



Alameda County Fire Department

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WILLIAM L. McDONALD
Fire Chief

October 10, 2023

AGENDA #_____, October 24, 2023

SERVING:

City of Dublin

City of Emeryville

City of Newark

City of San Leandro

City of Union City

Lawrence Berkeley
National Laboratory

Lawrence Livermore
National Laboratory

Unincorporated Areas
of Alameda County

Alameda County
Regional Emergency
Communications Center
"Accredited Center
of Excellence"

Honorable Board of Directors
County of Alameda
1221 Oak Street
Oakland, California 94612

Dear Board Members:

SUBJECT: APPROVE THE USE OF ALAMEDA COUNTY FIRE DEPARTMENT DISTRICT FUNDS TO PURCHASE REAL PROPERTY FROM DAVID D. BOHANNON ORGANIZATION; AUTHORIZE DIRECTOR OF GENERAL SERVICES AGENCY TO NEGOTIATE AND FIRE CHIEF OF ALAMEDA COUNTY FIRE DEPARTMENT TO EXECUTE PURCHASE AND SALES AGREEMENT AT 507 PASEO GRANDE, SAN LORENZO AND 587 PASEO GRANDE, SAN LORENZO; AMOUNT: \$1,740,367

Dear Board Members:

RECOMMENDATIONS:

- A. Authorize the Fire Chief to sign a Purchase and Sale Agreement with David D. Bohannon Organization ("Seller") to purchase the property at 507 Paseo Grande, San Lorenzo, APN # 412-31-92 and 587 Paseo Grande, San Lorenzo, APN #412-31-93, for a purchase price of \$1,640,367, plus closing costs of approximately \$100,000;
- B. Authorize the Director of the General Services Agency to:
 1. Perform all acts necessary to approve and accept on behalf of Alameda County Fire Department the purchase and acquisition of an interest in the above property, including execution of escrow documents;
 2. Execute amendments to the Purchase and Sales Agreement on behalf of Alameda County Fire Department as they may pertain to possible changes in the closing date of escrow; and
 3. Undertake all actions required by Revenue and Taxation Code section 5082.1 for the Auditor-Controller to cancel taxes on the Property for the remaining portion of the fiscal year after the date of apportionment.
- C. Authorize the Fire Chief of Alameda County Fire Department to:
 1. Accept on behalf of Alameda County Fire Department the deed conveying title to the real property;

- D. Approve funding in the amount of \$1,740,367 from the Alameda County Fire Department District Funds;
and
- E. Authorize the Auditor-Controller to make the related budgetary adjustments listed in the attached financial recommendation.

DISCUSSION/SUMMARY:

Alameda County Fire Department (ACFD) serves a diverse community of nearly 400,000 residents throughout 500 square miles by providing all-risk, full service emergency response. Since 1977, ACFD has leased the property at 427 Paseo Grande that serves as the current site for Fire Station 22, however, the location presents accessibility, inclusivity, and logistical challenges for current operations and future growth at Station 22. In an effort to expand the capacity and continue delivery of the very highest level of service, ACFD seeks a new location for its San Lorenzo Station 22.

On June 6, 2023, your Board authorized (Item No. 116) negotiations for the real property located at 507 Paseo Grande, San Lorenzo and 587 Paseo Grande, San Lorenzo. The land is a 40,433 square-foot corner lot with convenient access to Paseo Largavista, Paseo Grande, and Hesperian Boulevard. The proposed new location is located less than a quarter mile from the existing Station 22 in consideration of ACFD emergency response times and will allow ACFD to build a new Fire Station 22 as part of the Measure X Bond adopted by constituents in November 2020.


FINANCING:


Funding for the purchase of the property in the amount of \$1,740,367 is from Alameda County Fire Department District Fund. Appropriations for this contract are included in the ACFD FY 2023-2024 Approved Budget. There is no impact to County General Fund.

VISION 2026 GOAL:

The purchase of this new facility meets the 10X goal pathway of **Accessible Infrastructure** in support of our shared vision of a **Prosperous & Vibrant Economy**.

Respectfully submitted,

DocuSigned by:

0415A9D0B85D4B8...
William McDonald
Fire Chief, Alameda County Fire Department

DocuSigned by:

8D4CA131AA0B4C2...
Kimberly Gasaway
Director, General Services Agency

I:\BOARD LETTERS\RPM\LETTERS\2023\BOS.10.24.23.RPM PURCHASE OF 507 AND 587 PASEO GRANDE, SAN LORENZO.DOCX

cc: County Administrator
Auditor-Controller
County Counsel

FINANCIAL RECOMMENDATION**AGENDA DATE:** 10/24/2023

Authorize Director of GSA to negotiate and Fire Chief of ACFD to execute Purchase and Sales Agreement at 507 Paseo Grande, San Lorenzo and 587 Paseo Grande, San Lorenzo; Amount: \$1,740,367

Subject of Board Letter:**BY:** 2024**FUND:** 21601

The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT

The increase (decrease) in anticipated revenue, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL ANTICIPATED REVENUE \$0

The increase (decrease) in appropriations, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
280101	650031	00000		\$140,367
ORG TOTAL				\$140,367

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
280111	6100000	00000		(\$140,367)
ORG TOTAL				(\$140,367)

GRAND TOTAL APPROPRIATION \$0

REAL PROPERTY PURCHASE AND SALE AGREEMENT

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the Effective Date (as hereinafter defined in Section 3(b) hereof), by and between DAVID D. BOHANNON ORGANIZATION, a California corporation ("DDBO"), hereinafter referred to as ("Seller"), and the ALAMEDA COUNTY FIRE DEPARTMENT, a California Dependent Special District ("Buyer"). Capitalized terms not defined in the body of this Agreement are defined in Exhibit A to this Agreement.

RECITALS

WHEREAS, DDBO is the current owner of that certain real property formerly described as 507 Paseo Grande, San Lorenzo, California (Assessor Parcel No: 412-31-92) ("507 Paseo Grande"), and 587 Paseo Grande, San Lorenzo, California (Assessor Parcel No: 412-31-93) ("587 Paseo Grande"); and

WHEREAS, Buyer desires to acquire a reconfigured 587 Paseo Grande inclusive of a lot line adjustment ("LLA") to include portions of 507 Paseo Grande in the manner described in Exhibit B-1, attached hereto; and

WHEREAS, if such LLA is successfully completed, it will then permit the corner property (at the intersection of "Paseo Largavista" and "Paseo Grande"), as described in Exhibit B-2 and mapped in Exhibit B-3 as the "Corner Property," to be sold under this Purchase and Sale Agreement as a reconfigured and legal parcel under the LLA (herein, the "Real Property"); and

WHEREAS, Seller has knowledge of pre-existing environmental conditions involving "Hazardous Materials" (as defined in Exhibit A, attached) affecting the Real Property ("Existing Conditions"), which may require Buyer to complete additional testing and analysis to determine the nature and extent of such Existing Conditions and all required remediation activities imposed by law in managing the Existing Conditions on the Real Property; and

WHEREAS, the parties agree that Buyer cannot proceed with the purchase of the Real Property until the LLA has been approved, and when the LLA is approved, then (and only then) may the purchase proceed; and

WHEREAS, the parties agree that the proposed "Purchase Price" (as hereinafter defined) has been negotiated and set to account for Buyer's estimated costs for this additional testing, analysis and remediation of known and anticipated pre-existing environmental impacts by "Hazardous Materials" (hereafter "Existing Conditions"), and the Buyer agrees that by proceeding with its purchase, the Purchase Price is a fair adjustment and is intended to shift all risks for the Existing Conditions to Buyer; and

WHEREAS, Seller and Buyer have agreed that Buyer shall be granted certain rights to purchase the "Property" (as hereinafter defined, and subject to the conditions noted) and the parties have agreed to hereby evidence their agreement with respect thereto.

NOW, THEREFORE, for good and valuable consideration, including the "Consideration Payment" (as hereinafter defined), the sufficiency and receipt of which are hereby acknowledged

by the parties and in consideration of the respective agreements hereinafter set forth, it is mutually agreed as follows:

AGREEMENT

The Recitals and definitions set out above are incorporated herein by reference.

