

**RESOLUTION NO. 2019-077**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA APPROVING AND AUTHORIZING THE PURCHASE AND SALE AGREEMENT, ESCROW INSTRUCTIONS AND DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENTS WITH THE COUNTY OF NAPA FOR THE PURCHASE OF A PORTION OF THE NAPA COUNTY FAIR GROUNDS (APNS 11-140-055, 011-140-006, 011-140-007 AND 011-481-022); APPROVING A BUDGET ADJUSTMENT TO THE FISCAL YEAR 2019-2020 OPERATING BUDGET CREATING A NEW CIP PROJECT "FAIR GROUNDS"; TRANSFERRING \$200,000 FROM THE CITY ADMINISTRATION IMPACT FEE ACCOUNT (FUND 48) TO THE FAIR GROUNDS CIP PROJECT; AND FINDING THAT THE PROJECT IS EXEMPT FROM CEQA**

**WHEREAS**, since early 2016 the City of Calistoga (City) and Napa County (County) have been negotiating for the City to purchase approximately 34.3 acres of the Fair Grounds property (the "Property") in Calistoga located at 1435 and 1601 N. Oak; and

**WHEREAS**, the Property is home to the Napa County Fair in Calistoga, the Calistoga Speedway, the Calistoga R.V. Park, several buildings, and other community facilities, which provide important benefits to the community; and

**WHEREAS**, in early August 2019 the City's negotiating team consisting of the Mayor, City Attorney and City Manager completed the major terms and conditions of the Purchase and Sales Agreement and Escrow Instructions ("PSA"), and Declaration of Covenants, Restrictions and Reciprocal Easements ("Declaration"), including certain future net revenue sharing with the County; and

**WHEREAS**, under the terms of the PSA the City will purchase approximately 34.3 acres at \$225,000 per acre for an estimated total cost of \$7,717,500 with the final price subject to final agreed parcel configuration; and

**WHEREAS**, the Declaration contains provisions for net revenue sharing with the County on a sliding scale under specific terms, covenants, restrictions and the granting of reciprocal easements which will be determined during the due diligence period; and

**WHEREAS**, within three days of the adoption of a Resolution authorizing and approving the PSA and the Declaration and otherwise approving acquisition of the Property, the City is required to post a \$100,000 refundable deposit in an escrow account which will be applied to final purchase of the Property unless the City terminates the PSA before the close of the due diligence period; and

**WHEREAS**, the PSA provides the City with a one-hundred and twenty day (120) due diligence period to undertake inspection and review the Property and improvements and upon the expiration of the due diligence period, or any extensions agreed to by the

parties, the City will have sixty (60) days to close escrow and deposit the balance of the purchase price into escrow; and

**WHEREAS**, on January 23, 2019, the Planning Commission considered the location, purpose, and extent of the acquisition of the property pursuant to Government Code 65402(a) and confirmed that the acquisition of the Property was in conformity with the City's General Plan and was consistent with Objective OSC-4.5 and General Plan Policies P4.5-1, P4.5-2, and A4.5-1; and

**WHEREAS**, Staff has reviewed the proposed purchase of the Property in accordance with the California Environmental Quality Act and determined that the purchase itself will not have an impact on the environment and is therefore exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3), the "general rule" exemption, which states that, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA. The proposed action would only transfer ownership of the Property. Any future development or new uses of the Property, following its purchase by the City, will be subject to the appropriate level of CEQA analysis at the time it is proposed; and

**WHEREAS**, a Budget Adjustment to the Fiscal Year 2019-2020 Operating Budget creating a new CIP Project – Fair Grounds, Account No. 01-5592-4905-4915 and appropriation of funds is necessary to fund the deposit and conduct due diligence activities; and

**WHEREAS**, funds for the final purchase will be derived from bond proceeds issued under Certificates of Participation approved or authorized under separate City Council actions; and

**WHEREAS**, the acquisition of the Property supports Council Goal 4: Expand and improve recreational and community facilities.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Calistoga that the City Council does hereby resolve, determine and find as follows:

1. The above referenced recitals are true and correct and are incorporated into and form a material part of this Resolution.
2. The City Council hereby approves and authorizes the purchase of a portion of the Napa County Fair Grounds and Calistoga R.V. Park (1435 and 1601 N. Oak Street) in Calistoga containing approximately 34.3± acres (the "Property") for Two Hundred Twenty-Five Thousand Dollars per acre (\$225,000/acre) or \$7,717,500± (the "Purchase Price") subject to the final configuration of the Property boundary and completion of the Due Diligence Period.

3. The City Council hereby approves and authorizes the Mayor or Designee to execute the Purchase and Sale Agreement and Escrow Instructions and Declaration Of Covenants and Restrictions and Reciprocal Easement Agreement (“Declaration”) with the County of Napa for the purchase of the Property, in substantially similar form as provided in Exhibit A, subject to minor modifications as may be approved by the City Attorney, including any amendments once the final Property boundary is established and the due diligence period completed.
4. The City Council hereby approves a Budget Adjustment to the Fiscal Year 2019-2020 Operating Budget creating a new CIP Project – Fair Grounds, Account No. 01-5592-4905-4915 and appropriating \$200,000 to the Fair Grounds CIP Project derived from Fund No. 48 the City Administration Impact Fee Account fund balance.
5. The City Manager is hereby authorized and directed to deposit One Hundred Thousand Dollars (\$100,000.00) (“Deposit”) in the form of a cashier’s check or wire transfer to Placer Title Company, 5 Financial Plaza, #205, Napa, California 94558 and to further execute the Escrow instructions.
6. The City Manager is hereby authorized and directed to execute a Certificate of Acceptance accepting Grant Deed(s) on behalf of the City of Calistoga, in a form approved by the City Attorney, accepting fee title to the Property after the satisfactory close of the due diligence period and pursuant to the terms of the PSA. The City Manager is hereby authorized and directed to take all other actions and to execute all other documents as necessary or reasonably required to carry out, give effect to, and consummate the transaction contemplated by this Resolution and to take all action necessary in conformity therewith.
7. Finds that the proposed purchase is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3), the “general rule” exemption where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
8. This Resolution shall take effect immediately upon approval and adoption thereof.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting thereof held this **20th day of August 2019**, by the following vote:

**AYES:** Councilmembers Kraus, Lopez-Ortega, and Williams,  
Vice Mayor Dunsford and Mayor Canning

**NOES:** None

**ABSTAIN:** None

**ABSENT:** None



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**CHRIS CANNING, Mayor**

**ATTEST:**



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**IRENE CAMACHO-WERBY, City Clerk**

Attachment  
Exhibit A

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 August \_\_, 2019, by and between NAPA COUNTY, a political subdivision of the State of California (hereinafter referred to as “**SELLER**” or “**COUNTY**”), and CITY OF CALISTOGA, a general law city (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 improved land located in the City of Calistoga, County of Napa, commonly known as APN: 011-140-055, 011-140-006, 011-140-007 and 011-481-022 and more fully described on **Exhibit A** to this Agreement (“**Seller’s Existing Land**”). Seller’s Existing Land contains approximately ±70.6 acre; and

**WHEREAS**, SELLER wishes to sell to BUYER a portion of Seller’s Existing Land, which portion contains approximately ±34.3 acres and is located in the approximate area shown on **Exhibit B** (the “**Property**”). The exact boundaries of the Property will be determined as set forth below. Seller’s Existing Land exclusive of the Property is referred to herein as the “**Remaining Property**”; and

**WHEREAS**, SELLER has contracted with the Napa County Fair Association for over eighty (80) years to operate and maintain Seller’s Existing Land as the “Napa County Fairgrounds”; and

**WHEREAS**, in 2018 the Napa County Fair Association, notified the SELLER of its intent to terminate its contract with SELLER for the Napa County Fairgrounds; and

**WHEREAS**, over the last two (2) years, SELLER and BUYER have been discussing governance of Seller’s Existing Land and in particular the portion used for the Napa County Fairgrounds. Such discussions concluded with BUYER’s desire to acquire the Property to preserve and utilize the grounds thereof for the greatest benefit to Calistogans and County residents; and

**WHEREAS**, California Government Code Section 25365 (a) provides that a board of supervisors may, by a four-fifths vote, convey or otherwise transfer to a city any real property belonging to a county upon the terms and conditions as are agreed upon and without complying with any other provisions regarding surplusing of public property, if the property is not required for county use; and

**WHEREAS**, the Napa County Board of Supervisors as SELLER desires to declare the Property as no longer required for County use, designate it as surplus and convey the Property to BUYER upon the terms and conditions set forth herein; and

**WHEREAS**, BUYER desires to purchase the Property from SELLER on the terms and conditions set forth herein; and

WHEREAS, SELLER has given notice of its intended action to convey the Property to BUYER at least one week in advance pursuant to California Government Code Sections 25365 (c) and 6061; and

WHEREAS, SELLER and BUYER entered into direct negotiations for the purchase and sale of the Property and have reached agreement on the terms and conditions thereof, all as set forth herein.

### 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. **PROPERTY TO BE PURCHASED.** Any modifications to the size of the Property from that which is stated above in the Recitals (i.e., 34.3 acres) shall result in a proportional change to the Purchase Price.
3. **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**”).
4. **PURCHASE PRICE.** BUYER agrees to pay to SELLER, and SELLER agrees to accept, for BUYER’s purchase of the Property, the amount of Two Hundred Twenty-Five Thousand Dollars per acre (\$225,000/acre) all cash to SELLER ( $\pm$ \$7,717,500) (the “**Purchase Price**”) (both Parties’ signatories to initial here:\_\_\_\_\_/\_\_\_\_\_). The Parties will calculate the final Purchase Price once the boundaries of the Property are agreed to as specified in Paragraph 14. Once such occurs, the Parties shall enter into an amendment hereto setting forth the final Purchase Price.
5. **ENTIRE AGREEMENT.** THIS AGREEMENT, WHICH INCLUDES EXHIBITS A THROUGH I ATTACHED HERETO, 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.

6. **BUYER'S OBLIGATIONS.**

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

- i. BUYER shall make a deposit of One Hundred Thousand Dollars (\$100,000.00) (“**Deposit**”) within three (3) business days of the Effective Date in the form of a cashier’s check or wire transfer 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**”) as specified more fully in Paragraph 12. 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 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 22 [damage due to destruction, damage or loss of the Property], or 23.c.i [failure of any of the conditions to BUYER’s obligations to purchase the Property and consummate the Closing]. The Deposit shall be credited towards the Purchase Price at the Closing. All days referenced in this Agreement shall mean calendar days unless otherwise specified.
- 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 as provided for herein, including, as liquidated damages pursuant to Paragraph 28.b. below, 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. Within five (5) 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 Due Diligence 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 Closing 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 any and all escrow fees, title insurance premiums, and real property transfer or other taxes necessary for consummation of the purchase and any and all other closing costs, except as otherwise provided in Paragraph 42. 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. 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.

**7. 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 C** (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.

**8. 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 D** 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.

**9. DUE DILIGENCE PERIOD AND TITLE REVIEW.**

- a. Subject to the terms of Paragraph 13, 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, BUYER 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 consent, which consent may be withheld or granted in SELLER’s sole and absolute discretion. Additionally, BUYER may review the Land Tenure Agreement (the “**LTA**”) between the State of California and the County of Napa, the Lease Agreement between the County of Napa and the Napa County Office of Education (the “**NCOE Lease**”) and the Recycled Water Use Agreement between the City of Calistoga and Fairgrounds Association for continued applicability as well as all other Seller Documents provided under Paragraph 10. BUYER may terminate this Agreement and receive a refund of the Deposit by providing written 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 11.
- 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(s) 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 9.b or 9.c below shall have the same effect as termination pursuant to Paragraph 9.a and Paragraph 11.

