

EXHIBIT B

AGREEMENT FOR EXCHANGE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS Napa, California

This Agreement of Exchange of Real Property and Joint Escrow Instructions (“**Agreement**”), dated for reference purposes only as of _____, 2024, is entered into by and between COOMBS STREET LLC, a California Limited Liability Company (“**Developer**”), and the CITY OF NAPA, a California charter city (“**City**”). Developer and City are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties.**”

Recitals

A. City is the owner of that certain real property, commonly referred to as Dwight Murray Plaza, consisting of approximately 0.18 acres located on First Street, Napa, CA 94559 in the County of Napa, State of California, and designated as Assessor’s Parcel No. 003-166-017 (“**City Property**”), as more particularly described in Exhibit A, and graphically depicted on Exhibit B. The City Property was developed by the City in the 1970’s as a public plaza with brick pavers; however, the originally installed clock tower and fountain for the plaza were removed in the early 2000’s, and the City Property currently has a depressed grade change in the center with insufficient ADA access, a rock fountain structure not currently operated, and is in need of significant repairs.

B. Developer is the owner of certain real property that includes 1116 First Street, Napa, California 94559, in the County of Napa, State of California, and designated as Assessor’s Parcel No. APN 003-166-010 (“**Kohl’s Parcel**”), at which Developer proposes to demolish the existing improvements and develop said parcel with a mixed-use project consisting of rental and/or for sale housing, retail and an upper upscale hotel project and retail uses, as more particularly described in Exhibit C (“**First Street Napa Phase II Project**” or “**Project**”), which is proposed to be further defined in a Development Agreement as provided in Section 6(a)(vii) below. The Kohl’s Parcel is graphically depicted on Exhibit B.

C. City and Developer are parties to a separate purchase and sale agreement, including any amendments thereto (“**Agreement No. 2020-174**”), for the real property consisting of approximately 0.75 acres located at 1051 – 1199 Pearl St., Napa, CA 94559 in the County of Napa, State of California, and designated as Assessor’s Parcel Nos. 003-166-008 & 003-166-011 (referred to as the “**Parking Lot Property**”). The Parking Lot Property is graphically depicted on Exhibit B. The parties intend for the Developer to incorporate the Parking Lot Property into the Project.

EXHIBIT B

D. As part of the Project, Developer proposes to create a new, ADA-compliant pedestrian-oriented plaza on a portion of the Kohl's Parcel that will: (i) be of a size equal to or greater than the area of the City Property, and (ii) be in a location roughly aligned with the former Clay Street right-of-way, and (iii) include design elements for retail activation complimentary to First Street and public gathering opportunities ("**New Plaza**"). The property boundaries for the New Plaza shall be defined in accordance with Section 1(c) below ("**Developer Property**"), as graphically depicted on Exhibit D. Developer's proposed development of the New Plaza on the Developer Property are proposed to be further defined as a part of the Project in a Development Agreement, as provided below.

E. The City intends to convey, and Developer intends to accept, the City's fee simple interests in the City Property in exchange for Developer's conveyance, and the City's acceptance, of an easement for public use (or other such interest that is acceptable to the parties and compliant with the applicable provisions of the State Surplus Lands Act (California Government Code section 54220 *et seq.*) ("**SLA**")) of the Developer Property, upon and subject to the terms, conditions and provisions set forth in this Agreement. Developer intends to reserve such rights in the Developer Property for construction activities, underground utilities, overhead passageways and occasional rights to exclusive use or events. Neither Party will assume any of liens, contracts or other obligations of the other Party that encumber or affect the City Property or Developer Property except those expressly approved by the Parties and assumed at the close of escrow. Each party shall convey its respective property to the other party by grant deed or other legal instrument acceptable to the Parties. The Developer Property may be conveyed by a meets and bounds description or by dedication on a parcel map or by other means acceptable to the Parties prior to the Close of Escrow.

F. Developer intends to develop the Project on the Kohl's Parcel, the Parking Lot Property, and the City Property, with the subsequent conveyance to the City of an easement for public use of the improved Developer Property, as graphically depicted on Exhibit D (which may be referred to herein as the "**Project Property**"). The scope of the Project is conceptually described on Exhibit C, and will be further defined by a Development Agreement between the Parties.

G. Developer acknowledges that City is considering entering into this Agreement at a point in time when the Project's design issues have not been vetted by the City Council of the City of Napa, or subordinate City commissions (such as the Planning Commission); and required land use approvals from the City and other governmental agencies (if any), which are subject to environmental review in accordance with the California Environmental Quality Act (California Public Resources Code §§21000 *et seq.* and State CEQA Guidelines, California Code of Regulations Title 14 §§15000 *et seq.*) ("**CEQA**"), have not been secured. Accordingly, until such design issues have been publicly reviewed and approved and the land use approvals secured, City shall have the unfettered discretion to approve said matters, and if not approved by City, to terminate this Agreement without any further liability to Developer. As a result, any sums spent by Developer shall be at its risk and without recourse to City.

EXHIBIT B

H. City has determined that the property exchange transaction contemplated by this Agreement is exempt from the requirements of the SLA because the City Property is less than one-half acre in area (consistent with Government Code Section 54221(f)(1)(B)), and because the City is exchanging the City Property in return for the Developer Property which is necessary for the City's use (consistent with Government Code section 54221(f)(1)(C)).

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged and in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties agree as follows:

Agreement

1. Purchase and Sale/Exchange.

(a) Exchange, Effective Date. City shall convey to Developer the City Property and in exchange Developer shall convey to the City the Developer Property on the terms and subject to the conditions set forth in this Agreement. For purposes of this Agreement, the date on which Escrow Holder acknowledges in writing receiving a fully executed copy of this Agreement shall be hereinafter referred to as the “**Effective Date.**”

(b) City Property. The City Property shall include the improvements, together with all rights and appurtenances pertaining thereto, including any right, title and interest of City in all equipment, machinery, utility systems and lines, other built-in or attached elements, or other appurtenances of any nature whatsoever, whether or not of record, in any way now or hereafter belonging, relating or pertaining to the land and the improvements, as well as access to and from adjacent public roads, streets, alleys, easements or rights-of-way.

(c) Developer Property. The Developer Property boundaries shall be proposed by Developer to City as a part of the City's review and approval of a tentative parcel map or tentative subdivision map for the Project and related entitlements that will further refine the design of the Project such as a design review permit. The design of the Project to be approved by the City concurrently with the tentative map shall include the configuration of the New Plaza to be created on the Developer Property, the New Plaza improvements to be constructed by Developer thereon, as well as a description of the respective rights and responsibilities of the Parties related to the New Plaza. Prior to the issuance of the first building permit for the Project, and prior to Close of Escrow, Developer shall grant to City an irrevocable offer of dedication of an easement for the Developer Property for public plaza purposes on the final parcel map or final subdivision map for the Project, in accordance with the requirements of the Subdivision Map Act, including Government Code Section 66439, and approved by the Public Works Director as to substance and the City Attorney as to form (“Irrevocable Offer of Easement”) or by other legal instrument as agreed upon by the Parties (in substantial conformance with Exhibit E2) and acceptable to the Public Works Director and approved as to form by the City Attorney. The City's acceptance of the Irrevocable Offer of Easement will be subject to Developer's completion of the improvements for the New Plaza to the satisfaction of the City's Public Works Director. However, if the Parties mutually agree, Developer may satisfy its obligation to grant an Irrevocable Offer of Easement for the Developer Property by conveying the Developer Property to City via an irrevocable offer of a fee interest; and, if so: (i) the Developer Property may be subject to reservation of such rights in

EXHIBIT B

easement or other acceptable legal mechanism in the benefit of Developer for construction activities, underground utilities, overhead passageways and occasional rights to exclusive use or events; and (ii) all other references to Irrevocable Offer of Easement in this Agreement shall correspondingly be amended to an irrevocable offer of a fee interest. The Developer Property shall include the improvements, together with all rights and appurtenances pertaining thereto associated with creation of the New Plaza.

2. Escrow.

(a) Opening of Escrow. Within three (3) business days after Effective Date, Developer shall open escrow (“**Escrow**”) with Escrow Holder. Developer and City agree to execute and deliver to Escrow Holder, in a timely manner, such supplemental escrow instructions as are reasonably necessary to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control. Escrow Holder shall, upon receipt of a fully executed copy of this Agreement, sign and date the Receipt by Escrow Holder attached hereto and distribute it to all parties listed in the “Notices” section of the Agreement.

(b) Close of Escrow. The Escrow for conveyance of both the City Property and Developer Property shall simultaneously close (“**Close of Escrow**” or “**Closing**”) within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Developer Conditions Precedent (defined in Section 6(a)) and all of the City Conditions Precedent (defined in Section 6(b)). The Close of Escrow shall occur prior to the Outside Date. The “**Outside Date**” shall be the earlier of (a) the date that is ten (10) days after the date on which Developer obtains a grading or other building permit for the Project, or (b) December 31, 2035, except that the City Manager, may grant one or more extensions to such date (extending the Outside Date to no later than December 31, 2037), if: (i) requested in writing by Developer prior to expiration of the then Outside Date, and (ii) the City Manager determines in his or her sole discretion that the Developer is making diligent and good faith efforts to satisfy all City Conditions Precedent. If Closing does not occur on or before the Outside Date as it may be extended as provided above, then this Agreement shall automatically terminate and, except as otherwise provided in this Agreement, City and Developer will have no further obligations or rights to one another under this Agreement. For purposes of this Agreement, “**Closing**” for the City Property shall mean the time and day the Grant Deed is recorded with the Napa County Recorder, and “**Closing**” for the Developer Property shall mean the time and day the irrevocable offer of easement (as described in Section 1(c)) is recorded with the Napa County Recorder.