1. **Purchase Price and Property Included in Sale.** The purchase price for the “Property” as defined below, shall be One Million Six Hundred and Forty Thousand Three Hundred Sixty-Seven Dollars (\$1,640,367.00) (“Purchase Price”). In consideration of the payment of the Purchase Price, Seller hereby agrees to sell and to convey to Buyer and Buyer agrees to purchase from Seller, the following:

(a) The Real Property.

(b) All rights, privileges, and easements appurtenant to the Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on the Real Property owned by Seller as of record, as well as all existing rights appurtenant to the Real Property, such as any development rights, air rights, water, water rights and water stock relating to the Real Property and any easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Real Property. Seller does not warrant that any such rights or privileges exist except to the extent of any express warranty by Seller set out in this Agreement, if any.

(c) All improvements and fixtures located on the Real Property as well as all other structures presently located on the Real Property, all apparatus, equipment and appliances located on the Real Property and used in connection with the operation or occupancy of the Real Property, such as facilities used to provide any utility services, or other services on the Real Property (collectively, “Improvements”). Seller does not warrant that any such Improvements exist on the Real Property, and Buyer must satisfy itself respecting their nature and extent.

All of the items referred to in Subsections (a), (b), and (c), above are hereinafter collectively referred to as the “Property.”

2. **Deposits.**

(a) Within five (5) business days of the Effective Date, Buyer shall deposit Fifty Thousand Dollars (\$50,000.00) (the “Initial Deposit”) into an escrow (the “Escrow”) to be opened with Old Republic Title Company (“Escrow Holder”) in Oakland, which, together with any other amounts deposited by Buyer into Escrow, shall be placed in an interest-bearing account with a federally insured bank, with interest credited to Buyer, net of all expenses associated with setting up such interest bearing account.

(b) The “Consideration Payment” is the sum of One Hundred Dollars (\$100.00), which shall be paid to Seller by Escrow Holder out of the Initial Deposit. Immediately upon receipt of the Initial Deposit, Escrow Holder shall release the Consideration Payment to Seller without further instructions from Seller or Buyer, which shall be independent of any other consideration provided hereunder. The Consideration Payment is paid to Seller in consideration

of Seller granting Buyer the right to purchase the Property in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the Consideration Payment be refundable; however, the Consideration Payment (as part of the Initial Deposit) shall be applicable to the Purchase Price at Closing.

(c) If the Notice of Approval, as defined below, is timely issued, then, within five (5) days of the delivery of the Notice of Approval, Buyer shall increase its earnest money deposit into Escrow with an additional payment of Sixty Thousand Dollars (\$60,000.00) ("Second Deposit"), which, together with the Initial Deposit (collectively "EM Deposits") shall be non-refundable to Buyer unless, as of the Closing, the LLA has not been approved through no fault of Buyer. Within ten (10) days of such Notice of Approval, Seller shall pursue the LLA in a good faith manner as noted in Section 4(f), below. If the LLA has not been approved within sixty (60) days of Buyer's issuance to Seller of the Notice of Approval, through no fault of either party, then either party may terminate this Agreement. Upon any such termination, provided Buyer has performed its material obligations under this Agreement, the Buyer may recover its EM Deposits, less the costs of cancellation charged by the Escrow Holder. If Buyer has failed to perform, the EM Deposits shall be released to Seller by the Escrow Holder.

(d) At Closing, the EM Deposits shall be applied to the Purchase Price. Payment of the balance of the Purchase Price (i.e., after applying all EM Deposits) will be equal to One Million Five Hundred and Thirty Thousand Three Hundred Sixty-Seven Dollars (\$1,530,367.00) shall be deposited into the Escrow by Buyer in cash at least one Business Day before the scheduled Closing Date.

3. **"As Is" Sale; Due Diligence Period.**

(a) Buyer acknowledges that, the parties intend for this to be an "as is, where is" sale of the Property, and subject only to Seller's representations and warranties set forth in Section 8, Buyer has made or will make its own independent investigations as it deems necessary or appropriate concerning the ownership, use, condition, development or suitability of the Real Property and all Improvements, including, without limitation, any desired investigation or analysis of present or future zoning, land use or other Laws concerning the use, location or suitability of the Property, the condition of the Property, the status of any land use approvals for the Real Property and the permits and entitlements for the Real Property, the income or utility to be derived from the Property, the financeability of the Real Property, the presence or absence of Hazardous Materials on, within and adjacent to the Real Property, the location of the Real Property within any Natural Hazard Areas, the economic value of the Property, the adequacy of access to the Real Property, to what extent utilities service the Property, the presence or adequacy of infrastructure near or concerning the Real Property, any surface soil, subsoil, geologic or groundwater conditions or other physical conditions affecting the Real Property, title to the Property and the status of any existing, pending or future entitlements and/or the necessity or existence of any fees, dedications, charges or costs or future regulations relating to the Real Property, the nature, manner, construction, condition, state of repair or lack of repair of the Improvements on the surface or subsurface, the nature or quality of the soil conditions, drainage, flooding characteristics, utilities or other conditions existing in, on or under the Real Property and the presence or existence of Hazardous Materials in, on or about the Real Property (collectively, the "Property Conditions").

(b) Except for Seller's express representations and warranties set forth in Section 8 of this Agreement or in any of the closing documents, Buyer is (i) relying solely upon its own inspection, investigation and analyses in entering into this Agreement and, in doing so, is assuming the risk of such Property Conditions, (ii) not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information regarding the Property conditions or any other matter or material furnished by Seller or its representatives or consultants, whether oral or written, express or implied, of any nature whatsoever, (iii) Buyer will acquire the Property, "As-Is", in its state and condition as of the Close of Escrow, without representation by Seller or its representatives as to any matter and, except as specifically set forth herein or in the closing documents to the contrary, (iv) Seller has not made, does not make and specifically negates and disclaims any representations, warranties, or guarantees of any kind or character, whether express or implied, oral or written, past, present or future of, as to, covering or with respect to the Property or any other matter whatsoever, (v) Buyer has not relied and will not rely on, and Seller shall not be liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto made or furnished by Seller, the managers of the Real Property, or any real estate broker or agent.

(c) Buyer shall have a period of time to inspect the Property and all documents associated with the Property during the "Due Diligence Period", as defined below.

(d) The Due Diligence Period will begin upon the execution of this Agreement by the President of the Alameda County Board of Supervisors (and the date of such execution is the "Effective Date") and will end at 5:00 p.m. (Pacific Time) thirty (30) days thereafter unless mutually extended by written agreement. Buyer may approve or reject the Property Conditions in its sole and absolute discretion. Unless Buyer timely approves of the Property Condition, this Agreement will automatically terminate (i.e., there is no need to provide a notice of termination for the termination to take effect). This Agreement will terminate automatically unless Buyer delivers its "Notice of Approval" to Seller using the form attached to this Agreement as **Exhibit C**, before 5 p.m. Pacific Standard Time on the last day of the Due Diligence Period. The delivery of the Notice of Approval shall signify that Buyer is prepared to proceed with the purchase and has fully accepted all Property Conditions, subject only to Seller's obligations to perform the balance of its obligations under this Agreement through the Closing Date, and the approval of the LLA.

