

RESOLUTION NO. 5186

ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD APPROVING A PURCHASE AND SALE AGREEMENT WITH RICHARD SCAGLIOTTI (PREMIERE CINEMAS) FOR 13.63 ACRES LOCATED AT THE SOUTHEAST CORNER OF NESTLES ROAD & LOS COCHES ROAD (ASSESSOR PARCEL NUMBERS # 022-292-023, 022-292-024, 022-292-025, 022-292-026, 022-292-029, 022-292-030, 022-292-031, 022-292-032).

WHEREAS, pursuant to ABx1 26 enacted in June 2011 (as amended by AB 1484 enacted in June 2012, the "Dissolution Act"), the Redevelopment Agency of the City of Soledad (the "Dissolved RDA") was dissolved as of February 1, 2012, and the City of Soledad, acting in a separate limited capacity and known as the Successor Agency of the Redevelopment Agency of the City of Soledad, has elected to serve as the successor agency (the "Successor Agency") of the Dissolved RDA; and

WHEREAS, by Resolution No. SA-2013-07, dated November 6, 2013, the City Council adopted the Amended 2013 Long-Range Property Management Plan (Including Nestles/Los Coches Area (022-292-023 to 026; 022-292-029 to 032) for Future Development (Retail Property), which Redevelopment Plan was being implemented by the Dissolved RDA up until its dissolution; and

WHEREAS, the real property and specified other assets of the Dissolved RDA were transferred to the ownership and control of the Successor Agency as of February 1, 2012 pursuant to Health and Safety Code Section 34175(b), including the following parcels of real property (collectively, the "Properties") within the Project Area and subject to the Redevelopment Plan:

1. An approximately 13.63-acre property generally located at Nestles/Los Coches; Assessor Parcel Nos. 022-292-023 to 026; 022-292-029 to 032; and

WHEREAS, the Properties were acquired by the Dissolved RDA for transfer to the City of Soledad with uses consistent with, and for projects identified in, the Redevelopment Plan; and

WHEREAS, on April 18, 2013, the Successor Agency received a "Finding of Completion" from the California Department of Finance (the "DOF") pursuant to Health and Safety Code Section 34179.7, confirming that the Successor Agency had made specified required payments under the Dissolution Act; and

WHEREAS, pursuant to Health and Safety Code Section 34191.5(b), the Successor Agency then prepared a Long-Range Property Management Plan dated July 03, 2013, and was then submitted, as amended on November 20, 2013, to the DOF on March 13, 2014 and was approved by the DOF by letter of March 14, 2014; and

WHEREAS, the LRPMP provided for the Properties to be conveyed by the Successor Agency to the City for further redevelopment activities by the City consistent with the Redevelopment Plan and the LRPMP.

WHEREAS, pursuant to the foregoing condition, the City desires to sell to Richard Scagliotti 13.63 acres of property for the purposes of building a movie theater and associated retail uses generally located at the southeast corner of Nestles Road & Los Coches Drive (Assessor Parcel Numbers 022-292-023 to 026; 022-292-029 to 032); and

WHEREAS, the parties have agreed on a purchase price of \$2,400,000 as consideration for the subject property; and

WHEREAS, pursuant to Government Code Section 52201, a public hearing for the purposes of considering the sale of public property has been properly noticed and staff has made available to the public for review all necessary documents.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the City Council hereby finds that the above Recitals are true and correct, and together with the Staff Report, the Summary Report and all other information provided by the City staff and testimony received at the public hearing, form the basis for the findings and actions set forth in this Resolution.

BE IT FURTHER RESOLVED, that the City Council specifically adopts a finding that the consideration is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the property.

BE IT FURTHER RESOLVED, that the City Council specifically adopts a finding that the sale of the property will assist in the creation of economic opportunity, by facilitating the construction of a movie theater and associated commercial retail opportunities by adding local jobs and increasing the local tax base.

BE IT FURTHER RESOLVED, that the City Council hereby approves the Purchase and Sale Agreement with Richard Scagliotti, a copy of which is attached hereto as Exhibit A and by this reference incorporated herein, and authorizes the City Manager to execute the Purchase and Sale Agreement on behalf of the City.

BE IT FURTHER RESOLVED, that the City Manager, or the City Manager's designee, is authorized to implement the Purchase and Sale Agreement on behalf of the City, including taking any actions and executing any documents reasonably required to effectuate the purpose and intent of this Resolution and the Agreement.


ADOPTED on June 1, 2016 by the City Council of the City of Soledad by the following vote:

AYES, and in favor thereof, Councilmembers: Christopher K. Bourke, Patricia D. Stephens, Mayor Pro Tem Alejandro Chavez, Richard J. Perez and Mayor Fred J. Ledesma

NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmembers: None



FRED J. LEDESMA, Mayor

ATTEST:



ADELA P. GONZALEZ, City Clerk

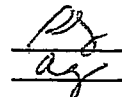


STANDARD OFFER, PURCHASE AGREEMENT AND DEPOSIT RECEIPT

THIS STANDARD OFFER, PURCHASE AGREEMENT AND DEPOSIT RECEIPT ("**Agreement**") is dated for reference purposes as of May 26, 2016 and is made by Richard Scagliotti or Assignee ("**Buyer**") to City of Soledad ("**Seller**"). Buyer hereby offers to purchase certain property from Seller, on the terms and conditions contained in this Agreement. As used herein, the term "Agreement" refers both to Buyer's offer to purchase from Seller the property described herein ("**Offer**") and, where the context requires, the binding purchase contract created by Seller's written acceptance.

Buyer has or will as of the Effective Date deliver to Seller the sum of One Hundred (\$100.00) Dollars (the "**Independent Consideration**") in consideration for Seller's entering into the Agreement to the exclusion of potential other buyers and granting Buyer the rights to inspect and evaluate the Property during the Contingency Period. The Independent Consideration is not refundable to Buyer under any circumstances, but will be applied to the Purchase Price if Closing occurs.

