

**DRAFT AGREEMENT FOR PURCHASE AND SALE OF REAL
PROPERTY (INCLUDING ESCROW INSTRUCTIONS)**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the "Agreement") is entered into as of _____, 2018, (the date of last execution of this Agreement by the parties as indicated on the signature page) by and between the City of Calistoga, a municipal corporation (the "Purchaser"), and Calistoga Spa, Inc., a California corporation (the "Seller").

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Agreement to Sell and Purchase. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, that certain vacant parcel of real property, together with any fixtures and appurtenant improvements thereon (collectively, the "Property"), situated in the City of Calistoga, County of Napa, State of California, located on Eddy Street and described as Assessor's Parcel 011-215-001-000.

2. Purchase Price. The total purchase price for the Property shall Five Hundred Thousand Dollars (\$500,000) (the "Purchase Price"), which shall be paid in two installments of \$250,000 dollars each, to be referred to as the "First Installment" and the "Second Installment." Purchaser shall pay the Purchase Price by depositing into Escrow, on or before the date for close of Escrow, immediately available funds in the amount of the First Installment. The Second Installment is a continuing obligation of Purchaser and shall be paid by City on or before January 1, 2019, provided that Seller has removed all ash stored onsite pursuant to Section 8.1(h).

3. Conveyance of Title. Seller agrees to convey by Grant Deed to Purchaser marketable fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes except such matters which are acceptable to Purchaser in its sole discretion, following Purchaser's review of the preliminary title report as provided in this Section 3. Within ten (10) days after the date of this Agreement, Old Republic Title Company (the "Title Company") shall deliver to Purchaser an updated standard CLTA preliminary title report (the "Report") with respect to the title to the Property, together with legible copies of the exceptions set forth in the Report. Purchaser shall have twenty (20) days from its receipt of the Report within which to give written notice to Seller of Purchaser's approval or disapproval of any of such exceptions. Purchaser's failure to give written approval or disapproval of the Report within such time limit shall be deemed disapproval of the Report. No deeds of trust, mortgages or other liens, except for the lien of property taxes and assessments not yet due, shall be approved exceptions. If Purchaser notifies Seller of its disapproval of any exceptions in the Report, or is deemed to have disapproved the Report, Seller shall have the right, but not the obligation, to remove any disapproved exceptions within twenty (20) days after receiving written notice of Purchaser's disapproval or provide assurances satisfactory to Purchaser that such exception(s) will be removed on or before the Closing. If Seller cannot or does not elect to remove any of the disapproved exceptions within that period, Purchaser shall have ten (10) days after the expiration of such twenty (20) day period to either give the Seller written notice that Purchaser elects to proceed with the purchase of the Property subject to the disapproved exceptions or to give the Seller written notice that the Purchaser

elects to terminate this Agreement. Purchaser's failure to give written notice within such ten (10) day period shall be deemed Purchaser's election to terminate this Agreement. The Purchaser shall have the right to approve or disapprove any exceptions reported by the Title Company after Purchaser has approved the condition of title for the Property. Seller shall not voluntarily create any new exceptions to title following the date of this Agreement.

4. Title Insurance Policy. Escrow Agent shall, following recording of the Grant Deed, provide Purchaser with a CLTA (or ALTA, at the request of the Purchaser) policy of title insurance in the amount of the Purchase Price, issued by the Title Company, together with any endorsements reasonably requested by the Purchaser, showing fee simple title to the Property vested in Purchaser, subject only to the exceptions approved by Purchaser as set forth in Section 3 and the printed exceptions and stipulations in the policy. Purchaser shall pay the title policy premium.

5. Escrow. Purchaser and Seller have opened or shall open an escrow (the "Escrow") in accordance with this Agreement at Old Republic Title Company (the "Escrow Agent"). This Agreement, together with the escrow instructions prepared by Escrow Agent and executed by Purchaser and Seller, constitutes the joint escrow instructions of Purchaser and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this Escrow in the shortest possible time.