(e) Buyer acknowledges that it will be solely responsible for engaging with the Title Company in selecting the form of title policy and endorsements that it will accept as evidence of clear title at Closing ("Title Policy"), and that it must elect whether it will procure an ALTA extended form of Owner's Policy (and provide the required survey for such underwriting at its sole cost) or accept a CLTA form of Owner's Policy. Such Title Policy shall contain such special endorsements as Buyer may reasonably require. Buyer shall pay for any premium required for the issuance of the Title Policy, including any endorsements that Buyer requires. If Buyer does not obtain and timely provide to Escrow an ALTA survey, the Title Policy shall be an CLTA Owner's form of policy, subject to the printed exceptions and exclusions of such policy form and the Permitted Exceptions. Buyer acknowledges that it will accept a Grant Deed from Seller in the form attached to this Agreement as **Exhibit D**, and that except for those matters that Seller has agreed to remove as liens or encumbrances on clear title under such Title Policy (including those

that the parties negotiate during the Due Diligence Period), it will accept title to the Real Property subject to all matters of record (other than those for which Seller is expressly responsible under the penultimate sentence of this subsection (e)), all matters of which it has notice as of the end of the Due Diligence Period, including all matters that are reflected in the Disclosure Documents, all matters that an ALTA survey would reveal, all matters in the LLA submissions to the County that it receives in copy during the Due Diligence Period, if any, and all matters that it agrees to permit as liens or encumbrances on title as of the Closing (collectively "Permitted Exceptions"). As such, during the Due Diligence Period, Buyer shall pursue its evaluation of the condition of title to the Property and shall promptly procure from the Title Company an updated Preliminary Report. Within twenty (20) days of the Effective Date, Buyer will notify Seller in writing of any title exceptions which are not acceptable to Buyer ("Buyer's Notice"). Not later than three (3) business days after receipt of Buyer's Notice, Seller shall notify Buyer in writing of Seller's election whether to cure (at Seller's sole expense) any title exceptions that are not acceptable to Buyer. Seller's failure to respond shall be deemed an election by Seller not to cure any such title exceptions. If Seller elects not to cure, then within seven (7) Business Days of Buyer's Notice, Buyer must notify Seller of its election to accept any title exceptions which Seller has not elected to cure, or this Agreement will automatically terminate. Notwithstanding the foregoing, even if Buyer does not voice an objection to them, (i) Seller shall cause any deed of trust recorded in connection with Seller's financing of the Property to be removed at Seller's sole expense at the Closing, (ii) Seller must remove all judgment liens as of Closing, and (iii) Buyer may terminate the transaction (and recover its EM Deposits) if the Title Company will not issue a Title Policy in the form of the Title Policy approved during the Due Diligence Period (but subject to those coverage conditions and limitations that are reasonably foreseeable or known to the Buyer as of the time it issued its Notice of Approval, and such new conditions materially and adversely affect the utility or value of the Real Property). In this context, "material" shall mean an adverse economic impact that exceeds \$2,000 and that Seller refuses to pay for.

(f) During the Due Diligence Period, Seller shall timely provide Buyer access to the Property, subject to Buyer providing proof of the insurance required for any on-site inspections. In addition to providing access to the Real Property for such inspections and evaluations, Seller agrees to deliver the reports, documents, records, and other due diligence materials identified as "Property Documents" in **Exhibit E** attached hereto within three (3) Business Days of the Effective Date, to the extent they are in Seller's possession; provided, however all such information is provided without any warranty whatsoever regarding its accuracy or completeness (other than that Seller has provided a true copy of what it has for the referenced Property Documents), and with the express understanding that Buyer must verify all such information using its consultants and vendors and may not rely on what is provided by Seller. If requested by Buyer and in Seller's possession, Seller will also reasonably cooperate with Buyer in providing additional documentation in its possession relating to (i) the physical condition of the Real Property, and (ii) the legal status of the Property, including any title related issues and any issues that are material to the application for the LLA. Buyer's request for additional information that is not a part of the Property Documents in Seller's possession shall not affect the expiration of the Due Diligence Period.

(g) Any Property Documents that are provided, all information available regarding the Real Property on Geotracker (as referenced in Section 8.a.i) and all written notices or additional information provided to Buyer in writing prior to Closing are collectively referred to

as the “Disclosure Documents.” If access to the Property is not timely offered to Buyer, or if any Disclosure Document is not delivered to Buyer within the time set by this Agreement, then the Due Diligence Period may be extended for a period equal to the delay by Buyer by written notice to Seller, except this cannot extend the Due Diligence Period by more than fifteen (15) days.

(h) If Buyer fails to provide a timely Notice of Approval, Buyer agrees that it will provide to Seller within five (5) Business Days of Seller’s request for written confirmation, in a form acceptable to Seller which acceptance will not be unreasonably withheld, that Buyer has no further rights or interest in the Real Property.

4. **Access and Reports; Lot Line Adjustment.**

(a) The parties acknowledge the need for Buyer to undertake due diligence by its own employees or third parties. Buyer shall have the right during the Due Diligence Period to inspect, and arrange for third party inspections of the Property, including but not limited to its physical, and seismic condition, code compliance, and suitability for Buyer’s purposes. Except for the express representations and warranties of Seller contained in Section 8 of this Agreement, Buyer may not rely on any information in the Disclosure Documents generated by third parties, and should verify information in the Disclosure Documents using its own consultants and services.

(a) Seller grants Buyer or Buyer’s representatives' access to the Property during the Due Diligence Period, at regular business hours from Monday to Friday. Seller shall work with Buyer to provide prompt access to all areas of the Property to perform its own due diligence on the following:

- i. General site condition
- ii. Structural condition
- iii. Civil infrastructure, including but not limited to electrical, and underground plumbing systems
- iv. Any other above-ground inspections or investigations as deemed reasonable and necessary by Buyer

(b) Buyer or its employees or third-party consultants shall not engage in any invasive investigations or invasive inspections without obtaining Seller’s prior written consent as to the scope and methodology of such invasive testing, which consent shall not be unreasonably withheld. If Buyer intends to perform any invasive testing, it must (i) identify the form of invasive testing and the consultants or vendors that Buyer intends to use; (ii) perform all such work in compliance with all Laws and any permits that are required; (iii) complete the work consistent with the standard of care applicable to such work; and (iv) provide that such consultants and vendors are licensed, bonded and insured prior to any entry onto the Real Property to pursue such work. Buyer acknowledges that extensive invasive testing has already been completed on the Real Property and Buyer agrees that it will not have a right to pursue additional testing that is duplicative. When this information is submitted to Seller, Seller’s consent to such testing shall be deemed to have been rejected by Seller unless Seller accepts the Buyer’s written request for such consent within two (2) business days of Buyer’s request, therefore. If a Buyer request for invasive testing is rejected, Seller shall provide the reasons for the rejection and what must be done to obtain Seller’s approval. If Seller consents to any invasive testing, Buyer shall not deviate from the

methodology approved by Seller and Buyer, at no charge to Seller, shall provide a copy of the testing results and report. If the purchase is not completed for any reason, Buyer shall restore any portion of the Real Property altered or damaged as a direct result of Buyer's inspections or testing efforts.

(c) Buyer shall cause its contractors performing the inspections to maintain, in full force and effect the following policies of insurance, prior to entering the Property and provide to Seller proof of such insurance before access to the Real Property occurs:

(i) Commercial General Liability Insurance, insuring against liability for bodily injury or death to persons, property damage and personal injury with a comprehensive single limit of liability not less than One Million Dollars (\$1,000,000.00) for each occurrence, but if such Commercial General Liability Insurance is subject to a general aggregate limit, then the aggregate limit shall be not less than One Million Dollars (\$1,000,000.00).

(ii) Such Commercial General Liability Insurance shall include coverage for non-owned and hired autos and such Commercial General Liability Insurance coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no coverage deletions and shall include an "additional insured" endorsement, by which Seller is added as additional insured with respect to liability arising out of acts or work performed by or for Buyer; and an endorsement that specifies that such insurance is primary and that any insurance or self-insurance maintained by Seller shall not contribute with it.

(iii) All such insurance shall: (a) be primary and non-contributory; (b) provide for severability of interests; (c) provide that an act or omission of one of the insureds shall not reduce or void coverage to any other insureds; and (d) afford coverage for all claims based on acts, omissions, injury, or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iv) Worker's Compensation Insurance to the extent required by applicable law and with limits of liability not less than the minimum required under applicable law, covering all employees of the insured party having any duties or responsibilities in or about the Property, which coverage shall include a waiver of subrogation claims against Seller.

(v) If invasive testing is pursued, Seller may require commercially reasonable additional insurance coverages as deemed necessary and appropriate by Seller.