1. **DEFINITIONS.** The following terms shall have the meanings set forth below. Certain other terms shall have the meanings given for them in other portions of this Agreement.
 - (a) **Broker.** Cassidy Turley Commercial Real Estate Services, Inc. d/b/a Cushman & Wakefield, 328B Main Street, Salinas, CA
 - (b) **Buyer's Conditions.** Those conditions to Buyer's obligation to purchase the Property, which conditions are set forth in Paragraph 9 below.
 - (c) **Close of Escrow.** The date on which the grant deed to the Real Property is recorded in the Official Records of the County in which the Real Property is located.
 - (d) **Closing Date.** The Close of Escrow shall occur on or before fifteen (15) days after the end of the Contingency Period, unless extended in writing by Buyer and Seller.
 - (e) **Cooperating Broker.** N/A.
 - (f) **Contingency Period.** A period commencing upon the Effective Date and expiring one hundred eighty (180) days thereafter, during which Buyer shall have the rights set forth herein to investigate the Property.
 - (g) **Effective Date.** The date of the signature hereon of the last party necessary to form a binding contract, as reflected by the dates next to the signatures appearing on the last page of this Agreement.
 - (h) **Hazardous Materials.** Petroleum, asbestos, radioactive materials or substances defined as "hazardous substances," "hazardous materials" or "toxic substances" (or words of similar import) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), and those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code or as "hazardous substances" in Section 25316 of the California Health & Safety Code, together with any amendments thereto, and in the regulations adopted and publications promulgated pursuant to such laws, and any other substances or materials regulated by any similar or successor laws, codes, rules, statutes, ordinances or regulations. Hazardous Materials will also include petroleum products, petroleum by-products and fractions thereof.



- (i) Permitted Exceptions. The exceptions shown on the Preliminary Title Report which are approved by Buyer pursuant to Paragraph 7 below.
- (j) Personal Property. The following personal property, if any, which is located on the Real Property:
N/A.
- (k) Preliminary Title Report. A current preliminary title report issued by Title Company, describing the Real Property and listing all exceptions to title insurance coverage.
- (l) Property. The Real Property and the Personal Property, collectively.
- (m) Real Property. That real property (and all Improvements and fixtures located thereon) located in the **County of Monterey, City of Soledad, State of California**, located at the SE corner of Nestles Road and Los Coches Road, and consisting of eight (8) parcels totaling approximately 13.63 acres (APN 022-292-023, 024, 025, 026, 029, 030, 031 & 032). The Real Property is shown on the parcel map attached hereto as Exhibit A and incorporated herein by this reference. The exact legal description shall be provided by the Title Company and inserted through Escrow.
- (n) Title Company and Escrow Agent. Old Republic Title Company whose address is 584 S. Main, Salinas St, CA 93901 Telephone: (831) 784-5214; Facsimile: ATTN: Kathy Handley email: khandley@ortc.com

2. **OFFER AND ACCEPTANCE**. Seller shall have until **June 3, 2016, at 5:00 p.m. PST** to accept this Offer. Seller may accept this Offer only by (a) signing in the section of this Agreement entitled "ACCEPTANCE BY SELLER" and (b) delivering to Buyer or Buyer's Broker such executed Agreement or counterpart thereof. If this Offer is not accepted in the manner and by the time provided above, then this Offer shall terminate unless Buyer elects otherwise. If this Offer is terminated, then Broker shall return all deposits to Buyer. If this Offer is accepted in the manner and by the time set forth above, then this Offer shall: (i) become a binding contract for the purchase and sale of the Property; (ii) constitute the entire Agreement between Buyer and Seller with respect to the purchase and sale of the Property; and (iii) supersede all prior discussions, negotiations and agreements between Buyer and Seller, whether oral or written. Any counter-offer or amendment to this Offer must be in writing and must be signed by both Buyer and Seller.

3. **PURCHASE PRICE**.

(a) Amount. Buyer shall pay to Seller the amount of **Two Million Four Hundred Thousand Dollars (\$2,400,000.00)** as the purchase price for the Property (the "**Purchase Price**"), in the manner specified in Paragraph 4 below.

4. **PAYMENT OF PURCHASE PRICE**. Buyer shall pay the Purchase Price, and (if applicable) assume existing financing, as follows:

\$ 50,000.00 (a) Initial Deposit. Broker acknowledges that Broker is in receipt of Buyer's initial deposit (the "**Initial Deposit**") in the amount shown in the left margin opposite this subparagraph, in the form of a personal check **[or]** cashier's check *[check one]* payable to Title Company. Broker shall deliver the Initial Deposit to Title Company within three (3) business days from the Effective Date. The Initial Deposit shall be deposited in an interest bearing account, with interest accruing for the account of Buyer. The Initial Deposit and all interest earned thereon shall be applied against the Purchase Price and shall be disbursed to Seller at the Close of Escrow, unless Buyer terminates this Agreement pursuant to Paragraph 9 below, in which case the Initial Deposit together with interest shall be returned to Buyer. Upon the satisfaction or waiver of all of Buyer's Conditions, the Initial Deposit shall become nonrefundable as liquidated damages

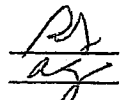
Initials:

pursuant to Paragraph 20 below, if the same is separately initialed by both parties.

\$ 2,350,000.00 (b) Balance of Purchase Price. The balance of the Purchase Price in the amount shown in the left margin opposite this subparagraph shall be paid in cash at the Close of Escrow.

5. **ESCROW.** The sale of the Property shall be consummated through an escrow at the office of Title Company. The parties shall execute escrow instructions as may be reasonably requested by Title Company, provided that such instructions shall be consistent with the terms and conditions contained in this Agreement. The parties shall provide Title Company with such other information, documents and instruments as Title Company may reasonably require in order to close escrow as provided in this Agreement. Upon Seller's acceptance of this Agreement, Broker shall: (i) establish an escrow at the office of Title Company; (ii) deliver the Initial Deposit to Title Company within two (2) business days; and (iii) instruct Title Company to deliver to Buyer and Broker the Preliminary Title Report, together with copies of all documents listed as exceptions therein.
6. **REVIEW OF TITLE; DELIVERY OF TITLE AT CLOSING.** No later than thirty (30) days prior to the expiration of Buyer's Contingency Period as set forth below [or within _____ days after the Effective Date], Buyer shall notify Seller in writing of Buyer's approval or disapproval of title matters as shown on the Preliminary Title Report and/or any survey of the Property (collectively, "**Buyer's Title Objections**"); provided, however, that Buyer shall be deemed, without written notice, to have objected to all monetary liens and encumbrances, and taxes due and payable. If Buyer does not so notify Seller, then Buyer shall be deemed to have waived all objection to title and survey matters and nonmonetary title exceptions as shown on the Preliminary Title Report. Seller shall have fifteen (15) days following receipt of Buyer's Title Objections to notify Buyer in writing whether Seller shall (a) cure such matter (in which case Seller shall have until the Close of Escrow to do so), or (b) not cure such matter. **Seller's failure to respond shall constitute its election not to cure Buyer's Title Objections.** If Seller elects not to cure Buyer's Title Objections, Buyer shall have until the expiration of Buyer's Contingency Period to deliver to Seller written notice of Buyer's election either to (a) waive Buyer's Title Objections and accept title to the Property subject to such matters, or (b) terminate this Agreement, in which case both Buyer and Seller shall be completely released from any obligations created herein (except for those obligations set forth in Paragraph 8 below) and all deposits shall be returned promptly to Buyer. **Buyer's failure to deliver timely written notice of its election shall be deemed to constitute its election to waive such Buyer's Title Objections as Seller has elected not to cure.** All nonmonetary exceptions accepted or waived by Buyer shall constitute the "**Permitted Exceptions.**" At the Close of Escrow, Seller shall convey to Buyer fee simple absolute title to the Property, free and clear of all liens and title exceptions other than the Permitted Exceptions and any other liens or title exceptions created by or at the direction of Buyer. Seller's obligations regarding the delivery of title to Buyer shall be satisfied by Title Company's issuing, at the Close of Escrow, a standard coverage [or extended coverage] [*check one*] ALTA owner's policy of title insurance showing title to the Real Property vested in Buyer, free and clear of all exceptions to title other than the Permitted Exceptions. The amount of bonds or assessments which are liens against the subject property shall be assumed by Buyer [or paid in full by Seller] [*check one*] at the Close of Escrow.
7. **DELIVERY OF DOCUMENTS AND INFORMATION.** Within seven (7) [or _____] days after the Effective Date ("**Delivery Date**"), at Seller's sole cost and expense, Seller shall deliver to Buyer copies of all of the following documents and information, to the extent that such documents and information currently exist and are in Seller's possession or under Seller's control, and shall authorize those persons who prepared such documents to disclose any information which such persons may have with respect to the Property:

Initials:



(a) All plans, specifications, working drawings, "as built" drawings, architectural plans and elevations and landscape architectural plans relating to the Property;

(b) All reports regarding the physical condition of the Property, including, without limitation, reports regarding the condition of all improvements, Hazardous Materials, soil and ground water conditions, topography and drainage, land or building surveys;

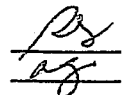
If there are no documents or information relating to some or all of the items listed above, then Seller shall, within ten (10) days after the Effective Date so notify Buyer in writing. In the event that any additional documents are delivered by Seller after the Delivery Date ("**Late Documents**"), and such delayed delivery ("**Delayed Delivery Date**") is less than five (5) business days prior to the expiration of Buyer's Contingency Period as set forth below, or occurs after the expiration of Buyer's Contingency Period, then Buyer shall have a period of five (5) business days after the Delayed Delivery Date ("**Buyer's Extended Contingency Period**") to review and approve the Late Documents. Buyer's Extended Contingency Period shall apply only to the Late Documents, and all other conditions set forth below shall be satisfied or waived prior to the expiration of the original Buyer's Contingency Period. Buyer may exercise its right to terminate this Agreement prior to the expiration of Buyer's Extended Contingency Period if Buyer reasonably disapproves any information first disclosed to Buyer in the Late Documents.

8. **ACCESS TO PROPERTY.** At all times prior to the expiration of Buyer's Contingency Period, upon not less than twenty-four (24) hours advance notice, Seller shall allow Buyer and Buyer's agents and representatives reasonable access to the Property to make tests, surveys or other studies of the Property, all of which shall be at Buyer's sole cost and expense. Buyer shall not undertake any invasive testing without the prior written consent of Seller, which shall not be unreasonably withheld. Buyer shall indemnify, defend, protect and hold Seller, and all elected or appointed officials, employees and agents (Together "the Indemnitees") harmless from and against all costs, damages, claims, actions, causes of action, liabilities and expenses (including the reasonable attorneys' fees of counsel chosen by Seller) arising out of or related to Buyer's tests, surveys or other studies of the Property, and the acts of Buyer and its agents, employees and contractors while on the Property; provided, however, that Buyer shall not be liable hereunder for any conditions discovered (but not caused or exacerbated) by Buyer. Buyer shall have the right to disclose the existence of Hazardous Materials discovered on the Property if and to the extent required to do so under applicable law. Prior to any entry onto the Property by Buyer or its agents or contractors, Buyer shall obtain and/or cause the applicable agent or contractor to obtain, and shall deliver to Seller, a reasonably satisfactory certificate of insurance evidencing the procurement of a commercial general liability insurance policy, with blanket contractual obligations endorsement, having a combined single limit in an amount not less than Two Million Dollars (\$2,000,000.00) for injury to or death of one or more persons in an occurrence and for damage to property (including loss of use) in an occurrence and identifying the Indemnitees as additional named insureds. The insurance coverage may be provided under a blanket policy, shall be primary and non-contributing with respect to any liability insurance carried by Seller, and shall contain a full waiver of subrogation clause.

9. **BUYER'S CONDITIONS.** Buyer shall have a period of one hundred eighty (180) days after the Effective Date of this Agreement in which to investigate the Property and all matters relating thereto ("**Buyer's Contingency Period**"). Buyer's obligations under this Agreement are contingent upon the satisfaction or waiver of each of the following conditions, which are for the sole benefit of Buyer and which may be waived or exercised only by Buyer. Buyer's decision whether to deliver such notice to proceed to Seller, as well as Buyer's decision whether to accept the condition of, or any other matter affecting the Property, shall be in the Buyer's sole discretion. Any other Buyer's Contingencies to be approved or satisfied within a time period other than the Contingency Period shall only be approved or satisfied if Buyer gives Seller written notice of such satisfaction or approval within the time period prescribed in the applicable subparagraph in which such other Buyers' Contingencies exist. Should Buyer fail to deliver its notice to proceed in a timely fashion it shall be conclusively presumed that Buyer has disapproved such item and/or items and this Contract shall

terminate and the Deposit shall be released to Buyer.