5.1 Grant Deed. Prior to the close of Escrow Seller shall execute, acknowledge and deliver into Escrow a Grant Deed (the "Grant Deed") in a form provided by Title Company. A Certificate of Acceptance to be attached to the Grant Deed shall be executed, acknowledged and delivered into Escrow by Purchaser on or before the close of Escrow. Purchaser and Seller agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

5.2 Insurance. Insurance policies for fire or casualty are not to be transferred, and Seller will cancel its own policies after close of escrow.

5.3 Escrow Account. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California. All disbursements shall be made by check from such account.

6. Pro Rations; Tax Adjustment Procedure. Escrow Agent is authorized and is instructed to comply with the following pro ration and tax adjustment procedure:

6.1 Delinquent Taxes. Escrow Agent shall pay, and charge Seller for, any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.

6.2 Current Taxes. Escrow Agent shall pay, and charge Seller for, any portion of current property taxes and assessments and any penalties and interest thereon allocable to the period prior to the close of Escrow. The portion of current property taxes which would otherwise be allocable to the period after the close of Escrow shall not be allocated, as Purchaser is exempt from payment of property taxes.

6.3 Refund of Taxes. Seller shall have the sole right, after close of Escrow, to apply to the Napa County Tax Collector for refund of any excess property taxes which have been paid by Seller with respect to the Property. This refund would apply to the period after Purchaser's acquisition of the Property, pursuant to Revenue and Taxation Code Section 5096.7.

7. Escrow Agent Authorization. Escrow Agent is authorized to, and shall:

7.1 Pay and Charge Seller. Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy Section 3 of this Agreement.

7.2 Pay and Charge Purchaser. Pay and charge Purchaser for any Escrow fees, recording fees and other costs and expenses of Escrow payable under Section 7.8, below.

7.3 Disbursement. Disburse funds, record the Grant Deed and Certificate of Acceptance, and deliver the title policy to Purchaser, when conditions of the Escrow have been fulfilled by Purchaser and Seller.

7.4 Close of Escrow. The term "close of Escrow," if and where written in these instructions, shall mean the date the Grant Deed and other necessary instruments of conveyance are recorded in the office of the Napa County Recorder. Recordation of instruments delivered through this Escrow is authorized, if necessary or proper in the issuance of the policy of title insurance pursuant to Section 4 hereof.

7.5 Time Limits. All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.

7.6 Time of the Essence. TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE ON OR BEFORE THE DATE THAT IS 60 DAYS FROM THE EFFECTIVE DATE. If this Escrow is not in condition to close by such date, then any party who has fully complied with this Agreement may, in writing, demand the return of its money or property; provided, however, no demand for return shall be recognized until five (5) days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown in Section 21, below, and if any objections are raised within such five (5) day period, Escrow Agent is authorized to hold all money, papers and documents until instructed by a court of competent jurisdiction or mutual instructions.

7.7 Escrow Agent Responsibility. The responsibility of the Escrow Agent under this Agreement is expressly limited to Sections 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 of this Agreement and to its liability under any policy of title insurance issued in regard to this Escrow.

7.8 Escrow Fees, Charges and Costs. Purchaser agrees to pay all Purchaser's and Seller's usual fees, charges, and costs which arise in this Escrow.

7.9 FIRPTA. If the provisions of FIRPTA or similar state act apply to the transaction memorialized in this Agreement, and unless Seller is not a "foreign person" or an exemption applies, the Escrow Agent shall deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price and shall otherwise comply with all applicable provisions of FIRPTA and any similar state act. Seller and Purchaser agree to execute and deliver as directed by Escrow Agent any instrument, affidavit, and statement, including without limitation a

standard form of Non-Foreign Transferor Declaration, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder.

7.10 Tax Requirements. Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

7.11 Transfer Taxes. No transfer tax shall be due because Purchaser is a public entity.

8. Conditions Precedent to Close of Escrow.

8.1. Purchaser's Conditions Prior to Closing. The obligation of the Purchaser to complete the purchase of the Property is subject to the satisfaction of the following conditions:

a. Seller shall deliver through Escrow an executed, acknowledged and recordable Grant Deed sufficient to convey fee title to the Purchaser as set forth in Section 5.1.

b. Seller shall deliver through Escrow a Non-Foreign Transferor Declaration duly executed.

c. Seller shall deliver through Escrow such other funds and documents as are necessary to comply with Seller's obligations under this Agreement.

d. Seller shall not be in default of any of its obligations under the terms of this Agreement, and all of Seller's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the close of Escrow.

e. Purchaser shall have approved the condition of title to the Property and Escrow Agent shall have committed to deliver to Purchaser a title insurance policy as required by Section 4 hereof.

f. Purchaser shall have approved the condition of the Property as provided in Section 9, below.

g. Seller shall be prepared to remove any and all ash that is stored onsite to grade level no later than 60 days following Closing.

