



CITY COUNCIL SPECIAL MEETING

Clearlake City Hall Council Chambers

14050 Olympic Dr, Clearlake, CA

Thursday, December 07, 2023

Special Meeting 11:00 AM

The City Council meetings are viewable in person in the Council Chambers, via livestreaming on the City's YouTube Channel (https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA) or "Lake County PEG TV Live Stream" at <https://www.youtube.com/user/LakeCountyPegTV/featured> and the public may participate through Zoom at the link listed below. The public can submit comments and questions in writing for City Council consideration by sending them to the Administrative Services Director/City Clerk at mswanson@clearlake.ca.us. To give the City Council adequate time to review your questions and comments, please submit your written comments prior to 4:00 p.m. on the day of the meeting.

AGENDA

MEETING PROCEDURES: *All items on agenda will be open for public comments before final action is taken. Citizens wishing to introduce written material into the record at the public meeting on any item are requested to provide a copy of the written material to the Administrative Services Director/City Clerk prior to the meeting date so that the material may be distributed to the City Council prior to the meeting. Speakers must restrict comments to the item as it appears on the agenda and stay within a three minutes time limit. The Mayor has the discretion of limiting the total discussion time for an item.*

AMERICANS WITH DISABILITY ACT (ADA) REQUESTS

If you need disability related modification, including auxiliary aids or services, to participate in this meeting, please contact Melissa Swanson, Administrative Services Director/City Clerk at the Clearlake City Hall, 14050 Olympic Drive, Clearlake, California 95422, phone (707) 994-8201, ext 106, or via email at mswanson@clearlake.ca.us at least 72 hours prior to the meeting, to allow time to provide for special accommodations.

AGENDA REPORTS

Staff reports for each agenda item are available for review at www.clearlake.ca.us. Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection on the City's website at www.clearlake.ca.us.

Zoom Link: <https://clearlakeca.zoom.us/j/82626873949>

Or One tap mobile :

+16694449171,,82626873949# US

+12532158782,,82626873949# US (Tacoma)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 669 444 9171 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)
+1 719 359 4580 US
+1 720 707 2699 US (Denver)
+1 253 205 0468 US
+1 564 217 2000 US
+1 646 558 8656 US (New York)
+1 646 931 3860 US
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Webinar ID: 826 2687 3949

International numbers available: <https://clearlakeca.zoom.us/j/kc9hPvMwiH>

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. BUSINESS

1. Discussion and Consideration of a Purchase and Sale Agreement for approximately three acres of City-owned Property to Adventist Health Clear Lake to Construct a Future Medical Office Building
Recommended Action: Approve the Agreement and Authorize the Mayor to Sign

D. ADJOURNMENT

POSTED: December 6, 2023

BY:



Melissa Swanson, Administrative Services Director/City Clerk



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Discussion and Consideration of a Purchase and Sale Agreement for approximately three acres of City-owned Property to Adventist Health Clear Lake to Construct a Future Medical Office Building

MEETING DATE: Dec. 7, 2023

SUBMITTED BY: Alan Flora, City Manager

PURPOSE OF REPORT: ☐ Information only ☒ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to approve a purchase and sale agreement for approximately three acres of city-owned property for future construction of a medical office building by Adventist Health Clear Lake.

BACKGROUND/DISCUSSION:

The City of Clearlake has been working with Adventist Health Clearlake for nearly five years on the development of new medical facilities in the City. As the City's plans have progressed for development of the former Pearce Field, there was a mutual interest developed in Adventist Health medical facilities becoming a key anchor to the larger development of retail at the site.

The agreement under consideration would provide land for the future development of a medical office building (MOB)/rural health clinic of at approximately 38,000 sq feet. The facility would provide a wide range of medical services including family medicine, pediatrics and various specialties. The clinic is expected to generate approximately 165,000 patient visits per year, once open in 2026. The agreement outlines other key terms of the deal which result in the City performing environmental review for this project, as well as the remainder of the former Pearce Field site, beginning in 2024; installation of public infrastructure improvements to the site; and discounted sale price of the land. Adventist Health will invest approximately \$50 million in construction of the future facility. The City will also hold additional adjacent land for a period of time for the possible construction of future medical facilities such as an imaging center and/or new hospital.

OPTIONS:

1. Approve the purchase and sale agreement with Adventist Health Clear Lake and Authorize the Mayor to sign the Agreement.
2. Other direction

FISCAL IMPACT:

☐ None ☐ \$ Budgeted Item? ☒ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

- ☒ Goal #1: Make Clearlake a Visibly Cleaner City
- ☒ Goal #2: Make Clearlake a Statistically Safer City
- ☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☒ Goal #4: Improve the Image of Clearlake
- ☒ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☒ Goal #7: Support Economic Development

☒ **Attachments:**

1. Proposed Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement"), dated _____, 2023, for reference purposes only, is by and between the City of Clearlake, California, a public body, corporate and politic ("Seller" and also sometimes "City" herein), and Adventist Health Clearlake Hospital, a California nonprofit religious corporation, d/b/a Adventist Health Clear Lake and/or its nominee or assignee ("Buyer"). The "Effective Date" of this Agreement shall be the first date upon which both Seller and Buyer have executed this Agreement.

RECITALS

A. Seller (i) owns a fee simple interest in property located at 6820, 6840, and 6860 Old Highway 53, Clearlake comprised of a portion of APN 010-043-380-000 as defined by that certain ALTA survey to be prepared per instruction of the Parties (the "Survey") and all of APNs 010-031-080-000, 010-031-090-000, and 010-031-050 referred to as the "Real Property".

B. Seller now desires to sell to Buyer and Buyer now desires to purchase from Seller, the Property (defined below), together with all rights appurtenant thereto, on the terms and conditions set forth in this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Agreement, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Purchase Terms.

(a) **Purchase and Sale; Purchase Price.** Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property for a cash purchase price of One Dollar (\$1.00) (the "Purchase Price"). As used in this Agreement, the term 'Property' shall mean: (a) the Real Property, provided that the boundaries, configuration and exact size of the land and the improvements comprising same shall be determined pursuant to the Survey, (b) all improvements and fixtures affixed to the Real Property, (c) all of Seller's rights, privileges, and hereditaments and easements appurtenant to the Real Property including, without limitation, all minerals, oil, gas and other hydrocarbon substances in, on or under the Real Property, and all air rights, water and water rights (collectively, the "**Appurtenances**"), (d) any personal property, machinery, apparatus and equipment owned by Seller and which Buyer and Seller agree is to be included with the sale of the Real Property, and (e) any and all of Seller's right, title and interest in and to (i) all permits, licenses, approvals, development agreements, entitlements and authorizations issued by any governmental or quasi-governmental authority to the extent applicable to the Property, (ii) all plans and specifications relating to the Property including, without limitation any architectural plans and drawings, and (iii) any prepaid credits, deposits and prepaid fees to the extent applicable to the Property (the property described in this Section (f) being hereinafter referred to collectively as the "**Intangibles**").

(b) Deposit.

(i) Initial Deposit. Within ten (10) business days after the Effective Date, Buyer shall deposit with Escrow Holder immediately available funds in the amount of One Dollar (\$1.00) (the "Deposit").

