiration of the Term, Developer shall provide all notifications required by Government Code Sections 65863.10 and 65863.11 or successor provisions and any other notification required by any state, federal, or local law.

(iii) Upon the expiration of the Term, County shall execute and record a release of all portions of the Property from the burdens of this Agreement within thirty (30) days following written notice from the Developer, if at the time the Developer is in compliance with all terms of this Agreement, including without limitation Developer's compliance with subparagraph (c)(ii) of this Section.

Section 2.3 Nondiscrimination. Developer shall not discriminate against persons or groups of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry or national origin in the use, sale, transfer, occupancy, lease, tenure or enjoyment of the Property, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with respect to use or occupancy of the Property.

ARTICLE 3 DEFAULT AND REMEDIES

Section 3.1 Default. Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within thirty (30) days after the delivery of a written notice of default from the County (or such longer period of time up to an additional one hundred twenty (120) days as may be necessary to remedy such default, provided that the Developer has commenced action during the thirty (30) days necessary to remedy such default, and the Developer is proceeding with reasonable diligence to remedy such default) will constitute a default under this Agreement, and, in addition to any other remedy authorized by law or equity for breach of this Agreement, the County may exercise any and all remedies available to it with respect to the Developer's failure to satisfy the terms of this Agreement, including but not limited to:

(a) instituting against the Developer, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation; and

(b) where one or more persons have received financial benefit as a result of a violation of this Agreement, the County may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of other benefits received;

(c) prosecuting a misdemeanor against any person who has violated the County Code; and

(d) any other remedies authorized by the County Code.

Section 3.2 Enforcement by Third Parties. As required by Section 54233 of the Act, any default in the Developer's obligations under the terms of this Agreement shall also be enforceable against the Developer by any of the entities described in subdivisions (a) through (f), inclusive, of Government Code Section 54222.5.

Section 3.3 Remedies Cumulative. No right, power, or remedy given to the County by the terms of this Agreement is intended to be exclusive of any other available right, power, or remedy; but each and every such right, power, or remedy shall be cumulative and shall be in addition to every other right, power, or remedy given under this Agreement or now or hereafter existing at law, in equity, or by

statute or ordinance. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 3.4 Attorneys Fees. In any proceeding brought to enforce rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in addition to any other recovery under this Agreement. Whether or not litigation is instituted, the County shall be entitled to receive from any person violating this Agreement, in addition to any remedy otherwise available under this Agreement, the costs of enforcing this Agreement, including without limitation reasonable attorney's fees and costs of County staff.

ARTICLE 4 GENERAL PROVISIONS

Section 4.1 Appointment of Other Entities. At its sole discretion, the County may designate any other public agency, for-profit, or non-profit entity to perform the County's obligations under this Agreement. The County shall notify the Developer of any designee pursuant to Section 4.2 of this Agreement.

Section 4.2 Subordination. In no event shall this Agreement be subordinated to any mortgage, deed of trust, or other method of security encumbering Developer's estate in the Property.

Section 4.3 Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the Party to receive such notice at the address set forth below:

TO THE COUNTY:

County of Napa
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: Director of Housing and Homeless Services

TO THE DEVELOPER:

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 4.4 Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes any and all prior arrangements and understandings between the parties, and no other agreement, statement, or promise made by the parties which is not contained in this Agreement

shall be binding or valid. No modification of this Agreement shall be binding unless reduced to writing and signed by the parties.

Section 4.5 Interpretation. The parties to this Agreement have read and reviewed this Agreement and agree that this Agreement reflects the mutual intentions of the parties and any rule of construction (including, but not limited to, Civil Code Section 1654 as may be amended from time to time) to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretations of this Agreement. The terms of this Agreement shall be interpreted so as to insure to the maximum extent possible that the Affordable Units are used for affordable housing and are occupied by Eligible Households.

Section 4.6 Applicable Law and Venue. The laws of the State of California shall govern this Agreement. Venue for any dispute arising out of this Agreement shall be Napa County, California.

Section 4.7 Hold Harmless and Indemnification. Developer will indemnify and hold harmless (without limit as to amount), with counsel approved by the County and its elected officials, officers, employees, and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all claims, damages, losses, liabilities, actions, causes of action, expenses, and demands whatsoever, including without limitation attorneys fees arising out of the performance of this Agreement (collectively "Claims"), arising out of or relating in any manner as a result of or in connection with Developer's construction, sale, management, or operation of the Affordable Units, or Developer's performance or non-performance of any obligation as and when required by this Agreement, caused in whole or part by any negligent act or omission of the Developer, except where caused by the gross negligence or willful misconduct of the County, and shall protect and defend Indemnitees, and any of them with respect thereto. The provisions of this Section 4.6 shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section 4.6 shall remain in full force and effect.

Section 4.8 Waivers. Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver shall be implied from any delay or failure by the County to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 4.9 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 4.10 Amendment of Agreement. This Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written consent of the County and Developer.

Section 4.11 Governmental Standards. In the event any standard established and maintained by any governmental agency which is necessary to give effect to this Agreement ceases to exist, and no comparable replacement is issued, the County shall create a replacement standard utilizing the formula and factors previously used to create the discontinued standard.

