

ATTACHMENT 1

AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS

1051 – 1199 Pearl St.
APN 003-166-008 & 003-166-011
Napa, California

This Agreement of Purchase and Sale and Joint Escrow Instructions (“**Agreement**”), dated for reference purposes only as of _____, 2020, is entered into by and between NAPA PARKWAY PLAZA, LLC, a California limited liability company (“**Buyer**”), and the CITY OF NAPA, a California charter city (“**Seller**”). Buyer and Seller are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties**.”

Recitals

A. Seller is the owner of that certain 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 as more particularly described on Exhibit A attached hereto (“**Property**”). The Property is currently improved with a 52-stall surface public parking lot and the former public transportation bus depot (the “**Improvements**”).

B. Buyer is the owner certain real property that includes 1116 1st Street, Napa, California 94559 (“**Kohl’s Parcel**”). Buyer’s tenant, Kohl’s Department Stores, Inc. (“**Tenant**”), has a lease that allows Tenant to occupy the Kohl’s Parcel until the year 2041. Tenant has informed Buyer that Tenant is investigating a relocation of its store to a new site within the City of Napa outside of the downtown core area and if Tenant is able to find a suitable location Tenant is willing to negotiate with Buyer a termination of said lease. Subject to Tenant’s relocation from the Kohl’s Parcel, Buyer desires to demolish the existing improvements on the Kohl’s Parcel and develop said parcel with a mixed-use project consisting of rental housing, retail and an upper upscale hotel project as more particularly described in Exhibit B (“**First Street Napa Phase II Project**” or “**Project**”), which is proposed to be further defined in a Development Agreement as provided in Section 8(a)(viii) below.

C. Buyer also desires to purchase the Property for the purpose of assembling such Property with the Kohl’s Parcel to make a more efficient and orderly project site, to better activate the downtown area, and to promote retailing and other compatible uses in the downtown area. As part of the Project, Seller would be relieved of certain parking obligations contained in the License Agreement dated February 1, 2000, City Agreement 7583 (“**Kohl’s Parking Obligation**”).

D. Buyer acknowledges that Seller 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

ATTACHMENT 1

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, Seller shall have the unfettered discretion to approve said matters, and if not approved by Seller, to terminate this Agreement and return the Deposit to Buyer without any further liability to Buyer. As a result, any sums spent by Buyer shall be at its risk and without recourse to Seller.

E. City has determined that the purchase and sale transaction contemplated by this Agreement is exempt from the requirements of the State Surplus Lands Act (California Government Code section 54220 *et seq.*), because the Property is subject to valid legal restrictions to satisfy the Koh's Parking Obligation (as provided in Government Code section 54221(f)(1)(G)).

F. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer upon and subject to the terms, conditions and provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties agree as follows:

Agreement

1. **Purchase and Sale.** Seller shall sell and convey to Buyer, and Buyer shall purchase from Seller, the 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.**" The Property shall include and all Improvements thereon, together with all rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent roads, streets, alleys, easements or rights-of-way, as well as all, equipment, machinery, utility systems and lines, other built-in or attached elements, and other rights-of-way 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.

2. **Purchase Price.** The purchase price ("**Purchase Price**") for the Property shall be the amount of Eight Hundred Seventy Thousand and 00/100 Dollars (870,000.00). Buyer has the right to independently verify the square footage of the Property, and agrees that if the square footage varies from that recited in this Agreement or in any materials provided by Seller or any representative of Seller, such variation shall have no effect on the Purchase Price.

3. **Payment of Purchase Price.** The Purchase Price shall be payable by Buyer to Seller as follows:

(a) **Deposit.** Prior to the end of the Contingency Period (as defined in Section 8(a)(i), below), Buyer shall deposit with Placer Title Company of Napa, 5 Financial Plaza, #205, Napa, CA 94558 ("**Escrow Holder**"), Fifty Thousand and 00/100 Dollars