- c. BUYER may, at or prior to Closing, notify SELLER in writing (the “**Gap Notice**”) of any Objection(s) it may have to any Exceptions to title (i) raised by the Title Company between the expiration of the Due Diligence Period and the Closing (including any Exceptions resulting from the Subdivision that did not previously exist) and (ii) not disclosed in writing by the Title Company or otherwise actually disclosed in writing to BUYER prior to the expiration of the Due Diligence Period (each, an “**Intervening Lien**”). BUYER must notify SELLER of such Objection to title within seven (7) days of being made aware of the existence of such Intervening Lien. If BUYER sends a timely Gap Notice to SELLER regarding any Intervening Lien, then BUYER and SELLER shall have the same rights and obligations with respect to such notice as apply to an Objection under Paragraph 9.b above, except that BUYER shall have until five (5) days after receipt of Seller’s Title Notice to an Intervening Lien to make BUYER’s election between subclauses (1) and (2) in Paragraph 9.b, above. If necessary, the Expected Closing Date shall be extended to give BUYER the time specified above to provide a Gap Notice and/or to make the above election, and/or SELLER sufficient time to provide Seller’s Title Notice in response to a Gap Notice.
- d. As used herein, “**Permitted Exceptions**” means any and all Exceptions (i) approved in writing by BUYER or deemed approved pursuant to the terms of this Agreement, (ii) all real estate taxes and assessments for the Property not yet due and payable, and/or (iii) any Exceptions caused by BUYER or any employee, agent or contractor thereof.

**10. SELLER DOCUMENTS.** Within fourteen (14) days from the Effective Date, SELLER shall provide access to BUYER to the following documents and materials related to the Property to the extent in SELLER’s actual possession: copies of any environmental or other reports, surveys, engineering studies, soil reports, environmental impact reports, negative declarations, maps, conditions of approval, permits, plans, the LTA, the NCOE Lease, and any other material

information relating to the condition of or feasibility of developing the Property (collectively, “**Seller’s Documents**”). Except as follows in the immediately following sentence, all of 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. SELLER represents and warrants to its actual knowledge that the copies of the LTA and the NCOE Lease are true and complete copies thereof.

- 11. TIME FOR BUYER TO WAIVE CONTINGENCIES TO CLOSE OF ESCROW.** As specified above, BUYER shall have until 5:00 p.m. 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 9.a and 9.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 9.a and 9.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, THEN IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS WAIVED ALL CONTINGENCIES AND OBJECTIONS TO CLOSE OF ESCROW AS SET FORTH IN PARAGRAPHS 9.a and 9.b.**

Unless the Parties otherwise agree in writing, and except as provided in Paragraph 9.c, Paragraph 22, below [Termination of Agreement Due to Destruction, Damage or Loss of the Property], and/or Paragraph 23.c [Closing Conditions], if and only if BUYER provides the written Cancellation 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 Deposit, 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, and (b) any and all Title Company and Escrow Holder cancellation fees and costs shall be shared equally between BUYER and SELLER. 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.

- 12. DURATION AND CLOSE OF ESCROW.** For purposes of this Agreement and any other escrow instructions, the Close of Escrow shall occur sixty (60) days from the expiration of the Due Diligence Period (the “**Expected Closing Date**”). Subject to satisfaction of the contingencies and obligations set forth in this Agreement as set forth or summarized in Paragraph 23.c below, Escrow Holder shall close the escrow (the “**Closing**” or “**Close of Escrow**”) by recording the Grant Deed executed by SELLER and any other documents required to be recorded, including the Restrictive Covenant (as defined below) and by disbursing the

funds and documents in accordance with this Agreement and any Supplemental Instructions not in conflict herewith. If all Closing Conditions set forth in Paragraph 23.c below have been met, and 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**").

**13. BUYER'S ENTRY UPON THE PROPERTY DURING ESCROW.** Subject to compliance with the insurance requirements set forth below and the limitations set forth in Paragraph 9(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 or any tenant's or licensee's use of the Property in any material manner, 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 9(a). Following any such entry or work, unless otherwise directed in writing by SELLER, BUYER shall return the Property to substantially the same 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 officers, officials, employees, agents and contractors of Seller, 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; provided, however, the foregoing indemnity shall not apply to any conditions existing on the Property prior to the entry onto the Property by BUYER or any of its agents, employees or contractors unless such party exacerbates such existing condition. 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:

- 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 satisfactory to SELLER's Risk Manager, or by a combination thereof:

- 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, issued by a company admitted to do business in the State of California, 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 13.a and 13.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 reasonably requested by SELLER).
    - i. The certificate(s) or other evidence of coverage shall reference this Agreement by its number or title and department; shall be kept current during the term of this Agreement; shall provide that, if such coverage is reasonably obtainable in the geographic area where the Property is located, 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 13.b.i. and, for the comprehensive automobile liability insurance coverage referenced in 13.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. All liability policies required by this Agreement shall be occurrence

based policies.

- 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 13.

**14. PARCEL RECONFIGURATION**. It is currently acknowledged that, as of the Effective Date, the Property does not constitute a legal lot or parcel of land ("**Legal Lot**") that may be conveyed as a separate lot or parcel in accordance with the California Subdivision Map Act as codified in California Government Code Section 66499.30, *et seq.* (the "**Map Act**"). SELLER shall, at its sole cost and expense, use diligent efforts to obtain all necessary governmental approvals legally required as specified in the applicable provisions of the Map Act and the City's Municipal Code or other applicable laws or regulations for and to complete a lot line adjustment, parcel map or subdivision map (the "**Subdivision**"), to bring the Property into compliance with the Map Act such that the same constitutes two (2) Legal Lots (one of which will be comprised of the Property and the other of which will be the Remaining Property). After the completion of the Subdivision, the Remaining Property shall also be comprised of two (2) Legal Lots. (Hereafter, any further Subdivision of the Remaining Property shall be undertaken by the County at the County's sole cost and expense.) Upon completion of the Subdivision, the final legal description of the Property shall be established and used as the legal description for the Property in the Grant Deed, Restrictive Covenant, and in any other transfer and conveyance documents relating thereto. As soon as reasonably possible during the Due Diligence Period, but no later than sixty (60) days after the Effective Date, SELLER will provide to BUYER the proposed exact boundaries of the Property to be used as part of the Subdivision for BUYER's approval (the "**Proposed Reconfiguration Notice**"). BUYER shall have fourteen (14) days from receipt of the Proposed Reconfiguration Notice to notify SELLER in writing of SELLER's approval or disapproval thereof. If BUYER fails to timely approve or disapprove of the Proposed Reconfiguration Notice as originally submitted to BUYER, or as revised, within said 14-day period and such failure continues for an additional three (3) business days after BUYER's receipt

of a second Proposed Reconfiguration Notice citing to this Paragraph 14, then BUYER shall be deemed to have approved of the applicable Proposed Reconfiguration Notice. If approved, then BUYER shall diligently seek to obtain the Subdivision, provided that nothing herein shall be deemed to require BUYER to approve of the Subdivision, except to the extent that such is legally required as specified in the applicable provisions of the Map Act and the City's Municipal Code or other applicable laws or regulations. Subject to the approval thereof, which this Agreement is expressly conditioned on as specified more fully in Paragraph 23.c.i.6 and 23.c.ii.4 the Subdivision shall be recorded as part of or concurrently with the Close of Escrow, and in the event that the Subdivision has not been completed by the Expected Closing Date, the parties agree to extend the Expected Closing Date to a date that is five (5) business days after the completion of the Subdivision unless the same is not approved. If BUYER timely disapproves of any Proposed Reconfiguration Notice, BUYER shall promptly provide SELLER with BUYER's proposed boundaries for the Property for SELLER's approval, which, if given, must be set forth in a written notice delivered to BUYER by an authorized representative of SELLER. If the Parties cannot agree on the exact boundaries of the Property during the Due Diligence Period, but BUYER does not terminate this Agreement as specified in Paragraph 11, then the agreed upon boundaries of the Property shall be deemed to be that set forth in the last Proposed Reconfiguration Notice sent by SELLER to BUYER. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall constitute or be deemed to constitute a waiver of an exemption to compliance with the Map Act, which exemption is applicable to SELLER as a public entity or agency.

15. **BUYER'S RESTRICTIONS.** BUYER and SELLER shall share in the "Net Proceeds (as that term is defined in the Declaration) of any (a) future sale of the Property, or any portion thereof, or (b) future ground lease of the Property, or any portion thereof, which ground lease (i) has a term, including any options (whether exercised or not), equal to or in excess of fifty (50) years; and (ii) results in a change in existing use on the Property from the uses existing on the Property as of the Effective Date (which existing uses are RV park, race track, public facilities, event center, telecom leases and fairgrounds (the "**Existing Uses**")), with the revenue from such future sale or ground lease being in "Constant Dollars" (as that term is defined in the Declaration) (the "**Revenue Participation**") as and to the extent set forth more fully in a Declaration of Covenants and Restrictions and Reciprocal Easement Agreement in substantially the form of **Exhibit E** hereto (the "**Declaration**"). The Parties agree that a Restrictive Covenant shall be recorded against the Property for the benefit of the Remaining Property, which will provide, among other things, for Revenue Participation for a period of twenty (20) years from the date that the Closing occurs, or until BUYER no longer owns any portion of the Property, whichever occurs first. Notwithstanding anything to the contrary herein, the Revenue Participation shall not apply to any Existing Leases or Existing Uses, renewals thereof, or to any other leases for any of the Existing Uses, regardless of whether said Existing Leases or Existing Uses are allowed to expand or increase from that existing under said leases or uses as of the Effective Date. This Paragraph 15 shall survive the Closing.
16. **WATER AND WASTEWATER ALLOCATIONS.** In accordance with policies and procedures adopted by the BUYER, the water and sewer allocation to SELLER'S Remaining Property shall be determined by the BUYER'S Standard Use Tables for the current domestic uses on SELLER'S Remaining Property (which BUYER acknowledges and agrees allows for

domestic water, recycled water, and sewer service to continue to be provided after Closing to serve the existing historical uses on the Remaining Property as of the Effective Date, including the golf course). Future water and wastewater allocations may be available for purchase by the SELLER at the rates at the then time and in accordance with BUYER'S customary policies and procedures. This Paragraph 16 shall survive the Closing.