(d) Buyer shall defend Seller and all Seller Parties, and protect, hold harmless and indemnify Seller and all Seller Parties from and against any and all claims, actions, proceedings, causes of action, demands, damages, liabilities, losses, expenses, or costs of any kind whatsoever (including reasonable out-of-pocket attorneys' fees) (collectively, "Losses") arising out of, or connected with, any such entry onto the Property by Buyer or Buyer's Consultants, except to the extent arising from the negligence or willful misconduct of Seller or a Seller Party (provided, however, Buyer agrees and acknowledges that Seller has absolutely no obligation or duty of any sort to supervise the activities of Buyer and Buyer's Consultants). Notwithstanding the foregoing, the obligations of Buyer to indemnify Seller and all Seller Parties as provided for in this Section shall not apply to the mere discovery or uncovering of a pre-existing condition on the

Property or the Existing Condition. This Section shall survive the Closing or the termination of this Agreement without the occurrence of the Closing.

(e) All of the inspections and reports completed for Buyer pursuant to this Section shall be at Buyer's sole expense.

(f) Not later than ten (10) days after Buyer's Notice of Approval, Seller shall file an application for the LLA with the County of Alameda and any other agencies with jurisdiction ("LLA Agencies") in approving the LLA and will in good faith and with diligence pursue the LLA application. Buyer will in good faith support the application and agrees that it will not directly or indirectly oppose the LLA, excepting that to the extent the County of Alameda has regulatory jurisdiction to grant or deny the LLA, Buyer's obligation of support in good faith the LLA shall not extend to the extent of its regulatory jurisdiction. Seller shall work in good faith with the LLA Agencies to facilitate timely approval of the LLA application, including but not limited to providing to the LLA Agencies such additional information or making non-material amendments to the LLA as may be required by the LLA Agencies as a condition of approval of the LLA. If the LLA has not been approved within sixty (60) days of Buyer's issuance to Seller of the Notice of Approval, either party may elect to terminate this transaction (unless such party has defaulted in cooperating on procuring such LLA). If Buyer elects to terminate and has not failed to perform its obligations, Buyer's EM Deposits shall be returned to Buyer within ten (10) days of notice of Seller's election to terminate this transaction. The costs of the LLA shall be advanced by Seller, up to a maximum limit of \$60,000.00. If costs exceed that sum, Seller is not obligated to pursue the LLA unless Buyer agrees to advance those additional funds at its sole cost and risk; provided, however, that any such additional advance shall be credited against the Purchase Price at the Closing.

5. **Conditions Precedent.** A party's obligation to purchase the Property is subject to the following conditions (the "Conditions Precedent") being met or waived by the party to be benefitted by them.

(a) **Buyer's Conditions Precedent.** Buyer's obligation to complete the Closing is subject to the following conditions being met, or waived by Buyer:

(i) **Property Condition.** Buyer's acceptance of all of the Property Conditions, as evidenced by its delivery of its Notice of Approval.

(ii) **The Seller's Obligations.** Seller has duly performed its obligations under this Agreement in all material respects, including delivering the Grant Deed and Closing documents, and the removal of any and all judgment liens and deeds of trust.

(iii) **Seller's Representations and Warranties.** Seller's Representations and Warranties in Section 8 remain true as of Closing or Buyer has waived any variance.

(iv) **Approval of the LLA.** The LLA must be approved by the County of Alameda.

(v) Title Policy. At the Closing, the Title Company will issue the Title Policy as required by this Agreement upon the payment of the applicable premium for the Title Policy, inclusive of all endorsements that are to be included in it.

(vi) Documentation, Reports and Records. Buyer's review and approval of the Property Documents during the Due Diligence Period.

(b) Seller's Conditions Precedent. Seller's obligation to complete the Closing is subject to the following conditions being met, or waived by Seller:

(i) The Buyer's Obligations. Buyer has duly performed its obligations under this Agreement in all material respects, including delivering the Purchase Price and all amounts needed to cover prorations and the costs of Closing allocable to Buyer, and the Escrow is prepared to complete the Closing.

(ii) Buyer's Representations and Warranties. Buyer's Representations and Warranties in Section 8 remain true as of Closing or Seller has waived any variance.

(iii) Approval of the LLA. The LLA must be approved by the County of Alameda.

6. Title to the Property.

(a) At the Closing, Seller shall convey its interest in the Real Property (as finally configured by the LLA) to Buyer through the delivery of the Grant Deed in the form attached to this Agreement as Exhibit D, with the updated legal description from the LLA inserted into the form, and shall reasonably cooperate with the Title Company in providing an Affidavit of Owner describing for the benefit of the Title Company any impairments, Claims or charges against the Real Property that are known to Seller as of the Closing, but not reflected of record. Seller shall have satisfied its obligations to convey the Real Property if at Closing it delivers the Grant Deed in the form required by this Agreement, and it has not breached its obligations under this Agreement. Buyer's Condition Precedent relating to the state of the Title Policy at Closing shall be met if Old Republic Title Company ("Title Company"), upon the payment by Buyer of all applicable premiums, will issue (i) an American Land Title Association form Extended Coverage Owner's Policy if Buyer has provided to the Title Company an ALTA survey to underwrite such a policy, or (ii) a California Land Title Association form Owner's Policy if no survey is provided, (iii) in each case with those endorsements required by Buyer for the Title Policy, in the full amount of the Purchase Price insuring fee simple title to the Real Property and its appurtenant rights, privileges and easements in Buyer, subject only to the Permitted Exceptions that Buyer approved or consented to pursuant to Section 3, above and the changes to the Permitted Exceptions created by the LLA.

7. Closing.

(a) The Closing shall occur on the later of thirty (30) calendar days after the LLA has been approved, or Buyer's delivery of its Notice of Approval. The Closing may be extended by mutual agreement in writing by both parties.

(b) At or before Closing, Seller shall deliver to Escrow the following:

(i) The Grant Deed conveying to Buyer the Real Property and all rights, privileges, and easements appurtenant thereto as required by this Agreement. Notwithstanding any other provision in this Agreement, Seller must remove all judgment liens and deeds of trust on the subject Property before Closing

(ii) [Intentionally deleted]

(iii) Closing statement in form and content satisfactory to Buyer and Seller; and

(iv) Any other documents, instruments or agreements called for hereunder which have not been previously delivered.

(c) Buyer may waive compliance on Seller's part under any of the foregoing items by an instrument in writing.

(d) Seller and Buyer shall each deposit such other instruments as are reasonably required by the Escrow or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof (e.g., FIRPTA, FTB Form 593, PCOR, etc.).

(e) Real property taxes and assessments, water, sewer, and utility charges, annual permits and/or inspection fees (calculated based on the period covered) and other expenses normal to the operation and maintenance of the Property shall be prorated as of the Closing based on a 365-day year.

(f) The following charges shall be allocated as follows:

(i) Title fees shall be paid by Buyer

(ii) Escrow fees shall be paid by Buyer

(iii) Documentary County Transfer Tax shall be paid by Buyer

(iv) City Transfer Tax shall be paid by Buyer

(v) Recording Fees shall be paid by Seller as Buyer is exempt from Recording Fees; in addition, Seller shall pay all fees required to remove deeds of trust and all judgment liens. Finally, if under this Agreement Seller is obligated to clear other items from title, Seller shall pay those recording fees and all related costs to do so.

(g) Seller is solely responsible for payment of all broker's commissions it may have agreed to pay. Each party represents and warrants to the other that it has not dealt with any broker, finder or other party, whether or not licensed, who may be entitled to a commission, finder's fee or similar payment, and each party hereby agrees to indemnify, protect, defend (with legal counsel acceptable to the other party) and holds the other party free and harmless from and against any and all Claims, costs and liabilities, including, without limitation, reasonable attorneys'

fees, for causes of action or proceedings which may be instituted by any person claiming to be a broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of such party in connection with this transaction. This indemnification shall survive the Close of Escrow.