Escrow Holder shall hold the Deposit in Escrow until the Closing (as defined below) or earlier termination of this Agreement, as applicable. In the event Buyer defaults in its obligation to make the Deposit as provided in this Section 1(b), Seller may terminate this Agreement, in its sole discretion, and, except as otherwise provided herein, if terminated by Seller, the parties shall have no further rights or obligations hereunder. If the closing of the purchase and sale transaction contemplated by this Agreement does not occur due to Buyer's disapproval of the Property prior to the expiration of the Due Diligence Period (hereafter defined), a material default by Seller under this Agreement, or the failure of a Buyer's Condition Precedent (as defined below) to close Escrow under Section 4 below, the Deposit shall be returned to Buyer in accordance with Section 5(b) below. The Deposit shall be credited against the Purchase Price at the Closing.

(c) Closing Payment. At the Closing, Buyer shall pay to Seller in immediately available funds the amount equal to the sum of the following amounts (the "Closing Payment"): the Purchase Price less the Deposit as adjusted by the Closing prorations made through Escrow as herein provided.

2. Buyer's Inspection and Approval of Property; Title Review.

(a) Right of Entry; Insurance; Indemnity. During the Due Diligence Period (defined in Section 2(d) below), Buyer, through its employees, agents and consultants shall be entitled to enter the Property at reasonable times and upon reasonable notice to Seller to conduct such examinations, inspections or tests of the Property as Buyer deems appropriate at Buyer's sole cost and expense, including any investigations and testing of the physical and environmental condition of the Property. Buyer has the right to conduct reasonably necessary soil, groundwater, and other invasive testing (inclusive of phase II testing for environmental contamination); provided however, the conduct of Buyer's employees, agents and consultants upon the Property shall not unreasonably disrupt the use of the Property at any time, and Buyer shall promptly repair any damage caused to the Property as a result of Buyer's entry thereon and shall restore the Property after any such entry to its condition at the time immediately preceding such entry by Buyer. During Escrow, Buyer's self-insured reserves for its commercial general liability coverages shall include an amount not less than Two Million Dollars (\$2,000,000) to insure Buyer's activities on the Property in accordance with the terms of Buyer's self-insurance program. Buyer shall indemnify, defend and hold harmless Seller from and against any and all obligations, liabilities, liens and mechanic's liens, claims, damages, costs, expenses and fees (including reasonable attorneys' and experts' fees and costs) to the extent caused by any entry, examinations, inspections, tests or restoration conducted by Buyer of the Property, and such indemnity obligations shall survive the Closing, or the earlier termination of this Agreement, as applicable.

(b) Seller's Property Documents. Within three (3) business days after the Effective Date, Seller shall make available to Buyer copies of all information, documents and materials in Seller's possession or control relating to the condition or use of the Property as set forth on Exhibit B, attached hereto and incorporated herein by this reference (collectively, the "Property Documents"). Seller represents and warrants to Buyer that as of the Effective Date, to Seller's actual knowledge, the Property Documents constitute all of the books, records, materials and documents in Seller's possession or control which relate to the condition or use of the Property. Seller acknowledges that Buyer is relying on this representation and warranty as material consideration for its agreement to purchase the Property herein. However, Buyer acknowledges and agrees that Seller is not obligated to provide any documents or other materials that constitute any communications between Seller and its counsel, including attorney-client privileged or work product material.

(c) Condition of Title; Buyer's Title Policy. Within two (2) business days following the opening of Escrow (defined below), Seller shall cause Escrow Holder to deliver to Buyer a current title report for the Property (the "Title Report"), together with copies of all documents referred to therein as exceptions. A copy of same shall be provided by Escrow Holder to Seller. Buyer shall have the right to object in writing to any title matters that are not Permitted Exceptions which are disclosed in the Title Report (with all such matters for which Buyer has a right to object herein collectively called "Liens") no later than the expiration of the Due Diligence Period. Buyer's approval of the Property pursuant to paragraph 2(d) below shall constitute Buyer's approval of all such Liens, except only for (i) monetary liens and encumbrances, and (ii) all leases, licenses, and occupancy rights to the Property whether or not recorded or disclosed of record which shall be deemed disapproved ((i) and (ii) are collectively "Seller's Title Exceptions"). Prior to the expiration of the Due Diligence Period, Buyer shall have the right in its sole discretion to object to any one or more Liens by delivery of a written notice to Seller so stating. All such Liens which are timely objected to by Buyer shall be herein collectively called the "Title Objections." Seller, in its sole and absolute discretion, may elect (but shall not be obligated) to remove or cause to be removed at its expense, any Title Objections, and shall be entitled, upon prior written consent of Buyer, to a reasonable adjournment of the Closing Date, for a period acceptable to Buyer, for the purpose of such removal, which removal will be deemed effected by the issuance of the Title Policy in a form reasonably acceptable to Buyer eliminating said Title Objections as title exceptions. Seller shall notify Buyer in writing within ten (10) days after receipt of Buyer's notice of Title Objections, whether Seller elects to remove the same; provided, however, Seller's failure to so notify Buyer on or before the expiration of the Due Diligence Period shall be deemed to constitute Seller's election not to remove any such Title Objections. The term "Permitted Exceptions" shall mean all real estate tax and assessment liens for the Property due but not yet payable appearing on the Title Report and all Liens appearing on the Title Report which are not Seller's Title Exceptions or included in Buyer's Title Objections. If Seller is unable to remove any Title Objections prior to the expiration of the Due Diligence Period, or if Seller elects not to remove one or more Title Objections, Buyer may elect, as its sole and exclusive remedy therefore, to either (a) terminate this Agreement by electing to, or being deemed to, terminate this Agreement on or before 5:00 p.m. Pacific Time on the last day of the Due Diligence Period, in which event the Deposit shall be returned to Buyer and, thereafter, the parties shall have no further rights or obligations hereunder except for those obligations which expressly survive the termination of this Agreement, or (b) waive such Title Objections by approving the Property pursuant to paragraph

2(d) below, in which event such Title Objections shall be deemed "Permitted Exceptions" and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price. If Buyer approves the Property in accordance with Section 2(d) below, at the Closing, Seller shall deliver to Buyer good and marketable title to the Property at Closing, free and clear of all Seller's Title Exceptions, subject only to the Permitted Exceptions. Should Seller elect to remove one or more of the Title Objections prior to Closing, as may be adjourned as provided in this Section 2(c), and fails to do so, or should Seller otherwise fail to comply with its obligation set forth in the preceding sentence, then such failure shall be deemed to be a material breach of this Agreement by Seller.