3. Conditions of Title.

(a) City Property. City shall convey the City Property to by a grant deed, substantially in the form attached hereto as Exhibit E1 (“**Grant Deed**”), subject only to (a) liens to secure payment of current, unpaid real estate taxes and assessments; (b) such title matters (other than liens to secure payment of real estate taxes and assessments, including supplemental taxes) affecting the City Property created by or with the written consent of Developer; (c) all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the

EXHIBIT B

City Property; (d) all matters which would be apparent from an inspection of the City Property; (e) all matters which would be disclosed by a survey of the City Property; and (f) exceptions which are approved and/or accepted by Developer in accordance with Section 6(a)(i) of this Agreement (collectively, “**Developer Approved Conditions of Title**”).

(b) Developer Property. Developer shall convey the Developer Property to City by Irrevocable Offer of Easement in accordance with Section 1(c) above

4. Title Policy.

(a) City Property. Title shall be evidenced by Escrow Holder’s title insurance underwriter (“**Title Company**”) issuing its American Land Title Association (“**ALTA**”) Extended Coverage Owner’s Policy of Title Insurance) to Developer, showing title to the City Property vested in Developer, subject only to the Approved Conditions of Title (“**Title Policy for City Property**”).

(b) Developer Property. Title shall be evidenced by Escrow Holder’s receipt of the Irrevocable Offer of Easement in accordance with Section 1(c) above .

(c) Costs and Exposures. Developer shall pay all expenses of issuing the Title Policies described in subsections (a) and (b) above, including any survey costs associated with and any endorsements to such Title Policies.

5. Milestones; Recordable Agreements. In addition to or part of the Development Agreement requirements contained in Sections 6(a)(vii) and 6(b)(viii) herein, prior to consideration of any Development Agreement for approval the Parties shall have agreed to a list of appropriate milestones (and corresponding deadlines) for, among other things, Developer’s preparation of and submittal to City of (i) a more precise Project description; (ii) concept plans and designs for the Project including site plan, elevations of all four sides; tabulation of areas and uses; plans to develop the New Plaza (such plaza plans are referred to as the “**New Plaza Concept**”); (iii) financing plan setting forth the terms under which equity and debt will be structured to fund construction of the Project; (iv) submittal of applications for key Project entitlements associated with the Development Agreement, including, but not limited to, the tentative map, zoning change, and design review permits; (v) a hotel flag operating agreement; and (vi) proposed forms of recordable agreements memorializing Developer’s and its successors’ ongoing obligations with respect to provision of parking, affordable rental housing or funding thereof, continued operation of a hotel meeting an upper upscale or better hotel STR (or comparable rating service) rating; and required maintenance, access and other operational requirements (“**Recordable Agreements**”) (collectively, “**Developer’s Milestones**”).

6. Conditions to Close of Escrow.

(a) Developer Conditions Precedent. The Close of Escrow and Developer’s obligation to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions (or Developer’s waiver in writing thereof) for Developer’s benefit on or prior to the dates designated herein below for the satisfaction of each such condition or in the event there is no date designated below the condition shall be satisfied (or Developer’s

EXHIBIT B

waiver in writing thereof) prior the Close of Escrow (collectively, the “**Developer Conditions Precedent**”):

(i) Title. Pursuant to the terms and conditions of this subsection, Developer shall have the right to approve any and all matters of and exceptions to title of the City Property, as disclosed by the following documents and instruments (collectively, “**City Title Documents**”): (A) a Preliminary Report issued by Escrow Holder with respect to the City Property; and (B) legible copies of all documents, whether recorded or unrecorded, referred to in such Preliminary Report. City shall cause Escrow Holder to deliver the City Title Documents to Developer within five calendar days following the Effective Date. Developer shall have until 5:00 PM (local time) on the date that is 45 calendar days following the DA Deadline as defined in Section 6(a)(vii) (“**Developer’s Title Review Period**”) to give City and Escrow Holder written notice (“**Developer’s Title Notice**”) of Developer’s approval or disapproval of the City Title Documents, except that the City Manager may grant extensions to the Developer Title Review Period, if: (i) requested in writing by Developer prior to the end of the Developer Title Review Period, and (ii) the City Manager determines that the Developer is making diligent and good faith efforts to complete the title review. The failure of Developer to give Developer’s Title Notice to City within the specified time period shall be deemed Developer’s disapproval of the Title Documents. City shall give Developer written notice (“**City’s Title Response Notice**”) of those disapproved title matters, if any, which City is unwilling or unable to have eliminated from title to the City Property by the Close of Escrow within ten business days after Developer’s Title Notice is received by City, if Developer’s Title Notice provides a disapproval, or Developer is deemed to have disapproved, of any matter of title shown in the City Title Documents. City’s failure to provide City’s Title Response Notice within said ten business day period shall be deemed City’s election not to remove any of the disapproved exceptions in Developer’s Title Notice. Notwithstanding the foregoing, City shall, at City’s sole cost and expense, remove as exceptions to title to the City Property, as of the Close of Escrow, all mortgages and deeds of trust, if any, under which City is the mortgagor, trustor or borrower that are currently recorded against the City Property, and City’s failure to do shall constitute a default hereunder.

If City is unable or unwilling to remove all of the title matters objected to by Developer in Developer’s Title Notice, or fails to deliver City’s Title Response Notice, Developer shall have five business days from receipt of City’s Title Response Notice, or expiration of the time period within which City is to respond, to notify City in writing that either (1) Developer is willing to purchase the City Property, subject to such disapproved exceptions, or (2) Developer elects to terminate this Agreement. Failure of Developer to take either one of the actions described in clause (1) or (2) in the previous sentence shall be deemed to be Developer’s election to take the action described in clause (2). If this Agreement is terminated pursuant to this Section 6(a)(i), City and Developer will have no further obligations or rights to one another under this Agreement.

(ii) Inspections and Studies/Costs. During the Developer’s Contingency Period (defined below), Developer and Developer’s employees, agents, contractors, subcontractors and consultants (collectively, “**Developer’s Representatives**”) shall have the right to enter upon the City Property and conduct any and all non-destructive inspections, investigations, tests and studies (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, economic

EXHIBIT B

feasibility studies and soils, seismic and geologic reports and environmental testing) with respect to the City Property as Developer may elect to make or maintain. Developer's and Developer's Representatives entry upon the City Property for purposes of conducting any invasive inspections including any Phase 2 environmental site assessment shall be conducted pursuant to a property entry agreement in a form reasonably acceptable to the Public Works Director and approved as to form by the City Attorney. The cost of any such inspections, tests and/or studies shall be borne by Developer.

All such inspections, tests, and/or studies shall be conducted at reasonable times during ordinary business hours upon notice to City at least one business day prior to entry and, if applicable, in a manner consistent with any property entry agreement between the Parties. Developer, in performing its inspections, investigations, tests and studies hereunder shall not unreasonably interfere with the operation of the City Property or any tenant or other person or entity with rights as to the City Property and agrees to coordinate its activities on the City Property with City in advance to avoid any such interference. Following any such tests or inspections, Developer agrees to promptly return any portions of the City Property damaged or altered by Developer during such tests or inspections to substantially the same condition which existed prior to such test or inspection.

To the fullest extent permitted by law, Developer shall indemnify, defend and hold City harmless from any and all claims, damages or liabilities arising out of or resulting from the entry onto or activities upon the City Property by Developer or Developer's Representatives or liens arising from such activities. Developer's obligation to indemnify City under the provisions of this Section 6 shall survive any termination of this Agreement, shall survive the Close of Escrow and shall not be merged upon delivery and acceptance of the Grant Deed for the City Property. Prior to any entry on to the City Property by any of Developer's Representatives, Developer shall deliver to City an endorsement to a commercial general liability insurance policy which evidences that such Developer's Representative is carrying a commercial general liability insurance policy with a financially responsible insurance company acceptable to City, covering the activities of such Developer's Representative on or upon the City Property. Such endorsement shall evidence that such insurance policy shall have a per occurrence limit of at least One Million Dollars (\$1,000,000) and an aggregate limit of at least Two Million Dollars (\$2,000,000), shall name City as an additional insured, and shall be primary and non-contributing with any other insurance, self-insurance or joint self-insurance available to City.

Prior to 5:00 PM (local time) on the date that is 60 calendar days following the DA Deadline ("**Developer's Contingency Period**"), Developer shall deliver to City and Escrow Holder written notice ("**Developer's Contingency Period Notice**") of its approval or disapproval of the City Property, except that the City Manager may grant extensions to the Developer's Contingency Period, if: (i) requested in writing by Developer prior to the end of the Developer's Contingency Period, and (ii) the City Manager determines that the Developer is making diligent and good faith efforts to complete the evaluation of underground Hazardous Materials (as defined by Section 12(a)(vi), below). The Developer's Contingency Period Notice may, but need not, be combined with the Developer's Title Notice. The Developer's Contingency Period Notice to the Escrow Holder shall be accompanied by the Natural Hazards Disclosure Statement (if not yet signed and returned to City). The failure of Developer to timely deliver the Developer's Contingency Period Notice shall be deemed to constitute Developer's disapproval of

EXHIBIT B

the City Property, and, except as otherwise provided in this Agreement, City and Developer will have no further obligations or rights to one another under this Agreement. Prior to the expiration of the Developer's Contingency Period, Developer may terminate this Agreement at any time for any reason at the sole discretion of Developer.

(iii) Title Insurance. As of the Close of Escrow, Title Company shall have committed to issue the Title Policy for City Property to Developer as described in Section 6, above.

(iv) City's Representations. All representations and warranties made by City to Developer in this Agreement shall be true and correct on the date hereof and shall be true and correct in all material respects as of the Close of Escrow.

(v) Natural Hazards Disclosure Statement. No later than ten (10) business days prior to the scheduled expiration of the Developer's Contingency Period, City shall deliver to Developer a Natural Hazards Disclosure Statement for the City Property. Developer shall have approved the Natural Hazards Disclosure Statement and returned a signed copy thereof to City by the expiration of the Developer's Contingency Period.

(vi) City's Obligations. As of the Close of Escrow for the City Property, City shall have performed all of the obligations required to be performed by City under this Agreement.

