City of Calistoga
STAFF REPORT

To: Honorable Mayor and City Council
From: Laura Snideman, City Manager
Meeting: City Council - Feb 06 2024
Subject: **Consideration of Purchasing Approximately 70 Acres of County of Napa Property Known as the "Fairgrounds" and Initiating Steps for Transition of Ownership**

DESCRIPTION:

Consideration of Purchasing Approximately 70 Acres of County of Napa Property Known as the "Fairgrounds" and Initiating Steps for Transition of Ownership

RECOMMENDATION:

Consider adopting a resolution that allows for the purchase of the Fairgrounds and numerous related steps.

BACKGROUND/SUMMARY:

While the history of the Fairgrounds in Calistoga dates back almost a century, over the past year the Calistoga City Council and the Napa County Board of Supervisors have negotiated for the City of Calistoga to purchase approximately 70 acres of the site. City Council approval of the Purchase and Sale agreement is now required and planning for the long-term stewardship of the site needs to begin with a number of immediate next steps.

ANALYSIS:

Purchase and Sale Agreement

Under the terms of the Purchase and Sale Agreement ("PSA"), the City would acquire the Fairgrounds property (approximately 70.6 acres) in an "as is condition", for the total price of $2,000,000 (the "Purchase Price"). The City is required to post a $20,000 refundable deposit which will be applied towards the Purchase Price of the Property at the close of escrow. Once the parties sign the PSA, a due diligence period of one-hundred and twenty days will commence ("Due Diligence Period") during which the City will undertake a review of all entitlements, conduct inspections, investigations, tests, and surveys of the Property, including a Phase I, and if necessary, a Phase II environmental assessment.

The PSA also provides that the County has the right to repurchase the Property, or applicable portions of it, for a period of ninety (99) years in the event the City proposes to rezone the Property, or a portion of the Property, to allow for a use that is not an "Historical Use" as defined in Exhibit D-1 to the PSA or if the City proposes a sale or conveyance or a lease in excess of 25 years. The purchase price for the repurchase would be $2,000,000, increased by the change in the Consumer Price Index (CPI), plus the value of all unamortized capital improvements made to the Property by the City.

The PSA also provides the County with the right, along with other governmental entitles working in partnership with the County, to use the Property for emergency response purposes upon the declaration of any federal, state or local disaster.

Immediate Next Steps and Stewardship

In order to become effective stewards of the property, readying the City for ownership should begin immediately. Therefore, included in the resolution are various items that will allow staff to:

- Create and recruit for the new position of Fairgrounds Revitalization Director
- Contract with vendors to address landscaping and related maintenance on the property following transfer to the city
- Prioritize creating a plan for the infrastructure necessary to re-open the RV park
- Make all necessary budget adjustments by first looking for savings in the current budget year and otherwise spending from the reserves should there be insufficient budget savings by the Fiscal Year end in June

Timing Expectations

The PSA allows for up to 120 days for the City to conduct due diligence. This will include a Phase I environmental assessment. Therefore, transfer of the property might not occur until June. In addition, given the inadequate infrastructure on the property including collapsed and non-functional portions of the sewer system and a leaking water system, it will be quite some time -- maybe several years -- before any significant uses will be viable.

CEQA STATUS:

The action is exempt from environmental review under the California Environmental Quality Act, Public Resource's Code section 21000 et seq. ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) as it can be seen with certainty that the project has no potential for causing a significant effect on the environment.

FINANCIAL IMPACT:

The $2 M purchase price is available in the current budget in Account #10-4110-4499. There is no funding source for any additional expenses such as capital investments or any of the other expenses mentioned in this report. The funding for all other activities other than the purchase price through June of this year will come from General Fund reserves to the extent other budget savings in the current budget are not identified prior to June 30, 2023.

ATTACHMENT(S):

City Council Resolution - Fairgrounds PSA - 02.06.2024

Exhibit 1 to Resolution - Fairgrounds PSA and Exhibits

APPROVAL(S):

Jessie Catacutan	Approved - Jan 30 2024
Laura Snideman, City Manager	Approved - Jan 30 2024
Yudiana Galvan, City Clerk	Approved - Jan 30 2024

RESOLUTION NO. 20-2024- _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA APPROVING AND AUTHORIZING: 1) EXECUTION OF THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS WITH THE COUNTY OF NAPA FOR THE PURCHASE OF THE NAPA COUNTY FAIR GROUNDS PROPERTY; 2) CREATION OF A FULL TIME FAIRGROUNDS REVITALIZATION DIRECTOR POSITION; 3) CITY MANAGER TO PROVIDE BASIC LANDSCAPING MAINTENANCE OF THE PROPERTY; 4) DEVELOPMENT OF A PLAN FOR INFRASTRUCTURE REPAIRS/IMPROVEMENTS NECESSARY TO REOPEN THE RV PARK ON THE PROPERTY; 5) STAFF TO MAKE ALL NECESSARY BUDGET ADJUSTMENTS NECESSARY TO IMPLEMENT ITEMS (1) THROUGH (4) ABOVE; AND 6) FINDING THAT THE ACQUISITION OF THE PROPERTY IS EXEMPT FROM CEQA.

WHEREAS, the County of Napa ("County") is the owner of approximately +/- 70.6 acres of improved land in the City of Calistoga, located at 1435 and 1601 N. Oak (APNS 11-140-055, 011-140-006, 011-140-007 AND 011-481-022) ("County Property"); and

WHEREAS, the County Property has multiple facilities that have provided important benefits to the community including serving as an R.V. park, car racetrack, golf course, and fairgrounds; however, the County Property has not been fully utilized for these purposes for years, and much of the infrastructure and buildings have suffered due to age and lack of adequate maintenance; and

WHEREAS, since early 2016 the City of Calistoga ("City") and County have been negotiating for the City to purchase the County Property, or a portion thereof, and the City and County have now negotiated for the City to purchase the County Property, less an approximately 1.24 acres ("Retained Land") consisting of certain land and improvements currently being leased to the Napa County Office of Education ("NCOE"), along with certain other adjacent property and storage building; the portion of the County Property that is the subject of the City's proposed purchase is hereinafter referred to as the "Property"; and

WHEREAS, in early January 2024 the City's negotiating team consisting of the Mayor, Councilmember Cooper, City Attorney and City Manager completed negotiating the terms and conditions of the Purchase and Sale Agreement and Escrow Instructions, including all exhibits thereto ("PSA"), and

WHEREAS, the County is willing to sell the Property to the City at a discounted price of Two Million Dollars ($2,000,000), subject to the County retaining certain reversionary rights to the Property should the City in the future wish to sell or lease the Property on a long-term basis (i.e., in excess of 25 years) or wish to change the historical use and zoning of the Property; and

WHEREAS, the PSA also includes the right of the County to use the Property for emergency response purposes, and the right of the City to use portions of the Retained Land for access and storage purposes; and

WHEREAS, within five (5) business days of the execution of the PSA by the City and the County, the City is required to post a Twenty Thousand Dollar ($20,000) 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) day due diligence period to undertake inspection and review the Property and improvements, including undertaking a Phase I, and if necessary a Phase II, of the Property, and upon the expiration of the due diligence period, the City will have fifteen (15) calendar days to close escrow and deposit the balance of the purchase price into escrow (the "Closing Date"); 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, the City staff has reviewed the proposed purchase of the Property in accordance with the California Environmental Quality Act ("CEQA") 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, the City's acquisition of the Property will require that the City's Personnel and Staffing Full Time Personnel include a new position titled Fairgrounds Revitalization Director , with the position's salary and benefits to be included within the City's Unrepresented Executive Management document as most recently amended by the City Council on March 21, 2023, and City staff will need to initiate recruitment steps to fill this position, with the assistance of a professional recruiter; and

WHEREAS, the City's acquisition of the Property will require that the City staff undertake all necessary steps to provide basic landscaping maintenance on the Property beginning on the Closing Date, and create a plan for repairs and improvements to the Property's infrastructure necessary to re-open the RV Park; and

WHEREAS, the City staff will need to make Budget Adjustments to the Fiscal Year 2023-2024 Operating Budget to provide the funds necessary to fund the new Fairgrounds Revitalization Director position, including the recruitment costs for such position, the cost of basic landscaping maintenance on the Property and the cost for the City staff to create the infrastructure plan for re-opening of the RV Park; and

WHEREAS, funds for the Two Million Dollar ($2,000,000) purchase price are available in the current budget in Account #10-4110-4499; and

WHEREAS, the County has declared that the Property is "exempt surplus land" pursuant to Government Code section 54221(f)(1)(D) based on the facts and reasons set forth in the County's Resolution declaring the Property "exempt surplus land", adopted on January 23, 2024.

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 the Napa County Fair Grounds and Calistoga R.V. Park (1435 and 1601 N. Oak Street) in Calistoga containing approximately +/- 70.6 acres, for the purchase price of Two Million Dollars ($2,000,000) (the "Purchase Price").

3. The City Council hereby approves and authorizes the City Manager to execute the PSA for the purchase of the Property, in substantially similar form as provided in Exhibit 1, subject to minor modifications as may be approved by the City Attorney.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to undertake the following actions:

1. Complete all necessary due diligence matters on the Property, including conducting a Phase I, and if necessary, a Phase II environmental assessment;

2. Modify the City's Personnel and Staffing Full Time Personnel to include a new position titled Fairgrounds Revitalization Director, with the position's salary and benefits to be included within the City's Unrepresented Executive Management document as most recently amended by the City Council on March 21, 2023, draft a detailed job description, and initiate recruitment steps to fill this position, with the assistance of a professional recruiter;

3. Undertake all necessary steps to provide basic landscaping maintenance on the Property beginning on the Closing Date;

4. Develop a plan for repairs and improvements to the Property's infrastructure necessary to re-open the RV Park;

5. Make all necessary budget adjustments to the Fiscal Year 2023-2024 Operating Budget to provide the funds necessary to fund the new Fairgrounds Revitalization Director position, including the recruitment costs for such position, the cost of basic landscaping maintenance for the Property and the cost to create the infrastructure plan for re-opening of the RV Park;

6. Deposit Twenty Thousand Dollars ($20,000.00) 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;

7. Execute a Certificate of Acceptance accepting the Grant Deed on behalf of the City of Calistoga, in a form approved by the City Attorney, conveying fee title to the Property after the satisfactory close of the due diligence period and pursuant to the terms of the PSA;

8. Take all other actions and 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; and

9. Find 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.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Calistoga at a regular meeting thereof held this 6th day of February 2024, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Don Williams, Mayor

ATTEST:

_____
Yudiana Galvan, City Clerk

EXHIBIT "1"

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

EXHIBIT “1”

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

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 _____, 2024, by and between NAPA COUNTY, a political subdivision of the State of California (hereinafter referred to as "**Seller**"), 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

A. Seller is the owner of approximately +/- 70.6-acres of real property as well as the buildings and other improvements located thereon 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 shown and described on **Exhibit A** to this Agreement (collectively, the **"Fairgrounds**").

B. Seller wishes to sell to Buyer (i) the land, building, and other improvements consisting of the entirety of the Fairgrounds (except for and excluding approximately 1.24 acres of the parcel designated as a portion of APN 011-014-055 (the "**Retained Land**"), which Retained Land includes the +/- .57 acres of land and improvements currently being leased to the Napa County Office of Education ["**NCOE**"] (with a street address of 1407 N. Oak Street, Calistoga, CA 94515) (the "**NCOE Leased Premises**"), certain land located to the west of the NCOE Leased Premises and improved with a building used for maintenance and storage purposes and related improvements (the "**Adjacent Storage Property**"), as well as the portion of the Fairgrounds currently encumbered by that Access and Utility Easement Agreement, Napa County Agreement 8575, entered into by and between Seller, as grantor, and NCOE, as grantee, with an effective date of January 1, 2019, and recorded in the Official Records of Napa County on December 7, 2018 as Document No. 2018-0023386) (the "**Access Easement Area**")) and (ii) any and all easement rights and appurtenances thereto (the "**Property**"). The approximate location of the Retained Land is depicted on **Exhibit A-1** hereto. The exact boundaries and acreage of the Retained Land will be determined as set forth below.

C. Previously, Seller contracted with the Napa County Fair Association for over eighty (80) years to operate and maintain that portion of the Property commonly known as the "Napa County Fairgrounds"; which contract was terminated before the Effective Date of this Agreement. Since such termination, Seller and Buyer have discussed governance of the Property as well as Buyer's desire to acquire the Property to preserve and utilize it for the greatest benefit of the residents of the City of Calistoga and the County of Napa. Seller and Buyer also entered into an agreement to sell the Property to Buyer, which contract terminated by its own terms before any of the Property was conveyed to Buyer.

D. 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.

E. Seller through its Board of Supervisors desires to declare the Property as no longer required for County use, designate it as surplus, and sell the Property to Buyer, and Buyer wishes to purchase the Property, each on the terms and conditions set forth below. With respect thereto, Buyer agrees and acknowledges that Seller is selling the Property to Buyer at a substantial discount below its fair market value in order to have Buyer own and operate the Property for public purposes consistent with historical uses, as defined herein, of the Fairgrounds for the benefit of the community.

F. Seller has given notice of its intended action to convey the Property to Buyer at least one week in advance of approving this Agreement pursuant to California Government Code Sections 25365 (c) and 6061.

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.

2. **PROPERTY TO BE PURCHASED.** An exact legal description of the Property and the Retained Land will be agreed upon by the Parties and insured by the Title Company (as defined below) at Closing as hereinafter described. Within thirty (30) days after the Effective Date, Seller shall provide Buyer with the proposed final legal descriptions of the Property and the Retained Land for Buyer's review and approval, which shall be consistent with the description of the Property and Retained Land as originally set forth in this Agreement. (If such does not occur within said 30-day period, then the Due Diligence Period shall be extended one day for each day past the thirty (30) days when the proposed, applicable final legal description is due on a day for day basis until the proposed final legal descriptions of the Property and Retained Land are delivered to Buyer.) During the Due Diligence Period (as defined below), Seller and Buyer shall attempt in good faith to agree on the final legal description of the Property and the Retained Land. If such occurs, then the Parties shall promptly enter into an amendment to this Agreement that shall include as exhibits thereto the agreed upon legal descriptions for the Property and the Retained Land. If no such agreement is reached but Buyer does not terminate this Agreement before the expiration of the Due Diligence Period as specified in Paragraph 11, then the final legal descriptions of the Property and the Retained Land shall be deemed to be the last respective descriptions of each provided to Buyer by Seller before the Due Diligence Period expired, and Seller and Buyer shall promptly document the same in an amendment to this Agreement.