(d) Buyer's Approval of Condition of the Property; Right to Terminate. The "Due Diligence Period" as such term is used in this Agreement is that period commencing upon the Effective Date and ending one hundred and twenty (120) calendar days thereafter; provided, however, that (i) should Buyer fail to receive all of the Property Documents or the Title Report on or before the respective dates specified in this Section 2, then the Due Diligence Period shall be extended day for day for all purposes until the same is (are) received. On or before the expiration of the Due Diligence Period (as such may be extended) Buyer shall deliver written notice to Seller specifying Buyer's approval or disapproval, in Buyer's sole and absolute discretion for any or no reason or based on Buyer's investigation of the Property, or the physical, environmental and title condition of the Property, or the status of Buyer's funding ("Due Diligence Contingency"). In the event that Buyer notifies Seller in writing of its disapproval or that any of the conditions of the Property are unacceptable to Buyer, such notification shall be deemed to constitute Buyer's election to terminate this Agreement and, except as otherwise provided herein, the parties shall have no further rights or obligations under this Agreement. If Buyer fails to provide Seller any written notice of approval or disapproval of the Property by the expiration of the Due Diligence Period, such failure shall be deemed to constitute Buyer's election to terminate this Agreement and, except as otherwise provided herein, the parties shall have no further rights or obligations under this Agreement. In the event that Buyer disapproves of the Property, Escrow Holder shall immediately return the Deposit to Buyer.

(e) Buyer's Investigation of Entitlements. During the Due Diligence Period, Buyer shall have the right to investigate the feasibility of obtaining entitlements for its proposed use of the Property. During the pendency of Escrow, Buyer shall have the right to contact any governmental entities responsible for any such entitlements, apply for and process a permit for development in accordance with existing entitlements for the Property in order to accommodate Buyer's proposed use of the Property, and apply for changes to the existing entitlements for the Property in order to accommodate Buyer's proposed use of the Property. Seller agrees to reasonably cooperate with Buyer, at no cost to Seller, during Buyer's investigation of, and applications to change, the entitlements. Notwithstanding any of the foregoing: (i) Buyer shall have no right prior to Closing to (a) bind Seller or the Property as to any matter should the Closing not occur, (b) obligate the Seller to pay any amount, or (c) execute any document for submittal to any governmental authority which would have the effect of binding Seller or the Property should the Closing not occur.

(f) Buyer's Project Discussions. During the Due Diligence Period, the Parties shall discuss Buyer's intended use and development of the Property ("Buyer's Project") in sufficient detail for Seller to investigate and determine the nature and scope of the Buyer's

Project and the timing for same in order for the Seller to prepare a written "project description" for the Buyer's Project that complies with the California Environmental Quality Act ("CEQA"), and a written delineation of all land use approvals that will be required for the Buyer's Project, including any off-site improvements or use restrictions for the Property or adjacent properties being developed by the City and the timing for implementation of same, if any (collectively, "Seller's Review Requirements"). During the Due Diligence Period, the Parties shall also discuss (i) the potential acquisition and development of additional acreage for an urgent care facility, imaging center, and/or other ancillary medical/wellness services, including acquisition of 6540 Old Highway 53 Clearlake, CA 95422 and the parcels of land with APNs 010-031-070-000; 010-031-060-000; 010-031-020-000, and (ii) the potential for an option for Buyer to purchase and develop a portion of the above referenced land for an imaging center should the City acquire the above referenced land and an option for Buyer to purchase a portion of the above referenced land for an urgent care facility or hospital should the City acquire the above referenced land (with (i) and (ii) collectively referred to as "Buyer's Future Projects").

(g) Development Agreement. From and after the Buyer's satisfaction or waiver of its Due Diligence Contingency, Seller shall commence and thereafter diligently pursue and complete Seller's Review Requirements. Upon completion of the Seller's Review Requirements, the Parties shall negotiate in good faith in an effort to mutually agree upon the terms and conditions for a California statutory development agreement setting forth the rights and obligations of both Parties with respect to Buyer's Project and, to the extent desirable, to accommodate Buyer's Future Projects ("Development Agreement"). If, notwithstanding their good faith efforts, the Parties fail to agree on the terms and conditions for the Development Agreement by the Outside Closing Date, then either Party may exercise its rights and remedies under Section 4 hereof for the failure to satisfy this Condition Precedent to Closing.

3. "As-Is" Condition of Property.

(a) "As-Is" Condition of Property. Buyer acknowledges and agrees that Buyer has been given or will be given before the end of the Due Diligence Period, at Buyer's own cost and expense, a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Buyer's choosing, including, without limitation: (i) all matters relating to the title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements, building permit requirements, building codes and other development requirements; (ii) the physical condition of the Property, including, without limitation, the infrastructure available or unavailable to the Property (as the case may be), access to the Property and all other physical and functional aspects of the Property, including any grading issues and whether or not the import or export of soil will be necessary for Buyer's use of the Property, such examination of the physical condition of the Property to include an examination for the presence or absence of Hazardous Materials (as defined below), which examination shall be performed or arranged by Buyer at Buyer's sole expense; and (iii) all other matters of any significance affecting the Property whether physical in nature or intangible in nature, such as the political climate with respect to the governmental agencies that have jurisdiction over the Property, development of the Property or the construction of improvements on the Property. EXCEPT AS IS EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE DEVELOPMENT AGREEMENT [DEFINED BELOW], BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING

AND BUYER IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS AND THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER (OTHER THAN THOSE MADE BY SELLER EXPRESSLY HEREIN AND IN THE DEVELOPMENT AGREEMENT), EXPRESS OR IMPLIED, FROM SELLER, SELLER'S AGENTS OR BROKERS, AS TO ANY MATTERS CONCERNING THE PROPERTY AND THOSE ITEMS AND ASPECTS OF THE PROPERTY REFERENCED IMMEDIATELY ABOVE, INCLUDING, WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition of the Property, including, but not limited to, access, soils, geology and any ground water; (ii) the existence, quality, nature, adequacy, and physical condition of utilities serving the Property; (iii) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (iv) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property; (v) the compliance of the Property or the Property's operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions, of any governmental or quasi-governmental entity or any other person or entity; (vi) the presence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property; (vii) the quality of any labor and materials used in any improvements on or benefiting the Property; (viii) condition of title to the Property; and (ix) the economics of the present or future operation of the Property.

(b) Definition of Environmental Laws; Hazardous Materials.

(i) For purposes of this Agreement, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. Section 3001 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100-25600), the Porter Cologne Water Quality Control Act (California Health and Safety Code Section 1300 et seq.), the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.) and all other applicable federal, state and local laws and regulations and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters.

(ii) For purposes of this Agreement, the term "Hazardous Materials" means (A) hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under any Environmental Laws; and (B) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to (1) petroleum,

(2) refined petroleum products, (3) waste oil, (4) waste aviation or motor vehicle fuel, and (5) asbestos.

4. Conditions Precedent.

(a) Buyer's Conditions Precedent. Buyer's obligation to purchase the Property from Seller shall be conditioned upon and subject to each of the conditions precedent set forth below in this Section 4(a) (collectively, the "Buyer's Conditions Precedent"). In the event that any of the Buyer's Conditions Precedent are not timely satisfied as of the Closing (or other date specified below), and Buyer, in its sole and absolute discretion, elects not to waive such Buyer's Condition Precedent, then the Closing shall not occur and Buyer shall have the right (in addition and not in lieu of any other available rights and remedies) to terminate this Agreement by providing to Seller written notice thereof, in which event Buyer's Deposit shall be returned to Buyer and the parties shall have no further rights or obligations under this Agreement, except for those obligations which expressly survive the termination of this Agreement.