(vii) Development Agreement. The Parties shall have approved and executed a Development Agreement pursuant to Government Code section 65865 *et seq.*, with respect to the Project Property, or portion thereof, in form and substance mutually acceptable to the Parties, each in its sole and absolute discretion, ("**Development Agreement**") by no later December 31, 2024 ("**DA Deadline**"), provided that the City Manager may grant one or more extensions extending the DA Deadline to no later than twelve (12) months after the DA Deadline (the "**Outside DA Deadline**") if the City Manager determines in his or her sole absolute discretion that the Parties representatives have made substantial progress towards negotiation and drafting of a Development Agreement in substance and form mutually acceptable to the Parties. The Development Agreement shall address matters including, but not limited to, the following: (a) use, intensity and density, maximum floor area, and maximum height of development on the Project Property, including requirements for timing of construction; (b) public benefits, including (i) the New Plaza Concept (including the process by which the legal description for the Developer Property will be prepared by the Developer and approved by the City prior to issuance of the first building permit for the Project), and (ii) providing or funding affordable housing (which may include funding for the housing project on the site of the First Methodist Church in downtown Napa), and (iii) the rights of City and the public to have access to use certain portions of the New Plaza and Project improvements to be available for public use; (c) requirements for timing of construction of the Project; (d) the amount of retail frontage required by the Project entitlements and Downtown Napa Specific Plan Guidelines; (e) a plan for Developer's participation in the improvement or reuse of the Brown Street corridor located adjacent to the Project; (f) on and off-site parking plan sufficient to serve the Project's residential and hotel demand; (g) vesting periods and impact fees; (h) CEQA compliance; (i) requirements for and forms of Recordable Agreements; and (j) such other matters related to the Project Property and the Project as the Parties may agree, each in its sole and absolute discretion. If the Parties have not executed a Development

EXHIBIT B

Agreement in a form mutually acceptable to the Parties by the DA Deadline, then this Agreement shall automatically terminate and, except as otherwise provided herein, neither Party shall have any further rights or obligations hereunder.

(viii) City Approval. City shall have approved Developer's Plaza Concept.

(ix) Other Approvals, Assurances and Permits. Developer shall have sought and received approvals and assurances from all appropriate governmental entities to develop the Project in the manner anticipated by the Development Agreement, and, subject to payment of the applicable fees, City shall be ready to issue all ministerial permit(s) necessary for the Developer to commence construction of the Project.

(x) Absence of Proceedings. There shall be an absence of any condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the City Property which would materially and adversely affect Developer's intended uses of the City Property or the value of the City Property.

(xi) Recordable Agreements. The Parties shall have executed one or more Recordable Agreements described in Section 5 that are otherwise acceptable to each of the Parties in its sole and absolute discretion.

(b) City Conditions Precedent. The Close of Escrow and City's obligation to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions (or, where applicable, City's waiver thereof) for City's benefit on or prior to the dates designated below for the satisfaction of such conditions (collectively, the "**City Conditions Precedent**"), or the Close of Escrow in absence of a specified date:

(i) Title. Developer shall have delivered to the Escrow Holder the Irrevocable Offer of Easement in accordance with Section 1(c) above.

(ii) Reserved.

(iii) Inspections and Studies/Costs. During the City's Contingency Period (defined below), City and City's employees, agents, contractors, subcontractors and consultants (collectively, "**City's Representatives**") shall have the right to enter upon the Developer Property and conduct any and all non-destructive inspections, investigations, tests and studies (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, economic feasibility studies and soils, seismic and geologic reports and environmental testing) with respect to the Developer Property as City may elect to make or maintain. City's and City's Representatives entry upon the Developer Property for purposes of conducting any invasive inspections including any Phase 2 environmental site assessment shall be conducted pursuant to a property entry agreement in a form reasonably acceptable to the Developer. The cost of any such inspections, tests and/or studies shall be borne by City.

All such inspections, tests, and/or studies shall be conducted at reasonable times during ordinary business hours upon notice to Developer at least one business day prior to entry and, if applicable, in a manner consistent with any property entry agreement between the

EXHIBIT B

Parties. City, in performing its inspections, investigations, tests and studies hereunder shall not unreasonably interfere with the operation of the Developer Property or any tenant or other person or entity with rights as to the Property and agrees to coordinate its activities on the Developer Property with Developer in advance to avoid any such interference. Following any such tests or inspections, City agrees to promptly return any portions of the Developer Property damaged or altered by City during such tests or inspections to substantially the same condition which existed prior to such test or inspection.

City shall indemnify, defend and hold Developer harmless from any and all claims, damages or liabilities arising out of or resulting from the entry onto or activities upon the Developer Property by City or City's Representatives or liens arising from such activities. City's obligation to indemnify Developer under the provisions of this Section 6 shall survive any termination of this Agreement, shall survive the Close of Escrow and shall not be merged upon delivery and acceptance of the Irrevocable Offer of Easement for the Developer Property. Prior to any entry on to the Developer Property by any of City's Representatives, City shall deliver to Developer an endorsement to a commercial general liability insurance policy which evidences that such City's Representative is carrying a commercial general liability insurance policy with a financially responsible insurance company acceptable to Developer, covering the activities of such City's Representative on or upon the Developer Property. Such endorsement shall evidence that such insurance policy shall have a per occurrence limit of at least One Million Dollars (\$1,000,000) and an aggregate limit of at least Two Million Dollars (\$2,000,000), shall name Developer as an additional insured, and shall be primary and non-contributing with any other insurance, self-insurance or joint self-insurance available to City.

Prior to 5:00 PM (local time) on the date that is 60 calendar days following the DA Deadline ("**City's Contingency Period**"), City shall deliver to City and Escrow Holder written notice ("**City's Contingency Period Notice**") of its approval or disapproval of the Developer Property, except that the Developer may grant extensions to the City's Contingency Period, if: (i) requested in writing by City prior to the end of the City's Contingency Period, and (ii) the Developer determines that the City is making diligent and good faith efforts to complete the evaluation of underground Hazardous Materials (as defined by Section 12(a)(vi), below). The City's Contingency Period Notice may, but need not, be combined with the City's Title Notice. The City's Contingency Period Notice to the Escrow Holder shall be accompanied by the Natural Hazards Disclosure Statement (if not yet signed and returned to Developer). The failure of City to timely deliver the City's Contingency Period Notice shall be deemed to constitute City's disapproval of the Developer Property, and, except as otherwise provided in this Agreement, City and Developer will have no further obligations or rights to one another under this Agreement.

(iv) Title Insurance. Intentionally Omitted.

(v) Developer's Representations. All representations and warranties made by Developer to City in this Agreement shall be true and correct on the date hereof and shall be true and correct in all material respects as of the Close of Escrow.

(vi) Natural Hazards Disclosure Statement. No later than ten (10) business days prior to the scheduled expiration of the Contingency Period, Developer shall deliver to City a Natural Hazards Disclosure Statement for the Developer Property. City shall have approved the

EXHIBIT B

Natural Hazards Disclosure Statement and returned a signed copy thereof to Developer by the expiration of the Contingency Period.

(vii) Developer's Obligations. Developer shall have timely performed all of the obligations required to be performed by Developer under this Agreement.

(viii) Development Agreement. The Parties shall have approved and executed a Development Agreement in form and substance mutually acceptable to the Parties, each in its sole and absolute discretion, as described in Section 6(a)(vii) of this Agreement prior to the Outside DA Deadline. If the Parties have not executed a Development Agreement by the Outside DA Deadline, then this Agreement shall automatically terminate and, except as otherwise provided herein, neither Party shall have any further rights or obligations under this Agreement.

(ix) City Approval. City shall have approved Developer's Plaza Concept.

(x) Recordable Agreements and Other Documents. The Parties shall have executed and acknowledged one or more Recordable Agreements described in Section 5 that are otherwise acceptable to each of the Parties in its sole and absolute discretion. This shall include, but shall not be limited to, a replacement Parking Agreement, as described in Exhibit C.

(xi) Other Approvals, Assurances and Permits. (1) Developer shall have sought and received all discretionary land use entitlements, permits and approvals from all appropriate governmental entities, including the City, to develop the Project; (2) City as lead agency under CEQA shall have approved an appropriate CEQA document for the proposed Project; and (3) subject to payment of the applicable fees, City shall be ready to issue all ministerial permit(s) necessary for the Developer to commence construction of such Project. The conditions set forth in clauses (1) and (2) of this subsection (xi) may not be waived by City.

(xii) Milestones. Prior to the Close of Escrow, City shall have approved Developer's Milestones as required in Section 5 of this Agreement.

(c) Failure of Condition to Close of Escrow. If any of the conditions set forth in Section 6(a) or Section 6(b) are not timely satisfied or, where applicable, waived by the appropriate benefited Party for a reason other than the default of Developer or City, this Agreement shall terminate, and except as otherwise provided herein, the Parties shall have no further rights or obligations hereunder.

7. Deposits by City. At least one business day prior to the Close of Escrow, City shall deposit with Escrow Holder the following documents:

(a) Grant Deed. The Grant Deed, duly executed and acknowledged in recordable form by City, conveying fee simple title to the City Property to Developer.

(b) Recordable Agreements. Counterpart originals of each of the Recordable Agreements duly executed and acknowledged in recordable form by City.

(c) FIRPTA Certificate. A certification, acceptable to Escrow Holder, duly executed by City under penalty of perjury, setting forth City's address and federal tax identification

EXHIBIT B

number in accordance with and/or for the purpose of complying with the provisions of Sections 7701 and 1445, as may be amended, of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

(d) California Franchise Tax Withholding. A certification, acceptable to Escrow Holder, that City is exempt from the withholding provisions of the California Revenue and Taxation Code, as may be amended from time to time, and that neither Developer nor Escrow Holder is required to withhold any amount from the Purchase Price pursuant to such provisions.

8. Deposits by Developer. At least one business day prior to the Close of Escrow, Developer shall deposit or cause to be deposited with Escrow Holder the following funds and documents:

(a) Irrevocable Offer of Easement. The Irrevocable Offer of Easement, duly executed and acknowledged in recordable form by City, conveying easement rights (or other interest as agreed to by the Parties as provided by this Agreement) to the Developer Property to City.

