

RESOLUTION R2018-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO CITY AGREEMENT NO. C2017 037 AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS BY AND BETWEEN THE CITY AND JAMES KELLER FOR THE SURFACE PARKING LOT AT THE SOUTHEAST CORNER OF SECOND AND RANDOLPH AND DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS RESOLUTION WERE ADEQUATELY ANALYZED BY A PRIOR CEQA ACTION

WHEREAS, the City and James F. Keller (“Developer”) entered into City Agreement No. C2017 037 entitled “Agreement of Purchase and Sale and Joint Escrow Instructions” dated February 14, 2017 (“PSA”) pursuant to which the City agreed to sell the surface parking lot located at the southeast corner of Second and Randolph Streets (“Property”) to Developer for the purpose of developing an automated parking structure; and

WHEREAS, City and Developer have subsequently negotiated a Development Agreement setting forth the terms and conditions under which Developer, following close of escrow for the sale of the Property, will rehabilitate the earthquake damaged Franklin Station Post Office building located at 1436 Second Street (“Post Office Parcel”) and construct a hotel on the Post Office Parcel and the adjacent property located at 819 Randolph Street and will develop an automated parking structure on the Property (collectively, the “Project”); and

WHEREAS, City and Developer desire to amend the PSA to, among other things, extend the deadline for close of escrow for the sale of the Property; and

WHEREAS, pursuant to California Environmental Quality Act (“CEQA”) Guidelines Section 15164, the Franklin Post Office Project Addendum dated October 9, 2018 (“Addendum”) to the Downtown Specific Plan Environmental Impact Report (“DNSP EIR”) certified by the City Council on May 1, 2012, was prepared to analyze the site-specific impacts of the Project. The Addendum and the DNSP EIR are on file in the Office of the City Clerk and are incorporated herein by reference; and

WHEREAS, the Addendum concluded that while certain changes and clarifications to the scope of the DNSP EIR are warranted, the Project is within the scope of the development program described and evaluated in the DNSP EIR, none of the conditions described under CEQA Guidelines Section 15162 are present, and accordingly, no subsequent or supplemental EIR or negative declaration is required for the Project; and

ATTACHMENT 6

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Napa, as follows:

1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the City Council's adoption of this Resolution.

2. The City Council hereby determines that the environmental effects of the actions authorized by this Resolution fall within the scope of the DNSP EIR as documented in the Addendum, pursuant to CEQA Guidelines Section 15168.

3. The City Council hereby authorizes the City Manager to execute Amendment No. 1 to Agreement No. C2017 037 Agreement of Purchase and Sale and Joint Escrow Instructions substantially in the form attached hereto as Exhibit "A".

4. This Resolution shall take effect immediately upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 13th day of November, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Dorothy Roberts
City Clerk

Approved as to form:

Michael W. Barrett
City Attorney

EXHIBIT A

**AMENDMENT NO. 1 TO AGREEMENT NO. C 2017 037
 AGREEMENT OF PURCHASE
 AND SALE AND JOINT ESCROW INSTRUCTIONS
 (Surface Parking Lot at Southeast Corner of Second and Randolph)
 APN 003-212-001**

This Amendment No. 1 (“**Amendment**”) to City Agreement No. C 2017 037 entitled Agreement of Purchase and Sale and Joint Escrow Instructions is made as of _____, 2018 (“**Date of First Amendment**”), by and between the City of Napa, a California charter city (“**Seller**”) and James F. Keller, a married man (“**Buyer**”), with reference to the following facts:

A. Seller and Buyer are parties to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of February 14, 2017, for the purchase and sale of certain real property improved with a surface parking lot located in Napa, California. The Agreement of Purchase and Sale and Joint Escrow Instructions has been amended by letter agreements between Buyer and Seller dated February 14, 2018 and August 30, 2018, respectively. The Agreement of Purchase and Sale and Joint Escrow Instructions as amended by the letter agreements is referred to herein as the “**Purchase and Sale Agreement**”.

B. Concurrently herewith, Seller and Buyer have entered into a Development Agreement dated _____, 201____ (“**Development Agreement**”), setting forth the terms and conditions under which Developer, following the Closing under the Purchase and Sale Agreement (i) will rehabilitate the earthquake damaged Franklin Station Post Office building located on the approximately 0.66 acre property at 1436 2nd Street, Napa, California, designated as Assessor’s Parcel No. 003-208-001 (“**Post Office Parcel**”) and construct on the Post Office Parcel and the adjacent approximately 0.34 acre property located at 819 Randolph Street, Napa, California, designated as Assessor’s Parcel No. 003-208-002 (“**Ace Parcel**”) a five-story, maximum 163 room upper upscale hotel, with ancillary retail and related amenities (“**Post Office Redevelopment**”), and (ii) will develop on the Property an automated parking structure not to exceed 60’ in height with ancillary improvements, including up to 7,000 square feet of ground floor retail/restaurant/commercial space (“**Parking Development**” and, collectively, with the Post Office Redevelopment, the “**Project**”).