8. **Representations and Warranties of the Parties.**

(a) Seller hereby represents, warrants and covenants the following, each of which shall be true in all respects as of the Effective Date (any such representation or warranty based on the Seller's "knowledge" or what it "knows" shall be limited to the actual knowledge of Scott Bohannon and Robert Webster as of the Effective Date (without any duty of inquiry):

(i) That, except as may be revealed by the Disclosure Documents, Seller does not know of the presence of a material quantity of Hazardous Materials on the Property in amounts that will materially impair its utility or value other than those revealed by the regulatory files and appurtenant reports and information reflected in Geotracker site: https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0600102098 which references Regional Water Quality Control Board Case #01-2282/Loc Case #RO0000167.

(ii) Except as may be revealed by the Disclosure Documents, Seller has not received any written notice from the Village of San Lorenzo or governmental authority that the Real Property or Improvements violate or are not in conformance with any applicable ordinance, regulation or code of any federal, state, county or municipal department, board, body, agency, office or other governmental authority, including any applicable law, ordinance, regulation or code presently enacted but with prospective application.

(iii) Except as disclosed in writing to Buyer, Seller does not know of any condemnation, zoning or other land use regulation proceedings, either instituted or planned to be instituted, which is not in the public records, and would detrimentally affect the use and operation of the Property, nor has Seller received notice of any special assessment proceedings (however, the parties recognize that the proposed transaction is subject to the condition that the LLA is issued).

(iv) Any survey, civil and seismic plans and specifications, other reports, certificates of occupancy, warranties and all other contracts or documents delivered to Buyer pursuant to this Agreement or in connection with the execution hereof are true and correct copies of the same materials in the possession of Seller; provided, however, Seller makes no warranty or guaranty that any such materials are accurate or complete and where such documentation originates with a third party, then the original author of any such document should be pursued for any such information.

(v) Except as otherwise disclosed in writing to Buyer, Seller has no actual knowledge of any lawsuits or legal action that is or are threatened or pending that are likely to have a material, adverse or other detrimental effect on the Property.

(vi) That, except as may be revealed by the Disclosure Documents, to Seller's actual knowledge, all civil, water, sewer, gas, electric, telephone and drainage facilities

and all other utilities required by law or by the normal use and operation of the Property are available at the Real Property.

(vii) All documents executed by Seller which are to be delivered to Buyer at Closing shall be duly authorized, executed and delivered by Seller and at the Closing shall be legal, valid and binding obligations of Seller, and do not and at the Closing shall not violate any provisions of any agreement to which Seller is a party.

(viii) Intentionally Omitted.

(ix) During the Escrow period, Seller shall not enter into any new lease, or option to lease, or extension of an existing lease or license, or any other contract or agreement pertaining to the Property if it will in any way hinder or interfere with Seller's ability to fully perform its obligations under this Agreement, unless Seller shall first send to Buyer for approval a copy of the document it proposes to sign, and Buyer approves of the document in writing.

(x) Except as previously disclosed by Seller to Buyer in writing, there are no tenants or other occupants on the Property, there are no current leases or licenses and as to any past lease or licenses there are no offsets or concessions owed to any tenant or licensee.

(b) **Buyer's Representations and Warranties.** Buyer hereby represents, warrants and covenants the following, each of which shall be true in all respects as of the Effective Date:

(i) All documents executed by Buyer which are delivered to Seller or Escrow Holder Buyer shall be duly authorized, executed and delivered by Buyer and shall be legal, valid and binding obligations of Buyer that were duly authorized and that require no further consents or validation and the same shall not violate any provisions of any agreement to which Buyer is a party.

9. **No Back-Up Offers.** Seller represents and warrants that Seller has not agreed to sell the Property or any interest therein to any party whose rights are superior to Buyer's rights under this Agreement. Once the Notice of Approval has issued, Seller shall not enter into any other agreements to sell the Property as long as this Agreement is in force; however, until the foregoing occurs, Seller shall have the right to solicit backup offers, which by their terms must subordinate to the rights of Buyer under this Agreement.

10. **Remedies.**

(a) **Seller's Event of Default.** "**Seller's Event of Default**" shall mean the occurrence of any of the following events:

- Seller fails to pay any monies or deliver any documents required to be delivered under this Agreement by the stated due date, and such failure shall continue for two (2) Business Days after notice from Buyer of such default; or

- Seller fails to perform any of Seller's other material obligations or defaults under any of its other material covenants and agreements set forth in this Agreement, and such failure shall continue for two (2) Business Days after written notice from Buyer of such default.
- i. **(i) IF A SELLER'S EVENT OF DEFAULT OCCURS, AND THE CLOSE OF ESCROW FOR THE PROPERTY FAILS TO OCCUR BY REASON THEREOF, BUYER'S SOLE REMEDY SHALL BE TO EITHER (A) TERMINATE THIS AGREEMENT BY WRITTEN NOTICE DELIVERED TO SELLER AND ESCROW HOLDER WITHIN THREE (3) BUSINESS DAYS OF SELLER'S EVENT OF DEFAULT, AND TO RECOVER THE EM DEPOSITS AND ALL OF BUYER'S OUT-OF-POCKET COSTS FOR THIRD PARTY SERVICES OR CHARGES THAT ARE INCURRED BY BUYER FROM THE EFFECTIVE DATE THROUGH THE DATE OF SUCH SELLER'S EVENT OF DEFAULT, INCLUDING BUT NOT LIMITED TO THIRD PARTY DUE DILIGENCE, FINANCING COSTS, FORFEITED DEPOSITS AND OTHER REASONABLE OUT OF POCKET EXPENSES INCURRED IN PURSUIT OF THE CLOSE OF ESCROW, OR (B) EXERCISE BUYER'S RIGHT TO SPECIFIC PERFORMANCE IN COMPLIANCE WITH THE CONDITIONS SET FORTH IN SUBSECTION (ii) BELOW. ALL OTHER REMEDIES FOR ANY SELLER EVENT OF DEFAULT ARE WAIVED BY BUYER. HOWEVER, THIS LIMITATION SHALL NOT LIMIT OR AFFECT: (I) DAMAGES FROM SELLER'S TORTIOUS CONDUCT; (II) SELLER'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT; (III) BUYER'S RIGHTS TO RECOVER ATTORNEY'S FEES IF THERE IS A DISPUTE RELATING TO SUCH DEFAULT AND ITS REMEDIES.**

SELLER'S INITIALS

BUYER'S INITIALS

(ii) Specific Performance: If the Close of Escrow does not occur solely due to a Seller's Event of Default (i.e., Buyer has fully performed or tendered full performance), then unless Buyer has timely terminated the purchase of the Property and the Agreement as set out in this Section 10, as its sole and exclusive remedy, Buyer may elect to specifically enforce Seller's obligation to execute and deliver the Grant Deed and other documents required from Seller, and to convey the Property to Buyer in accordance with the terms and conditions of this Agreement, but not for monetary damages (other than the recovery of attorney's fees and court

costs). In connection with any such action for specific performance, as a condition precedent to Buyer's pursuit of an action for specific performance, Buyer shall have fully performed all of Buyer's material obligations and made all deliveries required to be performed or delivered on or before the Closing Date; provided, however, Buyer shall not be required to deliver to Escrow Holder the balance of the Purchase Price and all other funds required of Buyer but shall be required to provide evidence to Seller that Buyer has such funds immediately available to deliver to Escrow Holder, or holds an unconditional written commitment from a lender or other funding source to provide such funds subject only to Seller's performance of its obligations under this Agreement that are needed to complete the Closing

Buyer acknowledges that Buyer's full performance of Buyer's material obligations above in every detail is material to Seller and, therefore, if Buyer has failed to satisfy any such requirements, Seller shall be entitled to an immediate dismissal of any such action. If Buyer fails to file and serve a specific performance action within ninety (90) days after the occurrence of Seller's Event of Default or fails to otherwise comply with the requirements of this Section 10, Buyer shall be deemed to have waived its right to seek specific performance as provided herein.