(b) Recordable Agreements. Counterpart originals of each of the Recordable Agreements duly executed and acknowledged in recordable form by Developer.

9. Costs and Expenses. As the City is a California municipal corporation, it is a tax-exempt entity and shall not pay the City of Napa Real Property Transfer Tax, any real property or other taxes, or pay any bond or assessment that is a lien customarily paid with real property taxes; provided, however, that City shall pay any applicable documentary transfer taxes. Except as otherwise specified in this Agreement, Developer shall pay all applicable closing costs, escrow fees, and title insurance costs for the City Property and Developer Property. Developer shall pay all legal and professional fees and fees of other consultants incurred by Developer and City in the preparation of this Agreement. Any cost incurred through the Escrow relating to either the City Property or the Developer Property that is not specifically allocated to Developer or City under this Agreement shall be apportioned in the manner customary in Napa County.

10. Prorations. All expenses for each Property shall be prorated as of 12:01 a.m. on the day of the Close of Escrow based upon the latest available information.

11. Corrections. If any errors or omissions are made regarding prorations as set forth in Section 10 above, the Parties shall make the appropriate corrections promptly upon discovery thereof. If any estimates are made at the Close of Escrow regarding any proration, the Parties shall make the appropriate correction promptly when accurate information becomes available. Any corrected proration shall be paid in cash to the Party entitled thereto.

12. Condition of Property.

(a) City Property. Notwithstanding any other provision of this Agreement to the contrary, City makes no representation or warranty (except as expressly set forth in Section 15 below) whatsoever regarding the City Property including, without limitation, as to:

(i) The size and dimensions of any portion of the City Property;

EXHIBIT B

- (ii) The suitability of the City Property for the Developer's planned use;
- (iii) All matters relating to title including extent and conditions of title to the City Property, taxes, assessments, and liens;
- (iv) All legal and governmental laws, statutes, rules, regulations, ordinances, restrictions or requirements concerning the City Property, including zoning, use permit requirements and building codes;
- (v) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the City Property;
- (vi) The physical, legal, economic and environmental condition and aspects of the City Property, and all other matters concerning the condition, use or sale of the City Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the City Property, and Hazardous Materials (as defined below). **"Hazardous Materials"** means any and all substances, contaminants, chemicals, wastes, sewage, materials or emissions which are now or hereafter regulated, controlled, prohibited or otherwise affected by any present or future local, state or federal statute, ordinance, code, rule, regulation, order, decree, permit or other law now or hereafter in effect including (A) any substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," or "air pollutant" in (I) the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. §9601, et seq., (II) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq., (III) the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. §6901, et seq., (IV) the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq., (V) the Clean Air Act, as amended, 42 U.S.C. §7401, et seq., (VI) the Toxic Substances Control Act, as amended, 15 U.S.C. §2601, et seq., (VII) the Clean Water Act, as amended, 33 U.S.C. §1251, et seq., (VIII) the Oil Pollution Act, as amended, 33 U.S.C. §2701, et seq., (IX) California Health & Safety Code (**"H&S Code"**) §25100, et seq. (Hazardous Waste Control), (X) the Hazardous Substance Account Act, as amended, H&S Code §25300, et seq., (XI) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, H&S Code §25404, et seq., (XII) H&S Code §25531, et seq. (Hazardous Materials Management), (XIII) the California Safe Drinking Water and Toxic Enforcement Act, as amended, H&S Code §25249.5, et seq., (XIV) H&S Code §25280, et seq. (Underground Storage of Hazardous Substances), (XV) the California Hazardous Waste Management Act, as amended, H&S Code §25170.1, et seq., (XVI) H&S Code §25501, et seq. (Hazardous Materials Response Plans and Inventory), (XVII) H&S Code §18901, et seq. (California Building Standards), (XVIII) the Porter-Cologne Water Quality Control Act, as amended, California Water Code §13000, et seq., (XIX) California Fish and Game Code §5650-5656 and (XX) or any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety (collectively, **"Environmental Laws"**); (B) any substance the presence of which at the City Property causes or threatens to cause a nuisance upon the City Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of human beings; and (C) any substance the presence of which at the City Property or at nearby or adjacent properties could constitute a trespass. In addition to the foregoing, to the extent not already included therein, the term "Hazardous Materials" also means (I) asbestos (including asbestos-containing materials); (II)

EXHIBIT B

flammable, explosive, infectious, carcinogenic, mutagenic, or radioactive materials; (III) petroleum or any substance containing or consisting of petroleum hydrocarbons (including gasoline, diesel fuel, motor oil, waste oil, grease or any other fraction of crude oil); (IV) paints and solvents; (V) lead; (VI) cyanide; (VII) DDT; (VIII) printing inks; (IV) acids; (X) pesticides; (XI) ammonium compounds; (XII) polychlorinated biphenyls; (XIII) radon and radon gas; and (XIV) electromagnetic or magnetic materials, substances or emissions;

(vii) Any easements and/or access rights affecting the City Property, including easement and access rights through the City Property for the benefit of adjacent properties;

(viii) Any contracts and other documents or agreements affecting the City Property; and

(ix) Any other matter of significance affecting the City Property.

(b) Developer Property. Notwithstanding any other provision of this Agreement to the contrary, Developer makes no representation or warranty (except as expressly set forth in Section 16 below) whatsoever regarding the Developer Property including, without limitation, as to:

(i) The size and dimensions of any portion of the Developer Property;

(ii) The suitability of the Developer Property for the City's planned use;

(iii) All matters relating to title including extent and conditions of title to the Developer Property, taxes, assessments, and liens;

(iv) All legal and governmental laws, statutes, rules, regulations, ordinances, restrictions or requirements concerning the Developer Property, including zoning, use permit requirements and building codes;

(v) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Developer Property;

(vi) The physical, legal, economic and environmental condition and aspects of the Developer Property, and all other matters concerning the condition, use or sale of the Developer Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the Developer Property, and Hazardous Materials (as defined above).

(vii) Any easements and/or access rights affecting the Developer Property, including easement and access rights through the Developer Property for the benefit of adjacent properties;

(viii) Any contracts and other documents or agreements affecting the Developer Property; and

EXHIBIT B

(ix) Any other matter of significance affecting the Developer Property.

13. City Property Condition Waiver. Effective upon the Close of Escrow, Developer waives its right to recover from City, and the officers, officials, employees, agents and predecessors of City, and the contractors, subcontractors, architects, engineers and consultants involved in the design and construction of improvements located on or serving the Property (collectively, “**City’s Representatives**”), and hereby releases City and City’s Representatives from, any and all damages, losses, liabilities, costs or expenses whatsoever (including attorneys’ fees and costs) and claims therefor, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or connected with (i) the physical condition of the City Property, (ii) the failure of any improvements or components of the City Property to comply with any law or regulation applicable thereto, and (iii) the environmental condition of the City Property. The foregoing waiver and release shall exclude only those losses, liabilities, damages, costs or expenses, and claims therefor, arising from or attributable to (a) a material matter actually known to City (excluding constructive notice), and (1) not disclosed to Developer and (2) not discovered by Developer prior to the Close of Escrow, and (b) any breach by City of its express representations or warranties pursuant to this Agreement. In connection with foregoing waiver and release, Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Developer’s Initials

14. Regulatory Authority; Developer Waiver and Release.

(a) Reservation of City’s Discretion. Developer acknowledges that while City is entering into this Agreement in its proprietary capacity, City nevertheless retains full and complete discretion in its regulatory capacity as to whether to approve the Project and enter into any Development Agreement. Accordingly, any action taken by the City (e.g. approval, conditional approval, disapproval) in the exercise of its discretion relating to (i) any analysis of the Project required by CEQA, (ii) any application for a permit or approval required to develop and construct the Project, or (iii) any proposed Development Agreement, shall not constitute a default or a breach of the terms of this Agreement by City.

By execution of this Agreement, City is not committing itself to, or agreeing to, undertake (1) approval of the Project or the proposed Development Agreement, or (2) any other act or activity requiring the subsequent independent exercise of discretion by the City. This Agreement shall not limit in any way the discretion of City in its consideration and action on any applications for discretionary land use permits, entitlements or approvals for the proposed Project, including without limitation consideration of any proposed Development Agreement. The Parties acknowledge that compliance with CEQA will be required in connection with consideration of

EXHIBIT B

such discretionary permits and approvals and proposed Development Agreement, and that City shall retain full discretion in accordance with CEQA and Applicable Laws (defined below) before action on any such discretionary permits, approvals, or agreement to (a) determine whether the proposed Project is exempt from the requirements of CEQA or otherwise adopt or certify an environmental analysis of the Project prepared in accordance with CEQA; (b) identify and impose mitigation measures to mitigate significant environmental impacts of the Project, if any; (c) select other feasible alternatives to avoid significant environmental impacts; (d) adopt a statement of overriding considerations in accordance with Public Resources Code Section 21081(b) relative to any significant environmental impacts of the proposed Project which cannot otherwise be avoided; or (e) determine not to proceed with the Project. “**Applicable Laws**” means, collectively: (i) all State and Federal laws and regulations applicable to the Project Property and the Project as enacted, adopted and amended from time to time; and (ii) all City of Napa ordinances, resolutions, orders, rules, regulations, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) from time to time. Any action taken by the City in the exercise of its discretion relating to any analysis of the Project required by CEQA or on any application for a discretionary permit, approval, or agreement required to develop and construct the Project shall not constitute a default or a breach of the terms of this Agreement by City.

(b) Developer acknowledges and agrees that all sums expended by Developer in connection with its investigation of the Project Property and design of and pursuit of land use entitlements and approvals for the proposed Project are at Developer’s sole risk and expense and that City shall have no liability to Developer for any such costs if this Agreement is terminated or expires for any reason, including due to the Parties’ failure to reach mutual agreement on the terms of a proposed Development Agreement or any of the other ancillary agreements contemplated by this Agreement or City’s failure to approve Developer’s applications for discretionary land use entitlements, permits or approvals. Developer irrevocably assumes all risks and waives and releases any and all claims against City resulting or arising directly or indirectly from City’s decision not to approve and enter into a proposed Development Agreement or other ancillary agreement contemplated by this Agreement or failure to approve one or more discretionary land use entitlements, permits or approvals that may be required in connection with the proposed Project.