(\$50,000.00) in cash or other immediately available funds ("**Deposit**"). The Deposit shall be invested by Escrow Holder with a financial institution acceptable to Buyer in a federally-insured interest-bearing demand account and the Deposit and all interest accrued thereon shall be credited to the Purchase Price upon the Close of Escrow (as defined in Section 4(b), below). 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 proposed Development Agreement (defined in Section 8(a)(viii)) becomes Final (as defined below) or (ii) 30 days following the date Tenant voluntarily relocates from the Kohl's Parcel (as described in Section 8(b)(ix)) (the "**Deposit Release Date**"). As used herein the term "**Final**" means the date on which (1) all applicable appeal periods for the filing of any administrative appeal or litigation challenging the approval or effectiveness of the Development Agreement and the City's related CEQA determinations shall have expired and no such appeal shall have been filed; (2) in the event of any administrative appeal or litigation challenge challenging one or more of such approvals, that the administrative appeal or litigation challenge is settled or there is a final determination or judgment upholding the approval(s), and the administrative appeal or litigation challenge is no longer subject to appeal; and (3) in the event of a timely referendum petition certified by the elections official as compliant with the Elections Code, a majority of voters voting on the Development Agreement vote in favor of it and the election results are certified in accordance with the Elections Code (collectively, (1) (2) and (3) are referred to as "Appeals"). If the proposed Development Agreement does not become Final by December 31, 2022, except that the City Manager, may grant one or more extensions to such date (extending the Deposit Release Date to no later than December 31, 2024 (the "Outside Deposit Release Date"), if: (i) requested in writing by Buyer prior to expiration of the then Deposit Release Date, and (ii) the City Manager determines in his or her sole discretion that the Buyer is making diligent and good faith efforts to satisfy the conditions of the Deposit Release Date. If the Development Agreement does not become Final on or before the Outside Deposit Release Date as it may be extended as provided above, this Agreement shall terminate, the Deposit, less costs of cancelling Escrow, shall be refunded to Buyer and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement.

(b) Balance of Purchase Price. On or before the Close of Escrow, Buyer shall deposit with Escrow Holder the balance of the Purchase Price, in immediately available funds, which shall be paid to Seller at Close of Escrow.

4. Escrow.

(a) Opening of Escrow. Within three (3) business days after Effective Date, Buyer shall open escrow ("**Escrow**") with Escrow Holder. Buyer and Seller 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 the Property shall close ("**Close of Escrow**") within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Buyer Conditions Precedent (defined in Section 8(a)) and all of the Seller Conditions Precedent (defined in Section 8(b)), which 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 Buyer obtains a grading or other building permit for the First Street Napa Phase II 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 Buyer prior to expiration of the then Outside Date, and (ii) the City Manager determines in his or her sole discretion that the Buyer is making diligent and good faith efforts to satisfy all Seller 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, Seller and Buyer will have no further obligations or rights to one another under this Agreement. For purposes of this Agreement, "**Closing**" shall mean the time and day the Grant Deed is recorded with the Napa County Recorder.

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 C ("**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 8(a)(i) of this Agreement (collectively, "**Approved Conditions of Title**").

6. Title Policy. 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 Buyer in an amount equal to the Purchase Price, showing title to the Property vested in Buyer, subject only to the Approved Conditions of Title ("**Title Policy**"). Buyer shall pay all expenses of issuing the Title Policy, including any survey costs associated with and any endorsements to such Title Policy.

7. Milestones

In addition to or part of the Development Agreement requirements contained in Sections 8(a)(viii) and 8(b)(v) herein, prior to approval of the Development Agreement the parties shall agree to a list of appropriate milestones (and corresponding deadlines) for, among other things, Buyer's preparation of and submittal to Seller of (i) a more precise project

description; (ii) concept plans and designs for Project including site plan, elevations of all four sides; tabulation of areas and uses; plans to develop parking improvements sufficient to serve the Project's parking demand and maintain sufficient public parking in the area to relieve Seller of the Kohl's Parking Obligation (such parking plans are referred to as "Parking Concept"); (iii) financing plan setting forth the terms under which equity and debt will be structured to fund construction of the Project; (iv) the Tenant relocation waiver and release; (v) submittal of applications for key project entitlements associated with the development agreement, including the tentative map, zoning change and design review permits; (vi) affordable housing regulatory agreements; (vii) hotel flag operating agreement; (viii) commitments on the upper upscale hotel STR rating or similar rating; and (ix) any required maintenance, access and other operational agreements, which shall be set forth in one or more recordable agreements ("**Recordable Agreements**")

8. Conditions to Close of Escrow.

(a) Buyer Conditions Precedent. The Close of Escrow and Buyer's obligation to consummate the transaction contemplated by this Agreement are subject to the satisfaction of the following conditions (or Buyer's waiver in writing thereof) for Buyer'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 Buyer's waiver in writing thereof) prior the Close of Escrow (collectively, the "**Buyer Conditions Precedent**"):