**17. EASEMENTS, NEW WATER AND SEWER SERVICES AND OFFER OF PUBLIC DEDICATION FOR ROAD AND SIDEWALK.**

- a. **EASEMENTS.** BUYER and SELLER agree that the Declaration shall contain a reciprocal grant of (i) utility easements for underground and, if necessary, overhead utilities, including without limitation, water, sewer, storm drain, electrical and telecom, and related facilities serving the Property and Remaining Property as shown on **Exhibit I**, together with the right of entry for purposes of maintenance, repair, replacement and/or reconstruction of said utilities; (ii) access easements providing for access to and from the Remaining Property across that portion of the Property as shown on **Exhibit I** (which also specifies any reasonable limitations on the use of said access easements), including access across the Property from Grant Street to the clubhouse and the golf course, and to and from the Property across that portion of the Remaining Property, as shown on **Exhibit I**; and (iii) any and all other similar easements as the Parties acting in good faith shall determine during the Due Diligence Period are reasonably necessary and desirable to allow for the development or redevelopment of the Property or Remaining Property, as applicable (each an "**Additional Easement**"), provided that the exact location of any such Additional Easements shall be subject to the reasonable approval of the Party whose land will be burdened by the easement. (If **Exhibit I** is not attached to this Agreement on the Effective Date, then the Parties shall work in good faith to agree on such exhibit during the Due Diligence Period. Upon such agreement, the Parties shall execute an amendment to this Agreement documenting the same, which shall include the agreed upon form of **Exhibit I**. If no such agreement (as evidenced by a fully signed amendment) is reached within the Due Diligence Period, then any disputes concerning **Exhibit I** shall be resolved by the dispute resolution procedure set below in this paragraph.) Without limiting any other grounds for disapproval, the Parties agree that it shall be reasonable for the SELLER or the BUYER to not approve of the location of an Additional Easement if the same has the reasonable potential to interfere with the ability to develop or use the Property or the Remaining Property in any material fashion. All such easements shall be set forth in a commercially reasonable fashion in the Declaration. If the Parties are unable to agree in writing on the exact language or descriptions to be set forth in the Declaration with respect to such easements, including, without limitation, any Additional Easements (the "**Final Easement Provisions**") and/or to agree on **Exhibit I**, then the SELLER shall provide a proposed final draft of the easement provisions of the Declaration (the "**SELLER'S Proposed Easement Provisions**") and/or a proposed **Exhibit I** ("**SELLER'S Proposed Exhibit I**"), as applicable, to BUYER and the BUYER shall have ten (10) business days after the receipt of the SELLER'S Proposed Easement Provisions or SELLER'S Proposed Exhibit I, as applicable, to either accept the same by way of a notice to SELLER, or provide BUYER'S proposed final draft easement provisions (the "**BUYER'S Proposed Easement Provisions**") and/or a proposed **Exhibit**

**I (“BUYER’s Proposed Exhibit I”)** to SELLER. If BUYER fails to either accept SELLER’s Proposed Easement Provisions and/or SELLER’S Proposed Exhibit I, as applicable, or provide BUYER’s Proposed Easement Provisions and/or BUYER’s Proposed Exhibit I, as applicable, to SELLER within said ten (10) business day period and said failure continues for an additional five (5) business days after BUYER’s receipt of notice thereof, which notice shall cite to this Paragraph 17a, then BUYER shall be deemed to have accepted SELLER’s Proposed Easement Provisions and/or SELLER’s Proposed Exhibit I, as applicable. If SELLER and BUYER have not agreed on the Final Easement Provisions and/or **Exhibit I**, as applicable, within ten (10) business days after SELLER’s receipt of BUYER’s Proposed Easement Provisions and/or BUYER’s Proposed Exhibit I, then the Parties shall each select a civil engineer with experience in easement preparation, not affiliated with either BUYER or SELLER. Such selection shall be made by providing notice thereof to the other Party within said 10-business day period. The first two (2) civil engineers will seek to reach agreement on the Final Easement Provisions and/or **Exhibit I**, as applicable, (and, if either Party fails to so timely appoint a civil engineer, then any civil engineer timely appointed by the other Party shall determine the Final Easement Provisions and/or **Exhibit I**, as applicable, in the manner specified below for the Third Engineer (had one been so appointed)). If within ten (10) business days after their appointment, the first two (2) civil engineers cannot reach agreement, then said two (2) civil engineers shall agree on and select a third civil engineer with experience in easement preparation, not affiliated with either BUYER or SELLER (the “**Third Engineer**”) (and, if the first two (2) engineers cannot agree on the selection of the Third Engineer, then either Party may retain a retired judge associated with JAMS to select the Third Engineer meeting the criteria set forth herein, and the fees and costs of such retention shall be shared equally among the Parties hereto). After his or her appointment, the third engineer shall select either the SELLER’s Proposed Easement Provisions or the BUYER’s Proposed Easement Provisions and/or, if applicable, SELLER’s Proposed Exhibit I or BUYER’S Proposed Exhibit I as the Final Easement Provisions and/or **Exhibit I**, as applicable, whichever the third engineer determines in its unbiased professional judgment to be the most fair and reasonable provisions or **Exhibit I**, considering the interests of both Parties, and such Final Easement Provisions shall be incorporated into the Declaration and/or the Parties shall execute an amendment to this Agreement adding said **Exhibit I** to this Agreement. Any determination of the Final Easement Provisions and/or **Exhibit I** made by one or more civil engineers pursuant to the above shall be binding on the Parties hereto without any right of appeal or review. Each Party shall pay for the cost of its selected civil engineer and one-half (1/2) of the cost of the third engineer, if any. To the extent any of the foregoing timelines extend past the Due Diligence Period, the Due Diligence Period shall be extended accordingly until the Final Easement Provisions have been achieved. Notwithstanding anything to the contrary set forth above, the Declaration shall provide that the owner of the Property or the Remaining Property, as applicable, may relocate any easements granted under the Declaration, which burdens the relocating owner’s property, if such relocation is reasonably necessary for the development or redevelopment of the land in question. The Declaration shall further provide that any such relocation shall (a) be at the requesting owner’s cost; (b) not reduce or unreasonably impair the usefulness or function of utility service and/or access to the benefitted property; (c) be completed using

materials and design standards which equal or exceed those originally used; (d) be approved by the utility company or provider; and (e) be undertaken in a manner so as not to unreasonably interfere with the conduct, or operation, of any tenants or other occupants on the burdened property.

- b. **OFFER OF PUBLIC DEDICATION FOR ROAD AND SIDEWALK.** SELLER shall, after Closing, submit to BUYER, for BUYER's consideration, an irrevocable offer of dedication for a public road way along Grant Street in the location as shown on **Exhibit I** (the "**Roadway Dedication Area**"). During the Due Diligence Period, the Parties shall work in good faith to agree on whether any compensation is owed to the County as a result of the Roadway Dedication Area, taking into account the agreed upon square footage of the land to be so dedicated and the potential uses of such land, including any limitations thereon, and the exact date by which such offer must be made. If the Parties cannot so agree, then any dispute shall be resolved by the same dispute resolution procedure set forth in Paragraph 17a above. Said irrevocable offer shall be approximately ten (10) feet in width along the Grant Street frontage of SELLER'S Remaining Property, the exact area of which is shown on **Exhibit I**. Notwithstanding any provisions of the Streets and Highway Code, BUYER'S Ordinances or any conditions of approval associated with the development of the Remaining Property by SELLER or any subsequent buyer of SELLER'S Remaining Property, neither SELLER nor any subsequent buyer of SELLER'S Remaining Property shall be financially responsible for the construction of any public improvements within the irrevocable offer area.
- c. **NEW WATER AND SEWER SERVICES.** SELLER shall, at its sole cost and expense, within one hundred eighty (180) days after Closing, install new water and sewer lateral connections from both the Clubhouse and the residence located on the Remaining Property to the nearest public water and sewer facilities, as shown on **Exhibit I**, and SELLER shall install separate meters for the same, and sign up for utility billing account(s) with the BUYER and agree to pay normal and customary utility charges established by the BUYER. BUYER agrees that BUYER will not charge SELLER water and sewer connection fees for these new connections to service the existing improvements. BUYER's standard use tables shall be used to determine baseline allocations for the two new services. SELLER, at its option and expense, may choose to "upsized" the connections in accordance with BUYER'S customary approval process and construction requirements, and in accordance with engineered plans approved by the BUYER, which approval shall not be unreasonably withheld, conditioned or delayed. SELLER is aware that there is no guarantee of future water or sewer allocations because of SELLER'S upsizing, and that said upsizing does not impose a "will serve" obligation or condition on to BUYER.
- d. The provisions of this Paragraph 17 shall survive the Closing; however, in the event of a conflict between the Declaration as recorded and this Paragraph, the Declaration shall control.

18. **MASTER PLAN.** BUYER and SELLER agree that effective on and after Closing either BUYER or SELLER may commence the processing of an application for a Master Plan on its respective property, and the Party so commencing such application shall provide the other Party the opportunity to participate in such Master Plan processing. In addition, the Parties agree that before any portion of the Property or the Remaining Party is sold to a third party, or made subject to a ground lease which ground lease (i) has a term equal to or in excess of fifty (50) years, and (ii) results in a change in the existing use, and not simply an expansion or increase in such existing use, on the Property or Remaining Property, as the case may be, from the uses on the Property (i.e., the Existing Uses) or Remaining Property (i.e., golf course and clubhouse), as the case may be, as of the Effective Date, the Party whose property is being sold or leased as described above shall commence the process for an application for a Master Plan and shall provide the other Party the opportunity to participate in the process and include its respective property in the Master Plan for the same or substantially comparable allowable uses as the property owned by the Party initiating the Master Plan process, to the fullest extent allowed by law, and that, if the Master Plan is actually approved, that the other property would be included therein. In order to comply with California Environmental Quality Act, Pub. Res. Code section 21000 et seq. and 14 Cal. Code Regs. section 15000 et seq. (collectively, “CEQA”) and give the public the opportunity to be aware of the environmental consequences of any such Master Plan, BUYER retains the absolute discretion to (i) approve or not approve the Master Plan and any projects thereunder as may be necessary to comply with CEQA; (ii) select other alternatives to avoid significant environmental impacts; (iii) balance the benefits of the Master Plan against any significant environmental impacts prior to taking final action, if such significant impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with approval of the Master Plan. The above provision shall be contained in the Declaration and survive the Closing.
19. **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, 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. Notwithstanding the above, BUYER shall not be obligated to provide to SELLER any documents which are subject to any attorney-client privilege and/or which are proprietary in nature.
20. **SELLER’S AND BUYER’S REPRESENTATIONS AND WARRANTIES; BUYER’S PURCHASE OF PROPERTY IN AS-IS CONDITION WITHOUT RELIANCE ON ANY REPRESENTATIONS OR WARRANTIES FROM SELLER OTHER THAN AS EXPRESSLY STATED HEREIN, AND WITHOUT ANY RIGHT OF CONTRIBUTION OR INDEMNITY FROM SELLER.**
- a. BUYER agrees and acknowledges that, subject to SELLER’S representations and warranties as expressly set forth below in this Agreement, 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. Except for any items belonging to the Napa County

Fair Association, 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, other than SELLER'S representations and warranties expressly set forth in this Agreement, 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; provided, however, nothing set forth above shall limit SELLER's liability for any breach of SELLER's representations and/or warranties set forth in this Agreement, nor shall it limit any remedies available to BUYER at law or in equity for any such breach by SELLER. 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, other than SELLER's express representations and warranties set forth in this Agreement.
- c. BUYER acknowledges that by the end of the Due Diligence Period, 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 or any default by SELLER under this Agreement, 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 OR RELEASED PARTY.”

**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 20 shall survive Closing. For the avoidance of doubt, the releases provided in this Paragraph 20 do not apply to any breaches or defaults by SELLER under this Agreement.

f. Representations and Warranties.

- i. By SELLER. As a material inducement to BUYER, SELLER represents and warrants to BUYER that, as of the Effective Date of this Agreement and as of the Expected Closing Date, with the same force and effect as if remade by SELLER in a separate certificate at that time:
1. SELLER is a duly organized and validly existing public entity in the State of California, and has all requisite power and authority to conduct business in the state where the Property is located;
  2. SELLER has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the

transaction contemplated hereby. The execution and delivery of this Agreement and the instruments referenced herein by SELLER and the performance and observance of the terms and the consummation of the transaction contemplated hereby have all been authorized by all necessary actions of SELLER.