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 total sum of Two Million Dollars ($2,000,000) all cash to Seller

(the "**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 Twenty Thousand Dollars ($20,000.00) ("**Deposit**") within five (5) 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, acting through Laura Blessing [Phone No.: (707) 346-6948 and Email: lblessingplacertitle.com] and whom the Parties agree will serve as escrow holder for the Property's purchase (the "**Escrow Holder**") as specified more fully in Paragraph 8. The Deposit shall be refundable to Buyer during the Due Diligence Period. If Buyer elects to proceed with the transaction at the expiration of the Due Diligence Period, the Deposit shall then be non-refundable to Buyer except in the event of a Seller default that results in a termination of this Agreement or otherwise provided in Paragraphs 19 [damage due to destruction, damage or loss of the Property], or 20.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, Buyer shall deliver the Deposit to the Escrow Holder as specified above. 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 26.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 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 40. 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 (as defined on Paragraph 12); 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 B** (the "**Grant Deed**"), which shall convey from Seller to Buyer fee title to the Property subject only to the Permitted Exceptions (as defined below). In addition, prior to the Expected Closing Date, Seller shall execute and submit to the Escrow Holder (1) 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, and (2) an easement agreement between Seller, as grantor, and Buyer, as grantee, whereby Buyer shall have the non-exclusive use of the Adjacent Storage Property and the Access Easement Area for Buyer's use, at no cost, pursuant to an easement agreement in the form attached hereto as **Exhibit I** ("**Adjacent Storage Property and Access Road Easement**").

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 C** and made a part hereof. This Agreement shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the purchase and sale through the escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by both Parties. Buyer and Seller may execute and deliver such supplemental escrow instructions and closing documents consistent with this Agreement as they may deem necessary or desirable ("**Supplemental Instructions**"). The Supplemental Instructions shall not modify or amend the provisions of this Agreement unless otherwise set forth in a separate written document signed by duly authorized representatives of both Buyer and Seller, including each Party's respective attorneys. In the event that there is any conflict between the provisions of this Agreement and the provisions of any Supplemental Instructions, the provisions of this Agreement shall prevail and control as to the Parties and the Escrow Holder.

9. **DUE DILIGENCE PERIOD; TITLE REVIEW; SELLER'S CONTINGENCY.**

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 or invasive testing on the Property or of any buildings or other structures which is part thereof, without Seller's consent as to the scope of such testing, which consent may be withheld or granted in Seller's sole, but good faith discretion. Additionally, Buyer may review the Land Tenure Agreement (the "**LTA**") between the State of California and Seller and the Recycled Water Use Agreement between the City and Fairgrounds Association for continued applicability as well as all other Seller's 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 an ALTA survey obtained by Buyer (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) ninety (90) 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 Title Inspection 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.c or Paragraph 9.d below shall have the same effect as termination pursuant to Paragraph 9.a, Paragraph 9.b 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 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.c 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.c, 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, (iii) any Exceptions caused by Buyer or any employee, agent, or contractor thereof; and/or (iv) any and all instruments required or stated in this Agreement to be recorded at Closing.

e. This Agreement is contingent on Seller receiving confirmation satisfactory to Seller in its sole but good faith discretion from the California Department of Housing and Community Development ("**HCD**") within thirty (30) days after the Effective Date that the conveyance of the Property and/or right to repurchase the Property pursuant to Paragraph 14 are not subject to the California Surplus Land Act, California Governmental Code Section 54220 et seq. (the "**SLA**"). If Seller does not receive such confirmation within the above-referenced 30-day period, then Seller may terminate this Agreement by providing notice thereof to Buyer within five (5) days after the expiration of the 30-day period. Any such termination shall have the same effect as a termination of this Agreement pursuant to Paragraph 11. Subject to the above, to the extent applicable, Seller shall comply with the SLA with respect to the conveyance of the Property to Buyer.

10. <u>SELLER DOCUMENTS.</u> Prior to the Effective Date, in connection with the previous Purchase and Sale Agreement dated November 3, 2022 between the Parties for the purchase and sale of the Fairgrounds Property and/or this Agreement, Seller has provided Buyer copies of all material documents in Seller's possession or control concerning the Property and listed on **Exhibit F** to this Agreement ("**Seller's Documents**"). Seller's Documents shall also include any other documents provided to Buyer by Seller concerning the Property no later than thirty (30) days before the expiration of the Due Diligence Period. Except as follows in the immediately following sentence, all of Seller's Documents are being, or have been, 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 copy of the LTA provided to Buyer is a true and complete copy thereof. With respect to events occurring after the Effective Date, but before the Closing, nothing set forth above is intended to alter or modify Seller's common law duty to disclose to Buyer any facts actually known to Seller, which would materially affect the value and desirability of the Property and which facts are to Seller's knowledge not known to, or within the reach of the diligent attention and observation of Buyer.

11. <u>TIME FOR BUYER TO WAIVE CONTINGENCIES TO CLOSE OF ESCROW.</u> 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 the contingencies set forth in Paragraphs 9.b. and 9.c., and in each case proceed to the 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, 9.b, and 9.c, 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 5:00 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, 9.b. AND 9.c.

Unless the Parties otherwise agree in writing, and except as provided in Paragraph 9.d, Paragraph 20, below [Termination of Agreement Due to Destruction, Damage or Loss of the Property], and/or Paragraph 21.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 periods 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 fifteen (15) calendar days following the expiration of the Due Diligence Period, or earlier waiver by Buyer of said contingency (the "**Expected Closing Date**"). Subject to satisfaction of the contingencies and obligations set forth in this Agreement as set forth or summarized in Paragraph 21.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 Memorandum and Emergency Use Easement (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 21.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, and Escrow Holder, in writing that, unless the Closing occurs within five (5) business days following said notice, the escrow for this Agreement shall be deemed terminated without further notice or instructions.

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.b, 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.b. 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. Minimum Limits Not Precluding Additional Coverage. No minimum limits of coverage set forth above shall serve to preclude the application of any coverage in excess of the

same, and insurance provided by Buyer shall be deemed to be primary and non-contributory with any insurance or self-insurance programs maintained by Seller.

f. Deductibles/Retentions. Any deductibles or self-insured retentions shall be disclosed to Seller's Risk Manager.

g. 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. REPURCHASE RIGHT AND RIGHT OF FIRST REFUSAL.

a. Repurchase Right. Buyer agrees that Seller possesses and hereby grants Seller the right and option to repurchase the Property, or applicable portions thereof, from Seller for a period of ninety-nine (99) years or as otherwise provided in Paragraph 14.c, for the Adjusted Price (as defined below) on and subject to the terms and conditions set forth below (the "**Repurchase Option**"):

i. Right to Exercise the Repurchase Option. Seller may exercise its Repurchase Option if the Property, or any portion thereof, is subject to a Proposed Rezoning (as defined below) except as follows: If Buyer (or any other applicable governmental authority or body) finally denies (i.e. the denial is not subject to any right appeal or legal challenge) the Proposed Rezoning before the Repurchase Closing occurs, then the Repurchase Option for the specific Proposed Rezoning whether or not previously exercised by Seller shall become null and void (but not Seller's right to exercise its Repurchase Option for other Proposed Rezonings). Unless Seller agrees in its sole and absolute discretion otherwise in writing, Buyer shall not hold a vote on or otherwise approve of any Proposed Rezoning until the time for Seller to deliver Seller's Election Notice has expired.

ii. Exercise of Repurchase Option.

1. Before any Proposed Rezoning of all or part of the Property occurs, Buyer shall send Seller a written notice in compliance with the notice provisions of this Agreement specifying the Proposed Rezoning and what parts of the Property would be affected thereby (the "**Option Property**"), which notice shall also include the reasons why Buyer wishes to permit or consider the Proposed Rezoning and be accompanied by a reconciled statement (the "**UCI Value Statement**") certified as being accurate by Buyer's chief financial officer or an outside auditor of the monetary value of all unamortized capital improvements (amortized in accordance with IRS guidelines), if any, made by Buyer (through the use of the Buyer's general funds) on the Option Property ("**Unamortized Capital**

Improvements Value") along with reasonable supporting documentation (the "**Proposed Change in Use Notice**"). Seller shall have until the later of (x) ninety (90) days after its receipt of the Proposed Change in Use Notice or (y), if Seller has agreed to permit such a vote on or approval to occur pursuant to subparagraph (i) above, thirty (30) days after the Proposed Rezoning has been finally approved to elect to exercise the Repurchase Option for the Option Property by providing notice of Seller's election to Buyer in accordance with the notice provisions of this Agreement ("**Seller's Election Notice**"). Buyer shall, however, have no obligation to convey the Option Property unless Seller pays the Adjusted Price (as defined below) to Buyer as specified in this Paragraph 14a. No more than once annually, Buyer shall provide Seller with an annual list of capital improvements, if any, made by the Buyer to the Property.

2. Notwithstanding the above, if less than the entirety of the Property is subject to a Proposed Rezoning and such portion of the Property is not a separate legal parcel or parcels in compliance with the California Subdivision Map Act (Government Code Section 66410 et seq. (the "**Map Act**"), then Seller and Buyer shall coordinate to process a lot line adjustment or parcel map creating a separate legal parcel for the portion of the Property subject to the Proposed Rezoning ("**Rezoning Parcel**"). Alternatively, Buyer may determine a parcel map to create the Rezoning Parcel may be waived or that the conveyance of the Rezoning Parcel is exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2). If a Rezoning Parcel is created, whether by map, lot line adjustment, waiver conveyance or exemption, Seller shall be entitled to repurchase the Rezoning Parcel but only for an Adjusted Price calculated on said basis. If (i) the application to create, or waive a map for creation of a Rezoning Parcel is finally denied by Buyer (or other applicable governmental authority or body) (i.e. beyond any applicable appeal or legal challenge period) and (ii) Buyer reasonably determines that the conveyance of the Rezoning Parcel (or what would have been the Rezoning Parcel had the application been approved) would not be exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2) or any successor or other statute or law, then Seller shall be entitled to repurchase the entirety of the legal parcel or parcels on which the land subject to the Proposed Rezoning is located (and which land will be deemed to be the Option Property), but only for an Adjusted Price calculated on said basis.

iii. Escrow and Closing of the Repurchase. If Seller timely exercises the Repurchase Option, then an escrow shall be opened promptly with Escrow Holder (or any national title company selected by Seller if Escrow Holder is no longer in business) for purposes of facilitating the reconveyance of the Option Property to Seller in accordance with the terms of this Paragraph 14a. In such an event, the closing of the repurchase transaction (the "**Repurchase Closing**") shall take place

on the ninetieth (90th) day following the delivery of Seller's Election Notice (the "**Repurchase Closing Date**") or such earlier date as Seller may elect subject to the following conditions and obligations being satisfied (but which date shall be subject to the extension to the extent that the Option Property does not initially entirely consist of one or more legal parcels to allow the process specified in subparagraph (ii) above to be completed). Title to the Option Property shall be conveyed to Seller by a grant deed substantially in the form of **Exhibit B** to this Agreement. Title to the Option Property shall be subject to all matters of record except Buyer shall cause the Option Property to be conveyed free and clear of all Monetary Liens (the "**Excluded Exceptions**"). As a condition of the Repurchase Closing, Seller shall be entitled to receive a CLTA owner's title policy (or other similar owner's title policy) in the amount of the Adjusted Price showing title vested in Seller with no Excluded Exceptions shown thereon. The Repurchase Closing shall take place on the Repurchase Closing Date at the offices of the applicable escrow holder or at such other location as may be agreed to by Buyer and Seller. All closing costs for the Repurchase Closing shall be allocated between Buyer and Seller per county custom as reasonably determined by the escrow holder for the transaction. Buyer and Seller shall sign and, if applicable, acknowledge such other documents and instruments as may be reasonably required to cause the Option Property to be conveyed to Seller pursuant to this Paragraph 14(a).

iv. No Extinguishment or Waiver**.** With respect to any future Proposed Rezoning not covered in a Proposed Change in Use Notice delivered to Seller, Seller's Repurchase Option shall not be deemed waived or extinguished if Seller elects not to exercise the Repurchase Option for the Proposed Rezoning actually specified in the applicable Proposed Change in Use Notice. Seller's repurchase right shall also survive any failure by Buyer to timely provide Seller with a Proposed Change in Use Notice as required under this Paragraph 14a.

v. Declaration of Covenants and Memorandum. At Closing, the Parties shall have duly executed and acknowledged a declaration of covenants and restrictions and memorandum of option and right of first refusal to purchase (the "**Memorandum**") and record the same in the official records of Seller to provide the public with notice of the Repurchase Option and the ROFR referenced below. The Memorandum shall be substantially in the form attached hereto as **Exhibit D**. The Grant Deed for the sale of the Property to Buyer shall also reference that the Property is being conveyed subject to the Repurchase Option and ROFR.

b. Right of First Refusal.

i. Buyer agrees that Seller possesses and hereby grants Seller a right of first refusal for a term of ninety-nine (99) years, or as otherwise provided in Paragraph 14c, to repurchase the Property, or any part thereof, (the "**ROFR**") for the Adjusted Price before, with respect to such Property, or any part thereof, (the "**ROFR Property**") Buyer either (1) sells or conveys fee title to the ROFR Property or

(2) enters into a Long Term Lease (as defined below) to any third-party entity for the ROFR Property. No such Long Term Lease or agreement to sell or convey the Property shall be effective until and unless Seller fails to timely provide a Seller's ROFR Exercise Notice as specified below, and in no event shall any such Long Term Lease or agreement to sell or convey the Property be binding on Seller if Seller's ROFR Exercise Notice is timely delivered and Seller proceeds to repurchase the Property, or the applicable portion thereof, pursuant to said notice.

ii. Prior to offering the ROFR Property for any such sale, conveyance, or Long Term Lease or accepting an unsolicited offer for the same, Buyer shall send Seller a written notice in compliance with the notice provisions of this Agreement including the proposed purchase agreement or lease, or specifying the proposed terms of the sale or lease, as applicable, along with a UCI Value Statement (the "**ROFR Notice**") for the ROFR Property certified, as being accurate by Buyer's chief financial officer or an outside auditor, and with supporting documents as specified in Paragraph 14a. Seller shall have ninety (90) days after its receipt of the ROFR Notice to exercise its ROFR by providing notice thereof to Buyer ("**Seller's ROFR Exercise Notice**"), which notice shall comply with the notice provisions of this Agreement. The ROFR Property shall be limited to the portion of the Property that is the subject of the proposed sale, conveyance or Long Term Lease.