On failure of any of the conditions set forth above, Purchaser may terminate its obligations under this Agreement with no further liability to Seller by giving notice to Seller on or before the expiration of the time allowed for each condition. In the event of such termination by the Purchaser, the Escrow Agent shall return the First Installment, if deposited, to Purchaser. Purchaser's failure to elect to terminate its obligations shall constitute a waiver of the condition by Purchaser.

8.2. Seller's Conditions Precedent to Closing. The obligation of Seller to complete the sale of the Property is subject to the satisfaction of the following conditions:

a. The Purchaser shall not be in default of any of its obligations under the terms of this Agreement, and all of Purchaser's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the close of Escrow.

b. The Purchaser shall have deposited with the Escrow Agent immediately available funds in an amount equal to the First Installment and the Purchaser's share of costs described herein.

On failure of any of the conditions set forth above, Seller may terminate its obligations under this Agreement with no further liability to Purchaser by giving notice to Purchaser on or before the expiration of the time allowed for each condition. Seller's failure to elect to terminate its obligations shall constitute a waiver of the condition by Seller.

9. Condition of Property. Within forty-five (45) days of Purchaser's execution of this Agreement, Purchaser at its expense may (but is not required to) perform such tests of the soils, groundwater and/or improvements on the Property as Purchaser shall deem appropriate (the "Tests") and approve the condition of the Property. If Purchaser disapproves the condition of the Property, this Agreement will terminate.

9.1 Permission to Enter on Premises. Seller hereby grants to Purchaser, or its authorized agents, permission to enter upon the Property at all reasonable times prior to close of Escrow for the purpose of making necessary or appropriate inspections.

9.2 Indemnification. Purchaser agrees to indemnify Seller and save it harmless from all damages, actions, causes of action, claims, judgments, costs of litigation, and attorney's fees which may in any way arise out of or result from the Tests. Purchaser further agrees to repair as nearly as reasonably can be accomplished any damages to the area covered by the Tests and will restore said area to as near its original condition as can be reasonably accomplished, in the event that the Purchaser does not acquire the Property from the Seller.

10. Tax Free Exchange. If Seller notifies the Purchaser prior to the Closing that Seller wishes to attempt to effectuate a "tax-free" exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement, the Purchaser shall cooperate with Seller, at no cost, expense, or liability to Purchaser, in the Seller's attempt to effectuate such exchange, but the Purchaser makes no representations to the Seller that any such exchange shall be treated as "tax-free" by the Internal Revenue Service. Seller agrees to indemnify Purchaser from all liability with respect to any action which the Seller requests the Purchaser to take pursuant to this Section 11, and to reimburse the Purchaser for all fees, costs, and expenses (including reasonable attorney's fees) incurred by the Purchaser as a result of the Seller's election to participate in a Section 1031 exchange. The Purchaser shall not be required to hold title to any real estate or other assets in order to cooperate with the Seller's Section 1031 exchange.

11. Closing Statement. Seller instructs Escrow Agent to release a copy of Seller's closing statement to Purchaser.

12. Loss or Damage to Property. Loss or damage to the Property, by fire or other casualty, occurring prior to the recordation of the Grant Deed, shall be at the risk of Seller. In the event that loss or damage to the Property, by fire or other casualty, occurs prior to the recordation of the Grant Deed, Purchaser may elect to require that the Seller pay to Purchaser

the proceeds of any insurance policy or policies which may become payable to Seller by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the Purchase Price by an amount equal to the diminution in value of the Property by reason of such loss or damage or the amount of insurance payable to Seller, whichever is greater.