15. City’s Representations and Warranties. In consideration of Developer entering into this Agreement, City makes the limited representations and warranties set forth in this Section 15. For the purpose of this Agreement, without creating any personal liability on behalf of such individual, usage of “to City’s actual knowledge,” or words to such effect, shall mean the present, actual knowledge of Vincent Smith, the Community Development Director of the City of Napa, or other designee as determined by the City Manager in writing, excluding constructive knowledge or duty of inquiry, existing as of the Effective Date. In the event that Developer, prior to Close of Escrow, becomes aware, from City or otherwise, of any inaccuracy or omission in the disclosures, information, or representations previously provided to Developer by City or its consultants or agents, which may have a material, adverse impact on Developer, the City Property or the intended use of the City Property, Developer, as its sole option and remedy, may either (i) terminate this transaction thereby waiving any claims or actions that Developer may have against City as a result of such inaccuracy or omission, or (ii) proceed with the Close of Escrow hereunder, thereby

EXHIBIT B

waiving any rights that Developer may have against City as a result of such inaccuracy or omission. Unless otherwise expressly stated in this Agreement, the warranties, representations and covenants of City shall survive the Close of Escrow and recordation of the Grant Deed for the City Property, and be binding upon and inure to the benefit of Developer for a period not to exceed 365 days after the Close of Escrow (“**Limitation Period**”) and no action, proceeding, suit or claim of any kind may be commenced or asserted by virtue of any of the representations or warranties contained in this Section 15 after the Limitation Period has expired.

(a) City’s Authority. City has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated herein in the execution, delivery and performance of this Agreement. Furthermore, the execution and delivery of this Agreement has been duly authorized and no other action by City is required in order to make it a valid and binding contractual obligation of City. The individual(s) executing this Agreement on behalf of City are authorized to do so.

(b) No Prior Transfers. City has not previously sold, transferred or conveyed the City Property, or granted to any other person or entity any right or interest in all or any part of the City Property and City has not entered into any executory contracts for the sale of all or any part of the City Property (other than this Agreement), nor do there exist any rights of first refusal or options to purchase the City Property, other than this Agreement.

(c) No Conflict. To City’s actual knowledge, City’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(d) No Undisclosed Liabilities. To City’s actual knowledge, except as disclosed by City or as disclosed on the Title Report, the City Property is not subject to any debt, liability, obligation, contract or commitment of City of any kind or nature, direct or indirect, whether accrued, absolute, contingent or otherwise.

(e) Compliance with Laws. To City’s actual knowledge, City has not received any notice of any violation of any law, rule, ordinance, order or regulation, and City is not subject to any settlement agreement or consent decree with continuing obligations or restrictions on City with respect to the City Property. To City’s actual knowledge, City is not aware of any existing permits governing City’s present use of the City Property.

(f) Legal Proceedings, Etc. To City’s actual knowledge, there is no legal, equitable, administrative or arbitration action, suit, proceeding or investigation pending or, threatened in writing against or affecting City or the City Property which, if adversely determined, could have a material adverse effect on the City Property or the ability of City to consummate the transactions contemplated hereby, and there is no judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator outstanding against City, which if outstanding against City would have a material adverse effect on the City Property.

(g) Environmental Matters. To City’s actual knowledge, as of the Effective Date and the Close of Escrow:

EXHIBIT B

(i) City has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the City Property are or have been in violation of any Environmental Laws, or informing City that the City Property is subject to investigation or inquiry regarding Hazardous Materials (as defined herein) on the City Property or upon the parking lot improvements or the potential violation of any Environmental Laws;

(ii) There is no monitoring program required by the United States Environmental Protection Agency or any similar state agency concerning the City Property or its improvements; and

(iii) City has disclosed to Developer all material information, records, and studies maintained by City in connection with the City Property and its improvements concerning Hazardous Materials.

(h) Provision of Documents. City has previously provided or shall, within fourteen (14) days following the Effective Date, provide Developer with true, correct and complete copies of each of the following, to the extent in City's possession:

(i) All permits and licenses pertaining to the use, operation, ownership and or management of the City Property, if any, and if City knows of any missing permits or licenses, City has identified them for Developer;

(ii) All contracts and agreements in City's possession relating to the use, operation, ownership and or management of the City Property, if any, and if any contracts are not in writing, City has informed Developer and provided a written summary of the material terms of any such oral agreements to Developer; and

(iii) All environmental, engineering, soils and property and operations management reports for the City Property, if any.

16. Developer's Representations and Warranties. In consideration of City entering into this Agreement and as an inducement to City to sell the City Property to Developer, Developer makes the following representations and warranties, each of which is material and is being relied upon by City (the continued truth and accuracy of which constitutes a condition precedent to City's obligations hereunder):

(a) Developer's Authority. Developer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated herein in the execution, delivery and performance of this Agreement and no other action by Developer is requisite to the valid and binding execution, delivery and performance of this Agreement. The individual(s) executing this Agreement on behalf of Developer are authorized to do so.

(b) No Prior Transfers. Developer has not previously sold, transferred or conveyed the Developer Property, or granted to any other person or entity any right or interest in all or any part of the Developer Property and Developer has not entered into any executory contracts for the sale of all or any part of the Developer Property (other than this Agreement), nor do there exist any rights of first refusal or options to purchase the Developer Property, other than this Agreement.

EXHIBIT B

(c) No Conflict. To Developer's actual knowledge, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(d) No Undisclosed Liabilities. To Developer's actual knowledge, except as disclosed by Developer or as disclosed on the Title Report, the Developer Property is not subject to any debt, liability, obligation, contract or commitment of Developer of any kind or nature, direct or indirect, whether accrued, absolute, contingent or otherwise.

(e) Compliance with Laws. To Developer's actual knowledge, Developer has not received any notice of any violation of any law, rule, ordinance, order or regulation, and Developer is not subject to any settlement agreement or consent decree with continuing obligations or restrictions on Developer with respect to the Developer Property. To Developer's actual knowledge, Developer is not aware of any existing permits governing Developer's present use of the Developer Property.

(f) Legal Proceedings, Etc. To Developer's actual knowledge, there is no legal, equitable, administrative or arbitration action, suit, proceeding or investigation pending or, threatened in writing against or affecting Developer or the Developer Property which, if adversely determined, could have a material adverse effect on the Developer Property or the ability of Developer to consummate the transactions contemplated hereby, and there is no judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator outstanding against Developer, which if outstanding against Developer would have a material adverse effect on the Developer Property.

(g) Environmental Matters. To Developer's actual knowledge, as of the Effective Date and the Close of Escrow:

(i) Developer has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Developer Property are or have been in violation of any Environmental Laws, or informing Developer that the Developer Property is subject to investigation or inquiry regarding Hazardous Materials (as defined herein) on the Developer Property or the potential violation of any Environmental Laws;

(ii) There is no monitoring program required by the United States Environmental Protection Agency or any similar state agency concerning the Developer Property or its improvements; and

(iii) Developer has disclosed to City all material information, records, and studies maintained by Developer in connection with the Developer Property and its improvements concerning Hazardous Materials.

(h) Enforceability. This Agreement and all documents required hereby to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.

EXHIBIT B

(i) Conflicting Documents. Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Developer is a party.

(j) No Side Agreements or Representations. Developer represents, warrants and covenants to City that Developer has entered into this Agreement based upon its rights and intentions to independently inspect the City Property. Except as specifically provided in Section 15 of this Agreement, City makes no representation or warranty regarding the condition of the City Property, its past use, or its suitability for Developer's intended use. Developer will be relying solely upon its own independent inspection, investigation, and analysis of the City Property as it deems necessary or appropriate in so acquiring the City Property from City, including, without limitation, any and all matters concerning the condition, use, sale, development or suitability of the City Property for Developer's intended use.

(k) No Developer Bankruptcy. Developer is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made.

(l) Tenant Relocation. Based on Developer's relationship with all tenants on the Project Property which predates this Agreement, Developer will exercise its preexisting authority to ensure that all tenants lawfully vacate the Project Property prior to commencement of Project construction. Accordingly, any removal of tenants from the Project Property will not be the result of this Agreement, but rather the result of the preexisting landlord-tenant relationship between Developer and tenants. However, to the extent applicable to the Project, Developer shall ensure that all occupants of the Project Property receive all notices, benefits, and assistance to which they are entitled in accordance with California Relocation Assistance Law (Government Code Section 7260 *et seq.*), all state and local regulations implementing such law, including without limitation 25 Cal. Code Regs. Section 6000 *et seq.*, and all other applicable local and state laws, regulations, and policies relating to the displacement and relocation of eligible persons as defined in such Relocation Laws (all of the foregoing, collectively "**Relocation Laws**").

(1) Developer shall be responsible for payment of any and all costs and expenses incurred in connection with the temporary and/or permanent displacement and/or relocation of tenants of the Project Property to the extent legally required by applicable Relocation Laws, which may include, without limitation, payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to Relocation Laws, and City shall have no responsibility for payment therefor. To the greatest extent allowed by law, Developer shall indemnify, defend (with counsel reasonably approved by City), and hold City harmless from and against any and all Claims arising in connection with the breach of Developer's obligations set forth in this Section 16(j) whether or not any insurance policies shall have been determined to be applicable to

EXHIBIT B

any such Claims. Developer's indemnification obligations under set forth in this Section 16(j) shall not apply to Claims to the extent resulting from the gross negligence or willful misconduct of City. The provisions of this Section 16(j) shall survive the expiration or earlier termination of this Agreement.

(m) **As-Is Purchase.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND DEVELOPER IS PURCHASING THE CITY PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS, NO PATENT OR LATENT DEFECTS ON THE CITY PROPERTY WHETHER KNOWN NOW OR DISCOVERED LATER SHALL AFFECT THIS AGREEMENT, AND THAT OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 15, DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR CITY'S REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE CITY PROPERTY.