iii. Notwithstanding the above, if less than the entirety of the Property is proposed to be subject to a Long Term Lease and such portion of the Property is not a separate legal parcel or parcels in compliance with the Map Act (as defined above) then Seller and Buyer shall coordinate to process a lot line adjustment or parcel map creating a separate legal parcel or parcels for the land included within the Long Term Lease and the ROFR Property shall consist of said legal parcel or parcels once such process is completed. Alternatively, Buyer may determine a parcel map to create the ROFR Property may be waived or that the conveyance of the ROFR Property is exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2). If the ROFR Property is created, whether by map, lot line adjustment, waiver, conveyance or exemption, Seller shall be entitled to purchase the ROFR Property but only for an Adjusted Price calculated on said basis. If (x) the application to create or waive a map to cause the ROFR Property to consist entirely of one or more legal parcels in compliance with the Map Act (as defined above) is finally denied by Buyer (or any other applicable governmental authority or body) and (y) Buyer reasonably determines that the conveyance of the ROFR Property is not exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2) or any successor or other statute or law, then Buyer shall not proceed with the Long Term Lease.

iv. If the ROFR is timely exercised, subject to the payment of the Adjusted Price, the ROFR Property shall be conveyed to Seller by a grant deed through an escrow, free and clear of Monetary Liens, all as specified in Paragraph 14(a) on the later of the closing date specified in the ROFR Notice or ninety (90) days after the

delivery of Seller's ROFR Exercise Notice (but which date shall be subject to the extension to the extent that the ROFR Property does not initially entirely consist of one or more legal parcels to allow the process specified in subparagraph (iii) above to be completed). Closing costs shall be allocated as specified in the ROFR Notice, or if not so specified, as stated in Paragraph 14(a).

v. For the avoidance of doubt, if the ROFR is timely exercised, the purchase price paid for the ROFR Property shall be the Adjusted Price and not any purchase price specified in any applicable purchase or sale agreement or term sheet triggering the ROFR.

c. Term of the Repurchase Option and ROFR. The term of the Repurchase Option and ROFR shall commence as of the Closing of the sale of the Property to Buyer and, unless otherwise agreed by Buyer and Seller in a recorded instrument, shall expire on the earlier of (x) 5:00 p.m. Pacific Time ninety-nine (99) years following said Closing or (y) the maximum period allowed by applicable law. The Repurchase Option and/or ROFR shall automatically expire and be of no effect on the expiration of the term specified in this Paragraph; provided, however, that Seller shall execute such instruments (e.g., a quitclaim deed) as may be reasonably requested by Buyer to confirm the termination of the Repurchase Option and/or ROFR, as applicable, after such occurs.

d. Defined Terms. Defined Terms. The following terms shall have the meanings ascribed to them below for purposes of this Paragraph 14.

i. "**Adjusted Price**" means the Purchase Price paid by Buyer at Closing increased by the change in the Index from the Closing of the sale of the Property to Buyer, plus the Unamortized Capital Improvements Value (as defined in Paragraph 14(a)(ii)), which Adjusted Price shall be prorated on a land to land basis (i.e. the ratio of the square footage of the land within the Option Property or ROFR Property, as the case may be, to the square footage of all of the land within the Property) if the Option Property or ROFR Property, as applicable, consists of less than all of the Property.

ii. "**Index**" means the Consumer Price Index for All Urban Consumers-All Items, published monthly by the United States Department of Labor (base year 1982-84=100), or any successor index thereto as hereinafter provided. If the base year of the Index is changed, then all calculations pursuant to this Paragraph 14 that require the use of the Index shall be made by using the appropriate conversion factor published by the Department of Labor (or successor agency) to correlate to the base year of the Index herein specified. If no such conversion factor is published, then the Parties shall in good faith make the necessary calculation to achieve such conversion. Should the Department of Labor discontinue the publication of the Index, then the Parties will adopt a substitute index or procedure, which reasonably reflects and monitors consumer prices.

iii. "**Historical Use**" means each prior use of the Property specified on **Exhibit D-1** to this Agreement; provided, however, in no event shall a Historical Use include a proposed project involving large scale commercial or residential development for a use or uses listed on **Exhibit D-1** or otherwise.

iv. "**Long Term Lease**" means any lease, license, occupancy, concession, or similar agreement with a term (including options to extend) in excess of twenty-five (25) years.

v. "**Proposed Rezoning**" means any proposed change in the zoning for the Property or any part thereof, to allow a use that is not a Historical Use of the Property and which such new use would not be allowed under the zoning for the Property as set forth in Calistoga Municipal Code Section 17.23.020 (A)(1), (2), (3) or (4) as of the Effective Date as stated in **Exhibit D-2** to this Agreement.

e. Right to Enforce. Buyer stipulates and agrees that Seller may enforce its Repurchase Option and ROFR through specific performance and/or other equitably relief, including through a mandatory or prohibitory injunction, and that the Property, and any part thereof, are of a special and unique character which gives it a peculiar value, and that Seller cannot be reasonably or adequately compensated in damages in an action at law in the event Buyer breaches its obligation to sell the Property, or any part thereof, to Seller pursuant to either Seller's Repurchase Option or ROFR.

f. Buyer Compliance With Surplus Land Act. If Seller seeks to exercise its Repurchase Option and/or ROFR pursuant this Paragraph 14, Buyer shall take all actions necessary to designate the Option Property, or ROFR Property, as applicable, "exempt surplus property" under the SLA (as defined in Paragraph 9(e)) to be transferred back to Seller for its use as a local agency to the full extent that such is legally required to allow such conveyance or transfer to occur. This obligation includes but is not limited to scheduling all public meetings, making all necessary findings, and providing all necessary documentation to the HCD to lawfully transfer the Option Property and/or ROFR Property, as applicable, to Seller under the SLA.

g. Survival. This Paragraph 14 including Seller's Repurchase Option and ROFR shall survive the Closing.

15. **EMERGENCY USE EASEMENT**. Buyer covenants and agrees that after Closing Seller shall have a perpetual right to use all or part of the Property for emergency response purposes at no cost to Seller upon the declaration of any federal, state or local disaster. At Closing, Buyer will grant Seller a perpetual right and easement for Seller and other governmental entities conducting the emergency response in partnership with the Seller to use along with their respective permittees all or part of the Property for emergency response purposes as specified above in the form of **Exhibit D-3** to this Agreement (the "**Emergency Use Easement**"), which shall be recorded against the Property as specified in Paragraph 21(d). To the extent that any governmental entities and/or their respective permittees conducting the emergency response in partnership with the Seller pay any rent or other fees for use of the Property for emergency

purposes, all such rent and/or fees shall be paid to the Buyer, not the Seller. The Seller may not assign its rights under the Emergency Use Easement to any other party or entity. The provisions of this Paragraph 15 shall survive the Closing.

16. 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.

17. 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 EXCEPT AS EXPRESSLY STATED HEREIN.

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 the following personal property items or equipment belonging to the Napa County Fair Association, Mt. St. Helena Golf Club and Calistoga Garden Club (each of whom has a shed and items located therein), Calistoga School District (a score board), HMC Promotions (container, a ticket booth, traffic delineators, fence poles, and concession stand sign), all structures, improvements, furniture, fixtures, and equipment located on the Property, including all personal property and equipment located within the structures, will remain on the Property at Close of Escrow and be deemed part of the Property. Buyer acknowledges and agrees that the foregoing third-parties, and not other parties, may remove the foregoing personal property from the Property prior to Closing. At no material cost, prior to Closing, Seller will use commercially reasonable efforts to cause such third-parties to remove such items and equipment from the Property and will also provide each such third-parties a notice that if they do not remove their personal property before Closing that such property will be deemed abandoned pursuant to applicable law. After Closing, Buyer acknowledges and agrees that Seller will have no responsibility or liability to Buyer for any such personal property items and/or equipment owned by such third-parties whether or not left on or removed from the Property prior to Closing.

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. 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, or otherwise be responsible for the same in any manner. 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 any agent or representative thereof, 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. 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.

d. Additionally, except as otherwise expressly provided for in this Agreement, Seller has not made, does not make and specifically negates and disclaims, any representations, warranties, promises, covenants, agreements, obligations, or guaranties of any kind or character whatsoever whether express or implied, oral or written, past present or future concerning or with respect to: (i) the value of the Property; (ii) the revenues to be derived from the Property; (iii) the manner, quality, state of repair, or lack of repair, of the Property; (iv) the nature quality or condition of the Property including without limitation, the water, soil and geology; (v) the compliance of or by the Property or its operation with any laws of any applicable governmental authority or body; (vi) the manner, condition, or quality of the construction or materials, if any, incorporated into the Property; (vii) compliance with any environmental protection, pollution or land use laws, including but not limited to, the Endangered Species Act, Title III of the Americans With Disabilities Act of 1990, and any other environmental laws or regulations, or other law governing access by disabled persons; (viii) the presence or absence of Hazardous Materials at, on, under, or adjacent to the Property; (ix) the conformity of the Property to past, current or future applicable zoning or building or code requirements; (x) the deficiency of any under shoring; (xi) the adequacy of any drainage; (xii) the fact that all

or a portion of the Property may be located on or near an earthquake fault line or located in an Alquist-Priolo special study zone; or (xiii) with respect to any other matter concerning the Property, discussed or disclosed in any Seller's Documents, in any public records of any governmental agency or entity or utility company, or in any other documents available to Buyer.

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 subparagraph and discussed its import with legal counsel and that the provisions of this subparagraph are a material part of this Agreement. The provisions of this Paragraph 17 shall survive Closing. For the avoidance of doubt, the releases provided in this Paragraph 17 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. 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.

7. 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 E** (the "**Existing Leases**") and (b) there are no maintenance, service or other agreements affecting or relating to the Property that will survive Closing. Seller shall provide Buyer with copies of each of the Existing Leases as part of Seller's Documents.

8. 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.

9. Seller has disclosed to Buyer that a certain claim has been made by David Abreu, individually, Abreu Vineyards, Inc. and David Abreu Vineyard Management, Inc. (individually and collectively "**Abreu**"), as set forth in the May 14, 2019 letter from Abreu's attorney and addressed to the Napa County Fair Association, Inc., a copy of which is attached hereto as **Exhibit H**, regarding certain improvements located on the Property (the "**Abreu Claim**"). Specifically, Abreu alleges as part of the Abreu Claim that Abreu is the owner of certain improvements located on the portion of the Property improved with a racetrack (the "**Racetrack**") and that he is entitled to remove the same from the Property (the "**Disputed Items**"). Seller has received additional correspondence from Abreu after the May 14, 2019 letter concerning the Disputed Items. Seller has provided Buyer copies of all written communications regarding the Abreu Claim in Seller's possession as of the Effective Date.

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.

18. **Seller's Environmental Disclosure**. Seller makes the following disclosure in connection with the contemplated sale of the Property to Buyer. The Property has been owned by Seller since approximately 1939. Prior to that date, Seller is informed that the Property was used as a dairy farm. During Seller's ownership, pesticides were used and stored on the Property. Additionally, at various times, diesel, gasoline (including gasoline containing lead), and liquid petroleum have been stored in the maintenance shop and yard, and/or in connection with the racetrack that was operated for decades on the Property. Antifreeze and potentially asbestos from brake pads were used or found on the Property, and automobile or vehicle maintenance and/or repair activities may have occurred on the Property. Waste oil, propane, diesel, and gasoline have been stored in tanks on the Property. Some of these tanks remain on the Property, although such tanks are not currently in service. In the 1950s, the fairgrounds portion of the Property was used by Civil Defense to store equipment and medical supplies that ultimately crystalized and became explosive. Seller's sheriff's department bomb unit, however, may have destroyed all such supplies. Other portions of the Property were previously used for an RV Park and golf course. Because of the prior uses of the Property, it is potentially possible that petroleum, petroleum related compounds, pesticides, and other Hazardous Materials have been released on or under the Property. Such past uses of the Property may affect the Buyer or subsequent owner's ability or rights to develop the Property. Among other things, oil-stained soil and/or pesticide residue are

sometimes found on properties that have been in such use; and Seller does not have the requisite information to determine the exact nature or environmental condition of the Property nor the exact effect, if any, that such past uses may have on the developability or other ability to use all or portions of the Property in the future. Seller makes no representations or warranties with respect to the present environmental condition of the Property, and/or the existence or lack of existence of Hazardous Materials located on or under the Property.

19. NO RECORDATION. Neither this Agreement nor any memorandum (excluding the Memorandum) thereof shall be recorded.

20. 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 20, 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.

21. 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 Memorandum (as defined in Paragraph 14) duly acknowledged and executed by Seller;

iii. an original of the Emergency Use Easement (as defined in Paragraph 15) duly acknowledged and executed by Seller;

iv. an original of the Adjacent Storage Property and Access Road Easement (as defined in Paragraph 7) duly acknowledged and executed by Seller;

v. an affidavit certifying that Seller is not a foreign entity under the Foreign Investment in Real Property Act as specified in Paragraph 7;

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

vii. a commercially reasonable owner's affidavit as may be requested by Title Company;

viii. an executed Closing statement reasonably acceptable to Seller; and

ix. 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 Memorandum (as defined in Paragraph 14) duly acknowledged and executed by Seller;

iii. an original of the Emergency Use Easement duly acknowledged and executed by Buyer;

iv. an original of the Adjacent Storage Property and Access Road Easement, duly acknowledged and executed by Buyer;

v. to the extent reasonably required by Escrow Holder, proof of Buyer's authority and authorization to enter into this Agreement;

vi. an executed closing statement reasonably acceptable to Buyer; 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.

c. Closing Conditions.

i. Conditions to Buyer's Obligations: Buyer will have no obligation to purchase the Property and consummate the Closing unless each of the following conditions precedent has been satisfied or waived by Buyer as of the Expected Closing Date:

1. Title Company shall issue or be unconditionally and irrevocably committed to issue to Buyer the Title Policy (as defined below);

2. Seller 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, with respect to Paragraph 14(a) [regarding the Repurchase Option and ROFR] only Seller or any of Seller'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; and

6. Buyer shall have received from Seller an estoppel certificate (the "**Tenant Estoppel Certificate**") from each tenant under each Existing Lease (excluding the lease with the Napa County Office of Education (the "**NCOE Lease**")), if any, which in each case is substantially in the form of **Exhibit G**, 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's 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.