(i) Buyer's Title Policy. Escrow Holder's captive underwriter ("Title Company") shall be irrevocably committed to issue to Buyer at Closing an owner's policy of title insurance, in form and with such ALTA extended coverages and all endorsements thereto as Buyer may have reasonably requested and the Title Company shall have agreed to in writing on or before the expiration of the Due Diligence Period, insuring Buyer (or its designated vestee pursuant hereto) in the full amount of the Purchase Price that title to the Property is vested in Buyer (or its designated vestee) upon the Closing Date (as defined below), free and clear of all Seller's Title Exceptions, subject only to the Permitted Exceptions (the "Buyer's Title Policy"). Notwithstanding the foregoing, if Title Company is irrevocably committed to issue a CLTA policy of owner's insurance in satisfaction of the foregoing requirements, but not an ALTA policy of owner's insurance and/or agreed endorsements due to Buyer's failure to obtain any survey or other of Buyer's prerequisites to the issuance of Buyer's Title Policy, this Buyer's Condition Precedent shall be deemed satisfied.

(ii) Development Agreement. The Development Agreement and all required Buyer's Project and Buyer's Future Projects, as applicable, CEQA clearances shall have been certified, executed and delivered by the Seller to Escrow Holder with irrevocable instructions that it be delivered to Buyer at Closing.

(iii) Boundary Line Adjustment. A boundary line adjustment for the portion of APN 010-043-380-000 reflected by the Survey as part of the Property shall have been completed so as to render the Property comprised of separate conveyable legal parcels in compliance with the Subdivision Map Act applicable to non-governmental entities.

(iv) No Litigation. No action, suit, investigation, inquiry or other proceeding by or before any court or any governmental body or authority, shall have been instituted or threatened against Seller or the Property that prevents Seller from performing its obligations to deliver title to the Property as required under this Agreement.

(v) Performance and Representations and Warranties. Seller shall have performed, satisfied and complied in all material respects, with all covenants, agreements

and conditions required by this Agreement to be performed or complied with by Seller on or before the Closing Date (including without limitation delivery of all documents as required in paragraph 6(c) below), and all of Seller's representations and warranties as made in this Agreement, or in any written statement that shall be delivered to Buyer pursuant to this Agreement, shall be true in all material respects as of the Closing Date as though made at that time.

(vi) Condition of Property. From and after Buyer's approval of the Property pursuant to Section 2(d) above until the Closing, there shall have been no Material Adverse Change. As used in this Agreement, the term 'Material Adverse Change' means: any effect, event, development or change that, individually or in the aggregate with all other effects, events, developments or changes, materially adversely affects the condition or use of the Property (inclusive of any damage or destruction to, or condemnation of, the Property and any changes in the current zoning or permitted use of the Property, other than those initiated by Buyer). Notwithstanding any of the foregoing, a mere change in the value of the Property is expressly excluded from the definition of a Material Adverse Change.

(vii) No Moratoria. As of the Closing, there shall not be any development, building, construction or utility moratoria affecting the Property.

(viii) Buyer's Internal Approvals. Prior to fifteen calendar days after the expiration of the Due Diligence Period ("Internal Approval Date"), Buyer shall have obtained all required internal approvals or consents for Buyer's consummation of the transactions contemplated by this Agreement and for the Closing; it being acknowledged and agreed by Seller that Buyer's obligation to close Escrow under this Agreement is expressly contingent upon approval by Buyer's board of directors for the Closing and the Development Agreement (collectively, the "Internal Approvals"). Buyer shall use commercially reasonable efforts to obtain the Internal Approvals prior to the expiration of the Internal Approval Date. Only Buyer's express written approval under this Section 4(a)(ix) or the fact of Closing shall be deemed to satisfy or waive this Buyer's Condition Precedent.

(ix) Subsequent Property Documents. Buyer shall have approved in writing any and all Property Documents first provided to Buyer after expiration of the Due Diligence Period. Should Buyer fail to approve in writing any such Property Document within thirty (30) days after receipt thereof, such failure shall be deemed to be Buyer's approval thereof.

(b) Seller's Conditions Precedent. Seller's obligation to sell the Property to Buyer shall be conditioned upon and subject to the condition precedent set forth below in this Section 4(b) (the "Seller's Condition Precedent"). In the event that as of the Closing Date the Seller's Condition Precedent is not timely satisfied and Seller, in its sole and absolute discretion, elects not to waive such Condition Precedent, then Seller shall have as its sole remedy, the right to terminate this Agreement by providing to Buyer written notice thereof, in which event, Buyer's Deposit shall be released to Seller and the parties shall have no further rights or obligations under this Agreement, except for those obligations which expressly survive the termination of this Agreement.

(i) Performance and Representations and Warranties. Buyer shall have performed, satisfied and complied in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Buyer on or before the Closing Date, and all of Buyer's representations and warranties as made in this Agreement, or in any written statement that shall be delivered to Seller pursuant to this Agreement, shall be true in all material respects as of the Closing Date as though made at that time.

(ii) Development Agreement. All required Buyer's Project and Buyer's Future Projects, as applicable, CEQA clearances shall have been certified and the Development Agreement shall have been executed and delivered by the Buyer to Escrow Holder with irrevocable instructions that it be delivered to Seller at Closing.

5. Covenants.

(a) Covenants during Escrow. During the period commencing on the Effective Date and concluding on the earlier to occur of: (a) the Closing Date; or (b) termination of this Agreement (the "Escrow Period"):

(i) Seller shall cause the Property to be operated only in the ordinary and usual course of business and consistent with past practice; preserve goodwill and advantageous relationships related to the Property; and not take any action or omission which would cause a Material Adverse Change or any of the representations or warranties of Seller contained in this Agreement to become inaccurate or any of the covenants of Seller to be breached.

(ii) Seller shall use its commercially reasonable efforts to continue to carry its existing insurance covering its Property and activities thereon through the Closing Date, and use its commercially reasonable efforts to not allow any breach, default, termination or cancellation of such insurance policies or agreements to occur or exist.

(iii) Without the prior written approval of Buyer, Seller shall not enter into or amend any operating agreements that will be an obligation affecting its Property or be binding on Buyer after the Closing.

(iv) Without the prior written approval of Buyer, Seller shall not create or allow any new encumbrances, liens, easements, restrictions, or other exceptions to title against the Real Property or any leases, contracts, licenses, or occupancy rights relating to the Property which could by their terms survive Closing.

(v) Seller shall use its commercially reasonable efforts to maintain in existence all existing permits and licenses, permits and approvals necessary or reasonably appropriate to the ownership, and operation of the Property.

(vi) Without the prior written approval of the Buyer, Seller shall not: (a) file any applications for any new entitlements; or (b) file any application or take any action to amend, modify or terminate any existing permits.

(vii) Seller shall have the continuing obligation during the Escrow Period to provide Buyer with all documents or records that constitute a Property Document including without limitation each and every notice or communication Seller receives (1) related to the Property, and (2) from any governmental body relating to the Property, and

(viii) Seller shall have the continuing obligation during the Escrow Period to provide Buyer with all information to Seller's actual knowledge which would cause any of Seller's representations or warranties contained in Section 7(a) to be untrue in any material respect.