- (a) Physical Condition of Property. Prior to the expiration of Buyer's Contingency Period, Buyer's written approval of the physical condition of the Property, including the condition of the Property with respect to Hazardous Materials.
 - (b) Documents and Information. Prior to the expiration of Buyer's Contingency Period, Buyer's written approval of the documentation and information, provided by Seller pursuant to Paragraph 7 above.
 - (c) Title. Buyer's having approved title to the Real Property pursuant to, and within the time period set forth in, Paragraph 6 above.
 - (d) Economic Analysis. Prior to the expiration of Buyer's Contingency Period, Buyer's determination, in Buyer's sole discretion, that Buyer's intended use and/or development of the Property is economically viable and is likely to produce a reasonable rate of return on Buyer's invested capital, considering such factors as, by way of example but not limitation, the ability to secure tenants for the Property, the amount of debt service, taxes and other carrying costs associated with the Property, the availability of any required zoning changes, land use approvals or other required permits or approvals, and other factors relating to the Property.
 - (e) Entitlements. Prior to the expiration of Buyer's Contingency Period, Buyer receiving entitlements for that portion of its Development dedicated exclusively to the establishment of a movie theater with a minimum of 8 screens, under terms, conditions and development fees satisfactory to Buyer in the reasonable exercise of Buyer's discretion.
 - (f) Buyer's Right to Extend. Buyer shall have the right to extend Buyer's Contingency Period for two (2) additional thirty (30) day periods. In order to exercise Buyer's Right to Extend, Buyer shall provide Seller written notice of Buyer's election to extend prior to the expiration of Buyer's Contingency Period and Buyer shall deliver to the Title Company, as escrow holder, the sum of Ten Thousand Dollars (\$10,000) as consideration for each thirty (30) day extension (the "Extension Payment(s)"). The Extension Payments shall be immediately non-refundable but applicable to the Purchase Price.
 - (g) Seller Default. Subject to the other terms of this Paragraph 10, if Seller defaults under or breaches this Agreement and fails to sell the Property in accordance with this Agreement, Buyer shall have the right, as its sole and exclusive remedy, to terminate this Agreement by giving written notice to Seller and receive the prompt return of the Deposit.
10. **SELLER'S COVENANTS, REPRESENTATIONS AND WARRANTIES**. Seller covenants, represents and warrants to Buyer as follows, and acknowledges that Buyer shall rely upon such covenants, representations and warranties, each of which shall be true and correct as of the Close of Escrow and shall survive the Close of Escrow:
- (a) Physical Condition of Property. To the best of Seller's knowledge as of the Date of this Agreement, there are no Hazardous Materials on, in, under or adjacent to the Property. During the time in which Seller owned the Property, Seller did not use, generate, manufacture, store, release or dispose of on, in or under the Property, or transport to or from the Property, any Hazardous Materials. Seller has not received notice of any action or proceeding relating to Hazardous Materials on, in, under or about the Property, and Seller shall promptly provide Buyer with a copy of any such notice which Seller may hereafter receive. If Seller or Buyer receives any such notice prior to the Close of Escrow, then Buyer may terminate this Agreement and the parties shall have no further rights, obligations or liability



hereunder (except Buyer's obligations under Paragraph 8 above).

- (b) Obligations and Agreements Relating to Property. Seller shall operate and maintain the Property in substantially the same manner as prior to Seller's acceptance of this Offer. Seller shall be responsible for and shall perform all obligations and liabilities related to, arising out of or in connection with the Property accruing prior to the Close of Escrow. Seller is not and shall not be in breach of any obligation secured by or relating to the Property. Seller shall not: (i) enter into or consent to any contracts, agreements, licenses, concessions or financing transactions affecting the Property; or (ii) give any consent or approval under any document or instrument, including any covenants and restrictions affecting the Property, which consent or approval would adversely affect the Property, its value or the use thereof by Buyer. From and after the date that Buyer has waived or satisfied all of Buyer's Conditions pursuant to Paragraph 9 above, Seller shall not enter into any new leases, or amend existing leases, without Buyer's consent; Buyer's failure to object thereto within ten (10) days following delivery of notice thereof by Seller shall be deemed to reflect Buyer's consent.
- (c) Compliance With Law. To the best of Seller's knowledge: (i) the Real Property complies with all applicable laws, ordinances, rules and regulations, including zoning, subdivision, building, life safety and other land use and environmental laws, regulations and codes, and conditions to permits or approvals given by any governmental authority; and (ii) there exists no violation of any permit or approval applicable to the use or operation of the Real Property which would constitute grounds for revocation or termination of such permit or approval.
- (d) Pending Litigation and Assessments. To the best of Seller's knowledge, there is no litigation, action or claim, whether pending or threatened, nor any facts which would form the basis of such a claim, which may have a material, adverse effect on the Property. Seller has no knowledge of and has not received notice of any pending proceeding for condemnation or under the powers of eminent domain, or for the imposition of or the formation of a special assessment district, the lien of which would encumber the Real Property. To the actual knowledge of Seller, there are no pending bankruptcy or receivership proceedings affecting Seller, the Property, or any tenants in the Property.
- (e) Authority. The person executing this Agreement on behalf of Seller is duly authorized to do so, and this Agreement, once it has been executed by Buyer and Seller, shall be binding upon Seller. If requested by Buyer, Seller shall provide Buyer with documentary or other evidence demonstrating, to Buyer's reasonable satisfaction, that the person executing this Agreement on behalf of Seller is authorized to do so.
- (f) Non-Foreign Status. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Internal Revenue Code and Regulations thereunder. Prior to the Close of Escrow, Seller shall deliver to Buyer an affidavit meeting the requirement of Internal Revenue Code Section 1445 (b) (2), stating the Seller is not a foreign person and setting forth Seller's United States employer identification number and Seller's business address. At the Close of Escrow, Seller shall deliver to Buyer: (i) if Seller's permanent place of business is located in California or Seller is a resident of California, a completed and executed California Form 590 certifying, among other things, that Seller's permanent place of business is located in California or Seller is a resident of California; or (ii) if Seller's permanent place of business is not located in California or Seller is not a resident of California, a completed and executed California Form 597 certifying, among other things, that Seller's permanent place of business is not located in California or Seller is not a resident of California. If clause (ii) is applicable to Seller, then Title Company shall withhold from Seller an amount equal to three and one-third percent (3-1/3%) of the Purchase Price and pay such withheld amount to the California Franchise Tax Board within twenty (20) days after the Close of Escrow. Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445(F)(3).

Initials: 

- (g) Other: For the purposes of this Paragraph 10, the phrase "to the best of Seller's knowledge" means the present knowledge of Brent Slama, without a duty of further inquiry or investigation, and without the imputation to Brent Slama of the knowledge of any other person. Seller represents to Buyer that Brent Slama is the person most knowledgeable about the Property on behalf of Seller. Except to the extent of Seller's express representations and warranties contained above, Buyer acknowledges that it is purchasing the Property completely "AS IS" in its present condition, with no warranty or representation, either express or implied, by either Seller or Broker.