17. Intentionally Omitted.

18. Damage or Condemnation Prior to Closing. Each Party shall promptly notify the other Party of any casualty to the respective Property or any condemnation proceeding considered or commenced prior to the Close of Escrow. If any such damage or proceeding relates to or may result in the loss of any "material portion" (as defined below) of the respective Property, City or Developer may, each at its option, elect either to (i) terminate this Agreement and neither Party shall have any further rights or obligations hereunder, or (ii) continue the Agreement in effect, in which event upon the Close of Escrow, the affected Party shall be entitled to any compensation, award, or other payments or relief resulting from such casualty or condemnation proceedings. The term "**material portion**" shall mean damages greater than One Hundred Thousand and 00/100 Dollars (\$100,000.00).

19. Specific Performance; Limitation on Remedies.

(a) **City Default.** If, at any time following the Parties' approval of a Development Agreement (if any), the exchange of the Properties as contemplated hereunder is not consummated due to City's default hereunder, Developer shall be entitled, as its sole remedy, to enforce specific performance of City's obligation to convey the City Property to Developer in accordance with the terms of this Agreement, provided that Developer files suit for specific performance on or before thirty (30) days following the date upon which Close of Escrow was to have occurred, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of City hereunder. Developer and City further agree that if City should default following the Parties' entry into a Development Agreement, the remedies otherwise provided by law including, but not limited to, damages will be deemed inappropriate and inadequate to fully remedy such City default given the unique nature of the City Property, Developer's intent to assemble the City Property with the adjacent Kohl's Parcel owned by Developer, and the extreme difficulty of assessing with certainty damages for such default. Accordingly, (i) City agrees that it shall not oppose the legal propriety of Developer requesting a court to consider the issuance of an injunction or other equitable relief as part of any appropriate specific performance remedy should the court find that after entering into a Development Agreement, City has breached or failed to perform its obligations under this Agreement, and (ii) Developer expressly waives its rights to seek damages in the event of City's default hereunder. Notwithstanding any other provision of

EXHIBIT B

this Section 19 to the contrary, no such City default shall be deemed to have occurred unless and until Developer has given City written notice thereof, describing the nature of the default, and City has failed to cure such default within five days after receipt of such notice (and the Close of Escrow shall be extended, if necessary, to allow the City the full five day period). Nothing herein shall be deemed to prevent City from opposing in good faith any Developer initiated court proceeding which attempts to find City in breach or default of any of City's obligations under this Agreement.

(b) Developer Default. If, at any time following the Parties' approval of a Development Agreement (if any), the exchange of the Properties as contemplated hereunder is not consummated due to Developer's default hereunder, City shall be entitled, as its sole remedy, to enforce specific performance of Developer's obligation to convey the Developer Property to City in accordance with the terms of this Agreement, provided that City files suit for specific performance on or before thirty (30) days following the date upon which Close of Escrow was to have occurred, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of Developer hereunder. City and Developer further agree that if Developer should default following the Parties' entry into a Development Agreement, the remedies otherwise provided by law including, but not limited to, damages will be deemed inappropriate and inadequate to fully remedy such Developer default given the unique nature of the Developer Property, City's intent to assemble the Developer Property with adjacent City-owned property used for pedestrian and related purposes, and the extreme difficulty of assessing with certainty damages for such default. For the purpose of this Section 19(b), the location of the Developer Property shall be defined as either: (x) the legal description approved by the City under Section 6(b)(ix), or (y) if the legal description has not previously been approved by the City, the property between Coombs Street and Brown Street following the alignment width and angle of Clay Street between Franklin Street and Randolph Street. Accordingly, (i) Developer agrees that it shall not oppose the legal propriety of City requesting a court to consider the issuance of an injunction or other equitable relief as part of any appropriate specific performance remedy should the court find that after entering into a Development Agreement, Developer has breached or failed to perform its obligations under this Agreement, and (ii) City expressly waives its rights to seek damages in the event of Developer's default hereunder. Notwithstanding any other provision of this Section 19 to the contrary, no such Developer default shall be deemed to have occurred unless and until City has given Developer written notice thereof, describing the nature of the default, and Developer has failed to cure such default within five days after receipt of such notice (and the Close of Escrow shall be extended, if necessary, to allow the Developer the full five day period). Nothing herein shall be deemed to prevent Developer from opposing in good faith any City initiated court proceeding which attempts to find Developer in breach or default of any of Developer's obligations under this Agreement.

20. Third Party Legal Challenge.

(a) Under the terms set forth in this Section 20, the Parties shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the City's initial approval of this Agreement or the City's approval of any permits or approvals for the proposed Project ("**Initial Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. The foregoing notwithstanding, the City may

EXHIBIT B

choose not to defend any such proceeding challenging the validity of any provision of this Agreement or the City's initial approval of this Agreement or the City's approval of one or more of the project approvals described in Section 6(a)(vii) through 6(a)(ix) of this Agreement.

(b) If an Initial Litigation Challenge is filed, upon receipt of the complaint, the Parties will have 20 days to meet and confer regarding the merits of such Initial Litigation Challenge and to determine whether to defend against the Initial Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines. City and Developer mutually commit to meet all required litigation timelines and deadlines. The Parties may enter a joint defense agreement, which will include among other things, provisions regarding confidentiality. The City Manager is authorized to negotiate and enter such joint defense agreement in a form acceptable to the City Attorney. Such joint defense agreement shall also provide that any proposed settlement of an Initial Litigation Challenge shall be subject to City's and Developer's approval, each in its reasonable discretion. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by Developer in Developer's sole discretion, and by City in City's sole discretion and in accordance with Applicable Laws.

(c) If, after meeting and conferring, the Parties mutually agree (each in its sole discretion) to defend against the Initial Litigation Challenge, then the following shall apply:

(i) For the purposes of cost-efficiency and coordination, the Parties shall first consider defending the Initial Litigation Challenge jointly, with counsel and under terms of joint representation mutually acceptable to the City and Developer (each in its sole discretion), at the Developer's sole cost and expense. If the Parties cannot reach timely and mutual agreement on a joint counsel, and Developer continues to elect (in its sole discretion) to defend against the Initial Litigation Challenge, then: (i) Developer shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (ii) City may, in its sole discretion, elect to be separately represented by the outside legal counsel of its choice in any such action or proceeding with the costs of such representation to be paid by City and (iii) Developer shall reimburse City, within ten (10) business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all necessary and reasonable costs incurred by City in connection with the Initial Litigation Challenge, not including City's legal fees.

(ii) For any Initial Litigation Challenge which the Developer has elected to defend under this Section 20, Developer shall indemnify and hold harmless the City and City's Representatives from any and all claims, liabilities and damages, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation), related to such Initial Litigation Challenge.

(d) If Developer elects, in its sole discretion, not to defend against the Initial Litigation Challenge, it shall deliver written Notice to the City regarding such decision. If Developer elects not to defend, the City has the right, but not the obligation, to proceed to defend against the Initial Litigation Challenge and, in such event, City shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal

EXHIBIT B

counsel of its choice, at its sole cost and expense. If Developer elects not to defend, the City has the right, but not the obligation, to terminate this Agreement, in which case this Agreement, other than those provisions which by their terms survive expiration or termination hereof, shall be of no further force or effect.

21. Notices. All notices, demands, consents, requests or other communications required or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section 21, shall be addressed to the Parties in the manner set forth below, and shall be delivered by certified mail return receipt requested, or by overnight courier or delivery service with signature required, to the addresses set forth below, or to such other place as any Party may similarly in writing designate to the other. Notices shall be effective three business days after mailing by certified mail or upon delivery by overnight courier or delivery service (or, if delivery is not during regular business hours on a business day, then on the next business day).

The addresses of the Parties to receive notices are as follows:

TO CITY:

City of Napa
City Hall, South Wing
955 School Street/PO Box 660
Napa CA 94559
Attention: City Manager
Telephone: 707-257-9501

WITH A COPY TO:

City of Napa
City Hall, South Wing
955 School Street/PO Box 660
Napa, California 94559
Attention: City Attorney
Telephone: (707) 257-9501

TO DEVELOPER:

Coombs Street LLC
Christopher M. George
c/o CMG Mortgage
3160 Crow Canyon Road, Suite 400
San Ramon, California 94583
E-mail: cgeorge@cmgfi.com

WITH A COPY TO:

Jerry Hunt
300 Venture Group
321 Hartz Avenue, Suite 200
Danville, California 94526
Email: Jerry@3VG.us

WITH A COPY TO:

Holman Teague Roche Anglin LLP
1455 First Street
Suite 217

EXHIBIT B

Napa, CA 94559
Attention: Kevin Teague
Tel: (707) 927-4280

TO ESCROW HOLDER:

Placer Title Company of Napa
5 Financial Plaza, #205
Napa, CA 94558
Attention: Laura Blessing
Tel: (707) 346-6940

22. Brokers. Each of City and Developer represent that it has not engaged nor is it aware of any person entitled to any brokerage commission or finder's fee in connection with this transaction. Each Party agrees to indemnify the other Party against any claim asserted against or adjudged against the other Party, for any brokerage commission or finder's fee or any like compensation occasioned by or as a result of any act or omission of each such Party, including all attorney's fees, costs, expenses and any other fees incurred by, charged against or adjudicated against, the other Party, whether or not suit is filed, which are related to this indemnity agreement or enforcement thereof. City's and Developer's indemnity obligations under this Section 22 shall survive any termination of this Agreement, shall survive the Closing and shall not be merged upon delivery and acceptance of the Grant Deed for the City Property or Developer Property.

23. Assignment. Neither Party shall assign its right, title or interest in this Agreement to any other party without the prior written consent of the other Party, which determination may be withheld by either Party in its sole and absolute discretion. Developer may, however, assign this Agreement and all of Developer's rights and obligations under it to an affiliated entity formed to develop, own and operate the Project or to another affiliated entity in which Developer or Developer's managing member maintains an ownership interest and day-to-day management and control in such entity, provided that (i) such assignee assumes in a writing reasonably acceptable to City, all of the obligations of Developer, (ii) City receives prior written notice of such assignment, and (iii) the assignee executes all documents and perform all obligations of Developer as if such assignee were the original Developer under this Agreement.