7. Notwithstanding the above, if Seller is unable to obtain Tenant Estoppel Certificates for each tenant under the Existing Leases (excluding the NCOE Lease), then Seller shall deliver a certificate to Buyer on or before the Expected Closing Date from Seller in the form attached hereto as **Exhibit G-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 7 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 26c and Survival Period set forth in Paragraph 17, 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 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 under this Agreement. 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 Material Adverse Information not set forth in the Landlord Estoppel Certificate.

If any of the conditions precedent in favor of Buyer set forth in Paragraph 21.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 11. 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 21.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 21.c.i., then Buyer shall be entitled to exercise its rights pursuant to the provisions of Paragraph 26.c.

ii. Conditions to Seller's Obligations: Seller will have no obligation to sell the Property and consummate the Closing unless each of the following conditions precedent has been satisfied or waived by Seller as of the Expected Closing Date:

1. Buyer and Escrow Holder, respectively, shall have performed all of its covenants and obligations set forth in this Agreement;

2. 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; and

3. Buyer shall not have terminated this Agreement pursuant to the contingencies set forth in Paragraph 9.

If any of the conditions precedent in favor of Seller set forth in this Paragraph 21.c.ii are neither satisfied nor waived by Seller by the Expected 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 11. In the case of any such termination, (i) the escrow for this Agreement 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 21.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 21.c.ii., Seller shall be entitled to exercise its rights pursuant to the provisions of Paragraph 26.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 Napa 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 Emergency Use Easement, the Adjacent Storage Property and Access Road Easement and the Memorandum with the County Recorder of Napa 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. 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;

v. 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;

vi. prepare and deliver to both Buyer and Seller one signed copy of Escrow Holder's closing statement showing all receipts and disbursements of the funds in escrow;

vii. deliver to Buyer the FIRPTA Affidavit and the California Form 593-C (or any successor thereto);

viii. deliver any other documents and complete such other acts as required of Escrow Holder hereunder; and

ix. 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.

22. **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.

23. **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.

24. **ASSIGNMENT OF LEASE.** During the Due Diligence Period, Buyer shall review all Existing Leases. Prior to the Effective Date, Seller has provided Buyer with the Existing Leases identified in **Exhibit E**. After the Effective Date, Seller will not enter into any new leases or other occupancy agreements for any portion of the Property (each a "**New Lease**") without Buyer's written consent, which consent may be withheld or granted in Buyer's sole and absolute discretion, except as follows: Nothing set forth above shall preclude or prevent Seller from allowing the Property to be used for staging areas for emergency personnel during wildfires or similar disasters; a community resource center during public safety power shutoffs; and/or entering into any short-term leases, licenses, or renewals of Existing Leases; provided, however, each such use, lease, license or renewal shall have a term ending before the Expected Closing Date or permit Seller to terminate the same before the Expected Closing Date, which termination Seller shall cause to occur before the Expected Closing Date unless Buyer elects otherwise in its sole and absolute discretion. Buyer may request of Seller that it terminate any Existing Lease or New Lease prior to Closing that has not yet terminated, or will not otherwise terminate pursuant to its terms prior to Closing, if the terms of such Existing Lease or New Lease (if any) expressly permit Seller to so terminate it (or the tenant is on a month-to-month basis), and the Existing Lease or New Lease does not require the payment of any sum, cost or expense to so terminate it, and Seller shall terminate any such Existing Lease or New Lease once all other Closing contingencies have been waived or satisfied. At Closing, Seller shall assign, and Buyer shall assume any other Existing Leases or New Leases that are not so terminated, pursuant to commercially reasonable assignment and assumption agreements.

25. **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.

26. **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 26b 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 26.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 IN PARAGRAPH 26.a, 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 THEREFOR, 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.

27. **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.

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

29. **GOVERNING LAW; VENUE.** This Agreement shall be governed, interpreted, construed, and enforced in accordance with the laws of the State of California and, subject to Paragraph 46, any litigation brought hereunder in state court shall be brought in the Superior Court of California, County of Napa, a unified court.

30. **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.

31. **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.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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) business days after mailing by first class, registered or certified mail, postage prepaid; or (iv) if by electronic mail, on the date sent, and properly addressed as follows:

BUYER:

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

With a copy to:

City Attorney
Burke, Williams & Sorensen, LLP
1999 Harrison Street, Suite 1650
Oakland, CA 94612
ATTN: Michelle Marchetta Kenyon
Email: mkenyon@bwslaw.com

SELLER:

Napa County
County Executive Office
1195 Third Street, Suite 319
Napa, California 94559
ATTN: Ryan Alsop / County CEO
Email: ryan.alsop@countyofnapa.org

With a copy to:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
ATTN: Sheryl Bratton / County Counsel
Email: sheryl.bratton@countyofnapa.org

With an additional copy to (only until the Closing occurs):

Miller Starr Regalia
1331 N. California Blvd., Suite 600
Walnut Creek, CA 94596
Attn: Michael Di Geronimo
Email: michael.digeronimo@msrlegal.com

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.

40. 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. 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 any Existing Lease or new lease to the extent permitted by Buyer, if any, in effect at Closing 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 applicable tenant and not applied or forfeited prior to the Closing) to Buyer on the Expected Closing Date. All delinquent fixed, base or

minimum rent, reimbursable tenant expenses and any and all additional rent, sums or expenses owed by any tenant under any Existing Lease or New Lease ("**Delinquent Rent**") shall not be prorated on the Expected Closing Date. Rather, with respect to any such Existing Lease or New 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 Expected 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 Expected Closing Date, Seller shall retain all of the rights relating thereto.

41. **REAL ESTATE BROKERS.** The Parties acknowledge and agree that there are no 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, and that no broker or other person, firm or entity 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. Seller 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, by reason of any dealings or act of the indemnifying Party.

42. **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 (including by DocuSign) 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.

43. **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.

44. **AUTHORITY TO SIGN; CERTAIN RIGHTS DELEGATED TO SELLER'S CHIEF EXECUTIVE OFFICER.** 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. Notwithstanding anything in this Agreement to the contrary, Seller's chief executive officer (Ryan Alsop) is hereby authorized on behalf of Seller to agree in an writing signed by him to extend the Due Diligence Period, Title Inspection Period, the Closing Date, and/or other similar dates specified in this Agreement (as originally signed or amended) as well as to sign any amendments contemplated by this Agreement as of the Effective Date.

45. **FORCE MAJEURE**. Neither Party hereunder shall be deemed to be in default under this Agreement, and all performance and other dates specified in this Agreement shall be extended where a delay in the Party's ability to perform is due to: war; insurrection; strikes and labor disputes; lockouts; riots; floods; pandemics, earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; governmental restrictions, or any other cause beyond that Party's reasonable control and without its fault or negligence (each a "**Force Majeure Delay**"). Acts or failures to act of Buyer shall not excuse performance by Buyer and acts or failures to act of Seller shall not excuse performance by Seller. Buyer's inability or failure to obtain financing or purchase funds for the purchase of the Property shall not be the basis for a Force Majeure Delay, except to the extent that the delivery of purchase funds in Buyer's possession or control was caused by one of the Force Majeure Delays enumerated above. An extension of time for any such Force Majeure Delay shall be for the period of the forced delay and shall commence to run from the time of the commencement of the cause of the delay until the cause of the delay has ceased, provided, and on the condition that the Party claiming such extension must send to the other Party written notice of such Force Majeure Delay (and the basis therefor) within ten (10) days of the commencement of the Force Majeure Delay or such Party waives its right to claim a Force

Majeure Delay hereunder.

[Signatures on next page]

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

BUYER:	**CITY OF CALISTOGA** By: _____ Name: _____ Its: _____ Date: _____, 202__
	APPROVED AS TO FORM: City Attorney: By: _____ Name: _____
SELLER:	**NAPA COUNTY**, a political subdivision of the State of California By: _____ Joelle Gallagher, Chair of the Board of Supervisors Dated: _____, 202__ APPROVED AS TO FORM: Office of County Counsel By: _____ County Counsel APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS: Dated: _____ Processed By:

	_____ Deputy Clerk of the Board ATTEST: NEHA HOSKINS 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 _____, 202_, and accepts the obligations of Escrow Holder as set forth herein.

PLACER TITLE COMPANY

By: _____
Name: _____
Title: _____

Exhibit A
Description of Fairgrounds Property

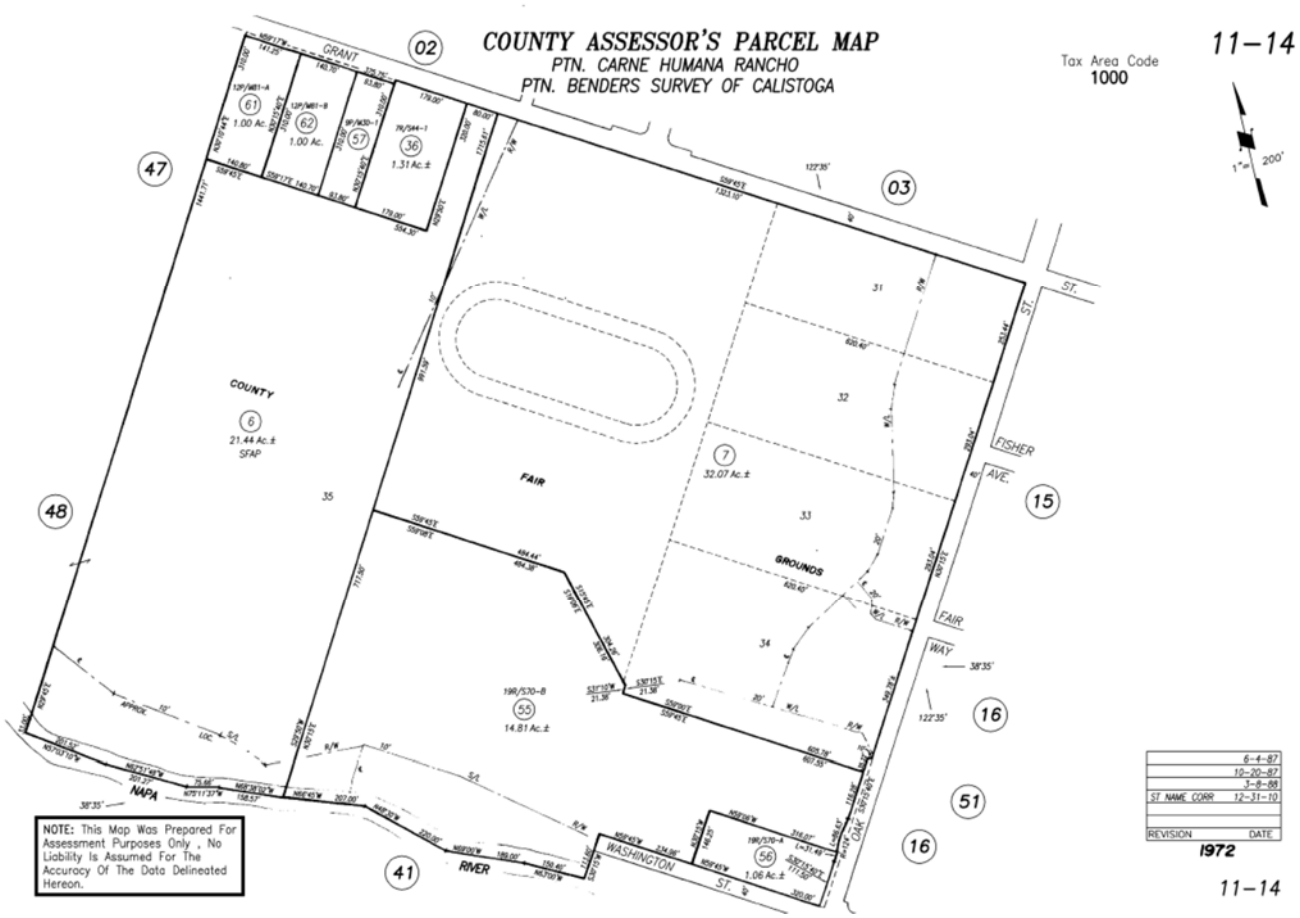


Exhibit A
[Continued]

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 comer 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 conveyed 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 A-1
Depiction of Retained Land

[Attached]

Exhibit B
Grant Deed

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: MAIL TAX STATEMENTS TO:	

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

DOCUMENTARY TRANSFER TAX IS $0. THIS TRANSFER IS EXEMPT FROM DOCUMENTARY TRANSFER TAX PURSUANT TO R&T CODE §11922.

EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE § 27383

THE PROPERTY IS LOCATED IN CALISTOGA, CALIFORNIA. APN(S): 011-140-055, 011-140-006, 011-140-007 and 011-481-022

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 (including a right of first refusal and purchase option as referenced more fully in that Declaration of Covenants and Memorandum of Option and Right of First refusal to Purchase recorded on even date herewith) and all matters that would be shown by an accurate survey of the Property.

Dated this ____ day of _____, 202__.

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*]

Exhibit C
Escrow Holder's General Provisions

1. All funds received in this escrow shall be deposited in a separate escrow fund account or accounts of Placer Title Company (for the benefit of the Parties hereto) with one or more state or national banks duly qualified to do business in the State of California, so that each such account shall be fully insured at all times by the Federal Deposit Insurance Corporation, to the maximum extent permitted by law. All disbursements shall be made by check of Placer Title Company.

2. Escrow Holder is authorized to prepare, obtain, record, and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order to be issued at Close of escrow the policy of title insurance as called for in these instructions. "Close of escrow" shall mean the date instruments are recorded, unless otherwise specified by the Parties.

3. All adjustments and prorations shall be made on the basis of a 365-day year and the actual number of days in the month in which the close of escrow occurs.

4. If applicable, Escrow Holder is instructed to assign any fire and casualty insurance policy delivered to you and to secure any endorsements required in the performance of these instructions. Escrow Holder may assume that said policy is in full force and effect and that all premiums due have been paid.

5. Escrow Holder shall have no responsibility 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 Company under the Agreement, nothing set forth in these General Provisions shall limit any liability set forth in the Title Policy(ies) provided in the Agreement.

12. For purposes of complying with Internal Revenue Code Section 6045(e), as amended effective January 1, 1991, escrow holder is hereby designated as the "person responsible for closing the transaction" and also as the "reporting person," for purposes of filing any information returns with the Internal Revenue Service concerning this transaction, as required by law.

13. Escrow Holder shall assist the Parties in obtaining a waiver of withholding from the Franchise Tax Board with respect to the transactions contemplated by the Agreement in accordance with Section 18662 of the Revenue and Taxation Code of California.