13. Possession and Disposition of Personal Property. Seller shall, prior to the close of Escrow, remove or otherwise dispose of all personal property located on the Property. All personal property remaining on the Property after the Closing shall become the property of Purchaser and Purchaser may dispose of same without liability as it alone sees fit, and Seller shall be liable for the costs of removal which are incurred by the Purchaser. Purchaser shall not be liable for any loss of or damage to the personal property remaining on the Property, regardless of when loss or damage occurs.

14. Warranties, Representations, and Covenants of Seller. Seller hereby warrants, represents, and/or covenants to Purchaser that:

14.1 Pending Claims. To the best of Seller's knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

14.2 Encroachments. To the best of Seller's knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements located on the Property encroach on other properties.

14.3 Condition of Property. The Property is in good condition, and until the close of Escrow, Seller shall maintain the Property in good condition and state of repair and maintenance and shall perform all of its obligations under any service contracts or other contracts affecting the Property.

14.4 Seller's Title. Until the close of Escrow, Seller shall not do anything which would impair Seller's title to any of the Property.

14.5 Utilities. All utilities including, without limitation, gas, electricity, water, sewage, and telephone, are available to the Property, and to the best of Seller's knowledge, all items are in good working order.

14.6 Conflict with Other Obligation. To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Seller or the Property may be bound.

14.7 Authority. Seller is the owner of and has the full right, power, and authority to sell, convey, and transfer the Property to Purchaser as provided herein and to carry out Seller's obligations hereunder. If Seller is a corporation, partnership, limited liability company or other similar entity, each party executing this Agreement on behalf of Seller represents and warrants that such person is duly and validly authorized to do so on behalf of Seller.

14.8 Bankruptcy. Neither Seller nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Property as provided herein.

14.9 Governmental Compliance. Seller has not received any notice from any governmental agency or authority alleging that the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Seller following the date this Agreement is signed by Purchaser, Seller shall notify Purchaser within ten (10) days of receipt of such notice. Seller then, at its option, may either elect to perform the work or take the necessary corrective action prior to the close of Escrow or refuse to do so, in which case Seller shall notify Purchaser of such refusal and Purchaser shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement.

14.10 Right to Possession. No person or entity other than Seller has the right to possess the Property or any portion of it, as of the date of this Agreement.

14.11 Non-Foreign Transferor. Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Act or any similar state statute, and Seller will comply with all of the requirements of the Foreign Investment in Real Property Act and any similar state statute in connection with this transaction.

14.12 Change of Situation. Until the close of Escrow, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 14 (14.1 through 14.11, inclusive) not to be true as of the close of Escrow, immediately give written notice of such fact or condition to Purchaser.

15. Hazardous Waste.

15.1 Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes, prior to the close of Escrow, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos or asbestos containing materials, (vii) polychlorinated biphenyls, (viii) Methyl-tert-Butyl Ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a "hazardous substances" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*

15.2 Compliance with Environmental Laws. Seller represents and warrants that to the best of Seller's knowledge, the Property and its present use complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environmental Quality Act, and the rules, regulations, and ordinances of the City of Calistoga, the California Department of Toxic Substances Control, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.

15.3 Environmental Indemnification. Seller agrees to indemnify, defend and hold Purchaser harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, remediation expense, or other expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials prior to the close of Escrow on, under, in or about, the Property, or the transportation of any such Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials prior to the Closing on, under, in or about, to or from, the Property. This indemnity shall include, without limitation, any damage, liability, remediation expense, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury, including sickness, disease or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. This indemnity extends to liability arising from (a) acts or omissions to act occurring prior to or up to the date of Closing or (b) any condition existing upon the close of Escrow or which arises after the close of Escrow due to acts or omissions to act occurring on or prior to the close of Escrow, whether any such claim is asserted prior to or after the Closing. Seller shall not be responsible for damage, liability, fines, penalties or costs or expenses arising from acts or omissions occurring after the Closing.

16. Contingency. It is understood and agreed between the parties hereto that the completion of this transaction, and the Escrow created hereby, is contingent upon the specific acceptance and approval of this Agreement by the Purchaser. The execution of this Agreement by Purchaser and the delivery of same to Escrow Agent constitutes said acceptance and approval.