3. This Agreement has been duly executed and delivered by SELLER.
4. This Agreement and all documents required herein to be executed by SELLER are and shall be valid, legally binding obligations in full force and enforceable against SELLER in accordance with their terms.
5. To SELLER's actual knowledge without any duty of inquiry or investigation, there are no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against SELLER, which would materially adversely affect the ability of Seller to consummate the transactions contemplated by this Agreement.
6. SELLER has not received any written notice that (i) the Property presently contains any Hazardous Materials that are in violation of environmental laws or the laws or regulations of any governmental authority or (ii) the Property is not in compliance with or violates applicable building and zoning laws rules or regulations, or any other applicable governmental laws. By way of disclosure, SELLER hereby informs BUYER that prior to the Effective Date SELLER (through its Public Works Department) notified the Napa County Fair Association that it was not fully in compliance with the storm water management plan applicable to its operations. SELLER will provide BUYER with additional information (to the extent within SELLER's possession) concerning the above during the Due Diligence Period.
7. To SELLER's actual knowledge without any duty of inquiry or investigation, there is no existing litigation regarding the Property, including, but not limited to, any pending proceedings in eminent domain which would affect the Property. To SELLER'S actual knowledge without any duty of inquiry or investigation, no writ, injunction, decree, order or judgment relating to any Hazardous Materials is outstanding, and there is no action, citation, directive, summons or investigation pending or, to the actual knowledge of SELLER, threatened against SELLER relating to any violation or alleged violation of any environmental law, or any release, presence or suspected release or presence of any Hazardous Materials on the Property.
8. To SELLER'S actual knowledge without any duty of inquiry or investigation, the Property does not contain any Hazardous Materials in

violation of applicable environmental laws. Neither SELLER, nor to SELLER'S actual knowledge, any third party has used, generated, transported, discharged, released, manufactured, stored or disposed in violation of any applicable environmental laws any Hazardous Materials from, into, at, on, under or about the Property.

9. To SELLER'S actual knowledge without any duty of investigation or inquiry, (a) there are no agreements affecting the right to possession of the Property except for the leases listed on **Exhibit F** hereto (the "**Existing Leases**") and (ii) there are no maintenance, service or other agreements affecting or relating to the Property that will survive Closing except for those agreements listed on **Exhibit G** hereto (the "**Existing Contracts**"). SELLER shall provide BUYER with copies of each of the Existing Leases and Existing Contracts as part of Seller Documents.
  10. SELLER (A) is not listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation or orders are collectively called, the "**Orders**"), and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**"); (B) is not a Person (as defined in the Orders) who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (C) is not owned or controlled by (including, without limitation, by virtue of such Person being a director or owning voting shares or interests), or acts for or on behalf of, any person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders.
- ii. By BUYER. As a material inducement to SELLER, BUYER represents and warrants to SELLER that, as of the Effective Date of this Agreement and as of the Expected Closing Date, with the same force and effect as if remade by BUYER in a separate certificate at that time:
1. BUYER is a duly formed and validly existing municipal corporation in the State of California, has all requisite power and authority to conduct business in the state where the Property is located.
  2. BUYER has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transaction contemplated hereby. The execution and delivery of this

Agreement and the instruments referenced herein by BUYER and the performance and observance of the terms and the consummation of the transaction contemplated hereby have all been authorized by all necessary actions of BUYER.

3. This Agreement has been duly executed and delivered by BUYER.
4. This Agreement and all documents required herein to be executed by BUYER are and shall be valid, legally binding obligations in full force and enforceable against BUYER in accordance with their terms.
5. BUYER (A) is not listed on the Lists; (B) is not a Person (as defined in the Orders) who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (C) is not owned or controlled by (including, without limitation, by virtue of such Person being a director or owning voting shares or interests), or acts for or on behalf of, any person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

All of the representations, warranties and covenants of SELLER and BUYER set forth in this Agreement shall survive the Closing and the recordation of the Grant Deed for a period of twelve (12) months after the Closing (the “**Survival Period**”). With respect to any claims and matters covered by the Survival Period, neither Party shall have a right to bring any action or proceeding against the other Party as a result of any untruth or inaccuracy of such representations and warranties, or any such breach, unless (a) the Party claiming the breach serves a written claim on the other Party within such Survival Period describing in reasonable detail the basis of the claim and (b) said Party thereafter commences and serves an action against the other Party within ninety (90) days after said Party gives such notice. Notwithstanding anything to the contrary in this Agreement, (1) SELLER shall have no liability, and BUYER shall make no claim against SELLER, for (and BUYER shall be deemed to have waived any failure of a condition hereunder by reason of a failure of any condition or a breach of any representation or warranty) if the failure or breach in question constitutes or results from a condition, state of facts or other matter that was actually known to BUYER on or prior to the Closing and BUYER proceeds with the Closing and (2) BUYER shall have no liability, and SELLER shall make no claim against BUYER, for (and SELLER shall be deemed to have waived any failure of a condition hereunder by reason of a failure of any condition or a breach of any representation or warranty) if the failure or breach in question constitutes or results from a condition, state of facts or other matter that was actually known to SELLER on or prior to Closing and SELLER proceeds with the Closing.

21. **NO RECORDATION.** Neither this Agreement nor any memorandum (excluding the Declaration) thereof shall be recorded.

22. **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 ONE MILLION DOLLARS (\$1,000,000.00) to repair or cure or the condemnation affects a material portion of the Property as reasonably determined by BUYER, then BUYER may, within thirty (30) business 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 Deposit (exclusive the Independent Consideration). 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 22, but it may be grounds for termination of this Agreement pursuant to Paragraph 9.

- 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.

**23. 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 Declaration 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 7;
  - iv. a California Form 593-C in the current form as established by the California Franchise Tax Board as specified in Paragraph 7;

- v. a commercially reasonable owner's affidavit as may be requested by Title Company;
  - vi. an executed Closing statement reasonably acceptable to SELLER; and
  - 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 BUYER 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 Declaration duly acknowledged and executed by BUYER;
  - 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 (provided, however, that notwithstanding anything to the contrary contained in this Agreement, BUYER shall have no right to waive the condition set forth in Paragraph 23.c.i.6.):
    - 1. Title Company shall issue or be unconditionally and irrevocably committed to issue to BUYER the Title Policy (as defined below);
    - 2. SELLER shall cause all Monetary Liens (as defined below), if any so exist, be released or otherwise removed from record title to the Property upon Closing. As used herein, "**Monetary Liens**" means any and all monetary liens or encumbrances recorded against the Property regardless of whether the same arise before or after the Due Diligence Period; provided, however, Monetary Liens shall not include (a) real estate taxes

and assessments not yet due and payable, (b) monetary liens, encumbrances, or obligations imposed as a result of the acts of BUYER or any of BUYER'S agents, employees, contractors or subcontractors, or (c) covenant or restriction on the use or change of the use of the Property resulting from (i) any contract with or monetary assistance provided by any governmental authority or entity, such, as by way of example only, any Williamson Act contract, or (ii) any other cause or circumstance.

3. SELLER and Escrow Holder, respectively, shall have performed all of their covenants and obligations set forth in this Agreement;
4. Each of the representations and warranties of SELLER in this Agreement will be materially true and correct as of the Effective Date and as of the Expected Closing Date with the same force and effect as if remade by SELLER in a separate certificate at that time;
5. BUYER shall not have terminated this Agreement pursuant to the contingencies set forth in Paragraph 9;
6. The Subdivision of the Property shall have been completed so that the Property is a Legal Lot; and
7. BUYER shall have received from SELLER an estoppel certificate (the "**Tenant Estoppel Certificate**") from each tenant under each Existing Lease, which in each case is substantially in the form of **Exhibit H**, or as otherwise required by any Existing Lease, and which does not disclose matters materially adverse to the Property or BUYER's purchase thereof, that are not set forth in the applicable Existing Lease or disclosed in the Seller Documents or otherwise discovered by BUYER during the Due Diligence Period ("**Material Adverse Information**"). In the event an Existing Lease does not require the tenant thereunder to provide an Estoppel Certificate, SELLER shall nonetheless use commercially reasonable efforts to obtain a Tenant Estoppel Certificate from such tenant as well as each other tenant under the Existing Leases. As long as SELLER uses such commercially reasonable efforts to obtain such Tenant Estoppel Certificates, SELLER shall not be deemed to be in breach of this Agreement because it does not obtain an Estoppel Certificate from any such tenant.
8. Notwithstanding the above, if SELLER is unable to obtain Tenant Estoppel Certificates for each tenant under the Existing Leases, then SELLER shall deliver a certificate to Buyer on or before the Expected Closing Date from SELLER in the form attached hereto as **Exhibit H-1** (a "**Landlord Estoppel Certificate**") executed by SELLER for any tenant for which no Tenant Estoppel Certificate has been previously delivered to BUYER, and in such event SELLER shall be deemed to have delivered an

Tenant Estoppel Certificate with respect to such tenant for purposes of satisfying the condition under this subparagraph 8 subject to BUYER's approval rights as set forth below. The Landlord Estoppel Certificate shall be subject to the damage limitations set forth in Paragraph 28c and Survival Period set forth in Paragraph 20, but otherwise BUYER shall be entitled to rely on the same. BUYER shall have at least two (2) business days to review and approve any Landlord Estoppel Certificate (which approval shall be given unless the Landlord Estoppel Certificate contains any Material Adverse Information) and, if necessary for such to occur, the Expected Closing Date shall be extended notwithstanding anything to the contrary in this Agreement. Any BUYER disapproval of a Landlord Estoppel Tenant Certificate shall constitute BUYER's decision to terminate this Agreement due to a failure of the subject Estoppel Certificate condition unless BUYER otherwise elects to Close. Notwithstanding the above, if SELLER delivers a Landlord Estoppel Certificate to BUYER, and a Tenant Estoppel Certificate is subsequently received from the applicable tenant, then the Tenant Estoppel Certificate in question shall replace the Landlord Estoppel Certificate, and SELLER shall not have any obligations or liabilities under said Landlord Estoppel Certificate, except and to the extent that the Tenant Estoppel Certificate is received after Closing and contains Adverse Material Information not set forth in the Landlord Estoppel Certificate.

If any of the conditions precedent in favor of BUYER set forth in Paragraph 23.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 written notice of termination to SELLER as and to the extent provided in Paragraph 12. In the case of 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 23.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 23.c.i., then BUYER shall be entitled to exercise its rights pursuant to the provisions of Paragraph 28.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 (provided, however, that notwithstanding anything to the contrary contained in this Agreement, SELLER shall have no right to waive the condition set forth in Paragraph 23.c.ii.4. below):

1. BUYER and Escrow Holder, respectively, shall have performed all of its

covenants and obligations set forth in this Agreement;

2. Each of the representations and warranties of BUYER in this Agreement will be materially true and correct as of Effective Date and as of the Expected Closing Date with the same force and effect as if remade by BUYER in a separate certificate at that time;
3. BUYER shall not have terminated this Agreement pursuant to the contingencies set forth in Paragraph 9; and
4. The Subdivision of the Property shall have been completed so that the Property is a Legal Lot.

If any of the conditions precedent in favor of SELLER set forth in this Paragraph 23.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 written notice of termination to BUYER as and to the extent provided in Paragraph 12. 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 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 23.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 23.c.ii., SELLER shall be entitled to exercise its rights pursuant to the provisions of Paragraph 28.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 delivery to BUYER (and Escrow Holder shall also provide a copy of the Grant Deed to BUYER with the recording information provided thereon);
  - ii. record the Declaration with the County Recorder of the County and provide copies thereof with the recordation contained thereon to BUYER and SELLER;
  - iii. issue the Title Policy, and cause it to be delivered to BUYER;
  - iv. pay the commission due the SELLER's Broker identified herein pursuant to instructions from SELLER from funds received from SELLER, or deducted from the sales proceeds otherwise due to SELLER;
  - v. 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;

- vi. 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;
- vii. prepare and deliver to both BUYER and SELLER one signed copy of Escrow Holder's closing statement showing all receipts and disbursements of the Escrow;
- viii. deliver to BUYER the FIRPTA Affidavit and the California Form 593-C (or any successor thereto);
- ix. deliver any other documents and complete such other acts as required of Escrow Holder hereunder; and
- x. 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.