(c) **Buyer's Event of Default.** "Buyer's Event of Default" shall mean the occurrence of any of the following events:

- Buyer fails to deliver the Deposit or otherwise pay any monies or deliver any documents required to be delivered under this Agreement by the stated due date, and such failure shall continue for two (2) Business Days after notice from Seller of such default; or
- Buyer fails to perform any of its other material obligations or defaults under any of its other material covenants and agreements set forth in this Agreement, and such failure shall continue for two (2) Business Days after written notice from Seller of such default.
- The cure periods stated above shall not apply to any deadlines for issuing the Notice of Approval, or the Closing Date or the timely performance of obligations related to such deadlines.

- i. **Liquidated Damages.** IF, BEFORE THE CLOSE OF ESCROW, BUYER REFUSES WITHOUT CAUSE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT WITHIN TWO (2) BUSINESS DAYS AFTER WRITTEN DEMAND FROM SELLER ON BUYER SO TO DO, IF BUYER FAILS TO CURE SUCH

DEFAULT BY THE END OF SUCH 2-DAY PERIOD, THEN BUYER SHALL BE DEEMED IN DEFAULT UNDER THIS AGREEMENT AND THIS AGREEMENT WILL TERMINATE. THE PARTIES RECOGNIZE THAT SELLER WILL INCUR EXPENSES IN CONNECTION WITH THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND THAT THE PROPERTY WILL BE REMOVED FROM THE MARKET AT A TIME WHEN ITS SALE IS CRITICAL TO SELLER'S INTEREST; FURTHER, THE PARTIES RECOGNIZE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE DAMAGE TO SELLER CAUSED BY THE BREACH BY BUYER OF THIS AGREEMENT AND THE FAILURE OF THE CONSUMMATION OF THIS AGREEMENT OR THE AMOUNT OF COMPENSATION SELLER SHOULD RECEIVE AS A RESULT OF BUYER'S DEFAULT IN FAILING TO COMPLETE THE SALE DUE TO ITS DEFAULT. THEREFORE, BUYER AND SELLER AGREE THAT IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT, SELLER'S DAMAGES FOR SUCH DEFAULT SHALL BE EQUAL TO THE EM DEPOSITS HELD BY ESCROW AND THE RETENTION OF SUCH EM DEPOSITS SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY FOR ITS DAMAGES DUE TO BUYER'S DEFAULT IN FAILING TO COMPLETE THE SALE AND SHALL BE IN LIEU OF ANY OTHER MONETARY RELIEF OR ANY OTHER RELIEF FOR SUCH CONTRACT DAMAGES TO WHICH SELLERS MAY OTHERWISE BE ENTITLED BY VIRTUE OF THIS AGREEMENT AT LAW OR IN EQUITY. HOWEVER, THIS LIMITATION SHALL NOT LIMIT OR AFFECT: (I) DAMAGES FROM BUYER'S TORTIOUS CONDUCT; (II) BUYER'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT; (III) SELLER'S RIGHTS TO RECOVER ATTORNEY'S FEES IF THERE IS A DISPUTE RELATING TO SUCH DEFAULT AND ITS REMEDIES.

SELLER'S INITIALS

BUYER'S INITIALS

11. **Indemnification**. Each party hereby agrees to indemnify the other party and hold it harmless from all costs, expenses, penalties, damages, and losses, including, without limitation, reasonable attorneys' fees and expenses resulting from any misrepresentations or breach of warranty or breach of covenant made by such party in this Agreement or in any document, certificate or exhibit given or delivered to the other pursuant to or in connection with this Agreement.

12. **Condemnation**. In the event that prior to Closing condemnation proceedings are commenced against the Property, Buyer shall have the right, exercisable by giving written notice

of such decision to Seller within thirty (30) days after receiving Seller's written notice of such condemnation proceedings, to terminate this Agreement in which case neither party shall have any further rights or obligations hereunder, except for their indemnity obligations and those expressly stated to survive the termination of this Agreement. If Buyer elects to accept the Property in its then condition, all condemnation awards payable to Seller for the loss of the Property by reason of such condemnation shall be paid or assigned to Buyer. In the event of non-material damage to the Property, there shall be no right to terminate this Agreement. Non-material is damage that is less than the Deposit. Under no circumstances will Seller have any obligation to repair the damage or effects of casualty.

13. **Possession.** Possession of the Property shall be delivered to Buyer at Closing; provided, however, that Seller shall afford authorized representatives of Buyer reasonable access to the Property for the purposes of satisfying Buyer with respect to the representations, warranties and covenants of Seller contained herein and with respect to satisfaction of any conditions precedent to the Closing.

14. **Maintenance of the Property.** Between the execution of this Agreement by Seller and Closing, Seller shall:

(a) Have no obligation to repair or maintain the Property except to the extent required to avoid a violation of the Law;

(b) Refrain from performing any grading or excavation, construction or removal of any Improvements or making any other change or improvement upon or about the Property;

(c) Refrain from creating or incurring or suffering to exist any mortgage, lien, pledge or other encumbrances in any way affecting the Property or its title (other than as expressly permitted by this Agreement) without Buyer's prior written approval (provided, however, without the approval of Buyer, Buyer may refinance or finance the Property so long as the proceeds of the sale of the Property will be sufficient to pay off all liens as of Closing);

(d) Refrain from committing any waste or nuisance upon the Property; and

(e) Observe the use, possession and management of the Property and not execute, extend, or otherwise further encumber the Property with contracts, including, without limitation, equipment maintenance or service contracts beyond the Closing, unless such contracts or agreements are first approved in writing by Buyer or expressly permitted by this Agreement.

15. **No Warranties.** Buyer hereby acknowledges and agrees that, except for the express representations and warranties in this Agreement, Buyer is buying the Property without any representations or warranties, express, implied, or statutory, of any kind whatsoever, by Seller, its agents, brokers, advisors, consultants, counsel, employees, officers, or affiliates. As a material inducement to Seller in agreeing to sell the Property to Buyer, Buyer is purchasing the Property in its "AS-IS," "WHERE IS" condition, with all faults, and Seller would not have agreed to sell the Property to Buyer for the Purchase Price set forth herein without Buyer's express agreement to the foregoing. Without limiting the generality of the foregoing, Buyer acknowledges that Seller expressly disclaims and negates, as to the Property: (a) any implied or express warranty of

merchantability; (b) any implied or express warranty of fitness for a particular purpose; (c) any implied or express warranty of conformity to models or samples of materials; and (d) any implied or express warranty with respect to the property information, the due diligence matters, the condition of the Property, its compliance with any legal requirements, the past or projected financial condition, performance, and operating results of the property (including income or expenses thereof) or the uses permitted on the Property, the environmental condition of the Property, the development requirements for, or any other matter or thing relating to, the Property or any portion thereof or interest therein. Buyer acknowledges that, to the extent required to be operative, the disclaimers of warranties contained in this Section 15 are “conspicuous” disclaimers for purposes of any applicable legal requirements. Notwithstanding the foregoing, Seller represents and warrants to Buyer that all documents delivered by Seller to Buyer pursuant to this Agreement are true, correct, and complete copies of the documents in Seller’s possession or known to the Seller; provided, however, with respect to any third party-prepared reports delivered to Buyer by Seller, Seller does not make, and hereby disclaims, any warranty or guaranty that any part of such reports or information is accurate or complete. The release and waiver other agreements of Buyer provided in this Section 15 shall be effective from and after the Closing and will survive Closing and the recordation of the Grant Deeds and will not be merged in the Grant Deed.

16. **Release.**

(a) **Buyer’s Acknowledgments.** At the end of the Due Diligence Period, Buyer will have reviewed and approved in its sole, absolute discretion, all plans, surveys, reports, CC&Rs, leases, etc. provided by Seller and, upon waiving Buyer’s contingencies, it shall be conclusively presumed that Buyer is satisfied with same. Buyer acknowledges and agrees that, if it elects to proceed to Closing, such election shall have been based upon Buyer’s own independent evaluation of information deemed relevant to Buyer, including, but not limited to, the Buyer’s own due diligence materials and Buyer’s independent evaluation of public information and related information. Buyer is a sophisticated party and fully capable of evaluating the Property Conditions and is being provided ample opportunity to prepare, obtain, review and approve, among other things, all reports of investigations of the Property, including such soil, subsurface, geological, engineering and environmental tests and reports and other inspections of the Property as Buyer may deem necessary in order to determine that the Property is suitable for Buyer’s intended use, as well as to investigate all zoning requirements, federal, state and local laws, ordinances, rules, regulations, permits, licenses, approvals and orders applicable to the Property.