(i) Title. Pursuant to the terms and conditions of this subsection, Buyer shall have the right to approve any and all matters of and exceptions to title of the Property, as disclosed by the following documents and instruments (collectively, "**Title Documents**"): (A) a Preliminary Report issued by Escrow Holder with respect to the Property; and (B) legible copies of all documents, whether recorded or unrecorded, referred to in such Preliminary Report. Seller shall cause Escrow Holder to deliver the Title Documents to Buyer within five calendar days following the Effective Date. Buyer shall have until 5:00 PM (local time) on the date that is 45 calendar days following the Effective Date ("**Title Review Period**") to give Seller and Escrow Holder written notice ("**Buyer's Title Notice**") of Buyer's approval or disapproval of the Title Documents, except that the City Manager may grant extensions to the Contingency Period, if: (i) requested in writing by Buyer prior to the end of the Contingency Period, and (ii) the City Manager determines that the Buyer is making diligent and good faith efforts to complete the evaluation of underground Hazardous Materials (as defined by Section 14(a)(vi), below). The failure of Buyer to give Buyer's Title Notice to Seller within the specified time period shall be deemed Buyer's disapproval of the Title Documents. Seller shall give Buyer written notice ("**Seller's Title Notice**") of those disapproved title matters, if any, which Seller is unwilling or unable to have eliminated from title to the Property by the Close of Escrow within ten business days after Buyer's Title Notice is received by Seller, if Buyer's Title Notice provides a disapproval, or Buyer is deemed to have disapproved, of any matter of title shown in the Title Documents. Seller's failure to provide Seller's Title Notice within said ten business day period shall be deemed Seller's election not to remove any of the disapproved exceptions in Buyer's Title Notice. Notwithstanding the foregoing, Seller shall, at Seller's sole cost and expense, remove as exceptions to title to the

Property, as of the Close of Escrow, all mortgages and deeds of trust, if any, under which Seller is the mortgagor, trustor or borrower that are currently recorded against the Property, and Seller's failure to do shall constitute a default hereunder.

(ii) If Seller is unable or unwilling to remove all of the title matters objected to by Buyer in Buyer's Title Notice, or fails to deliver Seller's Title Notice, Buyer shall have five business days from receipt of Seller's Title Notice, or expiration of the time period within which Seller is to respond, to notify Seller in writing that either (1) Buyer is willing to purchase the Property, subject to such disapproved exceptions, or (2) Buyer elects to terminate this Agreement. Failure of Buyer to take either one of the actions described in clause (1) or (2) in the previous sentence shall be deemed to be Buyer's election to take the action described in clause (2). If this Agreement is terminated pursuant to this Section 8(a)(ii), the Deposit, including all accrued interest, shall be returned to Buyer (provided that Buyer has complied with the terms of Section 25(n) below), and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement;

(iii) Inspections and Studies/Costs. During the Contingency Period (defined below), Buyer and Buyer's employees, agents, contractors, subcontractors and consultants (collectively, "**Buyer's Representatives**") shall have the right to enter upon the 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 Property as Buyer may elect to make or maintain. Buyer's and Buyer's Representatives entry upon the 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 City Attorney. The cost of any such inspections, tests and/or studies shall be borne by Buyer.

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

Buyer shall indemnify, defend and hold Seller harmless from any and all claims, damages or liabilities arising out of or resulting from the entry onto or activities upon the Property by Buyer or Buyer's Representatives or liens arising from such activities. Buyer's obligation to indemnify Seller under the provisions of this Section 8 shall survive any termination of this Agreement, shall survive the Closing and shall not be

merged upon delivery and acceptance of the Grant Deed or upon payment of the Purchase Price by Buyer to Seller. Prior to any entry on to the Property by any of Buyer's Representatives, Buyer shall deliver to Seller an endorsement to a commercial general liability insurance policy which evidences that such Buyer's Representative is carrying a commercial general liability insurance policy with a financially responsible insurance company acceptable to Seller, covering the activities of such Buyer's Representative on or upon the 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 Seller as an additional insured, and shall be primary and non-contributing with any other insurance, self-insurance or joint self-insurance available to Seller.

Prior to 5:00 PM (local time) on the date that is 60 calendar days following the Effective Date ("**Contingency Period**"), Buyer shall deliver to Seller and Escrow Holder written notice ("**Contingency Period Notice**") of its approval or disapproval of the Property. The Contingency Period Notice may, but need not, be combined with the Buyer's Title Notice. The Contingency Period Notice to the Escrow Holder shall be accompanied by the Natural Hazards Disclosure Statement (if not yet signed and returned to Seller). The failure of Buyer to timely deliver the Contingency Period Notice shall be deemed to constitute Buyer's disapproval of the Property, in which case the Deposit, including all accrued interest (less the costs of cancelling Escrow), shall be returned to Buyer (provided that Buyer has complied with the terms of Section 25(n) below), and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement. Prior to the expiration of the Contingency Period Buyer may terminate this Agreement at any time for any reason at the sole discretion of Buyer.

(iv) Title Insurance. As of the Close of Escrow, Title Company shall have committed to issue the Title Policy to Buyer as described in Section 6, above.

(v) Seller's Representations. All representations and warranties made by Seller to Buyer 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, Seller shall deliver to Buyer a Natural Hazards Disclosure Statement for the Property. Buyer shall have approved the Natural Hazards Disclosure Statement and returned a signed copy thereof to Seller by the expiration of the Contingency Period.