Unless otherwise expressly stated in this Agreement (a) each of the covenants, obligations, representations, and agreements contained in this Agreement shall survive the Close of Escrow and the execution and delivery of the grant deed only for a period of twelve (12) months immediately following the Close of Escrow, and (b) any claim based upon a misrepresentation or a breach of a warranty contained in this Agreement shall be actionable or enforceable if and only if notice of such claim is given to the party which allegedly made such misrepresentation or breached such covenant, obligation, warranty or agreement within twelve (12) months after the Close of Escrow; provided, however, in no event shall Seller's liability, if any, with respect to any breach of Seller's representations or warranties hereunder exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate. Notwithstanding anything stated to the contrary in this Agreement, the indemnification provisions hereof shall survive the termination of this Agreement or the Close of Escrow without limitation, and shall not be merged with the recording of the grant deed.

In the event of any breach by Seller of any of the preceding representations or warranties that is discovered prior to the Close of Escrow, Buyer shall (i) promptly advise Seller of such breach following Buyer's discovery of such breach, and (ii) cooperate with Seller, at no out-of-pocket expense to Buyer, in mitigating any damage to Buyer from such breach. In the event of any material breach by Seller of any of such representations or warranties discovered after the Close of Escrow, Seller shall be liable only for any direct or actual damages suffered by Buyer on account of Seller's breach. Seller shall have no liability based on matters disclosed to Buyer in any of the documents or information provided to Buyer in accordance with Paragraph 7. Additionally, notwithstanding the foregoing, if Buyer becomes aware prior to the Close of Escrow that any representation or warranty hereunder is untrue, or any covenant or condition to the Close of Escrow hereunder has not been fulfilled or satisfied (if not otherwise waived by Buyer), and Buyer nonetheless proceeds to close its purchase of the Property, then Buyer shall be deemed to have irrevocably and absolutely waived, relinquished and released all rights and claims against Seller for any damage or other loss arising out of or resulting from such untrue representation or warranty or such unfulfilled or unsatisfied covenant or condition.

Buyer acknowledges that it will have had an opportunity to conduct due diligence inspections of the Property and will acquire the Property, should it choose to do so after due diligence inspections, in its current condition based on its due diligence inspections. Buyer acknowledges and agrees that the Property is to be conveyed by Seller to Buyer "as is, with all faults," and substantially in its current condition. Buyer further acknowledges and agrees that, except for the representations and warranties by Seller expressly set forth in this Agreement or the documents to be delivered at the Close of Escrow, the sale of the Property to Buyer is made without any warranty or representation of any kind by Seller, either express or implied or arising by operation of law, and Seller shall have no liability with respect to the value, uses, habitability, merchantability, condition, design, operation, rents, financial condition or prospects, or fitness for purpose or use of the Property (or any part thereof), or any other aspect, portion or component of the Property, including but not limited to: (i) the physical condition, nature or quality of the Property, including the quality of the soils on and under the Property and the quality of the labor and materials included in any improvements, fixtures, equipment or personal property comprising a portion of the Property; (ii) the fitness of the Property for any particular purpose; (iii) the presence or suspected presence of hazardous materials on, in, under or about the Property (including the soils and

groundwater on and under the Property); and (iv) existing or proposed governmental laws or regulations applicable to the Property or the further development or change in use thereof, including environmental laws and laws or regulations dealing with zoning or land use. Further, except to the extent such condition was actually known by Seller's Representatives and not disclosed to Buyer, Seller shall have no liability for any latent, hidden or patent defect as to the Property or the failure of the Property, or any part thereof, to comply with any applicable laws and regulations. In particular, Buyer acknowledges and agrees that the Property information made available to Buyer under this Agreement (and any other information Buyer may have obtained regarding in any way any of the Property, including without limitation, its operations or its financial history or prospects from Seller or its agents, employees or other representatives) is delivered to Buyer as a courtesy, without representation or warranty as to its accuracy or completeness (except that Seller represents and warrants that it has provided complete copies of those documents in Seller's possession and control) and not as an inducement to acquire the Property; that nothing contained in any deliveries of Property information shall constitute or be deemed to be a guarantee, representation or warranty, express or implied, in any regard as to any of the Property; and that Buyer is relying only upon the provisions of this Agreement and its own independent assessment of the Property and its prospects in determining whether to acquire the Property.

BUYER'S INITIALS: PS

Except as specifically provided in this Agreement or the documents to be delivered by Seller at the Close of Escrow, upon the Close of Escrow Seller and its elected and appointed officials, employees and agents are hereby released from all responsibility and liability regarding the valuation, marketability, physical condition, or utility of the Property, or its suitability for any purpose whatsoever. Buyer acknowledges that any information of any type that Buyer has received or may receive from Seller, its property manager or their respective agents, including, without limitation, any environmental reports and surveys, is furnished on the express condition that Buyer shall make an independent verification of the accuracy of such information, all such information being furnished without any warranty whatsoever. Buyer hereby specifically waives the provisions of Section 1542 of the California Civil Code ("Section 1542") and any similar law of any other state, territory or jurisdiction. Section 1542 provides: A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

BUYER'S INITIALS: PS

Buyer hereby specifically acknowledges that Buyer has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement. The foregoing provisions of this Paragraph 10 shall survive the Close of Escrow.

Notwithstanding anything in this Paragraph 10 to the contrary, but subject to the time limitation and maximum liability amount set forth above, nothing else in this release shall be deemed to release or relieve Seller from liability for intentional fraud or the breach of any express representation or warranty set forth in this Agreement.

11. NATURAL HAZARDS AND EARTHQUAKE SAFETY DISCLOSURE.

- (a) Seller shall deliver a Natural Hazards Disclosure Report to Buyer within seven (7) days following the Effective Date. Prior to Close of Escrow, Buyer shall deliver a duly countersigned copy of the same to Escrow Agent, with a copy to Seller and Seller's Broker. Escrow Agent shall be instructed that the

Initials: PS
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Escrow shall not close unless and until Escrow Agent has received the Disclosure Report duly signed by Buyer.

- (b) If (1) the Property is located in the State of California, (2) the Improvements were constructed prior to 1975, and (3) the Improvements include structures with (i) pre-cast (e.g., tilt-up) concrete or reinforced masonry walls together with wood frame floors or roofs or (ii) unreinforced masonry walls, California law requires that Seller or Seller's Broker provide Buyer with a copy of the Commercial Property Owner's Guide to Earthquake Safety (the "**Booklet**") published by the California Seismic Safety Commission. Seller and Seller's Broker hereby inform Buyer that the Property:

- meets the foregoing requirements, and Seller and Seller's Broker are required to provide Buyer with a copy of the Booklet. Seller or Seller's Broker shall, within five (5) business days of the Effective Date, deliver to Buyer a copy of the Booklet and a completed "Commercial Property Earthquake Weakness Disclosure Report" contained in the Booklet duly executed by Seller. Within five (5) business days of Buyer's receipt of said Disclosure Report, Buyer shall deliver a duly countersigned copy of the same to Escrow Agent, with a copy to Seller and Seller's Broker. Escrow Agent is hereby instructed that the Escrow shall not close unless and until Escrow Agent has received the Disclosure Report duly signed by both Seller and Buyer [or]
- does not meet the foregoing requirements requiring the delivery of the Booklet [check one].