24. Miscellaneous.

(a) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving Party, which shall be extended by a period of time equal to the period of the delay.

EXHIBIT B

(c) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

(d) Surplus Lands Act Indemnity. Developer shall indemnify, defend and hold City harmless from penalties assessed pursuant to California Government Code section 54230.5(a) imposed by the State of California onto Seller arising out of or resulting from City's determination that this Agreement is exempt from the requirements of the State Surplus Lands Act (California Government Code section 54220 *et seq.*), including but not limited to because the City Property is less than one-half acre in area (consistent with Government Code Section 54221(f)(1)(B)), and because the City is exchanging the City Property in return for the Developer Property which is necessary for the City's use (consistent with Government Code section 54221(f)(1)(C)).

(e) Entire Agreement/Amendments. This Agreement (including all Recitals and Exhibits attached hereto), is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the Party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto.

(f) Time of Essence. City and Developer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either Party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the Party so failing to perform.

(g) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties to create the relationship of principal and agent, a partnership, joint venture or any other association between Developer and City.

(h) Construction/Exhibits. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated herein by this reference.

(i) Governing Law/Venue. The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California without reference to its choice of law rules. The Parties hereto agree that the exclusive jurisdiction and venue for any legal action arising out of or relating to this Agreement shall be in the applicable Court of Napa County, California, or, in

EXHIBIT B

the alternative, in cases where Federal jurisdiction is available, in the United States District Court for the Northern District of California.

(j) Days of Week. A “business day,” as used herein, shall mean any working day, as defined in City of Napa Municipal Code section 1.04.030. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 p.m. on the next business day.

(k) Possession of Property. Subject to the Approved Conditions of Title, Developer shall be entitled to the possession of the City Property immediately following the Close of Escrow. Subject to the Approved Conditions of Title, City shall be entitled to the possession of the Developer Property immediately following the first to occur of either: (A) City’s acceptance of completion of the construction of the public improvements constructed on the Developer Property as a part of the Project, or (B) termination of this Agreement and City’s acceptance of the irrevocable offer of dedication of easement.

(l) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(m) Facsimile and Electronic Signatures. In order to expedite the transaction contemplated herein, facsimile or electronic signatures may be used in place of original signatures on this Agreement. City and Developer intend to be bound by the signatures on the facsimile document, are aware that the other Party will rely on the facsimile or electronic signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of a facsimile or electronic signature.

(n) Termination Documents. If this Agreement is terminated prior to the Close of Escrow for any reason, Developer shall deliver to City upon City’s request, at no cost and without warranty as to correctness, the following documents and materials (collectively hereinafter referred to as the “**Termination Documents**”): copies of all reports, studies, maps and engineering studies that were generated by third parties for Developer with respect to the City Property, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans.

(o) Exclusivity. Except as otherwise expressly provided below, commencing on the Effective Date and continuing until Closing or termination of this Agreement, City shall not offer the City Property or any interest therein for sale or lease to any other party, or negotiate, solicit or entertain any offers to sell or lease the City Property, and Developer shall not offer the Developer Property separate from the Kohl’s Parcel or any interest therein for sale or lease to any other party, or negotiate, solicit or entertain any offers to sell or lease the Developer Property separate from the Kohl’s Parcel. City may issue one or more short term (i.e. daily, weekly or monthly) licenses authorizing use of all or a portion of the City Property provided the term of such license(s) shall not extend beyond the Closing. Nothing herein shall prevent Developer from offering to sell or lease the Kohl’s Parcel to any other party.

[Signatures on next page]

EXHIBIT B

EXHIBIT B

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

DEVELOPER:

CITY:

COOMBS STREET LLC, a California limited liability company

CITY OF NAPA, a California charter city

By: _____
Name: _____
Title: _____

By: _____
Name: Steve Potter
Title: City Manager
Date: _____

COUNTERSIGNED

By: _____
Erika Leahy, City Auditor

APPROVED AS TO FORM

By: _____
Sabrina S. Wolfson, Interim City Attorney

EXHIBIT B

Schedule of Exhibits

Exhibit A

Legal Description of the City Property

Exhibit B

Graphical Depiction of City Property

Exhibit C

First Street Napa Phase II Project Conceptual Project Description

Exhibit D

Depiction of Developer Property and New Plaza

Exhibit E1

Grant Deed

Attachment 1 to E1

Legal Description of City Property

Exhibit E2

Irrevocable Offer of Easement

Attachment 1 to E2

Legal Description of Developer Property

EXHIBIT B

RECEIPT BY ESCROW HOLDER

Escrow Holder hereby acknowledges receipt of a fully executed copy of the foregoing Agreement of Purchase and Sale and Joint Escrow Instructions (consisting of approximately 0.18 acres located on First Street, Napa, CA 94559 in the County of Napa, State of California, Assessor's Parcel No. 003-166-017), Napa, California on this date and agrees to abide by the escrow instructions contained therein.

Escrow Holder:

PLACER TITLE COMPANY OF NAPA

By: _____

Name: _____

Effective Date:_____

EXHIBIT B

EXHIBIT A

Legal Description of the City Property

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

Exhibit A

EXHIBIT B

EXHIBIT B

Graphical Depiction of City Property

Exhibit B

EXHIBIT B

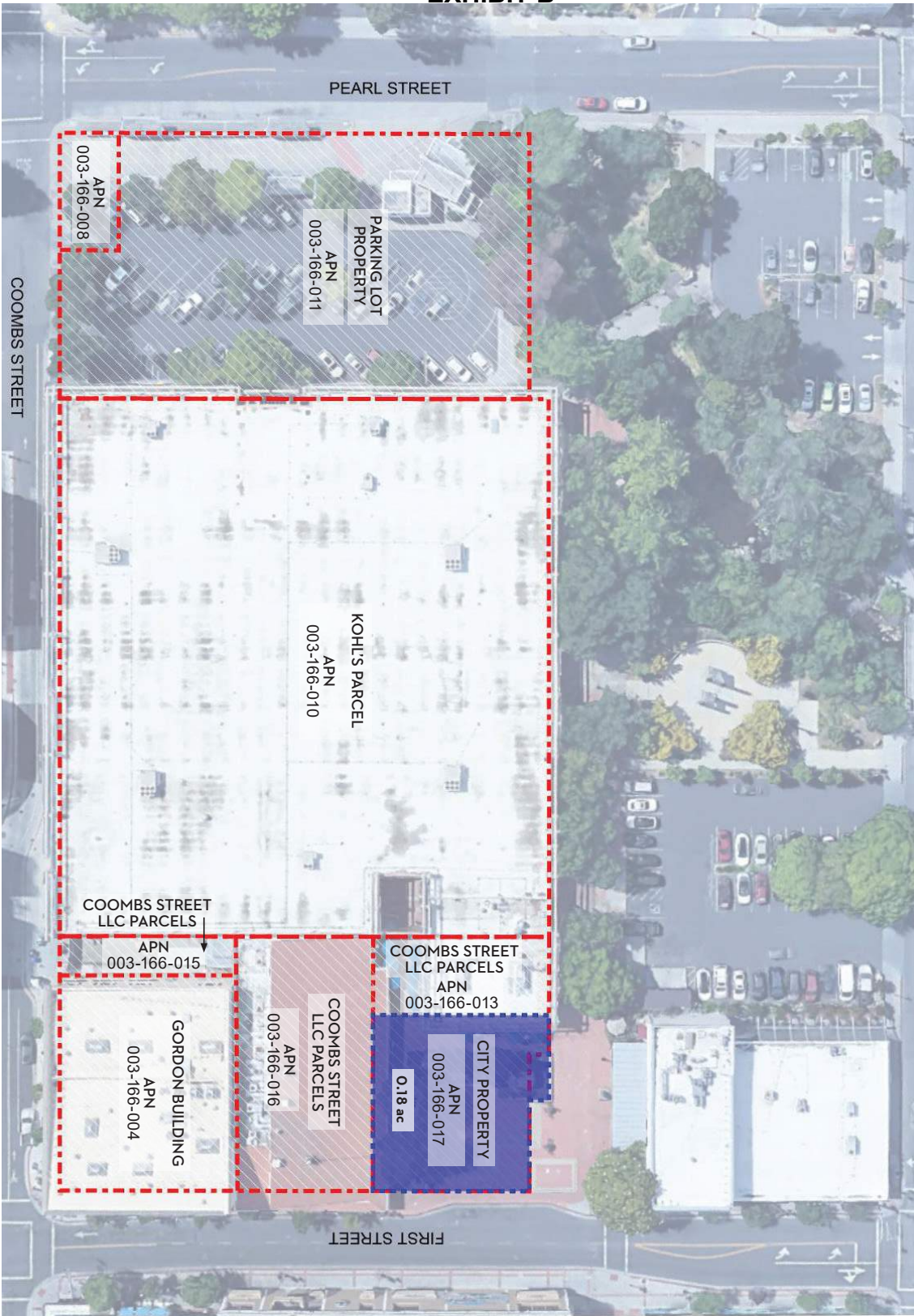


EXHIBIT B
PARCEL DEPICTION

LEGEND

- EXISTING PROPERTY BOUNDARIES
- EXISTING PLAZA BOUNDARIES

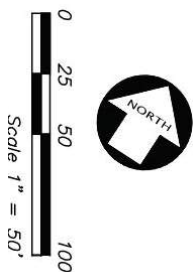


EXHIBIT B

EXHIBIT C

First Street Napa Phase II Project Conceptual Project Description

Use Description: First Street Napa Phase II Project (“Project”) is a dynamic housing, retail and upper upscale hotel project located in Downtown Napa’s most important and central public gathering area. As described in the “AGREEMENT FOR EXCHANGE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS” between the City and Developer, the Project is proposed to be developed on the “Project Property” described therein. The conceptual description of the key components of the Project, to be further clarified by the Parties through the negotiation and execution of a Development Agreement, is as follows:

Housing: Approximately 77 market-rate for sale condominium units that may be serviced by the Hotel and may be made available for short-term transient rental in connection with the Hotel. The Development Agreement will further define the terms and timing by which Developer will provide funding assistance to the affordable housing project proposed on property owned by the First United Methodist Church in downtown Napa.