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

(viii) Development Agreement. The Parties shall have approved and executed a Development Agreement pursuant to Government Code section 65865 *et seq.*, with respect to the Property and Kohl's Parcel and the First Street Napa Phase II Project, or portion thereof, in form and substance mutually acceptable to the Parties, each

in its sole and absolute discretion, ("**Development Agreement**") by no later than twelve months (12) months after the Effective Date ("**DA Deadline**"), provided that the City Manager may grant one or more extensions extending the Deposit Release Date to no later than 24 months after the Effective Date (the "Outside DA Deadline") if the City Manager determines in his or her sole 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 Property and Kohl's Parcel, including requirements for timing of construction; (b) public benefits, including (i) the Parking Concept, and (ii) the quantities of for rent affordable and for rent market rate housing, (iii) the rights of City and the public to have access to use certain portions of the Property and Kohl's Parcel 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 Buyer's participation in the improvement or reuse of Dwight Murray Plaza; (f) parking quantities sufficient to serve the Project's residential, hotel and retail components; (g) vesting periods and impact fees; (h) CEQA compliance; (i) any requirements for Recordable Agreements; addressing, among other provisions; and (j) such other matters related to the Property and Kohl's Parcel, and the Project as the Parties may agree, each in its sole and absolute discretion. If the Parties have not executed the Development Agreement by the Outside DA Deadline, then this Agreement shall automatically terminate and the Deposit, including all accrued interest, shall be returned to Buyer and, except as otherwise provided herein, neither Party shall have any further rights or obligations hereunder.

(ix) Seller Approval. Prior to the Close of Escrow, Seller shall have approved Buyer's Parking Concept and relieve Seller of the Kohl's Parking Obligation through the relocation of Buyer's Tenant as provided by the Development Agreement, all at no cost to Seller.

(x) Other Approvals, Assurances and Permits. Buyer 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, Seller shall be ready to issue all ministerial permit(s) necessary for the Buyer to commence construction of the First Street Napa Phase II Project.

(xi) 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 Property which would materially and adversely affect Buyer's intended uses of the Property or the value of the Property.

(xii) Recordable Agreement. The Parties shall have executed one or more Recordable Agreement described in Section 7 that are otherwise acceptable to each of the Parties in its sole and absolute discretion.

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

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

(ii) Buyer's Representations. All representations and warranties made by Buyer to Seller 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.

(iii) Purchase Price. Buyer shall have timely delivered the Purchase Price and other sums owing under this Agreement in good funds to Escrow Holder and fully, faithfully and timely performed all of its other obligations under this Agreement.

(iv) Natural Hazards Disclosure Statement. Prior to the end of the Contingency Period, Buyer shall have returned a signed copy of the Natural Hazards Disclosure Statement to the Seller.

(v) 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 8(a)(viii) of this Agreement prior to the DA Deadline. If the Parties have not executed a Development Agreement by the DA Deadline, then this Agreement shall automatically terminate and the Deposit, including all accrued interest, shall be returned to Buyer and, except as otherwise provided herein, neither Party shall have any further rights or obligations under this Agreement.

(vi) Seller Approval. Prior to the Close of Escrow, Seller shall have approved Buyer's plans to construct parking improvements sufficient to serve the First Street Napa Phase II Project's parking demand and relieve Seller of the Kohl's Parking Obligation through the relocation of Buyer's Tenant as provided by the Development Agreement, all at no cost to Seller.

(vii) Recordable Agreement and Other Documents. The Parties shall have executed and acknowledged one or more Recordable Agreement described in Section 7 that are otherwise acceptable to each of the Parties in its sole and absolute discretion.

(viii) Other Approvals, Assurances and Permits. (1) Buyer shall have sought and received all discretionary land use entitlements, permits and approvals from all appropriate governmental entities to develop the First Street Napa Phase II Project; (2) Seller 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, Seller shall be ready to issue all ministerial permit(s) necessary for the Buyer to commence construction of such project. The conditions set forth in clauses (1) and (2) of this subsection (viii) may not be waived by Seller.

(ix) Tenant Relocation Waiver. Prior to the Close of Escrow, Tenant (1) shall have relocated to another location or shall have vacated the Property and have declined to relocate, and (2) shall have executed and delivered to Seller a waiver of any and all rights to relocation assistance under applicable State and Federal law including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601, et seq.) and its regulations (49 CFR Part 24) and the Relocation Assistance Act (Cal. Gov. Code § 7260, et seq.), as may be amended (collectively, "**Relocation Laws**"), all in form and substance acceptable to Seller in its sole and absolute discretion. The condition set forth in this subsection (ix) may not be waived by Seller.

(x) Milestones. Prior to the Close of Escrow, Seller shall have approved Buyer's Milestones as required in Section 7 of this Agreement.