(ix) Prior to Closing, Seller shall terminate all existing leases and other occupancies on the Property and shall deliver possession of the Property to Buyer at Closing vacant.

(x) Prior to Closing, the Seller shall have acquired a fee title interest in and to the Property and be ready, willing and able to convey fee title to Buyer at Closing in accordance with the terms and conditions of this Agreement.

(xi) Prior to Closing, Seller shall cause to be completed a boundary line adjustment for the portion of APN 010-043-380-000 reflected by the Survey as part of the Property so as to render the Property comprised of separate conveyable legal parcels in compliance with the provisions of the Subdivision Map Act applicable to non-governmental entities.

(xii) Upon completion of the Seller's Review Requirements, the Parties shall negotiate in good faith in an effort to mutually agree upon the terms and conditions for the Development Agreement.

(b) **Covenants Upon Termination or Failure to Close.**

(i) **Return of Property Documents to Seller and Assignment of Buyer's Reports.** Buyer covenants and agrees that in the event of any termination of this Agreement or the failure of Escrow to close as provided herein, then Buyer shall promptly: (i) return to Seller all Property Documents previously delivered to Buyer; and (ii) take all actions and execute all documents and instructions (in form and substance reasonably satisfactory to Seller and Buyer) as may be reasonable and necessary, to assign, convey and deliver to Seller all of Buyer's right, title and interest in and to all reports, documents, and other materials obtained by Buyer in its inspection and investigation of the Property hereunder, to the extent the same are assignable.

(ii) **Release of Deposit.** In the event of any termination of this Agreement due to a material default of Seller hereunder, the failure of a Buyer's Condition Precedent, or upon any termination of this Agreement prior to expiration of the Due Diligence Period, then each party covenants and agrees that such party shall promptly provide Escrow Holder with such instructions as may be reasonable and necessary to cause Escrow Holder to release the Deposit to Buyer. In the event of any termination of this Agreement due to a material default of Buyer after expiration of the Due Diligence Period, then each party covenants and

agrees that such party shall promptly provide Escrow Holder with such instructions as may be reasonable and necessary to cause Escrow Holder to release the Deposit to Seller.

(iii) Payment of Escrow Cancellation Costs. In the event of any termination of this Agreement due to a default of a party, then the defaulting party shall pay all cancellation costs imposed by the Escrow Holder. In the event of termination of this Agreement for any other reason, the cancellation costs imposed by Escrow Holder shall be split equally by Buyer and Seller.

The obligations of the parties under Section 5 inclusive shall survive the Close of Escrow or earlier termination of this Agreement and shall not merge into the Grant Deed.

6. Escrow and Closing.

(a) Escrow; Escrow Instructions. Within three (3) business days after the Effective Date, Buyer shall open an escrow (the "Escrow") with Lesley Kaufman, Commercial Escrow Officer First American Title, 3001 I Street, Suite 100 Sacramento, CA 95816, Direct: 916-490-4512, Fax: 714-689-5184, Email: lkaufman@firstam.com ("Escrow Holder"), for the purposes of holding funds and closing the purchase and sale of the Property in accordance with this Agreement. Escrow shall be deemed to be "open" when the Buyer has delivered a fully executed copy of this Agreement together with all of its exhibits to the Escrow Holder. The parties shall deliver to the Escrow Holder such escrow instructions as are reasonable and necessary to carry out the provisions of this Agreement. If there is any inconsistency between the terms of this Agreement and such escrow instructions, the terms of this Agreement shall prevail and control.

(b) Closing; Closing Date. The Closing shall take place on the later of (i) thirty (30) days after the expiration of the Due Diligence Period, or (ii) thirty (30) days after the date on which the Seller has satisfied all of the requirements, including all CEQA certifications and clearances, for it to execute and deliver the Development Agreement at Closing; but in no event shall the date of the Closing (the "Closing Date") take place later than 20 months after the Effective Date ("Outside Closing Date"). The term "Closing" shall mean and refer to the date on which the Grant Deed is recorded in the official records of Lake County, California.

(c) Documents to be Delivered by Seller. Not later than one (1) business day before the Closing Date, Seller shall deliver to the Escrow Holder the following documents, duly executed by Seller and acknowledged where required:

(i) Original grant deed in recordable form duly executed by Seller, conveying Seller's fee title in and to the Property to Buyer or Buyer's designated vestee, which shall be in form attached hereto as Exhibit C-1, and incorporated herein by this reference and substance reasonably satisfactory to Buyer and Seller (the "Grant Deed");

(ii) Duplicate originals of a general assignment between Seller and Buyer, substantially in the form attached hereto as Exhibit C-2, and incorporated herein by this reference (the "General Assignment");

(iii) Duplicate originals of the Development Agreement in the agreed form.

(iv) Non-foreign certificates with respect to federal tax and California tax in form and substance reasonably satisfactory to Buyer, Seller and Escrow Holder;

(v) Such other documents and instructions as may be reasonably required by the parties or Escrow Holder in order to close Escrow in accordance with the terms of this Agreement;

(vi) Satisfactory evidence as may be reasonably requested by Buyer of Seller's compliance with Section 5(a)(ix) hereof.

(d) Funds and Documents to be Delivered by Buyer. Not later than one (1) business day before the Closing Date, Buyer shall deliver or cause to be delivered to the Escrow Holder the following funds and documents, duly executed by Buyer and acknowledged where required:

(i) Immediately available funds, in the amount equal to the sum of (A) the Closing Payment, and (B) any costs or prorations chargeable to Buyer under this Agreement;

(ii) Duplicate originals of the General Assignment; and

(iii) Duplicate originals of the Development Agreement in the agreed form.

(iv) Such other documents and instructions as may be reasonably required by the parties or Escrow Holder in order to close Escrow in accordance with the terms of this Agreement.

(e) Closing Prorations and Fees. Real property taxes, obligations on bonds, assessments, and fees which are a lien on the Property, owner's association dues and fees, if any, paid rent on Property leases, if any, and obligations on contracts being assumed by Buyer, if any, shall all be prorated by Escrow Holder as of the Closing Date. All income and expense items subject to proration pertaining to the period prior to the Closing Date will be allocated to Seller and all income and expense items subject to proration pertaining to the period starting on the Closing Date will be allocated to Buyer. Buyer and Seller shall each pay one-half of all escrow fees. Seller shall also pay all recording fees and city and county documentary transfer taxes and the cost of a standard coverage (CLTA) Owner's title insurance policy insuring that Buyer or its designated vestee holds fee title to the Property in the amount of the Purchase Price. Buyer shall pay any additional fees and costs related to Buyer's election to obtain any ALTA extended title insurance policy (but excluding the Survey's cost), as well as the costs of extended coverage endorsements, if any. Any other cost or expense of escrow will be borne by the party customarily paying the same in escrows for the purchase and sale of real property in Lake County, California. 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. In addition, Seller and Buyer shall each pay all

attorneys' and consultants' fees and costs incurred by such party in connection with the negotiation, execution, delivery and performance of this Agreement by such party.