14. Escrow Holder shall assist the Parties in complying with the provisions of Internal Revenue Code Section 1445 (FIRPTA withholding).

Exhibit D
Memorandum

[Attached]

RECORDING REQUESTED AND WHEN RECORDED RETURN TO:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
Attn: Sheryl Bratton

No transfer tax is owed as no property is being conveyed or transferred as of the recordation of this instrument; the transferee or grantee is a public entity; and consideration is less than $100. (Rev. & Tax Code Sections 11911 & 11922)

Exempt from recording fees pursuant to Gov. Code Section 27383

DECLARATION OF COVENANTS AND RESTRICTIONS AND MEMORANDUM OF AGREEMENT RE REPURCHASE OPTION AND RIGHT OF FIRST REFUSAL

THIS DECLARATION OF COVENANTS AND RESTRICTIONS AND MEMORANDUM OF AGREEMENT RE REPURCHASE OPTION AND RIGHT OF FIRST REFUSAL (this "**Declaration and Memorandum**") is entered into as of this _____ day of _____, 202__ (the "**Effective Date**"), by and between COUNTY OF NAPA, a political subdivision of the State of California (the "**County**"), and CITY OF CALISTOGA, a California general law city (the "**City**"). County and City are sometimes individually referred to herein as "**Party**" and together referred to as "**Parties**".

RECITALS

A. County was the owner of approximately +/- 70.6-acres of real property as well as the buildings and other improvements located thereon in the City of Calistoga, County of Napa, commonly known as and used as the Napa County Fairgrounds (collectively, the "**Fairgrounds**").

B. On or about the Effective Date, pursuant to that Napa County Agreement No. _____, Purchase and Sale Agreement and Escrow Instructions, between County, as Seller, and City, as Buyer (the "**Purchase Agreement**"), County sold and transferred the entirety of the Fairgrounds to the City (the "**Property**"), excluding an approximately +/- 1.24 acre parcel, the ownership of which was retained by the County (the "**Retained Land**"). The Property is more fully described on **Exhibit A** to this Declaration and Memorandum, and the Retained Land is more fully described on **Exhibit B** to this Declaration and Memorandum. The approximate locations of the Property and the Retained Land are designated on **Exhibit C** hereto. The Property and the Retained Land are sometimes individually referred to herein as a "**Parcel**" and collectively as the "**Parcels**".

C. As set forth in the Purchase Agreement, County sold the Property to City at a substantial discount below its fair market value in order to have City own and operate the Property for public purposes consistent with historical uses, as defined herein, of the Fairgrounds for the benefit of the community, all of which City has agreed to do.

D. One of the purposes of this Declaration and Memorandum is to provide record notice of certain provisions of the Purchase Agreement that survived the closing thereunder.

NOW, THEREFORE, for the purposes set forth above and as otherwise set forth below, for good and valuable consideration, the Parties declare that the Parcels shall hereafter be held, used, operated,

transferred, sold, conveyed, and leased subject to the following covenants and restrictions for the entirety of the term of this Declaration and Memorandum:

AGREEMENT

1. Incorporation of Purchase Agreement. The provisions of Paragraph 14 of the Purchase Agreement are incorporated into this Declaration and Memorandum and are set forth below. To the extent that any provisions of this Declaration and Memorandum and the Purchase Agreement conflict, the provisions of the Purchase Agreement shall control; provided, however, that for the avoidance of doubt, the Parties' agreements set forth herein are separate and independent of any provisions of the Purchase Agreement, and shall be binding regardless of any such conflict.

2. Defined Terms. Any capitalized terms contained herein shall have the meaning set forth in the Purchase Agreement as referenced in Section 4 below unless otherwise specified in this Declaration and Memorandum.

3. Historical Uses. City agrees to limit the use of the Property to Historical Uses except to the extent that County consents in writing in its sole and absolute discretion to permit a Proposed Rezoning or elects not, or fails to, exercise its Repurchase Option as specified below.

4. Repurchase Right and Right of First Refusal. Paragraph 14 of the Purchase Agreement provides in pertinent as follow:

> "a. Repurchase Right. Buyer [City] agrees that Seller [County] possesses and hereby grants Seller [County] the right and option to repurchase the Property, or applicable portions thereof, from Seller [County] for a period of ninety-nine (99) years or as otherwise provided in Paragraph 14.c, for the Adjusted Price (as defined below) on and subject to the terms and conditions set forth below (the "**Repurchase Option**"):
>
> > i. Right to Exercise the Repurchase Option. Seller [County] may exercise its Repurchase Option if the Property, or any portion thereof, is subject to a Proposed Rezoning (as defined below) except as follows: If Buyer [City] (or any other applicable governmental authority or body) finally denies (i.e. the denial is not subject to any right appeal or legal challenge) the Proposed Rezoning before the Repurchase Closing occurs, then the Repurchase Option for the specific Proposed Rezoning whether or not previously exercised by Seller [County] shall become null and void (but not Seller's [County's] right to exercise its Repurchase Option for other Proposed Rezonings). Unless Seller [County] agrees in its sole and absolute discretion otherwise in writing, Buyer [City] shall not hold a vote on or otherwise approve of any Proposed Rezoning until the time for Seller [County] to deliver Seller's Election Notice has expired.
> >
> > ii. Exercise of Repurchase Option.
> >
> > 1. Before any Proposed Rezoning of all or part of the Property occurs, Buyer [City] shall send Seller [County] a written notice in compliance with the notice provisions of this Agreement specifying the Proposed Rezoning and what parts of the Property would be affected thereby (the "**Option Property**"), which notice shall also include the reasons why Buyer [City] wishes to permit or consider the Proposed Rezoning and be

accompanied by a reconciled statement (the "**UCI Value Statement**") certified as being accurate by Buyer's [City's] chief financial officer or an outside auditor of the monetary value of all unamortized capital improvements (amortized in accordance with IRS guidelines), if any, made by Buyer [City] (through the use of the Buyer's [City's] general funds) on the Option Property ("**Unamortized Capital Improvements Value**") along with reasonable supporting documentation (the "**Proposed Change in Use Notice**"). Seller [County] shall have until the later of (x) ninety (90) days after its receipt of the Proposed Change in Use Notice or (y), if Seller [County] has agreed to permit such a vote on or approval to occur pursuant to subparagraph (i) above, thirty (30) days after the Proposed Rezoning has been finally approved to elect to exercise the Repurchase Option for the Option Property by providing notice of Seller's [County's] election to Buyer [City] in accordance with the notice provisions of this Agreement ("**Seller's Election Notice**"). Buyer [City] shall, however, have no obligation to convey the Option Property unless Seller [County] pays the Adjusted Price (as defined below) to Buyer [City] as specified in this Paragraph 14a. No more than once annually, Buyer [City] shall provide Seller [County] with an annual list of capital improvements, if any, made by the Buyer [City] to the Property.

2. Notwithstanding the above, if less than the entirety of the Property is subject to a Proposed Rezoning and such portion of the Property is not a separate legal parcel or parcels in compliance with the California Subdivision Map Act (Government Code Section 66410 et seq. (the "**Map Act**"), then Seller [County] and Buyer [City] shall coordinate to process a lot line adjustment or parcel map creating a separate legal parcel for the portion of the Property subject to the Proposed Rezoning ("**Rezoning Parcel**"). Alternatively, Buyer [City] may determine a parcel map to create the Rezoning Parcel may be waived or that the conveyance of the Rezoning Parcel is exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2). If a Rezoning Parcel is created, whether by map, lot line adjustment, waiver conveyance or exemption, Seller [County] shall be entitled to repurchase the Rezoning Parcel but only for an Adjusted Price calculated on said basis. If (i) the application to create, or waive a map for creation of a Rezoning Parcel is finally denied by Buyer [City] (or other applicable governmental authority or body) (i.e. beyond any applicable appeal or legal challenge period) and (ii) Buyer [City] reasonably determines that the conveyance of the Rezoning Parcel (or what would have been the Rezoning Parcel had the application been approved) would not be exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2) or any successor or other statute or law, then Seller [County] shall be entitled to repurchase the entirety of the legal parcel or parcels on which the land subject to the Proposed Rezoning is located (and which land will be

deemed to be the Option Property), but only for an Adjusted Price calculated on said basis.

iii. Escrow and Closing of the Repurchase. If Seller [County] timely exercises the Repurchase Option, then an escrow shall be opened promptly with Escrow Holder (or any national title company selected by Seller [County] if Escrow Holder is no longer in business) for purposes of facilitating the reconveyance of the Option Property to Seller [County] in accordance with the terms of this Paragraph 14a. In such an event, the closing of the repurchase transaction (the "**Repurchase Closing**") shall take place on the ninetieth (90th) day following the delivery of Seller's Election Notice (the "**Repurchase Closing Date**") or such earlier date as Seller [County] may elect subject to the following conditions and obligations being satisfied (but which date shall be subject to the extension to the extent that the Option Property does not initially entirely consist of one or more legal parcels to allow the process specified in subparagraph (ii) above to be completed). Title to the Option Property shall be conveyed to Seller [County] by a grant deed substantially in the form of Exhibit B to this Agreement. Title to the Option Property shall be subject to all matters of record except Buyer [City] shall cause the Option Property to be conveyed free and clear of all Monetary Liens (the "**Excluded Exceptions**"). As a condition of the Repurchase Closing, Seller [County] shall be entitled to receive a CLTA owner's title policy (or other similar owner's title policy) in the amount of the Adjusted Price showing title vested in Seller [County] with no Excluded Exceptions shown thereon. The Repurchase Closing shall take place on the Repurchase Closing Date at the offices of the applicable escrow holder or at such other location as may be agreed to by Buyer [City] and Seller [County]. All closing costs for the Repurchase Closing shall be allocated between Buyer [City] and Seller [County] per county custom as reasonably determined by the escrow holder for the transaction. Buyer [City] and Seller [County] shall sign and, if applicable, acknowledge such other documents and instruments as may be reasonably required to cause the Option Property to be conveyed to Seller [County] pursuant to this Paragraph 14(a).

iv. No Extinguishment or Waiver. With respect to any future Proposed Rezoning not covered in a Proposed Change in Use Notice delivered to Seller [County], Seller's Repurchase Option shall not be deemed waived or extinguished if Seller [County] elects not to exercise the Repurchase Option for the Proposed Rezoning actually specified in the applicable Proposed Change in Use Notice. Seller's [County's] repurchase right shall also survive any failure by Buyer [City] to timely provide Seller [County] with a Proposed Change in Use Notice as required under this Paragraph 14a.

b. Right of First Refusal.

i. Buyer [City] agrees that Seller [County] possesses and hereby grants Seller [County] a right of first refusal for a term of ninety-nine (99) years, or as otherwise provided in Paragraph 14.c, to repurchase the Property, or any part thereof, (the "**ROFR**") for the Adjusted Price before, with respect to such Property, or any part thereof, (the "**ROFR Property**") Buyer [City] either (1) sells or conveys fee title to the ROFR Property or (2) enters into a Long Term Lease (as defined below) to any third-party entity for the ROFR Property. No such Long Term Lease or agreement to sell or convey the Property shall be effective until and

unless Seller [County] fails to timely provide a Seller's ROFR Exercise Notice as specified below, and in no event shall any such Long Term Lease or agreement to sell or convey the Property be binding on Seller [County] if Seller's ROFR Exercise Notice is timely delivered and Seller [County] proceeds to repurchase the Property, or the applicable portion thereof, pursuant to said notice.

ii. Prior to offering the ROFR Property for any such sale, conveyance, or Long Term Lease or accepting an unsolicited offer for the same, Buyer [City] shall send Seller [County] a written notice in compliance with the notice provisions of this Agreement including the proposed purchase agreement or lease, or specifying the proposed terms of the sale or lease, as applicable, along with a UCI Value Statement (the "**ROFR Notice**") for the ROFR Property certified, as being accurate by Buyer's [City's] chief financial officer or an outside auditor, and with supporting documents as specified in Paragraph 14a. Seller [County] shall have ninety (90) days after its receipt of the ROFR Notice to exercise its ROFR by providing notice thereof to Buyer [City] ("**Seller's ROFR Exercise Notice**"), which notice shall comply with the notice provisions of this Agreement. The ROFR Property shall be limited to the portion of the Property that is the subject of the proposed sale, conveyance or Long Term Lease.

iii. Notwithstanding the above, if less than the entirety of the Property is proposed to be subject to a Long Term Lease and such portion of the Property is not a separate legal parcel or parcels in compliance with the Map Act (as defined above) then Seller [County] and Buyer [City] shall coordinate to process a lot line adjustment or parcel map creating a separate legal parcel or parcels for the land included within the Long Term Lease and the ROFR Property shall consist of said legal parcel or parcels once such process is completed. Alternatively, Buyer [City] may determine a parcel map to create the ROFR Property may be waived or that the conveyance of the ROFR Property is exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2). If the ROFR Property is created, whether by map, lot line adjustment, waiver, conveyance or exemption, Seller [County] shall be entitled to purchase the ROFR Property but only for an Adjusted Price calculated on said basis. If (x) the application to create or waive a map to cause the ROFR Property to consist entirely of one or more legal parcels in compliance with the Map Act (as defined above) is finally denied by Buyer [City] (or any other applicable governmental authority or body) and (y) Buyer [City] reasonably determines that the conveyance of the ROFR Property is not exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2) or any successor or other statute or law, then Buyer [City] shall not proceed with the Long Term Lease.

iv. If the ROFR is timely exercised, subject to the payment of the Adjusted Price, the ROFR Property shall be conveyed to Seller [County] by a grant deed through an escrow, free and clear of Monetary Liens, all as specified in Paragraph 14(a) on the later of the closing date specified in the ROFR Notice or ninety (90) days after the delivery of Seller's ROFR Exercise Notice (but which date shall be subject to the extension to the extent that the ROFR Property does not initially entirely consist of one or more legal parcels to allow the process specified in subparagraph (iii) above to be completed). Closing costs shall be allocated as specified in the ROFR Notice, or if not so specified, as stated in Paragraph 14(a).

v. For the avoidance of doubt, if the ROFR is timely exercised, the purchase price paid for the ROFR Property shall be the Adjusted Price and not any purchase price specified in any applicable purchase or sale agreement or term sheet triggering the ROFR.