(c) Failure of Condition to Close of Escrow. If any of the conditions set forth in Section 8(a) or Section 8(b) are not timely satisfied or, where applicable, waived by the appropriate benefited Party for a reason other than the default of Buyer or Seller, this Agreement shall terminate, and except as otherwise provided herein, the Parties shall have no further rights or obligations hereunder.

9. Deposits By Seller. At least one business day prior to the Close of Escrow, Seller shall deposit with Escrow Holder the following documents:

(a) Grant Deed. The Grant Deed, duly executed and acknowledged in recordable form by Seller, conveying fee simple title to the Property to Buyer. [***Parties to discuss and identify other relevant recordable documents to be executed, acknowledged and recorded through Closing, including Recordable Agreement(s), Parking Agreement, Affordable Housing Regulatory Agreement and/or Hotel Use/STR Rating Agreement***].

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

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

10. 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 and Buyer's share of closing costs (as adjusted by the Deposit and prorations provided for herein), in cash or other immediately available funds.

11. Costs and Expenses. As the Seller is a not political subdivision of the State of California, 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 Seller shall pay any applicable documentary transfer taxes. Except as otherwise specified in this Agreement, Buyer shall pay all applicable closing costs, escrow fees, and title insurance costs. Buyer and Seller shall each pay all legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. Any cost incurred through the Escrow relating to the Property that is not specifically allocated to Buyer or Seller under this Agreement shall be apportioned in the manner customary in Napa County.

12. Prorations.

(a) Taxes. [Not applicable, as the Property is publicly owned.]

(b) Other Expenses. All expenses for the Property shall be prorated as of 12:01 a.m. on the day of the Close of Escrow based upon the latest available information.

13. Corrections. If any errors or omissions are made regarding prorations as set forth in Section 12 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.

14. Condition of Property.

(a) Notwithstanding any other provision of this Agreement to the contrary, Seller makes no representation or warranty (except as expressly set forth in Section 17 below) whatsoever regarding the Property including, without limitation, as to:

- (i) The size and dimensions of any portion of the Property;
- (ii) The suitability of the Property for the Buyer's planned use;
- (iii) All matters relating to title including extent and conditions of title to the Property, taxes, assessments, and liens;
- (iv) All legal and governmental laws, statutes, rules, regulations, ordinances, restrictions or requirements concerning the Property, including zoning, use permit requirements and building codes;
- (v) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Property;

(vi) The physical, legal, economic and environmental condition and aspects of the Property, and all other matters concerning the condition, use or sale of the Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the 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 Property causes or threatens to cause a nuisance upon the 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 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) 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; (IX) 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 Property, including easement and access rights through the Property for the benefit of adjacent properties;

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

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

15. Property Condition Waiver. Effective upon the Close of Escrow, Buyer waives its right to recover from Seller, and the officers, officials, employees, agents and predecessors of Seller, and the contractors, subcontractors, architects, engineers and consultants involved in the design and construction of improvements located on or serving the Property (collectively, "**Seller's Representatives**"), and hereby releases Seller and Seller'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 Property, (ii) the failure of the improvements and components of the Property to comply with any law or regulation applicable thereto, and (iii) the environmental condition of the 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 Seller (excluding constructive notice), and (1) not disclosed to Buyer and (2) not discovered by Buyer prior to the Close of Escrow, and (b) any breach by Seller of its express representations or warranties pursuant to this Agreement. In connection with foregoing waiver and release, Buyer 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."

Buyer's Initials

16. Regulatory Authority; Buyer Waiver and Release.

(a) Reservation of Seller's Discretion. Buyer acknowledges that while Seller is entering into this Agreement in its proprietary capacity as owner of fee title to the Property, Seller nevertheless retains full and complete discretion in its regulatory capacity as to whether to approve the First Street Napa Phase II Project and enter into any Development Agreement. Accordingly, any action taken by the Seller (e.g. approval, conditional approval, disapproval) in the exercise of its discretion relating to (i) any analysis of the First Street Napa Phase II Project required by CEQA, (ii) any application for a permit or approval required to develop and construct the First Street Napa Phase II

Project, or (iii) any proposed Development Agreement, shall not constitute a default or a breach of the terms of this Agreement by Seller.