7. Representations and Warranties.

(a) Seller's Representations and Warranties. Seller makes the following representations and warranties as of the Effective Date and again as of the Closing Date:

(i) Seller has full power and authority to enter into this Agreement, and to sell, transfer and convey all of its right, title and interest in and to the Property in accordance with this Agreement.

(ii) Seller is duly created, validly existing, and authorized to complete the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by an authorized representative of Seller and constitutes the legal, valid and binding obligations of Seller in accordance with its terms.

(iii) Except as otherwise disclosed by Seller to Buyer in writing, to the best of Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry, pending or threatened against or relating to Seller which would affect the Property or Seller's ability to perform its obligations under this Agreement.

(iv) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

(v) Seller is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute, and has not made a general assignment for the benefit of creditors.

(vi) To the best of Seller's knowledge, there are no Hazardous Materials, or storage tanks containing Hazardous Materials, in, on, under, about or within the Property. To the best of Seller's knowledge, there has not occurred any discharge, use, generation, storage, manufacture, transport, release or disposal upon the Property or contamination of the Property by any Hazardous Material. To the best of Seller's knowledge, there are no pending or threatened litigation, proceedings or investigations before or by any administrative agency in which any person or entity alleges the presence, release, threat of release, placement on or in the Property or within the Property, or the generation, transportation, storage, treatment or disposal at the Property or within the Property, of any Hazardous Materials.

(vii) To the best of Seller's knowledge, there are no liens or encumbrances, or claims, or covenants, conditions and restrictions, easements, rights of way or other matters affecting the Property or any interest therein, except as indicated in the Title Report.

(viii) Seller is not a party to or bound by any oral or written options to purchase or other purchase rights for the Property, no third parties have any such options or rights.

(ix) Seller is not a party to or bound by any oral or written leases licenses, or occupancy rights to the Property, and no parties other than Seller are in possession of the Property.

(x) To the best of Seller's knowledge there are no mechanic's or materialman's liens or similar claims or liens asserted against the Real Property for work performed or commenced prior to the Closing that will not be removed prior to Closing.

(xi) To the best of Seller's knowledge, there are no violations of any applicable law, ordinance, rule, regulation or requirement of any governmental agency, body or subdivision affecting or relating to the Property, including, without limitation, any environmental law, ordinance, rule, requirement or regulation.

(xii) To the best of Seller's knowledge, there are no violations of any agreement, contract, encumbrance or covenants, conditions or restrictions affecting or relating to the Property.

For all purposes in this Agreement, the phrase "Seller's knowledge" or any variation thereof means the current, actual knowledge of Alan Flora, who holds the position of City Manager who Seller represents is the most knowledgeable employee of Seller with respect to the Property. The foregoing representations and warranties shall survive the Close of Escrow or earlier termination of this Agreement for a period of one (1) year and shall not merge into the Grant Deed.

(b) Buyer's Representations and Warranties. Buyer makes the following representations and warranties as of the Effective Date and again as of the Closing Date:

(i) Subject to the approval required per Section 4(a)(ix), Buyer has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(ii) This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligations of Buyer in accordance with its terms.

(iii) To the best of Buyer's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry, pending or threatened against or relating to Buyer which would affect Buyer's ability to perform its obligations under this Agreement.

The foregoing representations and warranties shall survive the Close of Escrow or earlier termination of this Agreement for a period of one (1) year and shall not merge into the Grant Deed.

8. **Possession; Risk of Loss.** Seller shall deliver possession of the Property to Buyer at Closing, subject only to the Permitted Exceptions. All risk of loss or damage with respect to the Property shall pass from Seller to Buyer at the Closing.

9. **Condemnation or Damage.** In the event the Property, or any material portion thereof, is substantially destroyed or substantially damaged prior to the Closing, or in the event of the taking of all or any material portion of the Property by eminent domain proceedings, or the commencement of such proceedings prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by delivering notice to Seller within five (5) business days after Buyer's discovery of such damage or condemnation action, in which case, Escrow Holder shall immediately return the Deposit to Buyer and except as otherwise provided herein, the parties shall have no further rights or obligations under this Agreement. If Buyer does not so terminate this Agreement, then Buyer may, at Buyer's option proceed to close at the current Purchase Price, with an assignment by Seller of all rights, title and interest in and to any and all such awards and proceeds to be received after the Closing, if any. Seller shall deliver notice to Buyer of any material damage and/or condemnation proceedings affecting the Property after Seller's discovery of such matter.

10. **Broker's Commissions.** Each of Buyer and Seller warrants and represents to the other that it has not retained, nor is it obligated to, any person or entity for brokerage, finder's or similar services in connection with the transactions contemplated by this Agreement, and that no commission, finder's fee or other brokerage or agent's compensation can be properly claimed by any person or entity based upon the acts of such party with regard to the transactions which are the subject matter of this Agreement. Each of Buyer and Seller shall indemnify, defend and hold harmless the other party from and against all obligations, liabilities, claims, damages, costs, expenses and fees (including reasonable attorneys' and experts' fees and costs) arising from or related to such indemnifying party's dealings with its broker or from such party's breach of the foregoing representation and warranty, and such indemnity obligations shall survive the Closing, or the earlier termination of this Agreement, as applicable.

11. **Further Assurances.** Seller and Buyer agree to execute such additional documents and take such additional actions which are consistent with, and as may be reasonable and necessary to carry out the provisions of, this Agreement.

12. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Agreement in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth beneath such party's signature on this Agreement, or at such other address for which that party may have given notice under the provisions of this Section. Any notice, demand, approval, consent, or other communication given by (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) electronic facsimile or email ("Electronic Transmission") shall be deemed to have been given on the date of transmission of the entire communication, provided such Electronic Transmission occurs during 8:00 a.m. and 6:00 p.m., Pacific Time, on a business

day, and the sending party deposits a hard copy of the original transmitted document(s) (i) with an overnight common courier for next business day delivery or (ii) by United States mail, addressed to the receiving party, first class postage prepaid, not later than the first (1st) business day following such Electronic Transmission.

13. **Default.**

(a) **Default by Seller Prior to the Closing.** In the event of a default under or breach of this Agreement on the part of Seller prior to Closing, Buyer shall have the option, as its sole and exclusive remedy at law or in equity, to elect either of the following by delivery of written notice to the Seller: (A) terminate this Agreement by delivery of written notice of termination to Seller, whereupon, Buyer shall receive an immediate return of the entire amount of the Deposit and Buyer and Seller shall each be released from all liability hereunder except (i) for those provisions which recite that they survive termination and (ii) Buyer may also pursue an action in damages against Seller for recovery of Buyer's actual losses and damages (in addition to legal costs and expenses required to recover such amount, to the extent recoverable under Section 14 below), or (B) continue to enforce the terms of this Agreement and seek the equitable remedy of specific performance of this Agreement (including recordation of a lis pendens upon the Property referencing same) together with any and all recoverable losses permitted at law and in equity in connection therewith. In no such event shall Seller be liable to Buyer for consequential or incidental damages, including, but not limited to, lost profits. The foregoing options are mutually exclusive and are the exclusive rights and remedies available to Buyer at law or in equity in the event of default under or breach of this Agreement on the part of Seller prior to the Closing. Buyer shall be deemed to have elected its remedy under clause (i) of this Section if Buyer fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located, on or before one hundred and eighty (180) days following the date upon which Closing was to have occurred. Nothing contained in this paragraph shall be deemed or construed to limit Buyer's right to (i) recover its reasonable attorneys' fees and legal costs if Buyer is determined to be the Prevailing Party as per Section 14 below, (ii) exercise any of its remedies for any breach or default of Seller first discovered subsequent to the Closing, (iii) exercise any of its remedies for any of Seller's obligations which survive the Closing or earlier termination of this Agreement, or (iv) exercise any of its remedies under any hold harmless or indemnification provision hereof.