17. Full and Complete Settlement for Fee Interest. The total compensation to be paid by Purchaser to Seller is in consideration for all of Seller's interest in the Property and any rights or obligations which exist or may arise out of the acquisition of the Property for public purposes, including without limitation, Seller's fee interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, relocation assistance, any alleged pre-condemnation or inverse condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller and Seller's Parties (defined below) which might arise out of or relate in any respect to the acquisition of the Property by the Purchaser.

Seller, on behalf of itself and all Seller's Parties, fully releases and discharges Purchaser from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to (i) the sale of the Property or the relocation of Seller's Parties' business operations, if any, or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Property, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under California Government Code Section 7260, *et seq.*, notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under said sections or other state or federal law; and (ii) compensation for any interest in the Property or the business operations conducted thereon, including, but not limited to, land and improvements, fixtures, furniture, or equipment thereon, goodwill, severance damage, attorneys' fees or any other compensation of any nature whatsoever. The term "Seller's Parties" means Seller and Seller's affiliates, parent companies, subsidiaries, successors and assigns; and its and their officers, directors, partners, members, employees, agents and representatives.

It is hereby intended that the above release relates to both known and unknown claims that the Seller's Parties may have, or claim to have, against the Purchaser with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with, the items set out above, the Seller expressly waives any rights under California Civil Code Section 1542, which provides:

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

18. Broker's Commission. Seller and Purchaser each warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the sale of the Property. Seller and Purchaser agree to and do hereby indemnify and hold the other harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.

19. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Purchaser and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Purchaser's performance hereunder, as appropriate, and any breach thereof by Purchaser or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this

Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

20. Attorney's Fees. In the event any declaratory or other legal or equitable action is instituted between Seller, Purchaser and/or Escrow Agent in connection with this Agreement, then as between Purchaser and Seller, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment. .

21. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by facsimile, reputable overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, three (3) business days after the date of posting by the United States post office; (iii) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day; or (iv) if sent by facsimile, with the original sent on the same day by overnight courier, the date on which the facsimile is received, provided it is before 5:00 P.M. Pacific Time. Notice of change of address shall be given by written notice in the manner described in this Section 21. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Seller: Calistoga Spa, Inc. a California Corporation
 1006 Washington Street
 Calistoga, CA 94515
 Attention: _____

If to Purchaser: City of Calistoga
 1232 Washington Street
 Calistoga, CA 94515
 Attention: Dylan Feik, City Manager

22. Default. Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within ten (10) days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such ten (10) day period.

23. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements,

representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

24. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

25. Governing Law. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California without regard to its choice of law principles.

26. Invalidity of Provision. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

27. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Purchaser and Seller.

28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

29. Time of Essence. Time is of the essence of each provision of this Agreement.

30. Binding Upon Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

31. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

32. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

33. Cooperation. Each party agrees to cooperate with the other in the Closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

PURCHASER:

CITY OF CALISTOGA, a California
municipal corporation

Date: _____ By: _____
Dylan Feik, City Manager

APPROVED AS TO FORM:

By: _____ Date: _____
Michelle Kenyon, City Attorney

ATTEST:

By: _____ Date: _____
Kathy Flamson, City Clerk

SELLER:

Date: _____ By: _____
Name _____
Title: _____
[signature must be notarized]

CONSENT OF ESCROW AGENT

Escrow Agent hereby acknowledges receipt of three (3) counterparts of this Agreement, each of which has been executed by the parties. Escrow Agent hereby agrees (i) to be and serve as Escrow Agent pursuant to this Agreement; and (ii) subject to further escrow instructions mutually agreeable to the parties and Escrow Agent, to be bound by the Agreement in the performance of its duties as Escrow Agent and to hold and disburse all funds received by Escrow Agent in accordance with the provisions of this Agreement; provided, however, Escrow Agent shall have no obligation, liability, or responsibility under any amendment to the Agreement unless and until the same is accepted by Escrow Agent in writing. Escrow Agent further agrees to immediately deliver to each of Seller and Purchaser's counsel one (1) original counterpart of this Agreement executed by the parties and Escrow Agent. Escrow Agent has assigned this Agreement file number _____.

By: _____

Its: _____