C. Buyer and Seller now desire to amend the Purchase and Sale Agreement as depicted on Exhibit D attached hereto (with deletions shown in ~~strikeout~~, additions in double underline), and as more particularly set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Amendment, the receipt and adequacy of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Definitions. Capitalized terms used in this Amendment but not defined herein shall have meaning given to such terms in the Purchase and Sale Agreement.

2. Amendment of Subsection 4(b). Subsection 4(b) of the Purchase and Sale Agreement (Close of Escrow) is hereby amended and restated in its entirety as follows:

EXHIBIT A

“(b) Close of Escrow. The escrow for conveyance of the Property shall close (“**Close of Escrow**”) within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Seller Conditions Precedent (defined in Section 7(a)) and all of the Buyer Conditions Precedent (defined in Section 7(b)), which shall occur prior to the Outside Date. The “**Outside Date**” shall be the earlier of (a) the date that is ninety (90) days after the date on which Buyer obtains a building permit for the Hotel Project, or (b) January 7, 2024, except that the City Manager may in his or her sole discretion grant one or more extensions to the Outside Date (extending the Outside Date to no later than January 7, 2025) if: (i) requested in writing by Buyer prior to the Outside Date, and (ii) the Development Milestones set forth in subsections 4.3.1a), b) and c) of the Development Agreement have each been satisfied or achieved by the applicable Development Milestone Outside Date, and (iii) the City Manager determines that the Buyer is making reasonable and good faith efforts to satisfy all Seller Conditions Precedent. If Closing does not occur on or before the Outside Date then this Agreement shall automatically terminate. For purposes of this Agreement, “**Closing**” shall mean the time and day the Grant Deed is recorded with the Napa County Recorder.”

3. Amendment of Section 5. Section 5 of the Purchase and Sale Agreement (Conditions of Title) is hereby amended and restated in its entirety as follows:

“5. Conditions of Title. The Property shall be conveyed to Buyer by Seller by a grant deed, substantially in the form attached hereto as Exhibit B (“**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 Property created by or with the written consent of Buyer; (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 Property; (d) all matters which would be apparent from an inspection of the Property; (e) all matters which would be disclosed by a survey of the Property; (f) exceptions which are approved and/or accepted by Buyer in accordance with Section 7(a)(i) of this Agreement; and (g) the Seller’s option to repurchase set forth in the Grant Deed (collectively, “**Approved Conditions of Title**”).”

4. Amendment of Subsection 7(a)(vii). The third sentence of Subsection 7(a)(vii) of the Purchase and Sale Agreement (Buyer Conditions Precedent; Development Agreement) is hereby deleted.

5. Amendment of Subsection 7(a)(xi). Subsection 7(a)(xi) of the Purchase and Sale Agreement (Buyer Conditions Precedent; Recordable Agreement) is hereby amended and restated in its entirety as follows:

“(xi) Recordable Agreement. The Parties shall have executed and acknowledged a recordable agreement (“**Recordable Agreement**”) that includes, among other provisions, the material terms set forth in Exhibit C and is otherwise acceptable to each of the Parties. The Recordable Agreement may consist of separate easement and operation and maintenance agreements and shall be recorded at Closing immediately following recordation of the Grant Deed.”

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6. Amendment of Subsection 7(b)(vii). Subsection 7(b)(vii) of the Purchase and Sale Agreement (Seller Conditions Precedent; Recordable Agreement) is hereby amended and restated in its entirety as follows:

“(vii) Recordable Agreement. The Parties shall have executed and acknowledged a Recordable Agreement that includes, among other provisions, the material terms set forth in Exhibit C and is otherwise acceptable to each of the Parties. The Recordable Agreement may consist of separate easement and operation and maintenance agreements and shall be recorded at Closing immediately following recordation of the Grant Deed.”

7. Amendment of Section 8. A new subsection 8(d) of the Purchase and Sale Agreement (Deposits by Seller) is hereby added to read as follows:

“(d) Recordable Agreement. One (1) counterpart of the Recordable Agreement duly executed by Seller and acknowledged and in recordable form.”