c. Term of the Repurchase Option and ROFR. The term of the Repurchase Option and ROFR shall commence as of the Closing of the sale of the Property to Buyer [City] and, unless otherwise agreed by Buyer [City] and Seller [County] in a recorded instrument, shall expire on the earlier of (x) 5:00 p.m. Pacific Time ninety-nine (99) years following said Closing or (y) the maximum period allowed by applicable law. The Repurchase Option and/or ROFR shall automatically expire and be of no effect on the expiration of the term specified in this Paragraph; provided, however, that Seller [County] shall execute such instruments (e.g., a quitclaim deed) as may be reasonably requested by Buyer [City] to confirm the termination of the Repurchase Option and/or ROFR, as applicable, after such occurs.

d. Defined Terms. Defined Terms. The following terms shall have the meanings ascribed to them below for purposes of this Paragraph 14.

i. "**Adjusted Price**" means the Purchase Price paid by Buyer [City] at Closing increased by the change in the Index from the Closing of the sale of the Property to Buyer [City], plus the Unamortized Capital Improvements Value (as defined in Paragraph 14(a)(ii)), which Adjusted Price shall be prorated on a land to land basis (i.e. the ratio of the square footage of the land within the Option Property or ROFR Property, as the case may be, to the square footage of all of the land within the Property) if the Option Property or ROFR Property, as applicable, consists of less than all of the Property.

ii. "**Index**" means the Consumer Price Index for All Urban Consumers-All Items, published monthly by the United States Department of Labor (base year 1982-84=100), or any successor index thereto as hereinafter provided. If the base year of the Index is changed, then all calculations pursuant to this Paragraph 14 that require the use of the Index shall be made by using the appropriate conversion factor published by the Department of Labor (or successor agency) to correlate to the base year of the Index herein specified. If no such conversion factor is published, then the Parties shall in good faith make the necessary calculation to achieve such conversion. Should the Department of Labor discontinue the publication of the Index, then the Parties will adopt a substitute index or procedure, which reasonably reflects and monitors consumer prices.

iii. "**Historical Use**" means each prior use of the Property specified on Exhibit D-1 to this Agreement [**Exhibit D** to this Declaration and Memorandum]; provided, however, in no event shall a Historical Use include a proposed project involving large scale commercial or residential development for a use or uses listed on Exhibit D-1 or otherwise.

iv. "**Long Term Lease**" means any lease, license, occupancy, concession, or similar agreement with a term (including options to extend) in excess of twenty-five (25) years.

v. "**Proposed Rezoning**" means any proposed change in the zoning for the Property or any part thereof, to allow a use that is not a Historical Use of the Property and which such new use would not be allowed under the zoning for the Property as set forth in Calistoga Municipal Code Section 17.23.020 (A)(1), (2), (3) or (4) as of the Effective Date as stated in Exhibit D-2 to this Agreement [**Exhibit E** to this Declaration and Memorandum].

e. Right to Enforce. Buyer [City] stipulates and agrees that Seller [County] may enforce its Repurchase Option and ROFR through specific performance and/or other equitably relief, including through a mandatory or prohibitory injunction, and that the Property, and any part thereof, are of a special and unique character which gives it a peculiar value, and that Seller [County] cannot be reasonably or adequately compensated in damages in an action at law in the event Buyer [City] breaches its obligation to sell the Property, or any part thereof, to Seller [County] pursuant to either Seller's Repurchase Option or ROFR.

f. Buyer Compliance With Surplus Land Act. If Seller [County] seeks to exercise its Repurchase Option and/or ROFR pursuant this Paragraph 14, Buyer [City] shall take all actions necessary to designate the Option Property, or ROFR Property, as applicable, "exempt surplus property" under the SLA (as defined in Paragraph 9(e)) to be transferred back to Seller [County] for its use as a local agency to the full extent that such is legally required to allow such conveyance or transfer to occur. This obligation includes but is not limited to scheduling all public meetings, making all necessary findings, and providing all necessary documentation to the HCD to lawfully transfer the Option Property and/or ROFR Property, as applicable, to Seller [County] under the SLA."

5. Covenants to Run with the Land. The covenants, restrictions, rights, conditions, powers, and other provisions contained or referenced in this Declaration and Memorandum: (a) are made for the mutual benefit of the Parties and their respective successors (by operation of law or otherwise) and assigns and the Parcels; (b) burden the applicable Parcels and are binding upon the Parties and their respective successors (by operation of law or otherwise), assigns, and all other persons or entities acquiring any Parcel, or portion thereof or interest therein; and (c) are intended as and 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 any successor statutes thereof.

6. Duration / Term of Declaration and Memorandum. The Parties agree that the covenants, restrictions and other provisions set forth in this Declaration and Memorandum will run with the land as specified above and stay in effect for ninety-nine (99) years or such shorter period as specified in Section 4 above / Paragraph 14c of the Purchase Agreement. Upon the termination of this Declaration and Memorandum, County will promptly execute and deliver to City an appropriate release and cancellation instrument acknowledging the expiration or termination of this Declaration and Memorandum, and the provisions thereof. The release and cancellation instrument will be executed in proper form for recordation in the official real estate records of the County.

7. Counterparts. This Declaration and Memorandum may be executed in one or more counterparts, each of which will constitute an original, and all of which together will constitute one and the same instrument.

8. Recordation. The Parties agree that this Declaration and Memorandum shall be recorded in the official real estate records of Napa County.

9. Modification and Termination. This Declaration and Memorandum may not be modified in any respect whatsoever or terminated, in whole or in part, except with the written consent of the City and the County.

10. 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) business days after mailing by first class, registered or certified mail, postage prepaid; or (iv) if by electronic mail, on the date sent, and properly addressed as follows:

CITY:	City of Calistoga 1232 Washington St. Calistoga, CA 94515 ATTN: City Manager Email: lsnideman@ci.calistoga.ca.us
With a copy to:	City Attorney Burke, Williams & Sorensen, LLP 1999 Harrison Street, Suite 1650 Oakland, CA 94612 ATTN: Michelle Marchetta Kenyon Email: mkenyon@bwslaw.com
COUNTY:	Napa County County Executive Office 1195 Third Street, Suite 319 Napa, California 94559 ATTN: Ryan Alsop Email: ryan.alsop@countyofnapa.org
With a copy to:	Napa County Office of Napa County Counsel 1195 Third Street, Suite 301 ATTN: Sheryl Bratton Email: sheryl.bratton@countyofnapa.org

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

11. No Waiver. The waiver by one Party of the performance of any covenant or condition hereunder shall not invalidate this Declaration and Memorandum, nor shall it be considered to be a waiver by such Party of any other covenant or condition hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any

other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this Declaration and Memorandum for any remedy shall not exclude other remedies unless they are expressly excluded.

12. Attorneys' Fees. If either Party shall bring suit against the other as a result of any alleged breach or failure by the other Party to fulfill or perform any covenants or obligations under this Declaration and Memorandum or in any deed, instrument or other document delivered pursuant hereto, or to seek declaratory relief as to the rights or obligations of either Party, then in such event, the prevailing Party in such action shall be entitled to reasonable attorneys' fees incurred by reason of such action and all costs of suit and those incurred in preparation thereof.

13. Provisions Severable. Each provision of this Declaration and Memorandum shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Declaration and Memorandum be deemed to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Declaration and Memorandum.

14. Governing Laws. This Declaration and Memorandum shall be construed and governed in accordance with the laws of the State of California.

15. Entire Agreement. THIS DECLARATION AND MEMORANDUM, WHICH INCLUDES EACH OF THE EXHIBITS ATTACHED HERETO, ALONG WITH THE PURCHASE AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT OF THIS AGREEMENT AND SUPERSEDES ALL PREVIOUS AGREEMENTS, PROMISES, REPRESENTATIONS, UNDERSTANDINGS AND NEGOTIATIONS, WHETHER WRITTEN OR ORAL, AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF.

16. Construction. Each Party has participated in the drafting of this Declaration and Memorandum and has had the same reviewed by counsel of its choosing, and, as such, this Declaration and Memorandum shall not be construed against either such Party based on the drafter of any particular provision thereof.

IN WITNESS WHEREOF, the undersigned have executed this Declaration and Memorandum as of the date and year set forth below.

CITY:	**CITY OF CALISTOGA** By: _____ Name: _____ Its: _____

	APPROVED AS TO FORM: City Attorney: By: _____ Name: _____
COUNTY:	**NAPA COUNTY**, a political subdivision of the State of California By: _____ Joelle Gallagher, Chair of the Board of Supervisors Dated: _____, 202__ APPROVED AS TO FORM: Office of County Counsel By: _____ County Counsel APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS: Dated: _____ Processed By: _____ Deputy Clerk of the Board ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

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 _____)

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State of California)
County of _____)

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County of _____)

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State of California)
County of _____)

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Signature _____

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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 _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF RETAINED PROPERTY

EXHIBIT C

SITE PLAN SHOWING PROPERTY AND RETAINED PROPERTY

[Attached]

EXHIBIT D / EXHIBIT D-1 TO PURCHASE AGREEMENT

HISTORICAL USES

Public fairs and celebrations, recreational, athletic, social, and other civic and community activities and enterprises of a public nature.

The County Fairgrounds has served as a versatile public open space to facilitate the exchange of goods and services; to celebrate agriculture; to host contests, entertainment, recreational and community events and services.

Communication towers.

Health services (e.g. vaccination clinics, cooling center, food distribution).

Collection events for household hazardous waste disposal service.

School events (e.g. graduations, parties, sports contests, classroom instruction, grad night).

Sports (e.g. cub football, adult softball).

Youth summer camps.

Events (e.g. weddings, wedding receptions, family reunions, quinceaneras, camping reunions for travel groups, memorial services, community fundraisers, Christmas bazaars, food festivals, car shows, horse shows, antiques shows, trade shows, auctions, crab feeds, pancake breakfasts, afternoon teas, dinners, home wine and beer tasting events, trade/agricultural/holiday fairs, livestock exhibits, conventions, flea markets, drive-in movies, dances, bingo, fashion shows, BBQs, card parties, music festivals, concerts, art shows, carnivals, circuses, haunted house, cultural celebrations, exhibitions).

Meetings (e.g. Lions, American Legion, Native Sons of the Golden West, Garden Club, Rock Club, Lions, Native Daughters of the Golden West, American Legion, Soroptimist, Women's Golf Club, Men's Golf Club, Sharpsteen Museum, Rotary, Youth-centric organizations, Cub Scouts, Boy Scouts, Cub Football, Calistoga Little League, Calistoga Wildcat Athletic Boosters, Calistoga Music Boosters, 4-H, FAA, Safe Grad Night, Silverado Riders, NARC/Racing groups, Equestrian groups, Calistoga Firefighters, Knights Valley Volunteer Fire Department, Mountain Volunteer Fire Department, Cal Fire/Napa Fire).

Races and/or racetrack.

Golf / golf course.

RV camping / RV park.

Emergency Evacuation Center.

Camps for emergency responders including during wildfires.

Housing for fairground employees

Museum.

Art Center.

Parking lot.

Recycled water distribution.

Public Safety training and recruitment exercises (e.g. helicopter rescue, agility tests, active shooter, fire suppression, forced entry)

Botanical gardens.

EXHIBIT E / EXHIBIT D-2 TO PURCHASE AGREEMENT

MUNICIPAL CODE

17.23.020 Uses allowed.

A. Uses allowed in a P district are as follows, and each shall require a use permit:

1. City and County offices, corporation yards, water and wastewater facilities;
2. Parks, libraries, schools, community centers, museums, fairgrounds, churches;
3. Quasi-public uses such as telephone and electric substations;
4. Fraternal buildings and hospitals.

Exhibit D-1
Historical Uses

Public fairs and celebrations, recreational, athletic, social, and other civic and community activities and enterprises of a public nature.

The County Fairgrounds has served as a versatile public open space to facilitate the exchange of goods and services; to celebrate agriculture; to host contests, entertainment, recreational and community events and services.

Communication towers.

Health services (e.g. vaccination clinics, cooling center, food distribution).

Collection events for household hazardous waste disposal service.

School events (e.g. graduations, parties, sports contests, classroom instruction, grad night).

Sports (e.g. cub football, adult softball).

Youth summer camps.

Events (e.g. weddings, wedding receptions, family reunions, quinceaneras, camping reunions for travel groups, memorial services, community fundraisers, Christmas bazaars, food festivals, car shows, horse shows, antiques shows, trade shows, auctions, crab feeds, pancake breakfasts, afternoon teas, dinners, home wine and beer tasting events, trade/agricultural/holiday fairs, livestock exhibits, conventions, flea markets, drive-in movies, dances, bingo, fashion shows, BBQs, card parties, music festivals, concerts, art shows, carnivals, circuses, haunted house, cultural celebrations, exhibitions).

Meetings (e.g. Lions, American Legion, Native Sons of the Golden West, Garden Club, Rock Club, Lions, Native Daughters of the Golden West, American Legion, Soroptimist, Women's Golf Club, Men's Golf Club, Sharpsteen Museum, Rotary, Youth-centric organizations, Cub Scouts, Boy Scouts, Cub Football, Calistoga Little League, Calistoga Wildcat Athletic Boosters, Calistoga Music Boosters, 4-H, FAA, Safe Grad Night, Silverado Riders, NARC/Racing groups, Equestrian groups, Calistoga Firefighters, Knights Valley Volunteer Fire Department, Mountain Volunteer Fire Department, Cal Fire/Napa Fire).

Races and/or racetrack.

Golf / golf course.

RV camping / RV park.

Emergency Evacuation Center.

Camps for emergency responders including during wildfires.

Housing for fairground employees

Museum.

Art Center.

Parking lot.

Recycled water distribution.

Public Safety training and recruitment exercises (e.g. helicopter rescue, agility tests, active shooter, fire suppression, forced entry)

Botanical gardens.

Exhibit D-2
Municipal Code

17.23.020 Uses allowed.

A. Uses allowed in a P district are as follows, and each shall require a use permit:

1. City and County offices, corporation yards, water and wastewater facilities;
2. Parks, libraries, schools, community centers, museums, fairgrounds, churches;
3. Quasi-public uses such as telephone and electric substations;
4. Fraternal buildings and hospitals.