12. **AMERICANS WITH DISABILITIES ACT.** Buyer and Seller acknowledge and understand that an owner of real property may be subject to the Americans With Disabilities Act (the "ADA"), a federal law codified at 42 U.S.C. Section 12101, *et seq.* Among other requirements of the ADA that could apply to the Property, Title III of the ADA requires owners of "public accommodations" to remove barriers to access by disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons by January 26, 1992. The regulations under Title III of the ADA are codified at 28 C.F.R. Part 36.
13. **SELLER'S DELIVERY OF DOCUMENTS INTO ESCROW.** Prior to the Close of Escrow, Seller shall deposit the following documents and instruments into Escrow:
- (a) A grant deed to the Real Property;
 - (b) All affidavits and forms required by Paragraph 10(g) above, in Title Company's standard form; and
 - (c) Such other documents as Title Company may reasonably require and as may be necessary to close the transaction in accordance with the terms of this Agreement.
14. **BUYER'S DELIVERY OF DOCUMENTS INTO ESCROW.** Prior to the Close of Escrow, Buyer shall deliver the following to Escrow Agent:
- (a) The cash balance of the Purchase Price plus additional sums as may be necessary to pay Buyer's share of the Closing Costs as set forth below;
 - (b) Executed acknowledgements of receipt of the Natural Hazards Disclosure Report and (if applicable) Commercial Property Earthquake Weakness Disclosure Report;
 - (c) Such other documents as Title Company may reasonably require and as may be necessary to close the transaction in accordance with the terms of this Agreement.
15. **PRORATIONS.** The following items shall be prorated as of the Close of Escrow, on the basis of a 360-day year: if applicable, rents under all leases in effect as of the Close of Escrow (with Buyer receiving a credit for all rentals required to have been paid for any period of time ending after the Close of Escrow, whether or not actually paid); real property taxes and assessments (if any); interest on the Existing Financing (if any); water,

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sewer and utility charges; amounts payable under any service contracts approved by Buyer; insurance premiums on policies approved and assumed by Buyer; and other expenses normal to the operation and maintenance of the Property. Buyer shall be entitled to a credit against the Purchase Price for the total sum of all security and other deposits paid to Seller by tenants under any leases affecting the Real Property. Buyer shall be debited against the Purchase Price for an amount equal to the balance in any impound account transferred to Buyer at Close of Escrow. Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of Escrow when the amount due has been determined.

16. CLOSING COSTS.

- (a) **Fees of Title Company.** Any and all costs of Title Company (other than the title insurance premium), including without limitation, escrow fees, recording fees, notary fees and document preparation costs, shall be paid by 50% Buyer and 50% Seller.
- (b) **Title Insurance Premium.** The premium for the standard coverage CLTA title insurance policy described in Paragraph 7 above shall be paid by Buyer or Seller or shall be allocated between Buyer and Seller as follows: _____] [check one]. The extra premium attributable to an ALTA extended coverage policy shall be paid by Buyer or Seller [check one]. The cost of any survey that may be required in order to obtain an ALTA title policy shall be paid by Buyer or Seller [check one].
- (c) **Transfer Tax.** Any County transfer tax shall be paid ____% by Buyer and **100%** by Seller. Any City transfer tax shall be paid ____% by Buyer and ____% by Seller.
- (d) **Sales Tax.** Any sales tax be paid by Buyer or Seller [check one].
- (e) **Other.** Any other closing costs shall be allocated between Buyer and Seller according to the custom then prevailing in the County in which the Real Property is located.

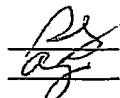
17. POSSESSION. Seller shall deliver all keys and possession of the Property to Buyer upon Close of Escrow, subject to any Existing Leases.

18. DESTRUCTION OF PROPERTY. If the Property is materially damaged or destroyed, so as to render the property unsuitable for Buyer's intended use and/or development, between the date the Buyer and Seller fully execute this Agreement and the Close of Escrow, then the Agreement shall, at Buyer's election, be terminated. If terminated, Buyer and Seller shall be relieved of any obligations created by this Agreement and all deposits made by Buyer and any interest earned thereon shall be returned to Buyer. If Buyer elects to accept the Property in its then condition, all proceeds of insurance payable to Seller by reason of such damage or destruction shall be paid to Buyer.

19. BROKERAGE COMMISSION.

- (a) **Commission.** Seller shall pay to Broker a brokerage commission in accordance with the previously executed listing agreement. However, if the Close of Escrow is prevented by a default of Buyer or Seller under this Agreement, then the defaulting party shall pay such brokerage commission to Broker on the date on which Escrow would have closed absent such default. Seller shall assign a portion of Seller's proceeds from escrow sufficient to pay Seller's commission obligation hereunder. This Offer, when accepted by Seller, shall constitute irrevocable instructions to Title Company to pay such brokerage commission to Broker as specified above, in cash through escrow upon the close of escrow or upon recordation of the deed or other evidence of title, whichever occurs first.

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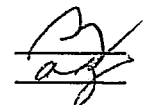


(b) No Other Commissions. Buyer and Seller represent and warrant to each other and to Broker that no commission or finder's fee is payable with regard to this transaction, other than the commission to Broker specified in Paragraph 19(a) above. Buyer and Seller shall indemnify, defend, protect and hold each other and Broker harmless from and against all costs, damages, claims, actions, causes of action, liabilities and expenses (including reasonable attorneys' fees) arising out of or related to the breach of the foregoing representation and warranty.