Section 4.12 Authority. This Agreement has been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery, and performance of this Agreement have been duly taken.

Section 4.13 Survival; No Merger. All of the terms, provisions, representations, warranties and covenants of the parties under this Agreement shall survive the close of escrow of any sale of the Property or the Affordable Units and shall not be merged in any deed transferring the Property or the Affordable Units.

Section 4.14 Further Assurances. The parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

Section 4.15 Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 4.16 Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, or if any provision of this Agreement is rendered invalid or unenforceable pursuant to any California statute which became effective after the effective date of this Agreement, the remaining portions of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

DEVELOPER:

_____,

By: _____

Its: _____

COUNTY:

NAPA COUNTY, a political subdivision of the
State of California

By: _____

Its: _____

APPROVED AS TO FORM
Office of County Counsel

By:
Deputy County Counsel

Date:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, the undersigned, a notary public for the state, personally appeared _____, proved to me to be the person(s) whose name(s) is/are subscribed to the within instrument, as a witness thereto, on the oath of _____, a credible witness who is known to me and provided a satisfactory identifying document. _____, being by me duly sworn, deposed and said that he/she/they was present and saw/heard _____, the same person(s) described in and whose name(s) is/are subscribed to the within, or attached, instrument in his/her/their authorized capacity(ies) as a party(ies) thereto, execute or acknowledge executing the same, and that said affiant subscribed his/her/their name(s) to the within instrument as a witness at the request of _____.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, the undersigned, a notary public for the state, personally appeared _____, proved to me to be the person(s) whose name(s) is/are subscribed to the within instrument, as a witness thereto, on the oath of _____, a credible witness who is known to me and provided a satisfactory identifying document. _____, being by me duly sworn, deposed and said that he/she/they was present and saw/heard _____, the same person(s) described in and whose name(s) is/are subscribed to the within, or attached, instrument in his/her/their authorized capacity(ies) as a party(ies) thereto, execute or acknowledge executing the same, and that said affiant subscribed his/her/their name(s) to the within instrument as a witness at the request of _____.

WITNESS my hand and official seal.

Signature _____

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

“That parcel of land conveyed to the Board of Directors of the Napa County Infirmary by deed filed February 8, 1869 and recorded in Book “L” of Deeds at Page 304 in Office of the Recorder of Napa County, California,

EXCEPTING therefrom the following:

COMMENCING at the southwesterly corner of the above mentioned parcel of land conveyed to the Board of Directors of the Napa County Infirmary; thence along the west line of said parcel North 30.00 feet to a point on the northerly line of the road known as “Old Sonoma Road”, said point being THE TRUE POINT OF BEGINNING of this description; thence continuing along said west line of the parcel of land conveyed to the Board of Directors of the Napa County Infirmary North 367.80 feet; thence leaving said west line of the parcel of land conveyed to the Board of Directors of the Napa County Infirmary East 130.49 feet; thence South 50.38 feet; thence East 235.56 feet; thence South 317.42 feet to the northerly line of the road known as “Old Sonoma Road” (“ . . .the road leading by P. Guessford’s lands...” per “L” Deeds 304, N.C.R.), thence along said northerly line West 366.05 feet to THE TRUE POINT OF BEGINNING.”

APN: 004-291-015

Exhibit E

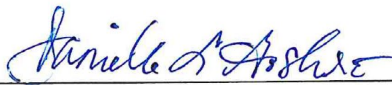
**Access Easement
Legal Description**

The land herein described is situate in the City of Napa, County of Napa, State of California and is a portion of those lands conveyed to the Board of Directors of the Napa County Infirmary by deed filed February 8, 1869 and recorded in Book "L" of Deeds at Page 304 in the Office of the Recorder of Napa County, California, being further described as follows:

COMMENCING at the southwesterly corner of the parcel of land conveyed to the Board of Directors of the Napa County Infirmary by deed filed February 8, 1869 and recorded in Book "L" of Deeds at Page 304 in the Office of the Recorder of Napa County, California; thence along the west line of said parcel North 00°01'30" East, 30.00 feet to a point on the northerly line of the road known as "Old Sonoma Road", said point being the southwesterly corner of that certain parcel conveyed to the County of Napa by Grant Deed recorded on January 15, 2003 as Document Number 2003-0002109; thence continuing along the west line of said Lands of the County of Napa North 00°01'30" East, 367.80 feet to the northwest corner thereof; thence departing said west line and along the northerly lines of said Lands of the County of Napa, South 89°54'28" East, 130.49 feet; thence South 00°01'30" West 15.58 feet to the TRUE POINT OF BEGINNING of this description; thence continuing South 00°01'30" West 34.80 feet; thence South 89°54'28" East, 54.24 feet; thence departing said northerly line of said Lands of Napa County North 00°01'30" East, 17.70 feet; thence North 89°54'28" West, 19.46 feet; thence North 00°01'30" East, 17.11 feet; thence North 89°54'28" West, 34.77 feet to the TRUE POINT OF BEGINNING.

Containing 1,554 square feet, more or less.

Bearings of this description are based on that certain Record of Survey filed for record in Book 42 of Surveys at Page 19, Napa County Records.



Prepared by: Danielle L. Goshert, PLS 8491

Date: 6/10/2019