By execution of this Agreement, Seller is not committing itself to, or agreeing to, undertake (1) approval of the First Street Napa Phase II Project or the proposed Development Agreement, or (2) any other act or activity requiring the subsequent independent exercise of discretion by the Seller. This Agreement shall not limit in any way the discretion of Seller in its consideration and action on any applications for discretionary land use permits, entitlements or approvals for the proposed First Street Napa Phase II 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 such discretionary permits and approvals and proposed Development Agreement, and that Seller 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 First Street Napa Phase II Project is exempt from the requirements of CEQA or otherwise adopt or certify an environmental analysis of the First Street Napa Phase II Project prepared in accordance with CEQA; (b) identify and impose mitigation measures to mitigate significant environmental impacts of the First Street Napa Phase II 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 First Street Napa Phase II Project which cannot otherwise be avoided; or (e) determine not to proceed with the First Street Napa Phase II Project. **"Applicable Laws"** means, collectively: (i) all State and Federal laws and regulations applicable to the Property, the Kohl's Parcel and the First Street Napa Phase II 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) after the Effective Date. Any action taken by the Seller in the exercise of its discretion relating to any analysis of the First Street Napa Phase II Project required by CEQA or on any application for a discretionary permit, approval, or agreement required to develop and construct the First Street Napa Phase II Project shall not constitute a default or a breach of the terms of this Agreement by Seller.

(b) Buyer acknowledges and agrees that all sums expended by Buyer in connection with its investigation of the Property and design of and pursuant of land use entitlements and approvals for the proposed First Street Napa Phase II Project are at Buyer's sole risk and expense and that Seller shall have no liability to Buyer 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 Seller's failure to approve Buyer's applications for discretionary land use entitlements, permits or approvals. Buyer irrevocably assumes all risks and waives and releases any and all claims against Seller 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 First Street Napa Phase II Project.

17. Seller's Representations and Warranties. In consideration of Buyer entering into this Agreement, Seller makes the limited representations and warranties set forth in this Section 17. For the purpose of this Agreement, without creating any personal liability on behalf of such individual, usage of "to Seller's actual knowledge," or words to such effect, shall mean the present, actual knowledge of Jeff Freitas, the Real Property Manager of the City of Napa, or other designee as determined by the City Manager, excluding constructive knowledge or duty of inquiry, existing as of the Effective Date. In the event that Buyer, prior to Close of Escrow, becomes aware, from Seller or otherwise, of any inaccuracy or omission in the disclosures, information, or representations previously provided to Buyer by Seller or its consultants or agents, which may have a material, adverse impact on Buyer, the Property or the intended use of the Property, Buyer, as its sole option and remedy, may either (i) terminate this transaction and receive a refund of its Deposit, including all accrued interest, thereby waiving any claims or actions that Buyer may have against Seller as a result of such inaccuracy or omission, or (ii) proceed with the Close of Escrow hereunder, thereby waiving any rights that Buyer may have against Seller as a result of such inaccuracy or omission. Unless otherwise expressly stated in this Agreement, the warranties, representations and covenants of Seller shall survive the Close of Escrow and recordation of any deed(s), and be binding upon and inure to the benefit of Buyer 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 17 after the Limitation Period has expired.

(a) **Seller's Authority.** Seller 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 Seller is required in order to make it a valid and binding contractual obligation of Seller. The individual(s) executing this Agreement on behalf of Seller are authorized to do so.

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

(c) **No Conflict.** To Seller's actual knowledge, Seller'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 Seller is a party or by which it is bound.

ATTACHMENT 1

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

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

(f) Legal Proceedings, Etc. To Seller's actual knowledge, there is no legal, equitable, administrative or arbitration action, suit, proceeding or investigation pending or, threatened in writing against or affecting Seller or the Property which, if adversely determined, could have a material adverse effect on the Property or the ability of Seller 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 Seller, which if outstanding against Seller would have a material adverse effect on the Property.

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

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

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

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

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

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

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

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

(a) Buyer's Authority. Buyer 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 Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement. The individual(s) executing this Agreement on behalf of Buyer are authorized to do so.

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

(c) 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 Buyer is a party.

(d) No Side Agreements or Representations. Buyer represents, warrants and covenants to Seller that Buyer has entered into this Agreement based upon its rights and intentions to independently inspect the Property. Except as specifically provided in Section 17 of this Agreement, Seller makes no representation or warranty regarding the condition of the Property, its past use, or its suitability for Buyer's intended use. Buyer will be relying solely upon its own independent inspection, investigation, and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including, without limitation, any and all matters concerning the condition, use, sale, development or suitability of the Property

(e) No Buyer Bankruptcy. Buyer 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 Buyer's assets has been made..

(f) **As-Is Purchase.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS, NO PATENT OR LATENT DEFECTS ON THE PROPERTY WHETHER KNOWN NOW OR DISCOVERED LATER SHALL AFFECT THIS AGREEMENT, AND THAT OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 17, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR SELLER'S REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE PROPERTY.