20. **LIQUIDATED DAMAGES.** IN THE EVENT THAT THE ESCROW AND THIS TRANSACTION FAIL TO CLOSE SOLELY AS A RESULT OF THE DEFAULT OF BUYER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, BUYER AND SELLER AGREE THAT SELLER'S ACTUAL DAMAGES WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX. THE PARTIES THEREFORE AGREE THAT IN THE EVENT THAT ESCROW AND THIS TRANSACTION FAIL TO CLOSE SOLELY AS A RESULT OF THE DEFAULT OF BUYER IN THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, AND SELLER IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, SELLER, AS SELLER'S SOLE AND EXCLUSIVE REMEDY, IS ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF \$ _____ [OR: EQUAL TO THE AMOUNT OF ALL DEPOSITS MADE PRIOR TO THE DATE OF DEFAULT] (CHECK ONE). IN THE EVENT THAT BUYER SUBSEQUENTLY REQUESTS ANY MODIFICATION OF THIS AGREEMENT WHICH IS GRANTED BY SELLER SUBJECT TO RECEIPT OF AN ADDITIONAL DEPOSIT(S), BUYER EXPRESSLY UNDERSTANDS AND AGREES THAT THE AMOUNT OF SUCH ADDITIONAL DEPOSIT(S) IS REASONABLY INTENDED TO COMPENSATE SELLER IN THE EVENT OF A BREACH OF THIS AGREEMENT UNDER SUCH MODIFIED TERMS, AND THEREFORE SUCH ADDITIONAL DEPOSIT(S) SHALL LIKewise BE TREATED AS LIQUIDATED DAMAGES IN THE EVENT OF BUYER'S BREACH. IN THE EVENT ESCROW FAILS TO CLOSE SOLELY AS A RESULT OF BUYER'S DEFAULT AND SELLER IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THEN (A) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF BUYER AND SELLER HEREUNDER AND THE ESCROW CREATED HEREBY SHALL TERMINATE, AND (B) ESCROW AGENT SHALL, AND IS HEREBY AUTHORIZED AND INSTRUCTED TO, RETURN PROMPTLY TO BUYER AND SELLER ALL DOCUMENTS AND INSTRUMENTS TO THE PARTIES WHO DEPOSITED THE SAME. THE PAYMENT OF SUCH AMOUNT PROVIDED HEREIN 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. SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS PARAGRAPH 22, AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

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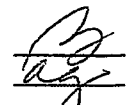



Buyer's Initials


Seller's Initials

21. **BROKER DISCLOSURE.** Buyer, Seller and Broker acknowledge and agree as to the matters specified in this Paragraph 21.

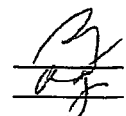
- (a) **Condition of Property.** Broker has not made, and is not making, any representations or warranties with respect to the physical condition of the Property, including without limitation the condition of the Property with respect to Hazardous Materials. Broker has not made an investigation of the Property or a determination regarding the physical or environmental condition of the Property, including without limitation the existence or nonexistence of underground tanks, sumps, piping or any other factors indicating the possible presence of Hazardous Materials on the Property. Broker has no expertise and is not qualified to evaluate the Property with respect to the presence of Hazardous Materials. Buyer acknowledges that it understands that there are substantial potential liabilities under environmental laws associated with the ownership, possession or control of real property on which Hazardous Materials are located. Broker hereby advises Buyer to obtain independent professional and technical advice in connection with the matters described in this Paragraph 21(a). Buyer acknowledges that it will rely solely on its own investigation of all matters pertaining to the condition of the Property, and is not relying upon Broker for any such matters.
- (b) **Reports.** Broker does not represent or warrant the accuracy or completeness of any documents or other information supplied to Buyer, except for those documents which Broker has itself prepared based on its own first-hand knowledge.
- (c) **Indemnification.** Buyer and Seller shall indemnify, defend, protect and hold Broker harmless from and against all costs, damages, claims, actions, causes of action, liabilities and expenses (including the reasonable attorneys' fees of counsel chosen by Broker), arising out of or related to the physical condition of the Property, any reports supplied to Buyer or any of the other matters described in this Paragraph 21.
- (d) **Consult with Your Legal and Tax Counsel.** Buyer and Seller acknowledge that they have been advised by Broker to consult and retain their own experts to advise and represent them concerning the legal and tax consequences of this Agreement, as well as the condition and legality of the Property (including, without limitation, the applicability of the ADA to the Property), the improvements and equipment located thereon, the soil thereof, the condition of title thereto, the environmental aspects thereof, the permitted use thereof, the existence and nature of any tenancies therein, the existence and status of any other agreements relating to the Property, and the status of any existing or contemplated future financing affecting the Property. Broker is not responsible for pursuing the investigation of any such matters.
- (e) **Disclosures Regarding the Nature of a Real Estate Agency Relationship.** The parties and Broker agree that their relationships shall be interpreted under the principles set forth in California Civil Code, Section 2079.16, as summarized herein. When entering into a discussion with a real estate agent regarding a real estate transaction, a buyer or seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by Broker in this transaction, as follows:
- (1) **Seller's Agent.** A seller's agent under a listing agreement with the seller may act as the agent for the seller only. A seller's agent or subagent has the following affirmative obligations: (i) to the seller, a fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the seller; and (ii) to the buyer and the seller, diligent exercise of reasonable skill and care in performance of the agent's duties, a duty of honest and fair dealing and good faith, and a duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known



to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

- (2) **Buyer's Agent.** A selling agent can, with a buyer's consent, agree to act as agent for the buyer only. In these situations, the agent is not the seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the seller. An agent acting only for a buyer has the following affirmative obligations: (i) to the buyer, a fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the buyer; and (ii) to the buyer and the seller, diligent exercise of reasonable skill and care in performance of the agent's duties, a duty of honest and fair dealing and good faith, and a duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.
- (3) **Agent Representing Both Seller And Buyer.** A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the seller and the buyer in a transaction, but only with the knowledge and consent of both the seller and the buyer. In a dual agency situation, the agent has the following affirmative obligations to both the seller and the buyer: (i) a fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the seller or the buyer; and (ii) other duties to the seller and the buyer as stated above in their respective sections (1) or (2) of this Paragraph 21(e). In representing both the seller and buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the seller will accept a price less than the listing price or that the buyer will pay a price greater than the price offered.
- (4) **Agent Not Competent to Give Professional Legal or Tax Advice.** The above duties of the agent in a real estate transaction do not relieve a seller or a buyer from the responsibility to protect their own interests. The buyer and the seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, a competent professional should be consulted.
- (5) **Further Disclosures.** Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure.
- (f) **Dual Agency; Broker Representation.** Buyer and Seller acknowledge that Broker in this transaction is representing only Buyer] or only Seller] or is acting as a dual agent in this transaction] [check one]. If Broker and its agents shall act as agents for both Buyer and Seller, Broker and its agents may have, or appear to have conflicting responsibilities because of their duties to both Buyer and Seller. Buyer and Seller understand and consent to Broker's and its agents' acting on behalf of both Buyer and Seller, and acknowledge that they have consented to such actual or potential conflict of interest.
22. **TAX-DEFERRED EXCHANGE.** If either party hereto (the "Exchanging Party") desires to effect a tax-deferred exchange pursuant to Internal Revenue Code Section 1031, then the other party (the "Cooperating Party") shall cooperate with the Exchanging Party, provided that: (i) the date for the Close of Escrow set forth in this Agreement shall not be delayed; (ii) the Cooperating Party shall incur no additional expense by reason of such cooperation; (iii) the Cooperating Party shall not be required to acquire title to

Initials:



any property in order to effect such exchange; and (iv) the Exchanging Party shall indemnify, defend, protect and hold the Cooperating Party harmless from and against all costs, damages, claims, actions, causes of action, liabilities and expenses (including the reasonable attorneys' fees of counsel chosen by the Cooperating Party), arising out of or related to the Cooperating Party's participation in such exchange.