24. **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 cost, to the extent available, BUYER may elect to obtain an 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.
25. **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.
26. **ASSIGNMENT OF LEASE.** During the Due Diligence Period, the BUYER shall review all Existing Leases. Prior to the end of the Due Diligence Period, BUYER may request of SELLER that it terminate any Existing Lease prior to Closing, if the terms of such Existing Lease expressly permit SELLER to so terminate it (or the tenant is on a month-to-month basis), and the Existing Lease does not require the payment of any sum, cost or expense to so terminate it, and SELLER shall terminate any such Existing Leases once all other Closing contingencies have been waived or satisfied. At Closing, SELLER shall assign and BUYER shall assume any other Existing Leases that are not so terminated, pursuant to commercially reasonable assignment and assumption agreements.
27. **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 an lease or contract with respect to the Property or any portion thereof, which would survive the Close of Escrow or otherwise materially impair BUYER's use of the Property.

**28. 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 28b 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 28.b. SHALL SERVE TO LIMIT ANY INDEMNITY OBLIGATION OF BUYER UNDER THIS AGREEMENT OR ANY POST-CLOSING OBLIGATION OF BUYER. EXCEPT AS EXPRESSLY PROVIDED ABOVE, SELLER HEREBY WAIVES AND RELEASES ANY RIGHT SELLER OTHERWISE POSSESSES TO RECOVER OR SEEK TO RECOVER ANY DAMAGES ARISING OUT OF A DEFAULT UNDER THIS AGREEMENT BY BUYER PRIOR TO CLOSING, INCLUDING, WITHOUT LIMITATION, ANY CONSEQUENTIAL (INCLUDING LOST PROFITS), SPECIAL OR GENERAL DAMAGES OF ANY NATURE OR KIND (EVEN IF BUYER 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 SELLER TO THE FULLEST EXTENT PERMITTED BY LAW.**

- 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; (ii) waive the default and proceed to Closing; or (iii) file an action for specific performance; provided, however, that no such action shall be deemed timely unless BUYER files and serves the same within no later than Ninety (90) days after the earlier of (x) the date the applicable SELLER's default occurred or (y) what would have been the Expected Closing Date, but for SELLER's default, and any such action filed or served thereafter shall be deemed time barred. 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.

29. **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.
30. **GENDER, NUMBER.** As used herein, the singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.
31. **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.
32. **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.

33. **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.
34. **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.
35. **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.
36. **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.
37. **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; however no obligations set forth herein connected with or pertaining to Revenue Participation shall bind any successors or assigns of BUYER.
38. **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.
39. **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.
40. **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 attorney's 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.

41. **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) 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, and properly addressed as follows:

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

BUYER:

City of Calistoga  
1232 Washington St.  
Calistoga, CA 94515  
ATTN: City Manager  
Email: mkirn@ci.calistoga.ca.us

SELLER:

Napa County  
Department of Public Works  
1195 Third Street, Suite 101  
Napa, California 94559  
ATTN: Director of Public Works  
Email: Steven.Lederer@countyofnapa.org

With a copy to:

City Attorney  
Burke, Williams & Sorensen, LLP  
1901 Harrison St., Suite 900  
Oakland, CA 94612  
ATTN: Michelle Marchetta Kenyon  
Email: mkenyon@bwslaw.com

With a copy to:

Napa County  
Office of Napa County Counsel  
1195 Third Street, Suite 301  
ATTN:: County Counsel  
Email: Laura.Anderson@countyofnapa.org

42. **CLOSING COSTS, FEES AND PRORATIONS.**

- a. 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 9 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.
- b. All fixed and additional rentals under the NCOE Lease shall be prorated subject to the following: SELLER shall deliver or provide a credit in an amount equal to all prepaid

rentals for periods after the Expected Closing Date and all refundable cash security deposits (to the extent the foregoing was made by the Napa County Office of Education under the NCOE Lease and not applied or forfeited prior to the Closing) to BUYER on the Closing Date. All delinquent fixed, base or minimum rent, Reimbursable Tenant Expenses (as defined below) and any and all additional rent, sums or expenses owed by any tenant under any Lease (“**Delinquent Rent**”) shall not be prorated on the Closing Date. Rather, with respect to the NCOE Lease, BUYER shall cause any such Delinquent Rents for the period prior to Closing to be remitted to SELLER if, as and when collected, subject to the following: At Closing, SELLER shall deliver to BUYER a schedule of all such Delinquent Rents. To the extent BUYER receives payment of rents (or income in connection with other tenant charges) no matter how identified on or after the Closing Date, such payments shall be applied first toward the rent (or other tenant charge) for the month in which the Closing occurs then to the rent (or other tenant charge) owed to BUYER in connection with the applicable Lease or other document for which such payments are received, and then to any Delinquent Rents (or other tenant charges) owed to SELLER, with SELLER’s share thereof being promptly delivered to SELLER; provided, however, that any year-end or similar reconciliation payment shall be allocated as hereinafter provided. BUYER may not waive any Delinquent Rents or modify a Lease so as to reduce or otherwise affect amounts owed thereunder for any period in which SELLER is entitled to receive a share of charges or amounts without first obtaining SELLER’s written consent. SELLER hereby reserves the right to pursue any remedy for damages against any tenant owing Delinquent Rents and any other amounts to SELLER (but following the Closing shall not be entitled to terminate any Lease or any tenant’s right to possession), provided that, SELLER shall not exercise any such remedy for a period of two (2) months after the Closing. BUYER shall reasonably cooperate with SELLER, at no material out-of-pocket cost to BUYER, in any collection efforts hereunder, but shall not be required to litigate or declare a default under any Lease. Notwithstanding the above, BUYER shall have no obligation to deliver any Delinquent Rent received by BUYER more than fourteen (14) months after the Closing and after said period shall have no further duty to cooperate with SELLER with respect to the collection of any Delinquent Rents. With respect to Delinquent Rents and any other amounts or other rights of any kind respecting tenants who are no longer tenants of the Property as of the Closing Date, SELLER shall retain all of the rights relating thereto.

43. **REAL ESTATE BROKERS.** The Parties understand and acknowledge that Colliers Parrish International, Inc. (“**Broker**”) is representing the SELLER exclusively, and SELLER shall pay any and all fees and/or commissions due to Broker. The Parties acknowledge and agree that other than the Broker listed herein, 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 Broker identified in this Paragraph, and that no broker or other person, firm or entity, other than said Broker 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 Broker by reason of any dealings or act of the indemnifying Party.

44. **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.
45. **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.
46. **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.

[Signatures on next page]

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

<p><b>BUYER:</b></p>	<p><b>CITY OF CALISTOGA</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Its: _____</p> <p>Date: _____, 2019</p>
	<p><b>APPROVED AS TO FORM:</b></p> <p>City Attorney:</p> <p>By: _____</p> <p>Name: _____</p>
<p><b>SELLER:</b></p>	<p><b>NAPA COUNTY</b>, a political subdivision of the State of California</p> <p>By: _____</p> <p>Ryan Gregory, Chair of the Board of Supervisors</p> <p>Dated: _____, 2019</p> <p><b>APPROVED AS TO FORM:</b></p> <p>Office of County Counsel</p> <p>By: : _____</p> <p>Deputy County Counsel</p> <p><b>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS:</b></p> <p>Dated: _____</p> <p>Processed By:</p> <p>_____</p> <p>Deputy Clerk of the Board</p>

ATTEST: JOSE LUIS VALDEZ  
Clerk of the Board of Supervisors

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

**JOINDER AND ACCEPTANCE BY ESCROW HOLDER**

Placer Title Company referred to in this Agreement as “Escrow Holder,” hereby acknowledges that it received this Purchase and Sale Agreement and Escrow Instructions executed by SELLER and BUYER on or about August \_\_, 2019, and accepts the obligations of Escrow Holder as set forth herein.

PLACER TITLE COMPANY

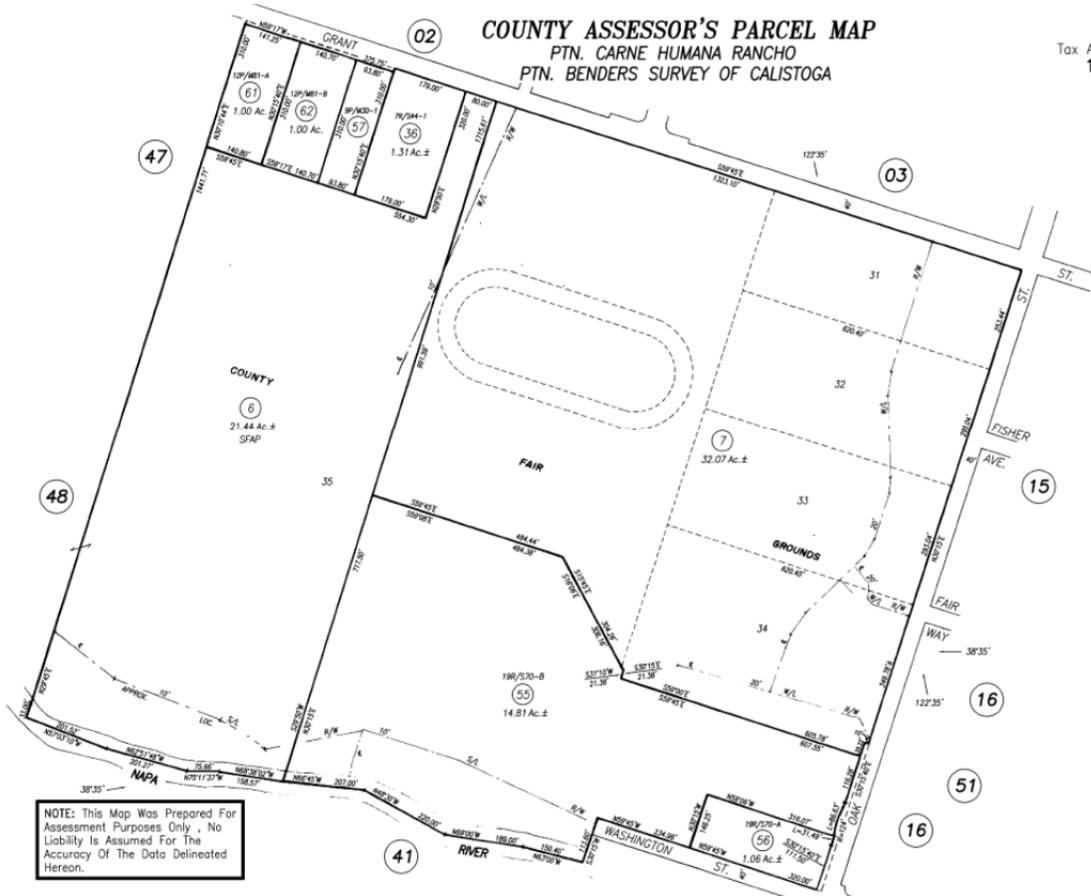
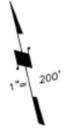
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# Exhibit A

## Description of Seller's Existing Land

11-14

Tax Area Code  
1000



11-14

**Exhibit A**  
[Continued]

The land referred to in this report is situated in the City of Calistoga, County of Napa, State of California, and is described as follows:

TRACT ONE:

PARCEL ONE:

Commencing at the most Northerly corner of the 15.62 acre tract of land described in deed to P. Rubbattino et al recorded September 30, 1916, in Book 116 of Deeds, at page 114, said Napa County Records; thence from said point of beginning S 29° 45' W, along the westerly line of said Tract 320.00 feet to the true point of beginning thence from said true point of beginning S 59° 45' E 554.30 feet; thence N 29° 50' E 320.00 feet to the northerly line of Lot 35 as shown on the map entitled, "Map of Calistoga Lands, as surveyed in 1871 and Subdivided in part in 1876" filed April 20, 1877, Napa County Records; thence S 59° 45' E along said northerly line, 80.00 feet to the westerly line of the Napa County Fair Grounds, described in deed of record in Book 130 of Official Records at page 215, Napa County Records; thence S 29° 50' W along said westerly line 1715.61 feet to the center of the Napa River; thence along the center of the Napa River the following courses and distances, N 68° 38' 02" W 158.57 feet; thence N 75° 11' 37" W 75.66 feet; thence N 62° 51' 48" W 201.27 feet; thence N 57° 03' 10" W 201.52 feet to the westerly line of said 15.62 acre tract; thence continuing northwesterly along the center of the Napa River to the center of Musgrove Creek; thence northerly along the center of Musgrove Creek to a point on a line which bears N 84° 15' 03" W from a point which lies S 29° 42' 44" W 80.11 feet from the most easterly corner of Lot 28 as shown on the "Final Map of Fairway Vista" recorded in Book 15 of Record Maps at Pages 4 and 5, Napa County Records; thence S 84° 15' 03" E to the southeasterly line of said Lot 28; thence N 29° 42' 44" E along the southeasterly line of Fairway Vista 1164.46 more or less to the point of beginning.