(b) **DEFAULT BY BUYER AFTER EXPIRATION OF DUE DILIGENCE PERIOD; LIQUIDATED DAMAGES.** SELLER AND BUYER HAVE DISCUSSED THE POSSIBLE CONSEQUENCES TO SELLER IN THE EVENT THAT THE CLOSING DOES NOT OCCUR BY REASON OF BUYER'S DEFAULT. SELLER AND BUYER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO FIX THE ACTUAL DAMAGES TO SELLER IN SUCH EVENT. SELLER AND BUYER AGREE THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, A REASONABLE REMEDY FOR SELLER AS TO SUCH DAMAGES IS THAT SELLER SHALL BE RELEASED FROM ITS OBLIGATIONS TO SELL THE PROPERTY TO BUYER AND SHALL RETAIN THE DEPOSIT. ACCORDINGLY, SHOULD THE SUBJECT TRANSACTION FAIL TO BE CONSUMMATED ACCORDING TO THE TERMS OF THIS AGREEMENT SOLELY BY REASON OF ANY DEFAULT OF BUYER OCCURRING AFTER THE

EXPIRATION OF THE DUE DILIGENCE PERIOD, SELLER SHALL BE RELIEVED OF ANY OBLIGATION TO SELL THE PROPERTY TO BUYER, BUYER SHALL HAVE NO RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT, AND THE DEPOSIT SHALL BE RETAINED BY SELLER. SUCH REMEDY IS NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, OR SIMILAR AUTHORITY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE LIQUIDATED DAMAGES PROVIDED FOR UNDER THIS SECTION SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY *EXCEPT* THAT SELLER SHALL ALSO HAVE THE RIGHT TO ENFORCE BUYER'S OBLIGATIONS WHICH SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT AS SET FORTH IN THIS AGREEMENT. NOTHING CONTAINED HEREIN SHALL IN ANY MANNER LIMIT THE AMOUNT OF DAMAGES OBTAINABLE PURSUANT TO AN ACTION UNDER ANY HOLD HARMLESS OR INDEMNIFICATION PROVISION HEREOF OR ATTORNEY'S FEES RECOVERABLE PURSUANT TO THIS AGREEMENT. BY PLACING THEIR INITIALS BELOW, SELLER AND BUYER SPECIFICALLY ACKNOWLEDGE, CONSENT TO AND CONFIRM THE ACCURACY OF THE STATEMENTS MADE WITHIN THIS SECTION AND THE FACT THAT SELLER AND BUYER WERE BOTH REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Seller's Initials: _____ Buyer's Initials: WY

14. **Legal Costs.** If any party to this Agreement shall take any action to enforce this Agreement or bring any action or commence any proceeding for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in taking such action, bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs and such amounts due hereunder shall be determined by a court of competent jurisdiction and not by a jury. For the purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees incurred in the following: (a) post judgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third-party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals.

15. **Resolution of Disputes.** The following provisions concerning resolution of disputes and the manner in which such proceedings shall be conducted are material elements of this Agreement.

(a) **Procedure.** In the event of a dispute between the parties arising under this Agreement, including but not limited to a dispute regarding the liquidated damages, the dispute shall be decided by general reference procedures pursuant to Code of Civil Procedure

Section 638, as modified by the provisions of this Section, and any subsequent provisions mutually agreed upon in writing by the parties. Any variations from the statutory reference procedures set forth herein shall be deemed to be a stipulation by the parties to such revised procedures. Should any court or referee determine that the procedures set forth herein violate any statute, case law, rule or regulation, the terms of such statute, case law, rule or regulation shall control and govern.

(b) Commencement. The general reference proceeding shall be commenced by a request or a motion filed with the Presiding Judge of the Superior Court of Lake County ("Court"). Except to the extent modified herein, the reference shall be conducted in accordance with California law, including, but not limited to, the Code of Civil Procedure and the Evidence Code.

(c) Referee. The referee appointed by the Court shall be a retired judge, who served at least five (5) years in the Courts of the State of California. The Court shall appoint only one referee. Subject to the award of fees and costs to the prevailing party in the general reference, each party shall pay one-half (1/2) of the expenses of the general reference at the rate set by the Court pursuant to Code of Civil Procedure Sections 645.1 and 1023. The referee shall not have the right to convene a jury to be the trier of fact of any controversy hereunder. BOTH PARTIES HEREBY WAIVE A JURY TRIAL OR PROCEEDING IN CONNECTION WITH ANY DISPUTE ARISING OUT OF THIS AGREEMENT.

(d) Location of References. All general reference proceedings hereunder shall, unless all parties hereto otherwise agree, be conducted in a mutually agreeable location in Lake County, California.

(e) Provisional Relief. Any party may, without waiving the right to general reference, prior to the time a referee is appointed by the Court, take any action necessary for its immediate provisional relief including, but not limited to, the filing of a complaint for the purpose of recording a lis pendens, attachment, receivership, injunction and motions to expunge a lis pendens. At such time as the Court has appointed a referee, the Court may transfer any such proceeding for provisional relief to the referee for disposition.

(f) Discovery. Within twenty (20) days after appointment of the referee, each party shall serve on each other party all documents relevant to the dispute and all documents that the party intends to offer as evidence during the reference proceedings. Each party shall be entitled to take one discovery deposition of each other party, to take three non-party depositions, and to propound 25 special interrogatories pursuant to Code of Civil Procedure Section 2030.030. The parties shall provide to the referee and to all other parties, within forth-five (45) days after appointment of the referee, a list of expert witnesses who will provide opinion testimony. The parties shall be entitled to depose any designated expert prior to the commencement of the hearing. The referee shall resolve any discovery disputes between the parties. The general reference hearing must commence within three (3) months after appointment of the referee and shall not exceed thirty (30) days in length without the approval of all parties. The referee shall report his or her findings to the Court in the form of a statement of decision within twenty (20) days after the close of testimony, pursuant to Code of Civil Procedure Section 643. The Court shall enter judgment based upon the statement of decision.

(g) **Costs and Expenses.** The referee shall be authorized to award costs of the general reference, including, without limitation, attorneys' fees, expert fees, and fees assessed by the referee, to the prevailing party. The referee shall also be authorized to order specific performance, the expungement of a lis pendens, or other provisional and equitable remedies.