(b) This provision shall only apply if the Closing occurs, in which case it is self-executing – without the need for the further execution of additional documents and it shall survive the Closing and delivery of the Grant Deed. Except for (a) a breach of Seller’s representations and warranties set forth in Section 8 of this Agreement or any of the closing documents, or (b) fraud by Seller or its intentional misconduct, Buyer, on its behalf and such Buyer’s successors-in-interest, irrevocably and unconditionally releases, discharges and forever acquits Seller and its owners, shareholders, officers, directors, employees, agents, successors and assigns. from all Claims of any nature whatsoever known or unknown, suspected or unsuspected, fixed or contingent, which it now has, owns, holds or claims to have, own or hold, or at any time heretofore had, owned, held, or claimed to have, own or hold, against Seller arising from, or related to the Property Conditions or the Property.

(c) Buyer, on behalf of Buyer and Buyer's successors-in-interest, agrees that the waivers and releases set forth above extend to all Claims of any nature and kind whatsoever, known or unknown, suspected or not suspected, as of the Effective Date and as of the Close of Escrow, and Buyer, by its initials set forth below expressly waives, on behalf of Buyer and Buyer's successors-in-interest, any of its rights granted under California Civil Code Section 1542, which provides as follows:

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 _____

17. **Survival.** All warranties, covenants, and other obligations described herein shall survive delivery of the Grant Deed for a period of one hundred eighty (180) days after Closing.

18. **Time of the Essence.** Time is of the essence of all times and dates set forth in this Agreement.

19. **Exhibits.** All exhibits attached hereto are incorporated herein by reference, specifically:

Exhibit A: Definitions

Exhibit B-1: LLA Property Description

Exhibit B-2: Legal Description (to be inserted after LLA has confirmed the property details from Exhibit B-1)

Exhibit B-3: Plat Map of Real Property (to be updated with final LLA version)

Exhibit C: Notice of Approval

Exhibit D: Form of Grant Deed

Exhibit E: Property Documents

20. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations, and agreements whether oral or written. Any amendment to this Agreement, including an oral modification supported by new consideration, must be reduced to writing and signed by both parties before it shall be effective.

21. **Construction of Agreement.** This Agreement shall not be construed in favor of or against either party but shall be construed as if both parties prepared this Agreement. Each party has had this Agreement reviewed by legal counsel and further agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.

22. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Except as expressly set forth in this Agreement to the contrary (e.g., in the Release and Liquidated Damages provisions, above): (i) all rights, options and remedies of the parties contained in this Agreement shall be construed and held to be cumulative, (ii) no remedy shall be exclusive of the others that are available, except as may specifically be provided, and (iii) the parties shall have the right to pursue any one or all of their respective legal or equitable remedies.

24. **Merger of Prior Agreements.** This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

25. **Interpretation.** Words used in the singular number shall include the plural, and vice-versa and any gender shall be deemed to include each other gender. The captions and headings of the Sections of this Agreement are for convenience of reference only and shall not be deemed to define or limit the provisions hereof.

26. **Notices.** All notices required or permitted under this Agreement or by law shall be given in writing either by personal service, overnight delivery by a reputable delivery company (including, e.g., UPS, FedEx, USPS, etc.) or by registered or certified mail, postage prepaid, and return receipt requested, or by electronic mail transmission with a confirmation copy to be sent by mail. Any such notice shall be effective as of the date it is delivered (whether or not it is rejected, or if notice is transmitted by electronic mail transmission, then it is deemed delivered on the following day. Notices shall be addressed as shown below for each party, except that, if any party gives notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

To Sellers:

Bohannon Development Company
David D. Bohannon Organization
Sixty 31st Avenue
San Mateo, CA 94403
Attn: Scott Bohannon
Email Address: scott.bohannon@ddbo.com

Copy to:

Andrew A. Bassak
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Email Address: ABassak@hansonbridgett.com

To Buyer:

County of Alameda
General Services Agency
c/o Real Property Manager
1401 Lakeside Drive, 10th Floor
Oakland, CA 94612-4305

Copy to:

Deputy County Counsel
Office of the County Counsel
1221 Oak Street, Ste. 450
Oakland, CA 94612

27. **Attorneys' Fees and Costs.** Except as otherwise provided herein, in the event of litigation, arbitration or other judicial or quasi-judicial process, including any bankruptcy proceeding or collection action, to enforce this Agreement or any of its terms, the prevailing party, as determined by the court (whether at trial, upon appeal or otherwise), shall be entitled to reimbursement from the other party of its reasonable attorneys' fees and costs. The parties agree that any litigation described herein shall be in a court of competent jurisdiction and located in the County of Alameda.

28. **1031 Exchange.** Intentionally deleted.

29. **Continuation and Survival of Representations and Warranties.** All agreements, representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall remain true and correct as of Closing, shall be deemed to be material and shall survive the execution and delivery of this Agreement and the delivery of the grant deeds and transfer of title. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Sellers in connection with the transaction contemplated hereby shall constitute representations and warranties hereunder.

30. **Advice of Counsel.** Each of Buyer and Seller acknowledge that they have carefully read and understood every provision of this Agreement. By execution of this Agreement, each of Seller and Buyer acknowledge their informed and voluntary consent hereto, and Buyer and Seller agree that the provisions of this Agreement are commercially reasonable and effectuate the intent of the parties with respect to the Property, and each of Seller and Buyer acknowledge that they have had a sufficient opportunity to consult with their legal counsel with respect to this Agreement.

31. **Counterparts and Electronic Signatures.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document. Furthermore, the parties agree that this Agreement and all related documents and agreements may be executed electronically using a secure platform such as DocuSign to ensure the integrity of the execution process. Regardless of this clause, a party shall provide its signature in the form reasonably required by the Escrow Holder to complete the Close of Escrow in the ordinary course.

32. **Limitation on Damages.** Notwithstanding anything to the contrary set forth in this Agreement, in no event shall Seller or Buyer be liable for any consequential, special or punitive damages for any breach of this Agreement. This limitation shall survive the Close of Escrow. This limitation shall not apply to or limit damages for a party's tortious activities.

33. **Further Assurances.** Seller and Buyer agree to execute such additional documents and take such actions as may be reasonable and necessary to carry out the provisions of the Agreement.

34. **Exhibits and Schedules.** All exhibits and schedules attached hereto are incorporated herein by reference.

[Signatures follow on next page.]

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

SELLER:

DAVID D. BOHANNON
ORGANIZATION
a California corporation

By: _____

Name: _____

Title: _____

Date: _____

EIN: _____

BUYER

ALAMEDA COUNTY FIRE DEPARTMENT,

William McDonald
Fire Chief
Alameda County Fire Department

Date

APPROVED AS TO FORM:
DONNA R. ZIEGLER
COUNTY COUNSEL
County of Alameda, State of California

By: _____

EXHIBIT A

DEFINED TERMS

Except as the context otherwise requires, all defined terms shall have the meaning set forth below.

“**Agreement**” means this Real Property Purchase and Sale Agreement.

“**Business Day**” means any day other than a Saturday or Sunday or legal holiday in the State of California. If the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday, the date for performance thereof shall be extended to the next Business Day.

“**Buyer’s Consultants**” means any agents, contractors or independent contractors of Buyer.

“**Buyer’s Event of Default**” shall have the meaning set forth in Section 10 of this Agreement.

“**Buyer Parties**” means the present and future officers, directors, partners, members, shareholders, employees, of Buyer and Buyer’s Consultants.

“**City**” means the village of San Lorenzo, County of Alameda, State of California.