8. Amendment of Section 9. Section 9 of the Purchase and Sale Agreement (Deposits by Buyer) is hereby amended and restated in its entirety as follows:

“9. **Deposits By Buyer.** At least one business day prior to the Close of Escrow, Buyer shall deposit or cause to be deposited with Escrow Holder the balance of the Purchase Price (as adjusted by the Deposit and prorations provided for herein), in cash or other immediately available funds, together with one (1) counterpart of the Recordable Agreement duly executed by Buyer and acknowledged and in recordable form.”

9. Grant Deed. A revised Exhibit B is attached to this Amendment, replacing Exhibit B attached to the Purchase and Sale Agreement.

10. Satisfaction of Development Agreement Condition. Subsections 7(a)(vii) and 7(b)(v) of the Purchase and Sale Agreement (Development Agreement) provide, as both Buyer and Seller Conditions Precedent to Closing, that the Parties must have approved and executed a Development Agreement pursuant to Government Code section 65865 *et seq.*, with respect to the Hotel Project, or portion of the Hotel Project as agreed to by the Parties, by no later than the DA Deadline. Notwithstanding anything in the Purchase and Sale Agreement to the contrary, the Parties hereby agree that in approving the Development Agreement by Ordinance No. _____, on _____, 201_, the condition for approval of a Development Agreement has been timely met, the Parties each hereby waives any right it may have to claim that the Purchase and Sale Agreement has automatically terminated as a result of the Parties’ failure to have entered into a Development Agreement by the DA Deadline, and Buyer hereby waives any right it may have to obtain a refund of the Deposit as a result of delayed approval of the Development Agreement. Accordingly, as provided in subsection 3(a) of the Purchase and Sale Agreement, the Deposit shall be released to Seller, and except for a default by Seller the Deposit shall become nonrefundable to Buyer on the later of (i) the date the Development Agreement is executed by Seller following approval by the City Council of the City of Napa, and (ii) the date which is 90 days after the effective date of the Ordinance approving the Development Agreement.

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11. Addition of New Section 24. A new Section 24 is hereby added to the Purchase and Sale Agreement to read as follows:

“24. Seller Option to Repurchase, Reenter and Repossess (Right of Reverter).

(a) Events Triggering Right of Reverter. Subject to written Notice of Breach (as defined in the Development Agreement) and opportunity to cure under Article 13 of the Development Agreement, and any applicable extension(s) for Force Majeure Delay(s) under Section 3.2.4 of the Development Agreement, Seller shall have the right, at its option, to repurchase, reenter and take possession of the entire Property if after conveyance of title to the Property and prior to the substantial completion of the Parking Development, Developer has:

(i) Within the time set forth in Section 4.3.2 of the Development Agreement (generally six (6) months after the commencement of the Extended Term), failed to either: (A) commence construction of the Parking Development; or (B) post security to secure the faithful performance of the Parking Development in a form acceptable to the City Manager, consistent with the provisions of California Government Code Sections 66499, et seq; or

(ii) Failed to substantially complete construction of the Parking Development within the time set forth in Section 4.3.2 of the Development Agreement.

(b) Mortgagee Rights. Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(i) Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

(ii) Any rights or interests provided in the Development Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

(c) Process for Seller Exercise. To exercise its right to repurchase, reenter and take possession with respect to the Property, Seller shall pay to Buyer or its successor in interest in cash an amount equal to the lesser of: (A) the fair market value of the Property as determined through a mutually agreed upon process to be documented in the Grant Deed prior to Close of Escrow; or (B) an amount equal to:

(i) The Purchase Price paid by Buyer for the Property; plus

(ii) The actual out-of-pocket hard costs incurred by Buyer and paid to unaffiliated third parties for labor and materials for the

EXHIBIT A

construction of the Parking Development through the time of the repurchase, reentry and repossession; less

(iii) The total amount of any mortgages, deeds of trust or other liens or security interests encumbering the Property and/or the Parking Development at the time of the repurchase, reentry and repossession.