APN: 011-481-022 and 011-140-006

TRACT TWO:

PARCEL ONE:

Lots numbered 31,32,33, 34 and the East one-half of Lot 35 as the said lots are laid down and delineated upon a certain map entitled "Map of Calistoga Lands, as Surveyed in 1871 and Subdivided In Part In 1876" filed April 20,1877 in the office of the County Recorder of said Napa County.

Excepting therefrom the following:

(a) All that portion of said Lots 31, 32 and 33 which lies southeasterly of the northeasterly extension of the southeasterly line of said Lot 34.

(b) 6.71 acres of land, more or less, of said Lot numbered 34, heretofore conveyed by Susan J. McFarling to F.M. Crumley by deed of record in Volume 98 of Deeds at page 48, Napa County Records.

(c) 11 38 acres of land, more or less, of said Lot numbered 35, heretofore conveyed by Susan J McFarling to Francis M. Crumley by deed of record Volume 112 of Deeds at page 94, Napa County Records.

APN: 011-140-007 (Ptn.)

PARCEL TWO:

Commencing at the most eastern corner of that certain parcel of land described in the deed of John B Logvy et ux of record in Book 161 of Official Records, page 306, said Napa County Records, and running thence along the northerly boundary thereof, North 59° 45' West, 615.78 feet and South 30° 15' West, 103 62 feet to a corner of said parcel: thence continuing South 30° 15' West 21.38 feet; thence South 59° 45' East 615.78 feet to a point on the northwesterly line of Oak Street; and thence North 30° 15' East and along said last mentioned line 125.00 feet to the point of beginning.

APN: 011-140-007(Ptn.)

PARCEL THREE:

Beginning at the point formed by the intersection of the Westerly line of the city street known as "Oak Street" with the northerly line of the city street known as "Washington Street," thence from said point of beginning along said northerly line N 59° 45' W 330.00 feet to the point of commencement along said northerly line N 59° 45' W 234.96 feet; thence S 30° 15' W 113.60 feet to the centerline of the Napa River, thence along the centerline the following courses and distances: N 63° 00' W 150.40 feet, N 69° 00' W 189.00 feet; N 48° 30' W 220.00 feet; and N 66° 45' W 207.00 feet to the southeast corner of the tract of land conveyed to the County of Napa in deed of record in Volume 548, at Page 14, Official Records; thence along the easterly line of said tract of land N 30° 15' E 717.50 feet to the southwest corner of the tract of land conveyed to the County of Napa in deed of record in Volume 130, Page 215, Official Records, thence along the Southerly line of said tract S 59° 08' E 484.38 feet; thence leaving said southerly line S 16° 06' E 306.16 feet; thence S 31° 10' W 21.39 feet to the southwest corner of the parcel of land covyed to the County of Napa in deed of record in Volume 746 at Page 370, Official Records; thence along the Southerly line of said parcel S 59° 45' E 617.55 feet to the westerly line of the City street known as "Oak Street," thence along the westerly line S 30° 15' W 202.28 feet; thence S 31° 10' W 21.38 feet to the Southwest corner of the parcel of land conveyed to the County of Napa in deed of record in Volume 746 Page 370, Official Records; thence along the Southerly line of said parcel S 59° 45' E 617.55 feet to the westerly line of the City street known as "Oak Street," thence along said westerly line S 30° 15' W, 202.28 feet; thence N 59° 06' W 330.02 feet; thence S 30° 15' W 146.25 feet to the point of commencement.

APN: 011-140-055

**Exhibit B**  
**Preliminary Plat or Site Plan Showing Property and Remaining Property**

[Attached]



**NAPA COUNTY**

DEPARTMENT OF PUBLIC WORKS  
 1195 THIRD STREET \* ROOM 101 \* NAPA, CA 94559  
 PHONE 707-253-4351 \* FAX 707-253-4627  
 STEVEN E. LEDERER  
 Director of Public Works

**EXHIBIT B**

**PLAT TO ACCOMPANY  
 SALE & PURCHASE  
 AGREEMENT**

Approved	
Drawn	D. Goshert
Date	July 2019
Project	
Scale	1" = 300'
Sheet No.	1
of	1

**Exhibit C  
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 CALISTOGA, CALIFORNIA.  
APN(S): \_\_\_\_\_.

**GRANT DEED**

For valuable consideration, NAPA COUNTY, a political subdivision of the State of California hereby grants to the CITY OF CALISTOGA, a general law city, all that certain real property located in the City of Calistoga, County of Napa, State of California, more particularly described on Schedule 1 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 \_\_\_\_\_, 20\_\_.

**GRANTOR:**

NAPA COUNTY, a political subdivision of the State  
of California

By: \_\_\_\_\_  
\_\_\_\_\_, 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 County of Napa, State of California, and described as follows:

***[To be inserted in accordance with Section 14]***

**Exhibit D**  
**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 for 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 Fifty Dollars (\$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 E  
Declaration**

[Attached]

**RECORDING REQUESTED BY:**

Napa County Department of Public Works  
1195 Third Street, Suite 101  
Napa, CA 94559  
Attn: Director of Public Works

**WHEN RECORDED, MAIL TO:**

Napa County Department of Public Works  
1195 Third Street, Suite 101  
Napa, CA 94559  
Attn: Director of Public Works

*(Space Above For Recorder's Use)*

*\*Exempt from fee pursuant to Government Code Section 6103*

**DECLARATION OF COVENANTS AND RESTRICTIONS AND RECIPROCAL  
EASEMENT AGREEMENT**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENT ("**Declaration**") is made by and between NAPA COUNTY, a political subdivision of the State of California (hereinafter referred to as "**Seller**" or "**County**"), and CITY OF CALISTOGA, a general law city (hereinafter referred to as "**Buyer**" or "**City**") as of \_\_\_\_\_, 20\_\_ (the "**Effective Date**")

**RECITALS**

A. Concurrently with the execution hereof, and pursuant to that certain Purchase and Sale Agreement and Escrow Instructions (Napa County Agreement No. \_\_\_\_ ) by and between County as seller and City as buyer (the "**Purchase Agreement**"), City is acquiring from County certain real property located within the City of Calistoga comprised of approximately 34.3 acres, as more particularly described on **Exhibit 1** attached hereto (the "**Property**"); and

B. Seller is retaining approximately 36.3 acres of land adjacent to the Property located in the City of Calistoga, County of Napa, California as shown on the attached **Exhibit 2** ("**Remaining Property**"); and

C. The County's willingness to enter into the Purchase Agreement and convey the Property to City is in reliance upon City's agreement to enter into this Declaration under the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Definitions. Capitalized terms used in this Declaration and not defined below or elsewhere in this Declaration shall have the meanings set forth in the Purchase Agreement.

1.1 "**Cap Rate**" is defined in Section 3.2.

1.2 "**City Acquisition Amount**" is defined in Section 3.1.

1.3 "**Constant Dollars**" means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 after the first full calendar year following the date of this Declaration, and thereafter at two (2) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the "**Current Index Number**" and the denominator of which is the "**Base Index Number**" (as such terms are hereinafter defined). The "**Base Index Number**" is the level of the "**Index**" (as hereinafter defined) for the month and year during which the Effective Date occurs; the "**Current Index Number**" is the level of the Index for the month of September of the year preceding the adjustment year; the "**Index**" is the Consumer Price Index for All Urban Consumers, U.S. City Average, All items published by the United States Department of Commerce (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.4 "**Long Term Lease**" means any future ground lease for any portion of the Property or the Remaining Property, which (i) has a term, including any options [whether exercised or not], equal to or in excess of fifty (50) years; and which (ii) results in a change in the existing uses (not simply an expansion or increase in said uses) on the Property or the Remaining Property, as the case may be, from the uses on the Property or the remaining Property, as the case may be, as of the Effective Date (which historical existing uses are RV park, race track, event center, public facilities, telecom leases and fairgrounds, as to the Property and golf course and clubhouse, as to the Remaining Property).

1.5 "**Net Operating Income**" means the income or rent that the City receives from any future Long Term Lease MINUS any and all operating expenses incurred by the City under such Long Term Lease, or otherwise payable by the City with respect to the leased portion of the Property. In no event, however, shall Net Operating Income include any income or rent generated by any use of the Property, or any lease or renewal of a lease that is not a Long Term Lease.

1.6 "**Net Proceeds**" means the proceeds City receives from the sale or future Long Term Lease of the Property, or any portion thereof, MINUS all standard and customary market-based costs and expenses incurred, on a one-time or ongoing basis, by City related to such sale or future Long Term Lease, including but not limited to title and escrow fees, title insurance premiums, survey costs, transfer taxes and fees, other closing

costs, brokerage commissions, costs of any improvements made to the Property, or any portion thereof, including but not limited to any and all design and construction fees and costs and related expenses, for such improvements, tenant improvement costs, rent concessions, attorneys' fees and costs, marketing fees and maintenance, management and other costs incurred by City in connection with the Property, or any applicable portion thereof.

1.7 "Notice of Transaction" is defined in Section 2.3.

1.8 "Property" is defined in Recital A.

1.9 "Purchase Agreement" is defined in Recital A.

1.10 "Remaining Property" is defined in Recital B.

1.11 "Revenue Participation" shall mean those amounts payable by City pursuant to Section 2.

2. Intentionally Deleted.

3. Revenue Participation. For a period commencing on the Close of Escrow and continuing until the earlier of (i) December 31, 2039 or (ii) until the County no longer has any fee ownership interest in any portion of the Remaining Property (excluding any portions of the Remaining Property that are subject to an offer of dedication), City agrees to pay to County in the manner specified below the amount of the "Revenue Participation" (as defined below).