23. **EXCULPATION.** Except for such parties' intentional misrepresentation or other intentional misconduct, no elected or appointed official, employee or agent of Seller, and specifically including but not limited to Brent Slama, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times

24. **MISCELLANEOUS.**

(a) **Attorneys' Fees.** If Buyer or Seller sues to enforce or for breach of an express provision of this Agreement, then the prevailing party shall be entitled to recover, in addition to any other relief, reasonable attorneys' fees and costs. If Broker sues Buyer and/or Seller to recover its brokerage commission, then Broker shall be entitled to recover from those parties, in addition to any other relief, Broker's reasonable attorneys' fees and costs.

(b) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

(c) **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon, Buyer and Seller and their respective heirs, representatives, successors and assigns; provided, however, that Buyer shall have the right to assign this Agreement only with Seller's prior written consent. Notwithstanding anything to the contrary contained in this Agreement, Seller shall not unreasonably withhold its consent to Buyer's assignment of all of its rights and obligations under this Agreement to any partnership, corporation or other entity, a majority interest of which is owned or controlled by Buyer.

(d) **Notices.** The address of each party for the purposes of all notices permitted or required by this Agreement is as follows:

Buyer: Richard Scagliotti
P.O. Box 1954
Hollister, CA 95024
Tel:831.638.4664 Fax:
Attention:
Email: richardv1953@aol.com

Seller: City of Soledad
248 Main Street
Soledad, CA 95008
Tel:831. Fax:831.
Attention: Brent Slama
Email: bslama@cityofsoledad.com

Initials: RS
BS

Broker: Cassidy Turley Commercial Real Estate Services, Inc.
d/b/a Cushman & Wakefield
328B Main Street
Salinas, CA 93901

Tel: 831.449.8000 Fax: 831.769.0314
Attention: Greg Findley Michael Bassetti
Email:

The notice address of any party set forth above may be changed by written notice given not less than five (5) days prior to the date such change is to be effected. All notices under this Agreement shall be in writing, shall be properly addressed and shall be sent by (i) personal delivery, (ii) United States Mail (certified, return receipt requested and postage prepaid), or (iii) Federal Express or similar overnight courier delivery service. All such notices shall be considered delivered: (a) if personally delivered, on the date of delivery; (b) if sent by United States Mail in the manner prescribed above, on the date shown on the return receipt for acceptance or rejection; or (c) if sent by overnight courier delivery service, on the date of delivery as shown by the delivery record of such service. In the alternative, if a facsimile or email address is provided above, notices may be given by facsimile or electronic transmission, during regular business hours, addressed to the facsimile or email addresses above, provided that the notice is also deposited for delivery via one of the methods specified in (i), (ii), or (iii) above on the same day; and such notices shall be deemed delivered on the date of confirmed electronic or facsimile transmission or, if transmission occurs after business hours, on the first business day following the time of transmission.

- (e) Time of Essence. Time is of the essence of this Agreement and each and every provision hereof.
- (g) Survival. All representations, warranties, indemnities and other obligations contained in this Agreement shall survive the Close of Escrow and shall not be deemed merged into any instrument conveying title to Buyer.
- (h) Signing in Counterpart. This agreement and any supplement, addendum or modification relating hereto, including any photocopy or facsimile thereof, may be executed in two or more counterparts, all of which shall constitute one and the same writing.
- (i) Additional Provisions.

THIS AGREEMENT IS CONTINGENT UPON APPROVAL BOTH I) THE SOLEDAD CITY COUNCIL'S DISCRETIONARY APPROVAL OF THE AGREEMENT AND II) THE CITY OF SOLEDAD FINALIZING A COMPENSATION AGREEMENT WITH THE AFFECTED TAXING AGENCIES. SHOULD THE SOLEDAD CITY COUNCIL NOT APPROVE THE TRANSACTION OR SHOULD THE CITY OF SOLEDAD BE UNABLE TO FINALIZE A COMPENSATION AGREEMENT WITH THE AFFECTED TAXING AGENCIES, BUYER AND SELLER SHALL BE RELEASED FROM ALL OBLIGATIONS CREATED BY THIS AGREEMENT (EXCEPT BUYER'S OBLIGATIONS UNDER PARAGRAPH 9 ABOVE), ALL DEPOSITS AND INTEREST EARNED THEREON AND OTHER PROCEEDS DELIVERED TO TITLE COMPANY BY BUYER SHALL BE RETURNED TO BUYER, AND ALL DOCUMENTS DELIVERED TO BUYER BY SELLER SHALL BE RETURNED TO SELLER.

THIS FORM IS NOT INTENDED FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY

IN WITNESS WHEREOF, Buyer and Broker have executed this Agreement as of the date first above written.

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Initials:



BUYER:

BY: [Signature]
TITLE: _____
DATE: 5/26/2016 , 2016

CASSIDY TURLEY COMMERCIAL REAL ESTATE SERVICES, INC.
D/B/A CUSHMAN & WAKEFIELD

BY: [Signature]
LICENSE #: 01170453
TITLE: MGR DIRECTOR
DATE: 6-2 , 2016

ACCEPTANCE BY SELLER

By signing in the space provided below, Seller hereby accepts the Agreement and agrees to be bound by all of the terms, covenants and conditions contained therein.

SELLER:

CITY OF SOLEDAD
BY: [Signature]
TITLE: CITY Manager
DATE: June 1 , 2016

CASSIDY TURLEY COMMERCIAL REAL ESTATE SERVICES, INC.
D/B/A CUSHMAN & WAKEFIELD

BY: [Signature]
LICENSE #: 01170453
TITLE: MGR DIRECTOR
DATE: 6-2 , 2016

Initials: [Signature]
[Signature]