In order to exercise such repurchase option, Seller shall give Buyer or its successor written notice of such exercise and Buyer or its successor shall, within sixty (60) days after receipt of such notice, provide Seller with a detailed accounting of all of Buyer's costs incurred as provided in subparagraph (ii) above and complete copies of all Contracts and Permits (defined in Section 25 below). Seller, within thirty (30) days thereafter, shall pay to Buyer or its successor in cash all sums owing pursuant to this Section 24, and, concurrently therewith, Buyer or its successor, as applicable, shall execute, acknowledge and deliver to Seller (1) a title company form grant deed in recordable form conveying to Seller all of Buyer's or its successors' interest in the Property, the Parking Development and any other improvements thereon, and (2) at Seller's option, an Assignment of Contracts and Permits (as defined in Section 25 below) as to those Contracts and Permits which Seller desires to assume.

Seller's rights under this Section 24 shall terminate upon substantial completion of the Parking Development.

(d) The provisions of this Section 24 shall survive the Closing."

12. Addition of New Section 25. A new Section 25 is hereby added to the Purchase and Sale Agreement to read as follows:

"25. Rights to Contracts and Permits. In the event Seller desires to exercise its right to repurchase, reenter and take possession with respect to the Property, Buyer or its successor, as applicable, within the time provided in Section 24 above, shall provide Seller with full and complete copies of all:

(a) plans and specifications and all amendments, modifications, supplements, general and/or special conditions, addenda and change orders now or hereafter executed and relating thereto (collectively the "**Plans and Specifications**"), which Plans and Specifications were prepared for Buyer in connection with the work of the Parking Development;

(b) any and all governmental permits, licenses, approvals, applications, inspections, orders, certificates, development rights and the like issued to or for the benefit of Buyer in connection with the work of the Parking Development (collectively, the "**Permits**"), to the extent assignable by law, specifically including, without limitation, all building permits; and

(c) any and all documents, contracts (including, without limitation, any and all construction and design contracts), indemnification agreements, and

EXHIBIT A

other documents, agreements and instruments, including, without limitation, any easements, entered into by or in favor of Buyer with respect to the work of the Parking Development and any other similar documents or instruments with respect to such work (collectively, the “**Agreements**”). The Plans and Specifications, Permits, and Agreements are collectively referred to as the “**Contracts and Permits**”.

Seller may elect, at its option, to assume any or all of the Contracts and Permits in connection with Seller’s exercise of its option to repurchase under Section 24 above. If Seller desires to assume one or more of the Contracts and Permits, then Buyer concurrently with execution and delivery of the grant deed under Section 24 above, shall assign to Seller those Contracts and Permits which Seller desires to assume, if any, pursuant to a written assignment agreement in a form reasonably acceptable to the City Attorney (“**Assignment of Contracts and Permits**”). The Assignment of Contracts and Permits shall provide among other things (i) that Seller is not assuming any obligations or liabilities under the Contracts or Permits arising on or before the date the assignment is executed by the parties (“Assignment Effective Date”) but assumes any obligations or liabilities from any acts by Seller in connection with such Contracts or Permits after the Assignment Effective Date, (ii) that Buyer shall be solely responsible for the payment of all amounts owing under the Contracts for work performed before or after the Assignment Effective Date at Buyer’s request or direction, and (iii) that neither the assignment nor any action or inaction on the part of Seller shall constitute an assumption on the part of Seller of any duty or obligation with respect to the Contracts and Permits, nor shall Seller have any duty or obligation to make any payment to be made by Buyer under the Contracts and Permits, or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts or the performance of any obligations which have been assigned to Seller or to which Seller may be entitled at any time or times.

The provisions of this Section 25 shall survive the Closing.”

13. Amendment Controls. In the event that the terms of this Amendment and the Purchase and Sale Agreement are held to be inconsistent, the terms of this Amendment shall control.

14. Ratification and Affirmation. Seller and Buyer each agree and warrant that, except as specifically provided for in this Amendment, the Purchase and Sale Agreement is unmodified, in full force and effect, and each party hereby ratifies and affirms the Purchase and Sale Agreement and any terms contained therein not otherwise modified by this Amendment.

15. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument. Each party may rely upon facsimile or electronic mail counterparts of this Amendment signed by the other party with the same effect as if such party had received an original counterpart signed by such other party.

[Signatures on the following page]

EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions as of the Date of First Amendment set forth above.

CITY:

CITY OF NAPA, a California charter city

By: _____
Steve Potter, City Manager

ATTEST:

By: _____
Dorothy Roberts, City Clerk

COUNTERSIGNED:

By: _____
Desiree Brun, City Auditor

APPROVED AS TO FORM:

By: _____
Michael Barrett, City Attorney

DEVELOPER:

James F. Keller, a married man

By: _____
James F. Keller

EXHIBIT A

ACCEPTANCE BY ESCROW HOLDER

Escrow Holder hereby acknowledges receipt of a fully executed copy of the foregoing First Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions (Surface Parking Lot at Southeast Corner of Second and Randolph) APN 003-212-001, Napa, California on this date and agrees to abide by the escrow instructions contained therein.