16. **Cooperation with Exchange.** In the event that at Closing, Seller and/or Buyer is under contract with a "qualified intermediary" for the purpose of effecting a tax-deferred exchange (including, without limitation, any reverse exchange) in accordance with Section 1031 of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder, the other party hereto shall cooperate with such exchange and perform any acts reasonably necessary to assist in such exchange, provided that (a) Buyer shall not be required to accept title to any property other than the Property, and (b) neither party hereto shall be required to expend any additional amounts of money above those amounts required pursuant to this Agreement, or extend the Closing. Each party shall indemnify and hold the other party harmless from and against expenses, costs and damages of any kind (including attorneys' and experts' fees) suffered by either by reason of the performance of, or failure to perform, any acts of cooperation necessitated by this Section.

17. **Time of the Essence; Dates.** Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or holiday (as defined in California Government Code Section 6700) (each a "Non-Business Day"), such date shall be deemed to be the succeeding business day. For purposes of this Agreement, a "business day" shall mean a day other than a Non-Business Day.

18. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

19. **Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, permitted assigns, and other successors in interest.

20. **Assignment.** Buyer may assign its interests under this Agreement to any affiliated or unaffiliated third party without the prior written consent of Seller provided that such assignment shall be in writing, the assignee thereunder shall assume all of Buyer's obligations under this Agreement, and the assignment agreement shall be delivered to Seller prior to the Closing. In the event of any such assignment, Buyer shall be released from Buyer's prospective obligations under this Agreement. Additionally, Seller agrees that Buyer may take title to the Property in the name of a joint venture, partnership, affiliated entity, developer entity, or other legal vehicle chosen by Buyer.

21. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

22. **No Merger.** The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance of title to the Property, placing any deeds of trust on the Property and delivery of money and documents in escrow), shall not merge with transfer of title but shall remain in effect until fulfilled.

23. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any action or proceeding arising out of, or related to, this Agreement shall be in Lake County, California.

24. **Drafting.** Each of the parties hereto agree that this Agreement is the product of joint draftsmanship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party to this Agreement waives the effect of such statute.

25. **Back Up Offers.** From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall not solicit, entertain, or accept any back up offers for the purchase of the Property.

26. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies delivered to a party by Electronic Transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

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

SELLER:

City of Clearlake, California, a public body,
corporate and politic

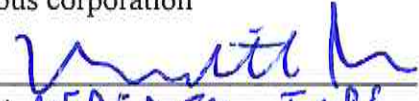
By: _____

By: _____

Dated: _____, 2023

BUYER:

Adventist Health Clearlake Hospital, a California
nonprofit religious corporation, d/b/a Adventist
Health Clear Lake, a California nonprofit
religious corporation

By: 
Name: MEREDITH JOBE
Its: SECRETARY

Dated: DECEMBER 6, 2023

Address:

With a copy to:

Address:

Adventist Health Clear Lake
PO Box 6710
Clearlake, CA 95422
Attn: Colleen Assavapisitkul, President
Tel: (707) 994-6486
Email: assavaCG@ah.org

With a copy to:

Adventist Health
Attn: JLL Property Management
One Adventist Health Way
Roseville, CA, 95661
Email: ahpropertymanagement@jll.com

Exhibit A to
PURCHASE AND SALE AGREEMENT

INTENTIONALLY OMITTED

Exhibit B to
PURCHASE AND SALE AGREEMENT
LIST OF PROPERTY DOCUMENTS

[To be attached]

Exhibit C-1 to
PURCHASE AND SALE AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Space Above this Line for Recorder's Use

APNs:

The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX: \$ _____; CITY TRANSFER TAX: \$ _____; SURVEY MONUMENT FEE: \$ _____

- ☐ computed on the consideration or full value of the interest or property conveyed; or
☐ computed on the consideration or full value less value of liens or encumbrances
☐ unincorporated area; ☐ City of _____

GRANT DEED

THIS GRANT DEED is made and entered into this _____ day of _____, 2022, by _____ ("Grantor"), in favor of _____, a California nonprofit religious corporation ("Grantee").

WITNESSETH:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GRANTOR hereby GRANTS to Grantee that certain real property in _____, California (the "Property") more particularly described as follows:

LEGAL DESCRIPTION IS ATTACHED HERETO AS EXHIBIT A
AND INCORPORATED HEREIN BY THIS REFERENCE.

The foregoing grant is expressly subject to:

1. Nondelinquent general and special taxes and assessments for the current fiscal year and any and all unpaid bonds and/or assessments not yet due or payable; and
2. All of the following which are of record: covenants, conditions, restrictions, reservations, rights-of-way, easements, and all other non-monetary encumbrances.

EXECUTED as of the day and year set forth above.

GRANTOR:

By: _____

[ALL SIGNATURES TO BE ACKNOWLEDGED]

C-1

Exhibit C-2 to
PURCHASE AND SALE AGREEMENT

GENERAL ASSIGNMENT

This General Assignment is made as of _____, 2023, by and between _____ (“Seller”), and _____, a California nonprofit religious corporation (“Buyer”).

Reference is hereby made to (a) the property (the “Property”) that is the subject of that certain Purchase and Sale Agreement dated _____, 2022 for reference purposes, between Buyer and Seller (the “Purchase Agreement”); (b) any and all land use entitlements, development rights, permits, approvals, and other rights pertaining to the Property, including the approved tentative map for such Property; (c) all engineering studies, reports, work, plans and surveys; (d) all utility service contracts, if any, in connection with the development of the Property; (e) all credits deposits, prepaid fees to the extent applicable to the Property, and reimbursements due from any governmental agency, quasi-governmental agency, or improvement district; (f) any and all of Seller’s right, title and interest in and to all other Intangibles, including without limitation (i) all contracts and agreements listed on an exhibit attached to this General Assignment which Buyer approves and agrees to accept, (ii) all plans and specifications relating to the Property including, without limitation any architectural plans and drawings to the extent the same are assignable without third party consent, and (g) the rights, privileges and entitlements incident thereto (collectively, the “Assigned Property”).

For good and valuable consideration, receipt of which is hereby acknowledged, Seller does hereby, give, grant, bargain, sell, transfer, assign, convey and deliver to Buyer, all of Seller’s right, title and interest in the Assigned Property, including without limitation: (i) all permits, licenses, entitlements, subdivision agreements, rights under other agreements relating to the subdivision or development of the Property; (ii) all plans, specifications, maps, drawings and other renderings relating to the Property; (iii) all warranties, guaranties, indemnities, claims and any similar rights relating to and benefiting the Property or the assets transferred hereby; (iv) all Intangibles, inclusive of intangible rights, goodwill and rights benefiting the Property; and (v) all development rights benefiting the Property.

Seller hereby covenants that it will, at any time and from time to time upon written request therefor, execute and deliver to Buyer, its nominees, successor and/or assigns, any new or confirmatory instruments and do and perform any other acts which Buyer, its nominees, successors and/or assigns, may request in order to fully transfer possession and control of, and protect the rights of Buyer, its nominees, successors and/or assigns in, all the Assigned Property intended to be transferred and assigned hereby.

SELLER:

BUYER:

, a California nonprofit religious corporation

By: _____

By: _____
Name: _____
Its: _____

Dated: _____, 2023

By: _____

Dated: _____, 2023