3.1 Calculation of Revenue Participation. "Revenue Participation" shall mean the applicable Share of Revenue set forth below in this Section 3.1 that is in excess of Two Hundred Twenty-Five Thousand Dollars (\$225,000) in Constant Dollars per acre (the "City Acquisition Amount") based on the date the applicable sale or Long Term Lease occurred:

Share of Revenue as of:	Share of Revenue to be Paid to County:
Closing to December 31, 2020	50%
January 1, 2021 to December 31, 2021	47.5%
January 1, 2022 to December 31, 2022	45%
January 1, 2023 to December 31, 2023	42.5%
January 1, 2024 to December 31, 2024	40%
January 1, 2025 to December 31, 2025	37.5%
January 1, 2026 to December 31, 2026	35%
January 1, 2027 to December 31, 2027	32.5%
January 1, 2028 to December 31, 2028	30%
January 1, 2029 to December 31, 2029	27.5%
January 1, 2030 to December 31, 2030	25%

January 1, 2031 to December 31, 2031	22.5%
January 1, 2032 to December 31, 2032	20%
January 1, 2033 to December 31, 2033	17.5%
January 1, 2034 to December 31, 2034	15%
January 1, 2035 to December 31, 2035	12.5%
January 1, 2036 to December 31, 2036	10%
January 1, 2037 to December 31, 2037	7.5%
January 1, 2038 to December 31, 2038	5%
January 1, 2039 to December 31, 2039	2.5%

3.2 Revenue. "**Revenue**" for purposes of this Declaration shall be defined as follows:

a. Sale. In connection with City's sale of the Property or any portion thereof, "**Revenue**" shall mean the Net Proceeds received by the City from the sale of the Property or any portion thereof to a third party. For purposes of calculating the Revenue Participation, the Net Proceeds shall be divided by the number of acres to determine the Net Proceeds per acre. If a portion of the Property being sold is less than an acre, then the Net Proceeds shall be prorated proportionately. For example, if the portion of the Property being sold was comprised of one-half (1/2) acre, then the City Acquisition Amount for purposes of calculating the Revenue Participation would be One Hundred Twelve Thousand Five Hundred Dollars (\$112,500) and if the closing of such portion of the Property occurred in 2027 and the Net Proceeds the City gained from the sale of such portion of the Property was \$212,500, then the Revenue Participation due from City to County would be \$30,000 calculated as follows:  $\$212,500 - \$112,500 = \$100,000 \times 30\% = \$30,000$ , each subject to any adjustment of the City Acquisition Amount due to CPI increases as specified in Section 1.3, which sets forth the definition of Constant Dollars.

b. Lease. In connection with the City entering into a future Long Term Lease for the Property or any portion thereof for which consideration is paid to City; "Revenue" shall mean and shall be calculated as follows:

(1) Revenue Participation shall be prorated based on the acreage covered by the lease, and the Revenue shall be determined by using a Net Operating Income approach to determine the fair market sales value of the Property (or the particular portion in question) ("**FMV**") through the use of an appropriate capitalization rate (the "**Cap Rate**") to determine what the Property would sell for if sold on the open market, i.e. its fair market value for purposes of a sale. If the parties cannot agree on the Cap Rate or the Revenue to be used for determining the Revenue Participation in connection with a lease transaction then the parties shall hire a commercial broker with not less than ten (10) years' experience in Napa or Sonoma Counties who neither party has hired previously in order to determine the Cap Rate and the FMV of the Property based thereon. If

the parties cannot agree on such a broker, then either party may retain a retired judge at JAMS to select such a broker for the parties (and if the parties cannot agree on the retired judge to use for such selection, then the Parties agree to be bound by any applicable rules adopted by JAMS to determine such selection). The parties shall share equally in the fees and costs of any broker and/or JAMS judge retained pursuant to the above.

(2) By way of example only, if City leased under a Long Term Lease one acre in June 2019 that generated a Net Operating Income of One Hundred Thousand Dollars (\$100,000) with a seven percent (7%) Cap Rate, then the FMV of the one acre portion of the Property subject to the Long Term Lease would be deemed to be \$1,428,571 with a Revenue Participation of \$601,785.50 [ $\$1,428,571 - \$225,000 \times .5$ ], subject to any adjustment of the City Acquisition Amount for increases therein due to CPI changes as specified in Section 1.3, which sets forth the definition of Constant Dollars.

3.3 Exclusions from Revenue Participation. Notwithstanding anything to the contrary herein, Revenue Participation shall not apply in either of the following circumstances: (i) The Revenue Participation shall not apply to any portion of the Property for which any Revenue Participation has already been paid as a result of any bona fide sale or Long Term Lease (i.e. not made in bad faith for purposes of evading or attempting to evade any obligation to pay Revenue Participation hereunder). By way of example, if the City leased two (2) acres of the Property to XYZ under a Long Term Ground Lease, and as a result, the City paid the County \$50,000 in Revenue Participation, then the City would not be required to pay the County any further Revenue Participation as a result of a sale of the same two (2) acres to ABC two years after the subject Long Term Lease was entered into; and (ii) the Revenue Participation shall not apply to any leases or uses on the Property in existence as of the Effective Date, or any expansion or increase of said leases and uses, or any renewals thereof (regardless of whether said uses in existence as of the Effective Date allowed under any such lease to expand or increase), or any other lease that is not a Long Term Lease.

3.4 Notice of Transaction. Regardless of whether or not any Revenue Participation is due to County, City shall deliver written notice to County of each and every sale or future Long Term Lease for the Property or portion thereof within thirty (30) days after such transaction is consummated (“**Notice of Transaction**”). Such Notice of Transaction shall be accompanied by a statement by City certifying the amount of consideration paid or payable to City in connection therewith, the amount of Property conveyed and if the applicable transaction is an applicable Long Term Lease, then also other terms of such transaction such as the term, and all rental amounts due thereunder. At County’s request, City shall deliver copies of the purchase contract or applicable Long Term Lease within ten (10) business days after County’s request therefor.

3.5 EACH PARTY HERETO AGREES TO BE BOUND BY THE FMV DETERMINATION OF ANY BROKER OR BROKERS RETAINED BY THE PARTIES PURSUANT TO THE ABOVE WITHOUT ANY RIGHT OF APPEAL OR REVIEW.

4. Payment of Revenue Participation. Payment of any Revenue Participation shall be paid by City to County as follows: (a) in the event of a fee title sale of the Property, or any portion thereof, within twenty (20) days after the Property, or any applicable portion of the Property, is transferred and the net sales proceeds are received by the City; and (b) in the event of a future Long Term Lease, the Revenue Participation due to the County shall be paid to the County on an annual basis (prorated over the term of such Long Term Lease) within ninety (90) days after the end of each calendar year, however, City shall only be required to pay the Revenue Participation from rent or other income actually received by the City.

5. Default and Remedies.

5.1 Default. Each of the terms, conditions, covenants and provisions of City and County under this Declaration is a material consideration for this Declaration, the breach of which shall be deemed a default hereunder. Said default shall be deemed to have occurred if either party has not effected a cure within 10 days of a written notice from the other party specifying the breach.

5.2 Rights and Remedies. To the maximum extent permitted by law, all rights, options and remedies of County and City contained in this Declaration shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and County and City shall each have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or equity, whether or not stated in this Declaration.

5.3 No Continuing Waiver. No waiver by County or City of a breach of any of the terms, covenants or conditions of this Declaration by the other party shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or conditions herein contained. No waiver of any default by City or County hereunder shall be implied from any omission by such party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in such waiver. The consent or approval by one party to or any act by the other party requiring a party's consent or approval shall not be deemed to waive or render unnecessary the party's consent or approval to or of any subsequent similar acts. Without limiting the generality of the foregoing, County's or City's acceptance of any payments hereunder shall not be deemed a waiver of any breach by City or County under the terms and conditions hereof.

6. Master Plan. City and County agree that effective on and after the Effective Date, either City or County may commence the processing of an application for a Master Plan on its respective property (a "**Master Plan**"), and the Party so commencing such application shall provide the other Party the opportunity to participate in such Master Plan processing. In addition, the Parties agree that before any portion of the Property or the Remaining Property is sold to a third party, or made subject to a future Long Term Lease, the Party whose property is being sold or leased as described above shall commence the process for an application for a Master Plan and shall provide the other Party the opportunity to participate in the process and include the its respective property in the Master Plan for the same or substantially comparable allowable uses as the property owned by the Party initiating the Master Plan process, to the

fullest extent allowed by law, and that, if the Master Plan is actually approved, the other property would be included therein. In order to comply with California Environmental Quality Act, Pub. Res. Code section 21000 et seq. and 14 Cal. Code Regs. section 15000 et seq. (collectively, “CEQA”) and give the public the opportunity to be aware of the environmental consequences of any such Master Plan, City retains the absolute discretion to (i) approve or not approve the Master Plan and any projects thereunder as may be necessary to comply with CEQA; (ii) select other alternatives to avoid significant environmental impacts; (iii) balance the benefits of the Master Plan against any significant environmental impacts prior to taking final action, if such significant impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with approval or adoption of the Master Plan.

7. Easements. **[TO BE AGREED UPON DURING THE DUE DILIGENCE PERIOD PURSUANT TO SECTION 17 OF THE PURCHASE AGREEMENT]**

8. [Intentionally Omitted]

9. Miscellaneous.

9.1 Notices. All notices or other communications between County and City required or permitted hereunder shall be in writing and personally delivered or sent by reputable overnight courier (such as Federal Express or UPS) to the following addresses:

City of Calistoga  
1232 Washington St.  
Calistoga, CA 94515  
Attn: City Manager

Napa County  
Department of Public Works  
1195 Third Street, Suite 101  
Napa, CA 94559  
Attn: Director of Public Works

With a copy to:

With a copy to:

City Attorney  
Burke, Williams & Sorensen, LLP  
1901 Harrison St., Suite 900  
Oakland, CA 94612  
ATTN: Michelle Marchetta Kenyon  
Email: [mkenyon@bwsllaw.com](mailto:mkenyon@bwsllaw.com)

Napa County  
Office of Napa County Counsel  
1195 Third Street, Suite 301  
ATTN:: County Counsel  
Email:  
[Laura.Anderson@countyofnapa.org](mailto:Laura.Anderson@countyofnapa.org)

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m., otherwise on the day following personal delivery, or on the day following delivery to the applicable overnight courier, if sent by overnight courier. Either party may change the address to which notices are to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

9.2 Time of the Essence. Time is of the essence of this Declaration and each and every term and provision hereof.

9.3 Benefits and Burdens Run with the Land only to a Limited Extent Regarding Revenue Participation. This Declaration and the rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Declaration (a) burden and benefit the Property and the Remaining Property, the City and the County with respect to their respective ownership interests in said properties, and the successors and assigns of their respective ownership interests in said properties and (b) are enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including without limitation, Section 1468 of the Civil Code of the State of California, as the same may be amended from time to time and all successor statutes thereof; provided, however, any and all rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Declaration that relate or pertain to Revenue Participation (x) burden the Property only during City's ownership of the Property; (y) do not burden any of the City's successors, grantees, assigns, or any and all other persons acquiring any portion of the Property or interest therein, whether by operation of law or in any manner whatsoever; and (z) do not benefit any of the County's successors, grantees or assigns, or any future owners of the Remaining Property, or any portion thereof. Upon the close of escrow of a sale of the Property (or applicable portion thereof) and the payment of any Revenue Participation due to the County, County shall not be entitled to further Revenue Participation in connection with a future sale or lease of the Property (or applicable portion thereof). For the avoidance of doubt, under no circumstances shall the City have any obligation to pay any Revenue Participation to any owner of the Remaining Property (or any portion thereof) other than the County.

9.4 Interpretation; Governing Law. This Declaration shall be construed as if prepared by both parties. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Declaration against the party that has drafted it is not applicable and is waived. This Declaration shall be construed, interpreted and governed by the laws of the State of California and the laws of the United States of America prevailing in California.