Escrow Holder:

FIRST AMERICAN TITLE COMPANY OF NAPA

By: _____

Name: _____

Date: _____

EXHIBIT A**EXHIBIT B****Form of Grant Deed**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL
TO AND MAIL TAX STATEMENTS TO:

James F. Keller
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)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the City of Napa, a municipal corporation (Grantor), hereby grants to _____ ("Grantee"), the real property located in the City of Napa, County of Napa, California described in Attachment 1 attached hereto and incorporated by reference.

1. Covenants. Grantee expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that Grantee and all such successors and assigns and all persons claiming under or through it, shall develop the Property only with the Parking Development and uses specified and in accordance with (a) that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of February 14, 2017, as amended by the First Amendment to Agreement of Purchase and Sale dated _____, 201_ (as amended, the "Purchase and Sale Agreement"); (b) that certain Development Agreement dated _____, 2019, recorded in the Official Records as Instrument No. _____ ("Development Agreement"); and (c) all other applicable City entitlements and permits (as may be amended from time to time) pertaining to construction of the Parking Development. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Purchase and Sale Agreement.

2. Grantor Option to Repurchase, Reenter and Repossess. Until such time as the Parking Development is substantially complete, Grantor shall have the right to repurchase, reenter and take possession of the entire Property and improvements thereon in the event of certain specified uncured defaults under the Development Agreement, as provided in Section 24 of the Purchase and Sale Agreement. Such right to repurchase, reenter and repossess shall be subordinate to and be limited by and shall not defeat, render invalid or limit: (a) any mortgage, deed of trust or other security instrument permitted by the Development Agreement; or (b) any rights or interests provided in the Development Agreement and/or Purchase and Sale Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

EXHIBIT A**3. Effect, Duration and Enforcement of Covenants.**

It is intended and agreed that the covenants and agreements set forth in this Grant Deed shall be covenants running with the land and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, (a) binding for the benefit and in favor of Grantor, as beneficiary; and (b) binding against Grantee, its successors and assigns to or of the Property. The agreements and covenants herein shall be binding on Grantee itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Property. Grantor shall have the right, in the event of breach of any such covenants of which it is stated to be the beneficiary, to institute an action to specifically enforce Grantor's option to repurchase, reenter and repossess.

4. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument encumbering the Property; provided, however, that any successor of Grantee to the Property (other than the Grantor in the event Grantor re-acquires title to the Property) shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. Amendments. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained or incorporated by reference within this Grant Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and the Parking Development.

6. Certificate of Completion. Upon Grantee's or its successors substantial completion of the Parking Development, Grantor shall execute, acknowledge and deliver to Grantee for recordation in the Official Records, a certificate of completion evidencing termination of Grantor's option to repurchase, reenter and repossess the Property under Section 2 above.

7. Grantee's Acknowledgment. By its execution of this Grant Deed, Grantee hereby acknowledges and accepts the provisions hereof.

8. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

EXHIBIT A

GRANTOR:

City of Napa, a California charter city

Date: _____, 20__

By: [form document – do not execute]
_____, City Manager
[SIGNATURE MUST BE NOTARIZED]

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

GRANTEE:

_____, a

Date: _____, 20__

By: [form document – do not execute]
Name: _____
[SIGNATURE MUST BE NOTARIZED]
Title: _____

Date: _____, 20__

By: [form document – do not execute]
Name: _____
[SIGNATURE MUST BE NOTARIZED]
Title: _____

EXHIBIT A
ACKNOWLEDGMENTS

[To be inserted]

EXHIBIT A

ATTACHMENT 1

Legal Description of Property

EXHIBIT A

EXHIBIT D

- Amendment of Subsection 4(b). Subsection 4(b) of the Purchase and Sale Agreement (Close of Escrow) is hereby amended and restated in its entirety as follows (deletions shown in ~~strikeout~~, additions in double underline):