“**Claims**” means all claims, actions, causes of action, suits, liens, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys’ fees and costs and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under the Agreement.

“**Close of Escrow**” means the consummation of the purchase of the Property by Buyer from Seller and the recordation of the Grant Deed in the County real property records.

“**Closing Date**” means the date for the Close of Escrow set forth in the Basic Terms, as it may be adjusted under the provisions of this Agreement.

“**Condemnation**” or “**condemnation**” or “**condemned**” or “**taking**” means the exercise of, or intent to exercise, the power of eminent domain, expressed in writing, as well as the filing of any action or proceeding for such purpose, by any person, entity, body, agency or authority having the right or power of eminent domain (the “**condemning authority**” herein), and includes a voluntary sale by Seller to any such condemning authority, either under the threat of condemnation or while condemnation proceedings are pending, and the condemnation shall be deemed to occur in point of time upon the actual physical taking of possession pursuant to the exercise of said power of eminent domain.

“**County**” means the County of Alameda.

“**Due Diligence Period**” means the period described in Section 3.

“**Grant Deed**” means the grant deed attached hereto as **Exhibit D**.

“**Hazardous Materials**” means and refers to any substance, material or waste which is or becomes subject to regulation by any local or regional governmental authority, the State of California, or the United States Government under any federal, state or local statute, regulation, or ordinance, whether located in soil, water, ambient air, indoor air, or other places, as a pollutant, contaminant, hazard, solid waste, mixed waste, sludge, hazardous waste, extremely hazardous waste, restricted hazardous waste, non-RCRA hazardous

waste, RCRA hazardous waste, recyclable material, hazardous substance, hazardous material, or other classification, including, without limitation, asbestos or asbestos-containing materials, metals, solvents, volatile organic compounds, semi-volatile organic compounds, petroleum products, petroleum, gasoline, used oil, crude oil, waste oil, and any fraction thereof, natural gas, methane gas, synthetic fuels, pesticides, herbicides, fungicides, polychlorinated biphenyls; lead-based paints or materials, medical waste, urea, manure, nitrates, total dissolved solids, or total suspended solids.

“Real Property” means the real property described in **Exhibit B** (as amended by the LLA).

“Laws” means all federal, state and local laws, ordinances, regulations, and restrictions relating to the Real Property, including, without limitation, the requirements of Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, et seq., the Provisions Governing Public Accommodations and Services Operated by Private Entities), and all regulations promulgated thereunder, and all amendments, revisions or modifications thereto.

“Notice of Approval” shall have the meaning set forth in Section 3 of the Agreement.

“Property Documents” shall have the meaning set forth in Section 3 of the Agreement.

“Seller’s Event of Default” shall have the meaning set forth in Section 10 of the Agreement.

“Seller Parties” means the present and future officers, directors, partners, members, shareholders, employees, attorneys, affiliates and agents of Seller.

“Title Company” shall have the meaning as set forth in Section 6. a.

EXHIBIT B-1

LLA PROPERTY DESCRIPTION

DRAFT

EXHIBIT B-2

LEGAL DESCRIPTION

[INSERT HERE AFTER LLA HAS CONFIRMED PROPERTY DETAILS]

DRAFT

EXHIBIT B-3

PLAT MAP OF REAL PROPERTY

[TO BE UPDATED WITH FINAL LLA VERSION]

DRAFT

EXHIBIT C
FORM OF NOTICE OF APPROVAL
[ATTACHED]

Buyer's letterhead

_____, 2023

Bohannon Development Company
C/O David D. Bohannon Organization
Sixty 31st Avenue
San Mateo, CA 94403

Old Republic Title Company
c/o Julie Massey
555 12th Street, Ste. 2000
Oakland, CA 94607

Re: [DESCRIBE PROPERTY BY ADDRESS AND APN (if available): REAL PROPERTY PURCHASE AND SALE AGREEMENT] (the "Agreement") dated [____], 2023 by and among DAVID D. BOHANNON ORGANIZATION, a California corporation ("Seller") and ALAMEDA COUNTY FIRE DEPARTMENT, a California special district ("Buyer")

Dear Seller:

Reference is hereby made to the Agreement. Capitalized terms used herein that are not defined herein shall have the meanings ascribed to them in the Agreement.

Pursuant to Section 3 of the Agreement, this letter shall constitute the Notice of Approval to Seller and is Buyer's approval of the Conditions and Buyer's election to proceed with the Close of Escrow contemplated by the Agreement.

This approval does not limit Seller's or Buyer's obligations under the Agreement.

Very truly yours,

Buyer: ALAMEDA COUNTY FIRE DEPARTMENT, a California special district

By:

Name:

Its: _____

EXHIBIT D TO REAL PROPERTY PURCHASE AND SALE AGREEMENT

FORM OF GRANT DEED

Recording requested by: County of Alameda

And when recorded, mail to:

County of Alameda Real Property Management
1401 Lakeside Drive, 10th Floor
Oakland, CA 94612
Attn: Real Property Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

APN # **PENDING RECORDATION AFTER LLA.**

DAVID D. BOHANNON ORGANIZATION ("Grantor") hereby GRANTS to THE ALAMEDA COUNTY FIRE DEPARTMENT, a California Dependent Special District ("Grantee"), the following real property situated in the State of California. County of Alameda, described as follows:

The full legal description is attached as Exhibit B-2 consisting of one (1) page and a one (1) page plat attached as Exhibit B-3.

TOGETHER WITH all of Grantor's right, title and interest, in and to all appurtenances thereon or in any way appertaining thereto and all of Grantor's right, title and interest in and to all fixtures and improvements located thereon.

The real property conveyed herein by Grantor to Grantee is conveyed and accepted subject to: (i) real property taxes and all current general and special taxes and assessments, not yet due and payable; and (ii) all covenants, conditions, restrictions, reservations, rights of way and other matters of record, or apparent from an inspection or an accurate and current ALTA survey of the subject real property as of the date of this Grant Deed.

Date _____ 2023 By: _____

Name: _____

Title: _____

State of California
County of Alameda

On _____, 2023, before me, _____, a notary public, personally appeared _____, who proved to mean 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 of Notary

CERTIFICATE OF ACCEPTANCE

Agency: County of Alameda

Assessor's Parcel No. PENDING RECORDATION

County: Alameda

This is to certify that, pursuant to Section 27281 of the California Government Code, the interest in real property conveyed by the Grant Deed Dated _____, 2023 by DAVID D. BOHANNON ORGANIZATION, to the ALAMEDA COUNTY FIRE DEPARTMENT is hereby accepted by the undersigned officer on behalf of the ALAMEDA COUNTY FIRE DEPARTMENT as approved by the COUNTY OF ALAMEDA Board of Supervisors sitting as the Board of Directors of the ALAMEDA COUNTY FIRE DEPARTMENT on _____, 2023.

Accepted

ALAMEDA COUNTY FIRE DEPARTMENT

By: _____

Date: _____

William McDonald

Fire Chief, Alameda County Fire Department

On _____, 2023, before me, _____, a notary public, personally appeared WILLIAM MCDONALD, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary

EXHIBIT E

PROPERTY DOCUMENTS

1. The following documents, to the extent in Seller's possession relating to the Real Property (if no time frame is provided, it is for documents from and after January 1, 2020):

- Any title policies and title reports;
- All documents reflecting plats, easements, restrictions, covenants, and conditions and instruments affecting the Real Property that are known to Seller but not recorded against the Real Property with no limit as to time;
- Existing surveys;
- Soil tests, percolation tests, engineering tests (including calculations), core samples.
- Water, oil, gas, mineral, asbestos, radon, formaldehyde, PCB or other environmental tests or studies (including Phase I and Phase II environmental assessments), if any, to the extent these are **not included in the Geotracker site** referenced in the Agreement;
- Inspection reports relating to the physical condition of the Real Property other than those covered in the prior bullet point;
- Permits relating to the Real Property;
- Site plans and specifications;
- Active service agreements and contracts affecting the Property after the Closing, with no limit as to time;
- Any pending notices of violations or litigation relating to the Property.