19. Liquidated Damages. BUYER RECOGNIZES THAT THE PROPERTY WILL BE REMOVED BY THE SELLER FROM THE MARKET DURING THE EXISTENCE OF THIS AGREEMENT, AND THAT IF, FOLLOWING THE DEPOSIT RELEASE DATE, THIS TRANSACTION CONCERNING THE PROPERTY IS NOT CONSUMMATED FOR ANY REASON OTHER THAN A DEFAULT BY SELLER, IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF THE DETRIMENT TO SELLER. THE PARTIES HAVE DETERMINED AND AGREED THAT THE ACTUAL AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER AS A RESULT OF ANY SUCH FAILURE TO CLOSE IS DIFFICULT OR IMPRACTICABLE TO DETERMINE AS OF THE DATE OF THIS AGREEMENT AND THAT THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE AMOUNT OF SUCH DAMAGES. FOR THESE REASONS, THE PARTIES AGREE THAT IF, FOLLOWING THE DEPOSIT RELEASE DATE, THE PURCHASE AND SALE IS NOT CONSUMMATED FOR ANY REASON OTHER THAN A SELLER DEFAULT, THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES AS SELLER'S SOLE REMEDY. NOTHING CONTAINED HEREIN SHALL IN ANY MANNER LIMIT THE AMOUNT OF DAMAGES OBTAINABLE PURSUANT TO AN ACTION UNDER ANY HOLD HARMLESS, DEFENSE OR INDEMNIFICATION PROVISION SET FORTH IN THIS AGREEMENT OR REASONABLE ATTORNEYS' FEES RECOVERABLE PURSUANT TO ANY ACTION UNDER A HOLD HARMLESS, DEFENSE OR INDEMNIFICATION SET FORTH IN THIS AGREEMENT. THE PAYMENT OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. THE PARTIES WITNESS THEIR AGREEMENT TO THIS LIQUIDATED DAMAGES PROVISION BY PLACING THE INITIALS OF THE AGENT EXECUTING THIS AGREEMENT ON ITS BEHALF BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Seller _____

Buyer _____

20. Damage or Condemnation Prior to Closing. Seller shall promptly notify Buyer of any casualty to the 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 Property, Seller or Buyer may, each at its option, elect either to (i) terminate this Agreement, in which event the Deposit, including all accrued interest, shall be returned to Buyer 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, Buyer 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).

21. Third Party Legal Challenge.

(a) The Parties may 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 Seller’s initial approval of this Agreement or the City’s approval of any permits or approvals for the proposed First Street Napa Phase II 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 Seller may choose not to defend any such proceeding challenging the validity of any provision of this Agreement or the Seller’s initial approval of this Agreement or the City’s approval of one or more of the Project Approvals.

(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. Seller and Buyer 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 Seller’s and Buyer’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 Buyer in Buyer’s sole discretion, and by Seller in Seller’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 Seller and Buyer (each in its sole discretion), at the Buyer's sole cost and expense. If the Parties cannot reach timely and mutual agreement on a joint counsel, and Buyer continues to elect (in its sole discretion) to defend against the Initial Litigation Challenge, then: (i) Buyer 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) Seller 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 reasonable costs of such representation to be paid by Seller and (iii) Buyer shall reimburse Seller, within ten (10) business days following Seller'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 Seller in connection with the Initial Litigation Challenge, not including Seller's legal fees.

(ii) For any Initial Litigation Challenge which the Buyer has elected to defend under this Section 22, Buyer shall indemnify and hold harmless the Seller and Seller'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 Seller by way of judgment, settlement, or stipulation), related to such Initial Litigation Challenge.

(d) If Buyer elects, in its sole discretion, not to defend against the Initial Litigation Challenge, it shall deliver written Notice to the Seller regarding such decision. If Buyer elects not to defend, the Seller has the right, but not the obligation, to proceed to defend against the Initial Litigation Challenge and, in such event, Seller 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, at its sole cost and expense. If Buyer elects not to defend, the Seller has the right, but not the obligation, to terminate this Agreement, in which case the Buyer Deposit shall be refunded to Buyer and this Agreement, other than those provisions which by their terms survive expiration or termination hereof, shall be of no further force or effect.

22. 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 23, 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 SELLER:

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 BUYER:

Napa Parkway Plaza, LLC
1339 Pearl Street, Suite 201
Napa, CA 94559
Attention: Andrew Mazotti
Tel. 707-257-0600

WITH A COPY TO:

Holman Teague Roche Anglin LLP
1455 First Street
Suite 217
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

23. Brokers. Each of Seller and Buyer 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. Seller's and Buyer'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 or upon payment of the Purchase Price by Buyer to Seller.

24. Assignment. Buyer shall not assign its right, title or interest in this Agreement to any other party without the prior written consent of Seller, which determination may be withheld in Seller's sole and absolute discretion. Buyer may, however, assign this Agreement and all of Buyer's rights and obligations under it to ZGJV Napa Wine Holding Company LLC which is the affiliated entity formed to develop, own and operate the First Street Napa Phase II Project or to another affiliated entity in which Buyer or Buyer'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 Seller, all of the obligations of Buyer, (ii) Seller receives prior written notice of such assignment, and (iii) the assignee executes all documents and perform all obligations of Buyer as if such assignee were the original Buyer under this Agreement.