9.5 Severability. If any provision of this Declaration, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Declaration and application of such provision to other circumstances, shall be interpreted so as best to reasonably effect the intent of the parties hereto.

9.6 Performance of Acts on Business Days. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

9.7 Attorneys' Fees. In the event of any legal action or other proceeding between the parties regarding this Declaration or the Property (an "**Action**"), the prevailing party shall be entitled to the payment by the losing party of its reasonable attorneys' fees, court costs and litigation expenses, as determined by the court.

9.8 Post-Judgment Attorneys' Fees. The prevailing party in any Action shall be entitled, in addition to and separately from the amounts recoverable under Section 9.7, to the

payment by the losing party of the prevailing party's reasonable attorneys' fees, court costs and litigation expenses incurred in connection with (a) any appellate review of the judgment rendered in such Action or of any other ruling in such Action, and (b) any proceeding to enforce a judgment in such Action. It is the intent of the parties that the provisions of this Section be distinct and severable from the other rights of the parties under this Declaration, shall survive the entry of judgment in any Action and shall not be merged into such judgment.

9.9 Waiver of Jury Trial. The parties hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by a party hereto or its successors and assigns on any matter whatsoever arising out of, or in any way connected with, this Declaration, the relationship of the parties hereto, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

9.10 Jurisdiction. The parties agree that any action or proceeding to enforce or relating to this Declaration shall be brought exclusively in the federal or state courts located in Napa County, California, and the parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

9.11 Entire Agreement; Amendments. This Declaration, together with the other written agreements referred to herein, is intended by the parties to be the final expression of their agreement with respect to the subject matter hereof, and is intended as the complete and exclusive statement of the terms of the agreement between the parties. As such, this Declaration supersedes any prior understandings between the parties, whether oral or written. Any amendments to this Declaration shall be in writing and shall be signed by all parties hereto.

9.12 No Waiver. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

9.13 Assignment. City shall not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of County.

9.14 Headings; Cross-References; Exhibits. The headings and captions used in this Declaration are for convenience and ease of reference only and shall not be used to construe, interpret or limit the terms of this Declaration.

9.15 Survival of Certain Covenants. City's obligation to pay Revenue Participation shall survive the conveyance by City of the Property or any applicable portion thereof, as long as such Revenue Participation is due as of the conveyance of the Property by the City. Those covenants of City which are not capable of being fully performed prior to the sale by City of the Property or which may be capable of or require performance after the sale of the Property shall survive until performed in full. The foregoing shall apply whether or not such covenant is expressly stated to survive.

9.16 No Partnership. County shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer, purchaser, or any other party for services performed or materials supplied or for any causes of action arising out of or in connection with construction or sale of improvements on the Property by or on behalf of City. County shall not be liable for any debts or claims accruing in favor of any such parties against City or others or against the Property. City is not and shall not be considered an agent of County for any purposes. County is not a venture partner with City in any manner whatsoever and County shall not have any fiduciary duties as to City. County shall not be deemed to be in privity of contract with any contractor or provider of services on the Property or any purchaser of the Property or any portion thereof, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by County. Approvals granted by County for any matters covered under this Declaration shall be construed to be solely for the benefit of City and no other person shall be considered a third party beneficiary hereof.

9.17 Interest Rate Limitation. County and City stipulate and agree that none of the terms and provisions contained herein or in any document or instrument executed in connection herewith shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if County shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate payable under this Declaration to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of County, be credited to the payment of other sums, if any, due hereunder or returned to City.

IN WITNESS WHEREOF, the parties hereto have caused this Declaration to be executed.

CITY:	<p><b>CITY OF CALISTOGA</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Its: _____</p> <p>Date: _____, 2019</p>
	<p><b>APPROVED AS TO FORM:</b></p> <p>City Attorney:</p> <p>By: _____</p> <p>Name: _____</p>

<p>COUNTY:</p>	<p><b>NAPA COUNTY</b>, a political subdivision of the State of California</p> <p>By: _____  Ryan Gregory, Chair of the Board of Supervisors</p> <p>Dated: _____, 2019</p> <p><b>APPROVED AS TO FORM:</b></p> <p>Office of County Counsel</p> <p>By: : _____  Deputy County Counsel</p> <p><b>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS:</b></p> <p>Dated: _____</p> <p>Processed By:</p> <p>_____</p> <p>Deputy Clerk of the Board</p> <p><b>ATTEST: JOSE LUIS VALDEZ</b>  Clerk of the Board of Supervisors</p> <p>By: _____</p>
----------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[SIGNATURES MUST BE NOTARIZED]

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**[ADD ANY ADDITIONAL REQ. NOTARY ACKNOWLEDGMENTS]**

**Exhibit "1"**  
**to**  
**Declaration**

Legal Description of Property

All that certain land situated in the City of Calistoga, County of Napa, State of California,  
described as follows:

**[To be added pursuant to Section 14 of the Purchase Agreement]**

**Exhibit "2"**  
**to**  
**Declaration**

Legal Description of Remaining Property

All that certain land situated in the City of Calistoga, County of Napa, State of California, described as follows:

**[To be added pursuant to Section 14 of the Purchase Agreement]**

**Exhibit F**  
**Existing Leases**

1. That Structure Lease Agreement between Seller and New Cingular Wireless PCS, LLC entered into on or about November 25, 2014
2. That Napa County Fair Association, Inc. (the “Association”) License Agreement for Use of Fairground Facilities entered into on December 31, 2018 between the Association and the Calistoga Art Center
3. That County of Napa License Agreement for Use of Fairground Facilities entered into on April 3, 2019 by and between Seller and Community Action of Napa Valley
4. That License Agreement 190214C entered into on January 1, 2019 between Seller and Buyer, as amended
5. That Land and Tower Lease Agreement entered into on or about December 29, 2016 between Seller and GTE Mobilnet of California limited partnership
6. Napa County Agreement No. 8574 entered into as of December 4, 2018 between Seller and Napa County Office of Education

**Exhibit G**  
**Existing Contracts**

[If Not Attached or Listed Below, to be Provided to Buyer by Seller within ten (10) days after the Effective Date]

**Exhibit H**  
**Tenant Estoppel Certificate**

CITY, STATE  
Address  
PN#

TENANT ESTOPPEL CERTIFICATE

TO:

DATE:

PREMISES:

LEASE DATE:

LANDLORD: ("Landlord")

TENANT: ("Tenant")

MONTHLY BASE RENT:

PERCENTAGE RENT:

LEASE TERM: Lease expires

RENEWAL OPTIONS: As stated in the lease

Ladies and Gentlemen:

To the best of its knowledge and belief, the undersigned Tenant hereby confirms, as of the date hereof, the following:

1. It is currently in possession of the Premises. Tenant has not assigned the Lease or sublet the Premises.
2. The Lease is in full force and effect and represents the entire agreement between Tenant and the Landlord relating to the lease of the Premises, and the Lease has not been amended, modified, changed, supplemented or clarified, except as follows:
  - a.

3. Monthly Base Rent is \_\_\_\_\_ [Insert date]. No rent has been paid more than one month in advance of its due date.

4. To its actual knowledge, Tenant has no defense or offset to Tenant's obligation to pay Rent pursuant to the Lease.

5. Tenant has not received nor has Tenant given any notice of default pursuant to the terms of the Lease which has not been cured, except:

6. The Security Deposit, if any, paid by Tenant is:

7. Tenant has no option, right of first refusal or otherwise to purchase the Property or any portion thereof or any interest therein and the only interest of the Tenant in the Property is that of a tenant pursuant to the terms of the Lease.

This Tenant Estoppel Certificate is given solely for the information of the party to whom it is addressed and may not be relied upon by any other person or entity. Tenant shall be estopped from taking any position contrary to the statements contained in this Tenant Estoppel Certificate in any dispute between Tenant and the party to whom this Tenant Estoppel Certificate is addressed, however, this Tenant Estoppel Certificate shall not in any way create any liability in, or provide any right of action against Tenant or its officers, directors, agents, employees and representatives.

Very truly yours,

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT H-1**  
**Form of Landlord Estoppel Certificate**

TO: CITY OF CALISTOGA, a general law city (“Buyer”)

RE: Premises Address: \_\_\_\_\_, Calistoga, CA (the Premises”)  
Leases Date: \_\_\_\_\_

By and Between: NAPA COUNTY, a political subdivision of the State of California (“Landlord”)  
and \_\_\_\_\_ (“Tenant”)

The undersigned is the Landlord of the above-referenced lease and any and all amendments thereto (collectively, the “Lease”). The undersigned hereby acknowledges and certifies to Buyer the following:

1. Tenant is currently in possession of the Premises. To Landlord’s actual knowledge, Tenant has not assigned the Lease or sublet the Premises, except as follows: \_\_\_\_\_.
2. The Lease is in full force and effect and represents the entire agreement between Tenant and Landlord relating to the lease of the Premises, and the Lease has not been amended, modified, changed, supplemented or clarified, except as follows: \_\_\_\_\_.
3. Monthly Base Rent is \_\_\_\_\_ [Insert date]. No rent has been paid more than one month in advance of its due date.
4. To Landlord’s actual knowledge, Tenant has no defense or offset to Tenant’s obligation to pay Rent pursuant to the Lease.
5. Landlord has not received nor has Landlord given any notice of default pursuant to the terms of the Lease which has not been cured, except as follows: \_\_\_\_\_.
6. The expiration date of the Lease is \_\_\_\_\_. Tenant has no options to extend the term of the Lease other than the following:  
.
7. The Security Deposit, if any, paid by Tenant is \_\_\_\_\_.
8. Tenant has no option, right of first refusal or otherwise to purchase the property of which the Premises is a part or any portion thereof, and the only interest of the Tenant in said property is that of a tenant pursuant to the terms of the Lease.

Pursuant to that Purchase and Sale Agreement and Escrow Instruction, dated August \_\_, 2019 for reference purposes, between Landlord, as seller, and Buyer (the “Purchase Agreement”), the undersigned hereby certifies that the information contained in this Landlord Estoppel Certificate is true and correct in all material respects, that the parties to whom this statement is addressed may rely upon said information, and Landlord shall be estopped from taking any position contrary to the statements

contained in this Landlord Estoppel Certificate. To the extent that the Tenant subsequently provides a Tenant Estoppel Certificate as specified more fully in Paragraph 23.c.7 of the Purchase Agreement, the terms of Paragraph 23.c.7 shall apply. Notwithstanding anything to the contrary herein, (1) this Landlord Estoppel Certificate shall not be effective unless and until the "Closing" (as defined in the Purchase Agreement) occurs; (2) Seller shall have no liability under this Landlord Estoppel Certificate except to the extent Tenant makes a claim that constitutes a breach of this Landlord Estoppel Certificate above, and any such liability shall be limited by the damage limitations set forth in Paragraph 28.c of the Purchase Agreement; and (3) this Landlord Estoppel Certificate is subject to the time limitation set forth in Paragraph 20 of the Purchase Agreement, which is referred to therein as the Survival Period.

IN WITNESS WHEREOF, Landlord has executed this Landlord Estoppel Certificate as of \_\_\_\_\_, 20\_\_.

NAPA COUNTY, a political subdivision of the State of California

By: \_\_\_\_\_  
\_\_\_\_\_, Chair of the  
Board of Supervisors

Dated: \_\_\_\_\_, 20\_\_

APPROVED AS TO FORM:

Office of County Counsel

By : \_\_\_\_\_  
Deputy County Counsel

**EXHIBIT I**

**Easements to be Included in the Declaration And Showing the Roadway Dedication Area**

[To be attached after the Parties agree to the Easements pursuant to Section 17.a]