Retail: Approximately 15,000 sf of stand-alone retail space in the ground floors of two buildings, along with approximately 15,000 sf of hotel and residential accessory commercial space in the ground and second floors of two buildings.

Hotel: The planned hotel will be an STR-rated upper-upscale facility with approximately 165 rooms. The Hotel will also include amenities such as a restaurant on the ground floor and a rooftop patio and bar and event space. These amenities may be operated as independent retail and commercial uses from the hotel.

Outdoor and Public Spaces: The outdoor and public spaces will include both raised and at-grade spaces facilitating a myriad of public and private uses. This will include spaces designed for active engagement and connections for pedestrians on adjacent public property on First Street and the former Brown Street corridor. Programming includes the potential for public gatherings, traditional food and beverage sales, and for organized public and private events. The Project will develop a new public plaza (the “New Plaza”) of a size equal to or greater than the City Property (approximately 0.18 acres) and in a location roughly aligned with the former Clay Street right-of-way (to create visual connections for pedestrians from Coombs Street to the 9/11 Memorial Garden and the Opera House). The New Plaza will be a pedestrian-oriented ADA-compliant space with design elements for retail activation complimentary to First Street and public gathering opportunities that will include a public concourse running between the hotel and residential buildings that will lead from the First Street Napa mall to the Brown Street Corridor. The former Brown Street corridor will be restored and is intended to be designed to meaningfully engage the adjacent public rights-of-way between the Project site, the 9/11 Memorial Garden, Main Street, Napa Creek and the surrounding downtown areas and Oxbow district. This will transform the currently underutilized spaces adjacent to the Creek into an extension of the project’s spaces for public and private uses.

EXHIBIT B

Parking: The City of Napa is currently obligated to provide a designated number of non-exclusive parking spaces for retail uses conducted on the Kohl's Parcel under the existing Kohl's (formerly Mervyn's) lease, as provided in that certain License Agreement dated February 1, 2000, City Agreement 7583 ("License Agreement"). As a condition of Close of Escrow, the Parties will negotiate and execute a "Parking Agreement" (a "Recordable Agreement" for parking) which will completely supersede and replace the License Agreement, including an accounting of total parking demand from the Project and a credit for historic parking allocated to uses on the Project Property under the License Agreement. The Parties will refine the parameters for the Parking Agreement as a part of the Development Agreement. Developer plans to construct a portion of required parking improvements on-site for residential uses. Developer proposes to provide hotel parking off-site in the Pearl Street Garage and Pearl Street surface lot, subject to the terms of the Parking Agreement. Such parking is intended to be sufficient to serve the Project's parking demand, which will be regulated by the Development Agreement. In the event sufficient public parking is not available in the Pearl Street lots or if future structured parking becomes available, the Pearl Street parking or portion thereof may be relocated to another nearby public parking location acceptable to the City and Developer, subject to an agreement for such relocation, including any financial contributions, between the City and Developer.

EXHIBIT B

EXHIBIT D

Depiction of Developer Property and New Plaza

Exhibit D

EXHIBIT B

EXHIBIT D
DEPICTION OF DEVELOPER PROPERTY AND NEW PLAZA AREA

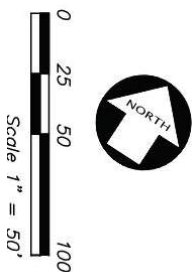
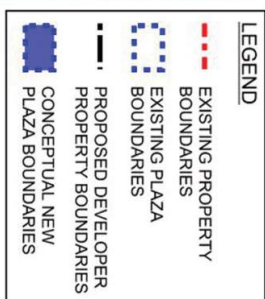
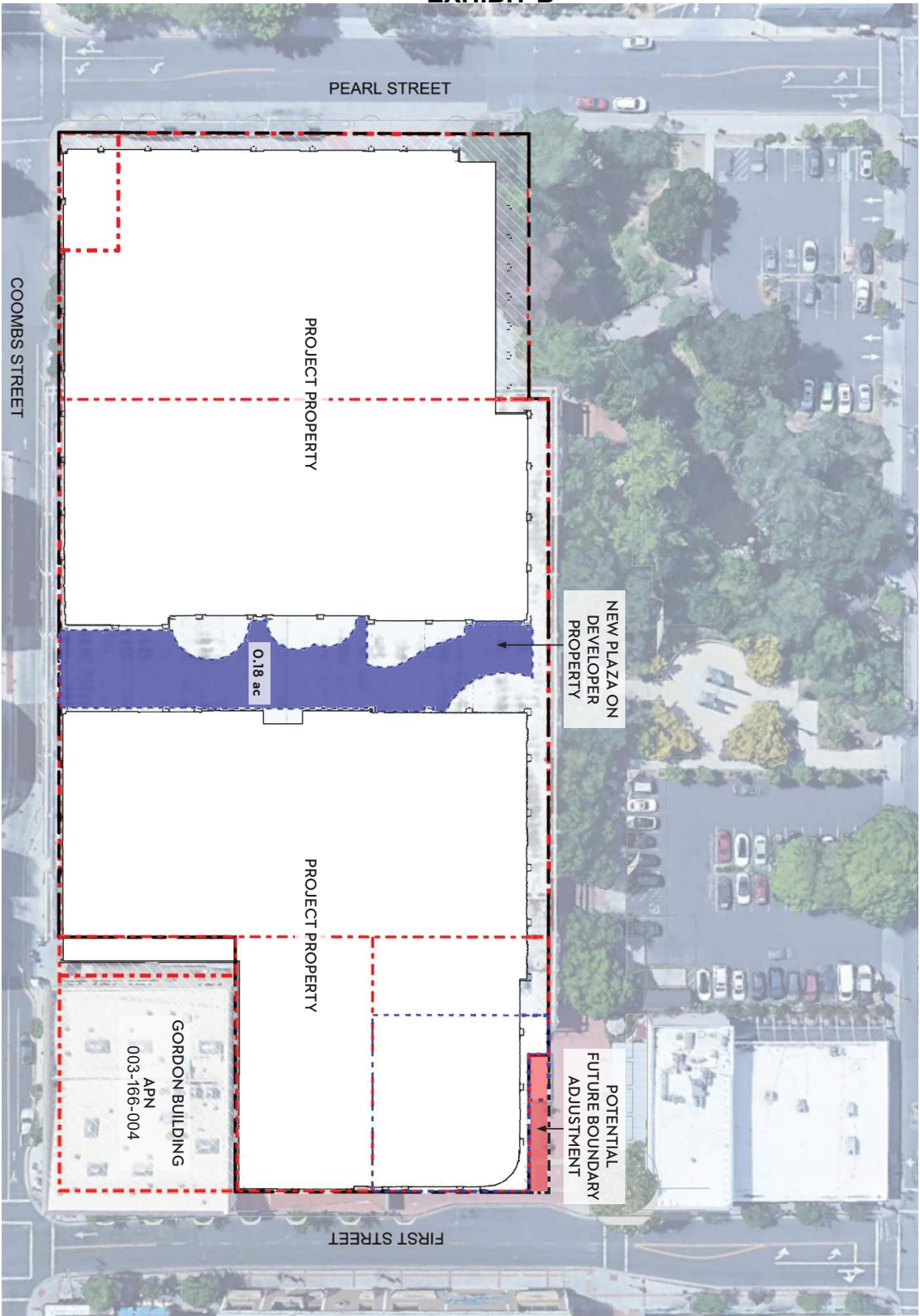


EXHIBIT B

EXHIBIT E1

Grant Deed

RECORDING REQUESTED BY:

WHEN RECORDED MAIL
TO AND MAIL TAX STATEMENTS TO:

****INSERT NAME OF PARTY****
c/o Holman Teague Roche & Anglin, LLP
1455 First Street, Suite 217
Napa, California 94559
Attn.: Kevin Teague

(Above Space for Recorder's Use Only)

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the City of Napa, a California charter city and municipal corporation, hereby grants to ****INSERT NAME OF PARTY****, the real property located in the City of Napa, County of Napa, California described in Attachment 1 attached hereto and incorporated by reference.

CITY OF NAPA, a California charter city and
municipal corporation

By: _____
Steve Potter, City Manager
(Signature must be notarized)

EXHIBIT B

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT B

ATTACHMENT 1 TO E1

Legal Description of City Property

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

EXHIBIT E2

Irrevocable Offer of Easement

[In conjunction with a Subdivision Map, which shall contain:]

Coombs Street LLC hereby irrevocably offers to the City of Napa, a California charter city and municipal corporation (“City”), the dedication of an easement for public purposes, for the real property described on Attachment 1, attached hereto and incorporated herein by reference. The public purposes for the easement shall be for a public plaza, which shall include the right to install, operate, maintain, repair, and replace any and all public improvements which the City deems necessary, in its sole and absolute discretion. For the purpose of this easement, the public improvements may include underground utilities and drainage, surface improvements such as pavement, asphalt, or decorative pavers, and street furniture such as benches, waste receptacles, signs, shade features, public art, and similar facilities. The City’s right to use the easement shall include all typical uses of similar public plazas and pedestrian-oriented public spaces, including uses for public gatherings and uses by pedestrians, bicycles, vehicles authorized for uses on City sidewalks, maintenance vehicles, and authorized public emergency vehicles.

This irrevocable offer of easement may be accepted in writing by the City Public Works Director. Until accepted in writing by the City Public Works Director, this irrevocable offer of easement shall not be terminated unless the City Council approves a vacation of the easement in accordance with California Streets and Highways Code Division 9, Part 3, commencing with Section 8300.”

EXHIBIT B

ATTACHMENT 1

Legal Description of Developer Property

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