25. 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.

(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) Intentionally Omitted.

(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. Seller and Buyer 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 Buyer and Seller.

(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 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, Buyer shall be entitled to the possession of the Property immediately following the Close of Escrow.

(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. Seller and Buyer 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, Buyer shall deliver to Seller upon Seller'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 Buyer with respect to the Property, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans. It

is understood and agreed that, with respect to any provision of this Agreement which refers to the termination of this Agreement and the return of the Deposit to Buyer, such Deposit shall not be returned to Buyer unless and until Buyer has fulfilled its obligation to return to Seller the Termination Documents.

(o) Exclusivity. Except as otherwise expressly provided below, commencing on the Effective Date and continuing until Closing or termination of this Agreement, Seller shall not offer the 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 Property. Seller may issue one or more short term (i.e. daily, weekly or monthly) licenses authorizing use of all or a portion of the Property, including for parking purposes, provided the term of such license(s) shall not extend beyond the Closing.

ATTACHMENT 1

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

BUYER:

NAPA PARKWAY PLAZA, LLC, a
California limited liability company

By: _____
Name: _____
Date: _____

SELLER:

CITY OF NAPA, a California charter city

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

ATTEST:

By: _____
Tiffany Carranza, City Clerk

COUNTERSIGNED

By: _____
Sasha Payaslian, Deputy City
Auditor

APPROVED AS TO FORM

By: _____
Michael W. Barrett, City Attorney

Schedule of Exhibits

Exhibit A

Legal Description of Property

Exhibit B

First Street Napa Phase II Project Conceptual Project Description

Exhibit C

Grant Deed
Attachment 1 Legal Description of Property

Exhibit D

Recordable Agreement Material Terms

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 (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:

PLACER TITLE COMPANY OF NAPA

By: _____

Name: _____

Effective Date: _____

EXHIBIT A

Legal Description of the 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:

DRAFT

EXHIBIT B

First Street Napa Phase II Project Conceptual Project Description

Use Description: First Street Napa Phase II Project is a dynamic rental housing, retail and upper upscale hotel project located in Downtown Napa's most important and central public gathering area. Each component is proposed as follows:

Rental Housing (Including Workforce): The project plans to develop 120 for rent apartments with 15% of the units (18 units) to be restricted to 120% AMI. All units are for rent units and will provide housing for a variety of the workforce.

Retail: The project plans to include approximately 25,000 sf of retail space in the ground floors of two buildings.

Hotel: The planned hotel will be an STR-rated upper-upscale facility with approximately 200 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 ground floor outdoor and public space will include both raised and at-grade spaces facilitating a myriad of public and private uses. Programming includes the potential for movie screening to be projected onto the hotel building, for public gatherings, traditional food and beverage sales, and for organized public and private events. The Northeastern corner of the building is intended to be designed to meaningfully engage the adjacent public right-of-way between the site and the Napa Creek. This will transform the currently underutilized space adjacent the creek embankment into an extension of the project's assembly space for public and private uses. The project concept includes a public walkway between the hotel and apartment buildings that will lead from the First Street Napa mall to the 9/11 memorial.

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. The Project which is anticipated to involve Kohl's voluntary agreement to an early termination of its lease would relieve the City of all parking obligations under the License Agreement. Buyer's plans to construct parking improvements sufficient to serve the First Street Napa Phase II Project's parking demand and relieve Seller of the Kohl's Parking Obligation will be established in the Development Agreement. In the event that sufficient public parking is not available upon relieving the City of the Kohl's Parking Obligation and the development of parking within the First Street Napa Phase II Project (as structured, surface or subsurface parking), additional spaces may be required by the City to be provided or developed by Buyer, at its expense, on an adjacent parcel or other nearby public parking location acceptable to the City in its sole absolute discretion or through the payment of parking exempt fees.

DRAFT

EXHIBIT C

Grant Deed

RECORDING REQUESTED BY:

WHEN RECORDED MAIL
TO AND MAIL TAX STATEMENTS TO:

Napa Parkway Plaza, LLC,
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 municipal corporation, hereby grants to Napa Parkway Plaza, LLC, a California limited liability company, 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 municipal corporation

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

ATTEST:

By: _____
Tiffany Cardozza, City Clerk

COUNTERSIGNED:

By: _____
Sasha Payaslian, Deputy City
Auditor

APPROVED AS TO FORM:

By: _____
Michael W. Barrett, City Attorney

DRAFT

ATTACHMENT 1

Legal Description of 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:

DRAFT

EXHIBIT D

Recordable Agreement Material Terms

Prior to the Close of Escrow, the Parties shall execute a Recordable Agreement (or, at the Parties' option, separate easement and operation and maintenance agreements) that includes, but is not limited to, the following terms:

DRAFT