Exhibit D-3
Emergency Use Easement

[Attached]

RECORDING REQUESTED AND WHEN RECORDED RETURN TO:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
Attn: Sheryl Bratton

The affected property is located in the City of Calistoga, County of Napa

No transfer tax is owed as no property is being conveyed or transferred as of the recordation of this instrument; the transferee or grantee is a public entity; and consideration is less than $100. (Rev. & Tax Code Sections 11911 & 11922)

Exempt from recording fees pursuant to Gov. Code Section 27383

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "**Agreement**"), dated _____ __, 2024, is entered into by and between CITY OF CALISTOGA, a California general law city ("**Grantor**"), and NAPA COUNTY, a political subdivision of the State of California ("**Grantee**"). Grantor and Grantee may be referred to in this Agreement at times individually as a "**Party**" and collectively as the "**Parties**". The following Recitals are a material part of this Agreement:

RECITALS

A. As of the date of this Agreement, Grantor has purchased certain improved real property located in the City of Calistoga, County of Napa, which real property is more fully described on **Exhibit A** to this Agreement (the "**Property**"). The Property is a part of the land commonly known as the Napa County Fairgrounds and was sold to Grantor pursuant to that Napa County Agreement No. __ Purchase and Sale Agreement and Escrow Instructions, dated ____ 2024, entered into by Grantee, as seller, and Grantor, as buyer (the "**Sales Contract**").

B. Pursuant to the Sales Contract, Grantor has agreed to and wishes to grant, and Grantee desires to receive and accept certain easements over the Property for (i) emergency response purposes and (ii) ingress and egress over and across the Property to accomplish the foregoing purpose, on the terms and conditions stated more fully below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements and covenants are hereby made:

1. PERPETUAL EASEMENTS IN GROSS. Grantor hereby grants to Grantee and its successor(s), the following perpetual easements in gross:

   a. a non-exclusive easement on, in, over, and across the Property including any buildings and/or structures located thereon for emergency response purposes by Grantee and other governmental entities conducting the subject emergency response in partnership with Grantee (including federal, state, county, and city emergency personnel) upon the

declaration of any federal, state, county or other local disaster as such may occur from time to time, including, without limitation, the use of all or part of the Property for temporary staging of emergency personnel, vehicles and equipment; shelter and housing for emergency personnel and disaster victims; medical care and first aid; communication facilities; counseling services; financial assistance offices; and meals (the "**Emergency Response Easement**"). Each said use shall be entitled to be continued until a reasonable period after the cessation of the applicable disaster.

b. a non-exclusive easement of ingress and egress for the use of Grantee and other governmental entities conducting the subject emergency response in partnership with Grantee (including federal, state, county, and city emergency personnel) over and across those portions of the Property not improved with buildings or other structures (except to the extent the same are being used as part of the Emergency Response Easement) for vehicular and pedestrian access for the purpose of utilizing the easements set forth in and granted by subsection (a) above.

Said easements may be used by Grantee and other governmental entities conducting the subject emergency response in partnership with Grantee (including federal, state, county, and city emergency personnel) and their respective agents, employees, consultants, contractors, and similar permittees.

2. ALTERATIONS. Grantee and other governmental entities conducting the emergency response in partnership with the Grantee (including federal, state, county, and city emergency personnel) shall have the right, from time to time, to make improvements, modifications, and/or alterations to the Property, which are consistent with, or facilitate the use of, the Emergency Response Easement, provided that any such improvements, modifications, or alterations are of a temporary nature and will be removed, or caused to be removed, by Grantee after they are no longer needed after the cessation of the applicable disaster, and any damage to the Property caused by such improvements, modifications and/or alterations is repaired at no cost to Grantee.

3. CERTAIN RESERVED RIGHTS. Except as otherwise provided in this Agreement, the Grantor reserves the rights to use the Property as long such use does not materially and/or unreasonably interfere with the Grantee's easement rights under this Agreement.

4. INDEMNITY. Except as may be prohibited or limited by applicable law, (i) Grantee will be responsible for all costs required to repair damages to the Property and the improvements thereon caused by Grantee and/or other governmental entities conducting the emergency response in partnership with the Grantee, including all of their respective agents, employees, consultants, contractors, and similar permittees in the exercise of the rights granted under this Agreement, and (ii) Grantee shall indemnify, defend and hold Grantor harmless from and against any and all actual loss, cost, expense (including attorneys' fees), claims, demands, causes of action, liability, and damages arising from third-party claims against Grantor for personal injury or property damage (collectively, "**Claims**") that result from or arise out of the use of the easements granted under this Agreement by Grantee and/or other governmental entities conducting the emergency response in partnership with the Grantee, including all of their respective agents, employees, consultants, contractors, and similar permittees; provided, however, such indemnification and defense obligations shall not extend to any Claims to the extent caused by or arising from Grantor's negligence or willful misconduct, or that of any agent, representative, contractor or employee thereof.

5. INSURANCE. Grantee and other governmental entities conducting the emergency response in partnership with the Grantee shall cause all of their respective third-party agents, consultants, contractors (including subcontractors), and similar permittees who enter upon the Property for purposes of

conducting any emergency response (collectively "**Grantee's 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 use the easement by the applicable Grantee's Agents:

a. Workers' Compensation Insurance. To the extent required by law, Grantee's Agents shall provide Workers' Compensation, 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 Grantor'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 the insured party. 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 5a and 5b, above, shall be evidenced by one or more certificates of coverage and copies of applicable endorsements or, with the consent of Grantor's Risk Manager, demonstrated by other evidence of coverage acceptable to Grantor's Risk Manager, which shall be delivered by Grantee or Grantee's Agents to Grantor prior to each of Grantee's Agents' entry onto the Property, or any one of them (and anytime thereafter as may be reasonably requested by Grantor).

   i. The certificate(s) or other evidence of coverage shall reference this Agreement by its number or title; 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, Grantor 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 5bi. and, for the comprehensive automobile liability insurance coverage referenced in 5bii. where the vehicles are covered by a commercial policy rather than a personal policy, Grantee's Agents shall also deliver to Grantor with the evidence of coverage an endorsement from the insurance provider naming Grantor and its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Grantee's Agents shall deliver to Grantor 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 Grantee's Agents not covered by this Easement, then the limits in the applicable certificate relating to the additional insured coverage of Grantor shall pertain only to liability for activities of Grantee's Agents under this Agreement, and that the insurance provided is primary coverage to Grantor with respect to any insurance or self-insurance programs maintained by Grantor.

iv. Upon request by Grantor's Risk Manager, Grantee's Agents 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.

d. Minimum Limits Not Precluding Additional Coverage. No minimum limits of coverage set forth above shall serve to preclude the application of any coverage in excess of the same, and insurance provided by Grantee's Agents shall be deemed to be primary and non-contributory with any insurance or self-insurance programs maintained by Grantor.

e. Deductibles / Retentions. Any deductibles or self-insured retentions for policies of Grantee's Agents shall be disclosed to Grantor's Risk Manager.

f. Inclusion in Subcontracts. Grantee agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other third-party permittee who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and Grantee shall require compliance of said persons or entities with such insurance requirements set forth in this Section 5.

6. FEE PAYMENTS. To the extent that any governmental entities and/or their respective permittees conducting the emergency response in partnership with Grantee pay any rent or other fees for use of the Property for emergency purposes, all such rent and/or fees shall be paid to the Grantor, not the Grantee.

7. TERM OF THE AGREEMENT; RUNNING OF BENEFITS. This Agreement and the term of all easements granted herein shall be perpetual. All provisions of this Agreement including the benefits and burdens, are binding upon and inure to the benefit of the heirs, permitted assigns, successors, licensees, invitees, successors, tenants, and subtenants of the Parties until such time, if any, that both Parties agree in writing to mutually terminate the easements set forth herein.

8. ENFORCEMENT. Either Party shall be entitled to enforce their respective rights under this Agreement through injunctive or equitable relief.

9. 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) business days after mailing by first class, registered or certified mail, postage prepaid; or (iv) if by electronic mail, on the date sent, and properly addressed as follows:

Grantee's Address:	Napa County County Executive Office 1195 Third Street, Suite 319 Napa, California 94559 Attention: Ryan Alsop / County CEO Email: ryan.alsop@countyofnapa.org
With a copy to:	Napa County Office of Napa County Counsel 1195 Third Street, Suite 301 Attention: Sheryl Bratton / County Counsel Email: sheryl.bratton@countyofnapa.org
Grantor's Address:	City of Calistoga 1232 Washington St. Calistoga, CA 94515 Attention: City Manager Email: lsnideman@ci.calistoga.ca.us
With a copy sent to:	City Attorney Burke, Williams & Sorensen, LLP 1999 Harrison Street, Suite 1650 Oakland, CA 94612 Attn: Michelle Marchetta Kenyon Email: mkenyon@bwslaw.com

Either Party may provide written notice of a change of address in accordance with the above.

10. MISCELLANEOUS.

a. No Assignment. Grantee may not assign the easements and other rights granted to it under this Agreement to any other party or entity.

b. Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto pertaining to its subject matter.

c. Headings. The section headings and captions used in this Agreement are inserted herein for convenience of reference only and are not to be considered in the construction of the provisions hereof and shall not in any way limit the scope or modify the substance or context of any section or paragraph

hereof. In the event of any ambiguity in this Agreement, this Agreement shall not be construed against either Party based on the drafter hereof.

d. Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

GRANTOR:	**CITY OF CALISTOGA** By: _____ Name: _____ Its: _____
	APPROVED AS TO FORM: City Attorney: By: _____ Name: _____
GRANTEE:	**NAPA COUNTY**, a political subdivision of the State of California By: _____ Joelle Gallagher, Chair of the Board of Supervisors APPROVED AS TO FORM: Office of County Counsel By: _____ County Counsel

	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS: Dated: _____ Processed By: _____ Deputy Clerk of the Board ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To be Inserted]

Exhibit E
Existing Leases

1. That Structure Lease Agreement between the County and New Cingular Wireless PCS, LLC entered into on or about November 25, 2014 (Napa County Agreement No. 8238).

2. Amended and Restated License Agreement for Use of Fairground Facilities, dated August 11, 2020, by and between the County and the Calistoga Art Center, a nonprofit organization (Napa County Agreement No. 200398B), as amended by that Napa County Agreement No. 200398B Amendment No. 1, dated December 8, 2020, that Napa County Agreement No. 200398B Amendment No. 2, dated May 18, 2021, that Napa County Agreement No. 200398B Amendment No. 3, dated June 7, 2022, that Napa County Agreement No. 200398B Amendment No. 4, dated January 10, 2023, and that Napa County Agreement No. 200398B Amendment No. 5, dated June 6, 2023. With the City's written permission, County may extend the above-referenced agreement.

3. Intentionally Omitted.

4. Intentionally Omitted.

5. That Land and Tower Lease Agreement entered into on or about January 24, 2017, by and between the County and GTE Mobilnet of California limited partnership (Napa County Agreement No. 170731B).

6. Ground Lease dated December 4, 2018, by and between the County and the Napa County Office of Education (Napa County Agreement No. 8574) along with that Access and Utility Easement Agreement, dated January 1, 2019, by and between the County and the Napa County Office of Education (Napa County Agreement No. 8575).

7. Intentionally Omitted.

8. That Amended and Restated Space License Agreement for Use of Fairground Facilities, dated December 8, 2020, by and between the County and Silver Rose Property Owner, a limited partnership (Napa County Agreement No. 21098B), as amended by that Amendment No. 1, dated June 8, 2021, and that Assignment and Amendment No. 2, dated December 14, 2021, wherein Licensee's interest was assigned to Calistoga Vines Lessee, Inc., as amended by that Amendment No. 3, dated December 13, 2022, and as amended by that Amendment No. 4, dated June 6, 2023. With the City's written permission, County may extend the above-referenced agreement.

9. That Space License Agreement, dated August 2, 2021, by and between the County and Pacific Gas and Electric Company, a California corporation (Napa County Agreement No. 220111C), as amended by that Napa County Agreement No. 220111C, dated February 24, 2022, and as amended by that Napa County Agreement No. 220111C Amendment No. 2, dated May 24, 2023. With the City's written permission, County may extend the above-referenced agreement.

10. Intentionally Omitted.

11. Intentionally Omitted.

12. That Space License Agreement, dated February 16, 2023, by and between the County and Calistoga Cares! Food Bank, Inc, a California 501(c)3 non-profit organization (Napa County Agreement No. 230327C), as amended by that Napa County Agreement No. 230327 Amendment No. 1, dated May 18, 2023.

Exhibit F
List of Seller's Documents

[To be finalized before the Effective Date]

1. Access and Utility Easement Agreement between the County and Napa County Office of Education entered into as of January 1, 2019 (Napa County Agreement No. 8575).

2. Land Tenure Agreement between Napa County and the State of California, Department of Food and Agriculture, Division of Fairs and Expositions entered into as of January 27, 2004 (Napa County Agreement No. 6243).

3. Correspondence from HomanTeague to the County regarding "David Abreu's Personal Property At Fairgrounds," dated June 2, 2022 and November 22, 2022.

Exhibit G
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 G-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 21.c.7 of the Purchase Agreement, the terms of Paragraph 21.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 26.c of the Purchase Agreement; and (3) this Landlord Estoppel Certificate is subject to the time limitation set forth in Paragraph 17 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 H
Abreu Claim

[Attached]

Buchalter
1230 Pine Street, St. Helena, CA 94574-1106
Telephone (707) 967-9656 / FAX (707) 963-0771

James R. Rose, Shareholder
E-Mail: jrose@buchalter.com

May 14, 2019

Napa County Fair Association, Inc.
P. O. Box 796
Calistoga, CA 94515

Re: Personal Property at the Calistoga Speedway at the Napa County Fairgrounds Owned by David Abreu, individually, Abreu Vineyards, Inc. and David Abreu Vineyard Management, Inc.

Dear Napa County Fair Association Board of Directors:

This letter is to advise you that property placed at the Calistoga Speedway at the Napa County Fairgrounds since 2013 by David Abreu, Abreu Vineyards, Inc. and David Abreu Vineyard Management, Inc. is personal property belonging to David Abreu and was not placed there on loan to the Calistoga Speedway or Napa County Fairgrounds.

At the time the property listed below was placed by David Abreu, there was not an agreement made with the Napa County Fair Association, Inc., Calistoga Speedway or Napa County that these items would be gifts to the county. The items were placed to ensure the safety of the race car drivers and the spectators at races as well as to enhance the spectator's enjoyment of the races.

The following personal property items remain at the Calistoga Speedway property at the will of David Abreu, Abreu Vineyards, Inc. and David Abreu Vineyard Management, Inc.:

1. Sound system and speakers – bolted on. There are a total of twelve speakers - one single speaker on each end of the racetrack and ten double speakers in front of the grandstands - on 3" poles.
2. 3 digital scoreboards – (turn 2, turn 3, one facing the grandstands on the front straight-away) - bolted on. There is a main vertical ten-digit car position scoreboard and there are two single-digit scoreboards in the corners.