“(b) Close of Escrow. The escrow for conveyance of the Property shall close (“**Close of Escrow**”) within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Seller Conditions Precedent (defined in Section 7(a)) and all of the Buyer Conditions Precedent (defined in Section 7(b)), which shall occur prior to the Outside Date. The “**Outside Date**” shall be the earlier of (a) the date that is ninety (90) days after the date on which Buyer obtains a building permit for the Hotel Project, or (b) January 7, 2024, ~~March 31, 2019~~ except that the City Manager ~~shall~~ may in his or her sole, absolute discretion ~~grant up to a 180-day extensions~~ to the Outside Date (extending the Outside Date to no later than ~~September 27, 2019~~ January 7, 2025) if: (i) requested in writing by Buyer prior to the Outside Date, and (ii) the Development Milestones set forth in subsections 4.3.1a), b) and c) of the Development Agreement have each been satisfied or achieved by the applicable Development Milestone Outside Date, and (iii) the City Manager determines that the Buyer is making reasonable and good faith efforts to satisfy all Seller Conditions Precedent. If Closing does not occur on or before the Outside Date then this Agreement shall automatically terminate. For purposes of this Agreement, “Closing” shall mean the time and day the Grant Deed is recorded with the Napa County Recorder.”

- Amendment of Section 5. Section 5 of the Purchase and Sale Agreement (Conditions of Title) is hereby amended and restated in its entirety as follows (deletions shown in ~~strikeout~~, additions in double underline):

“5. Conditions of Title. The Property shall be conveyed to Buyer by Seller by a grant deed, substantially in the form attached hereto as Exhibit B (“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 Property created by or with the written consent of Buyer; (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 Property; (d) all matters which would be apparent from an inspection of the Property; (e) all matters which would be disclosed by a survey of the Property; ~~and~~ (f) exceptions which are approved and/or accepted by Buyer in accordance with Section 7(a)(i) of this Agreement; and (g) the Seller’s option to repurchase set forth in the Grant Deed (collectively, “**Approved Conditions of Title**”).”

- Amendment of Subsection 7(a)(vii). The third sentence of Subsection 7(a)(vii) of the Purchase and Sale Agreement (Buyer Conditions Precedent; Development Agreement) which reads as provided below is hereby deleted (deleted text shown in ~~strikeout~~):

EXHIBIT A

~~“An executed recordable agreement (“Recordable Agreement”) which includes, among other provisions, the material terms set forth in Exhibit C shall be incorporated into and attached as an exhibit to the Development Agreement; the executed Recordable Agreement may consist of separate easement and operation and maintenance agreements.”~~

- Amendment of Subsection 7(a)(xi). Subsection 7(a)(xi) of the Purchase and Sale Agreement (Buyer Conditions Precedent; Recordable Agreement) is hereby amended and restated in its entirety as follows (deletions shown in ~~strikeout~~, additions in double underline):

~~“(xi) Recordable Agreement. The Parties shall have executed and acknowledged a Recordable Agreement (“Recordable Agreement”) that includes, among other provisions, the material terms set forth in Exhibit C and is otherwise acceptable to each of the Parties. The Recordable Agreement may consist of separate easement and operation and maintenance agreements and shall be recorded at Closing immediately following recordation of the Grant Deed.”~~

- Amendment of Subsection 7(b)(vii). Subsection 7(b)(vii) of the Purchase and Sale Agreement (Seller Conditions Precedent; Recordable Agreement) is hereby amended and restated in its entirety as follows (deletions shown in ~~strikeout~~, additions in double underline):

~~“(vii) Recordable Agreement. The Parties shall have executed and acknowledged a Recordable Agreement that includes, among other provisions, the material terms set forth in Exhibit C and is otherwise acceptable to each of the Parties. The Recordable Agreement may consist of separate easement and operation and maintenance agreements and shall be recorded at Closing immediately following recordation of the Grant Deed.”~~

- Amendment of Section 8. A new subsection 8(d) of the Purchase and Sale Agreement (Deposits by Seller) is hereby added to read as follows (additions in double underline):

~~“(d) Recordable Agreement. One (1) counterpart of the Recordable Agreement duly executed by Seller and acknowledged and in recordable form.”~~

- Amendment of Section 9. Section 9 of the Purchase and Sale Agreement (Deposits by Buyer) is hereby amended and restated in its entirety as follows (additions in double underline):

~~“9. Deposits By Buyer. At least one business day prior to the Close of Escrow, Buyer shall deposit or cause to be deposited with Escrow Holder the balance of the Purchase Price (as adjusted by the Deposit and prorations provided for herein), in cash or other immediately available funds, together with one (1) counterpart of the Recordable Agreement duly executed by Buyer and acknowledged and in recordable form.”~~

- Grant Deed. A revised Exhibit B is attached to this Amendment, replacing Exhibit B attached to the Purchase and Sale Agreement.