3. Fencing, consisting of
    - 300 – 3" Schedule 40 galvanized pipes (21 ft. tall) - around the track
    - 9 Cables – 27,000 feet of 5/8" cable
    - 2 layers of 2" x 4" horse wire fencing (6 ft. tall) – 6,000 feet of horse wire fencing – tied with wire around pipes
4. Black shade cloth (tied with zip-ties) around 2/3 of the racetrack
5. Start-Finish Flag Stand - bolted-down
6. Flag Pole – 36 ft., 6" stainless steel – bolted down
7. Irrigation timer box in the infield/Rainbird controller – bolted to light pole
8. Valley Internet service equipment – bolted on the football light pole

Should Mr. Abreu wish to remove these items, we will give the Napa County Fair Board Association adequate notice in advance of the removal of these personal property items.

Very truly yours,

BUCHALTER
A Professional Corporation

JAMES R. ROSE

cc: Client
Napa County Board of Supervisors

Exhibit I
Adjacent Storage Property and Access Road Easement

[Attached]

RECORDING REQUESTED AND WHEN RECORDED RETURN TO:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
Attn: Sheryl Bratton

The affected property is located in the City of Calistoga, County of Napa, and constitutes a portion of Napa County Assessor's Parcel Number (APN) 011-140-055

No transfer tax is owed as no property is being conveyed or transferred as of the recordation of this instrument; the transferee or grantee is a public entity; and consideration is less than $100. (Rev. & Tax Code Sections 11911 & 11922)

Exempt from recording fees pursuant to Gov. Code Section 27383

EASEMENT AGREEMENT REGARDING ADJACENT STORAGE PROPERTY AND ACCESS ROAD

This EASEMENT AGREEMENT REGARDING ADJACENT STORAGE PROPERTY AND ACCESS ROAD (the "**Agreement**"), dated _____ __, 2024, is entered into by and between NAPA COUNTY, a political subdivision of the State of California ("**Grantor**") and CITY OF CALISTOGA, a California general law city ("**Grantee**"). Grantor and Grantee may be referred to in this Agreement at times individually as a "**Party**" and collectively as the "**Parties**". The following Recitals are a material part of this Agreement:

RECITALS

A. As of the date of this Agreement, Grantee has purchased from Grantor certain improved real property located in the City of Calistoga, County of Napa, which real property is more fully described on **Exhibit A** to this Agreement (the "**Property**"). The Property is a part of the land commonly known as the Napa County Fairgrounds and was sold to Grantee pursuant to that Napa County Agreement No. __ Purchase and Sale Agreement and Escrow Instructions, dated ____ 2024, entered into by Grantee, as seller, and Grantor, as buyer (the "**Sales Contract**").

B. Pursuant to the Sales Contract, Grantor retained ownership of an approximate 1.24 acres parcel, which is more fully described on **Exhibit B** to this Agreement (the "**Easement Parcel**"). The Easement Parcel consists of certain land and improvements currently being leased to the Napa County Office of Education ("**NCOE**") (with a street address of 1407 N. Oak Street, Calistoga, CA 94515) (the "**NCOE Leased Premises**"); certain land located to the west of the NCOE Leased Premises that is currently improved with a building used for maintenance and storage purposes and related improvements (the "**Adjacent Storage Property**"), and an access roadway or driveway providing access for the rest of the Easement Parcel to Oak Street (the "**Access Road**"). The Adjacent Storage Property is more fully described on **Exhibit C** to this Agreement and depicted on **Exhibit C-1** hereto. The Access Road is more fully described on **Exhibit D** to this Agreement and depicted on **Exhibit D-1** hereto.

C. Grantee desires to obtain from Grantor and Grantor desires to grant to Grantee (i) a non-exclusive easement to access and use the Adjacent Storage Property for the term specified below and (ii) a permanent non-exclusive easements for (1) ingress and egress purposes over the Access Road and (2) utilities under said road on the terms and conditions stated more fully below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements and covenants are hereby made:

1. ADJACENT STORAGE PROPERTY EASEMENT. Grantor hereby grants to Grantee and its successor(s) and assigns a non-exclusive easement over, across, on, and under the Adjacent Storage Property for the term specified below to use the same including the building located thereon for the benefit of the Property in conjunction with the City's ownership and operation thereof (the "**ASP Easement**").

2. ACCESS ROAD EASEMENTS. Grantor hereby grants to Grantee and its successor(s) and assigns a non-exclusive, perpetual easement for the following purposes and no others:

a. vehicular and pedestrian access over, on and under the Access Road for ingress and egress to and from the Property and, while the ASP Easement referenced in Section 1 continues in effect, the Adjacent Storage Property, to and from the public roadway currently known as North Oak Street, which use shall be consistent with design and size of said Access Road.

b. the installation, use, maintenance, repair, and replacement of utilities serving the Property, Access Road, and while the ASP Easement referenced in Section 1 continues in effect, the Adjacent Storage Property, all of which shall be installed and maintained underground and below the Access Road. In no event shall any such utilities interfere with any utilities serving the Easement Parcel or any portion thereof.

Said easements may be used by Grantee and its agents, employees, contractors, and other permittees including any tenants and occupants of the Property. Grantee may assign the easement rights specified above to any tenant or occupant of the Property for the term of said tenant's or occupant's lease or other occupancy agreement as well as to successor owners of all or part of the Property.

3. MAINTENANCE.

a. At its sole expense, Grantee shall maintain in good condition the Adjacent Storage Property including all improvements thereon while the ASP Easement remains in effect. Grantee shall also be responsible for all costs related to the utility easement rights granted to it under Section 2b above. Grantee shall cause the Access Road to be maintained in good condition (including the paving and repairing, restriping, or resurfacing or replacement of such areas, when reasonably necessary, with the type of material originally installed thereon, or such substitute therefor as shall in all respects be at least equal thereto in quality, appearance and durability) (the "**Access Road Maintenance Work**"). Grantor shall reimburse Grantee for fifty percent (50%) of the costs of the Access Road Maintenance Work (but only for the portion encumbered by the easement set forth in Section 2a above) within thirty (30) days after Grantor's receipt of an invoice for the same along with reasonable supporting documentation, which invoice shall detailed how Grantor's share of such Access Road Maintenance Work was calculated or determined.

b. All maintenance work performed by Grantee pursuant to Section 2a or otherwise within any easements granted by this Agreement shall be undertaken in such a manner as to minimize any interfere with Grantor's and its permittees' use of the Easement Parcel, or any portions thereof, to the extent reasonably possible. Without limiting the above, except

in the event of an emergency, no temporary closure of the Access Road for maintenance or repair purposes shall occur unless such is during non-business hours (i.e., before 8:00 a.m. or after 5:00 p.m., Monday thru Friday, or on Saturday or Sunday) unless some reasonable means of alternative access to the Easement Parcel (outside of the Access Road) from the public street (either directly or indirectly is made available to Grantee and its permittees.

c. Except in the event of an emergency, Grantee shall provide Grantor with at least twenty (20) days' prior notice of any Access Road Maintenance Work or utility work undertaken pursuant to this Agreement.

4. ALTERATIONS. Grantee shall not perform or permit to be performed any alterations or other changes to the Adjacent Storage Property and/or Access Road without Grantor's written approval not to be unreasonably withheld, conditioned or delayed. In no event shall any alterations preclude or interfere in any material manner with Grantor's or its permittees' use of the Easement Parcel, or any portion thereof. Nothing set forth above, however, shall preclude or prevent Grantee from constructing and maintaining a fence along the boundary of the Property and the Easement Parcel. If such a fence is installed, then Grantor shall reimburse Grantee for fifty percent (50%) of the actual costs incurred for the fencing and its installation. Said reimbursement shall be made within thirty (30) days after Grantee's receipt of an invoice detailing such costs, which invoice shall include proof of payment by Grantee and reasonable supporting documentation.

5. CERTAIN RESERVED RIGHTS. Except as otherwise provided in this Agreement, the Grantor reserves the rights to use those portions of the Easement Parcel burdened by the easements specified above as long such use does not materially and/or unreasonably interfere with the Grantee's easement rights under this Agreement.

6. INDEMNITY. Except as may be prohibited or limited by applicable law, (i) Grantee will be responsible for all costs required to repair damages to the Easement Parcel and the improvements thereon caused by Grantee and/or its permittees use of any of the easements granted under this Agreement, and (ii) Grantee shall indemnify, defend and hold Grantor harmless from and against any and all actual loss, cost, expense (including attorneys' fees), claims, demands, causes of action, liability, and damages arising from third-party claims against Grantor for personal injury or property damage (collectively, "**Claims**") that result from or arise out of the use of the easements granted under this Agreement by Grantee and/or its permittees; provided, however, such indemnification and defense obligations shall not extend to any Claims to the extent caused by or arising from Grantor's negligence or willful misconduct, or that of any agent, representative, contractor, employee or other permittee thereof.

7. INSURANCE. Grantee shall cause all of its respective third-party agents, consultants, contractors (including subcontractors) (each a "**Grantee's Agent**") who enter upon the Easement Parcel to have, the following insurance coverage in full force and effect as a condition of any entry or continued entry onto the Easement Parcel or any portion thereof, and such insurance shall be maintained in full force and effect throughout the use the easement by the applicable Grantee's Agent:

a. Workers' Compensation Insurance. To the extent required by law, Grantee's Agents shall provide Workers' Compensation, 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 Grantor'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 the insured party. 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 7a and 7b, above shall be evidenced by one or more certificates of coverage and copies of applicable endorsements or, with the consent of Grantor's Risk Manager, demonstrated by other evidence of coverage acceptable to Grantor's Risk Manager, which shall be delivered by Grantee or Grantee's Agents to Grantor prior to each of Grantee's Agents' entry onto the Property, or any one of them (and anytime thereafter as may be reasonably requested by Grantor).

i. The certificate(s) or other evidence of coverage shall reference this Agreement by its number or title; 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, Grantor 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 a 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 7bi and, for the comprehensive automobile liability insurance coverage referenced in 7bii. where the vehicles are covered by a commercial policy rather than a personal policy, Grantee's Agents shall also deliver to Grantor with the evidence of coverage an endorsement from the insurance provider naming Grantor and its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Grantee's Agents shall deliver to Grantor 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 Grantee's Agents not covered by this Easement, then the limits in the applicable certificate relating to the additional insured coverage of Grantor shall pertain only to liability for activities of Grantee's Agents under this Agreement, and that the insurance provided is primary coverage to Grantor with respect to any insurance or self-insurance programs maintained by Grantor.

iv. Upon request by Grantor's Risk Manager, Grantee's Agents 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.

d. Minimum Limits Not Precluding Additional Coverage. No minimum limits of coverage set forth above shall serve to preclude the application of any coverage in excess of the same, and insurance provided by Grantee's Agents shall be deemed to be primary and non-contributory with any insurance or self-insurance programs maintained by Grantor.

e. Deductibles / Retentions. Any deductibles or self-insured retentions for policies of Grantee's Agents shall be disclosed to Grantor's Risk Manager.

f. Inclusion in Subcontracts. Grantee agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other third-party permittee who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and Grantee shall require compliance of said persons or entities with such insurance requirements set forth in this Section 7.

8. TERM OF THE AGREEMENT; RUNNING OF BENEFITS. This Agreement and the term of all easements granted herein shall be perpetual except as follows: The ASP Easement may be terminated by Grantor providing notice of such termination to Grantee. No such termination notice shall be effective, however, unless Grantee is given at least nine (9) months prior notice of the specified termination date. The easements and covenants granted and given under this Agreement shall run with the land for the benefit of the Property and to the extent applicable the Easement Parcel and burden the Easement Property and to the extent applicable the Property. This Agreement shall be binding upon and inure to the benefit of Grantee and any successor owner of any portion of the Property, and shall be binding upon and inure to the benefit of Grantor and any successor owner of the Easement Parcel or any portion thereof.

9. ENFORCEMENT. Either Party shall be entitled to enforce their respective rights under this Agreement through injunctive or equitable relief.

10. 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) business days after mailing by first class, registered or certified mail, postage prepaid; or (iv) if by electronic mail, on the date sent, and properly addressed as follows:

Grantor's Address: Napa County
County Executive Office

	1195 Third Street, Suite 319 Napa, California 94559 Attention: Ryan Alsop / County CEO Email: ryan.alsop@countyofnapa.org
With a copy to:	Napa County Office of Napa County Counsel 1195 Third Street, Suite 301 Attention: Sheryl Bratton / County Counsel Email: sheryl.bratton@countyofnapa.org
Grantee's Address:	City of Calistoga 1232 Washington St. Calistoga, CA 94515 Attention: City Manager Email: lsnideman@ci.calistoga.ca.us
With a copy sent to:	City Attorney Burke, Williams & Sorensen, LLP 1999 Harrison Street, Suite 1650 Oakland, CA 94612 Attn: Michelle Marchetta Kenyon Email: mkenyon@bwslaw.com

Either Party may provide written notice of a change of address in accordance with the above.

11. MISCELLANEOUS.

a. Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto pertaining to its subject matter.

b. Headings. The section headings and captions used in this Agreement are inserted herein for convenience of reference only and are not to be considered in the construction of the provisions hereof and shall not in any way limit the scope or modify the substance or context of any section or paragraph hereof. In the event of any ambiguity in this Agreement, this Agreement shall not be construed against either Party based on the drafter hereof.

c. Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

GRANTEE:	**CITY OF CALISTOGA** By: _____ Name: _____ Its: _____
	APPROVED AS TO FORM: City Attorney: By: _____ Name: _____
GRANTOR:	**NAPA COUNTY**, a political subdivision of the State of California By: _____ Joelle Gallagher, Chair of the Board of Supervisors APPROVED AS TO FORM: Office of County Counsel By: _____ County Counsel

	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS: Dated: _____ Processed By: _____ Deputy Clerk of the Board ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To be Inserted]

EXHIBIT B

LEGAL DESCRIPTION OF THE EASEMENT PARCEL

[To be Inserted]

EXHIBIT C

LEGAL DESCRIPTION OF ADJACENT STORAGE PROPERTY

[To be Inserted]

EXHIBIT C-1

DEPICTION OF ADJACENT STORAGE PROPERTY

[To be Inserted]

EXHIBIT D

LEGAL DESCRIPTION OF ACCESS ROAD

[To be Inserted]

EXHIBIT D-1

DEPICTION OF ACCESS ROAD

[To be Inserted]