

PURCHASE & SALE AGREEMENT FOR

330 HEWETT STREET SANTA ROSA, CALIFORNIA

This Agreement, dated as of _____, 2019 ("Effective Date"), is by and between the **Sonoma County Water Agency**, a body corporate and politic, organized and existing under and by virtue of the laws of the State of California, ("Seller"), and the **Sonoma County Community Development Commission** ("Buyer").

RECITALS

WHEREAS, Seller owns and is offering for sale the real property located at 330 Hewett Street, Santa Rosa, and identified by the Sonoma County Assessor's Office as Assessor's Parcel Numbers 010-700-015 and more completely described as follows:

That certain real property conveyed to the Sonoma County Water Agency by that certain Grant Deed recorded August 3, 2016, as Document Number 2016066324 of Official Records of County of Sonoma (hereafter referred to as "Water Agency property"); and

WHEREAS, Buyer desires to purchase such land for its development for affordable housing; and

WHEREAS, the parties are entering into this Agreement to set forth the terms and conditions of the sale to Buyer; and

NOW, THEREFORE, IN CONSIDERATION of the respective agreements hereinafter set forth, Seller and Buyer agree as follows:

AGREEMENT

1. **Property Included in Sale.** Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

(a) that certain real property identified by the Sonoma County Assessor's Office as Assessor's Parcel Number 010-700-015 and more particularly described in Exhibit "A" attached hereto (hereinafter referred to as the "Real Property"); and

(b) all rights, privileges and easements appurtenant to the Real Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Real Property, as well as all development rights, air rights, water, and water stock relating to the Real Property and any other easements, rights-of-way or appurtenances used in connection with the beneficial use and enjoyment of the Real Property (all of which are collectively referred to as the "Appurtenances").

(c) All of the items referred to in Paragraph 1 subsections (a) and (b) above are hereinafter collectively referred to as the "Property."

2. Purchase Price for the Real Property.

(a) The purchase price of the Property is Seven Hundred and Fifty Thousand Dollars (\$750,000.00) (the "Purchase Price").

(b) The Purchase Price shall be paid as follows:

- (i) Buyer shall provide a nonrefundable deposit (hereafter referred to as the "Deposit") in the amount of Thirty Thousand Dollars (\$30,000) to escrow (See Closing and Escrow below) within ten (10) days of the Effective Date of this Agreement. Buyer shall deposit the Deposit with Fidelity National Title Company (Escrow #FSNX-7051500598-CT), 1101 College Avenue, Suite 100, Santa Rosa, CA 95404. In the event the sale of the Property as contemplated hereunder is consummated, the Deposit shall be credited against the purchase price of the Property. In the event the sale of the Property is not consummated because of a default under this Agreement solely on the part of Seller, the Deposit shall be returned to Buyer. If said sale is not consummated for any other reason, including without limitation, a default by Buyer hereunder, then the Deposit shall be paid to and retained by Seller as liquidated damages. The parties have agreed that Seller's actual damages, in the event of such a default by Buyer, would be extremely difficult or impracticable to determine. Therefore, by placing their initials below, the parties acknowledge that the Deposit has been agreed upon after negotiation, as the parties' reasonable estimate of Seller's damages.

Seller_____

Buyer_____

- (ii) The balance of the Purchase Price (\$720,000) shall be financed with two loans secured by a Deed of Trust, a Community Development Block Grant (CDBG) loan in the amount of \$600,000 and a Seller Carry-Back loan in the amount of \$120,000. The Seller Carry-Back Deed of Trust is attached hereto as Exhibit "B", executed by Buyer, and shall be paid to Seller in accordance with an Installment Note, attached hereto as Exhibit "C", executed by Buyer. All loan documents for both the CDBG and the Seller Carry-Back loans shall be deposited into Escrow with the Title Company no later than 10:00 a.m. on or before the business day before the Closing Date (as defined below). The interest rate for the Seller Carry-Back Installment Note shall be based on the U.S. Department of the Treasury Daily Treasury Yield Curve Rate for a 1-year term for the date of approval by the Seller's Board of Directors to execute the sale.

- (iii) The Closing Date shall be One-hundred twenty (120) days after the Effective Date of this Agreement and shall be considered under the terms herein as the "Closing." Upon mutual agreement of the parties in writing, the Closing Date may be changed to an earlier date or may be extended for a reasonable period of time. The General Manager of the Sonoma County Water Agency may act on behalf of the Seller in agreeing to a change in the Closing Date pursuant to this paragraph. The Executive Director of the Sonoma County Community Development Commission may act on behalf of the Seller in agreeing to a change in the Closing Date pursuant to this paragraph.

3. Title to the Property.

3.1 Conditions of Title. At the Closing, Seller shall convey the Property to Buyer by a good and sufficient Grant Deed, substantially in the form attached hereto as Exhibit A, subject to no exceptions other than:

- (i) Any exceptions disclosed by a preliminary title report and any other exceptions to title, which would be disclosed by an inspection and/or survey of the Property.
- (ii) The Notice of Affordable Housing Requirement per Government Code Section 54233, attached hereto as Exhibit "D."

All the foregoing exceptions shall be referred to collectively as the "Conditions of Title."

3.2 Evidence of Title. Delivery of title in accordance with the foregoing shall be evidenced by the willingness of the Title Company to issue, at Closing, its standard Owner's California Land Title Association Policy of Title Insurance in the amount of the Purchase Price showing title to the Property vested in Buyer, subject to the Conditions of Title (the "Title Policy").

4. Buyer's Examination.

4.1 Buyer's Independent Investigation.

(a) Buyer acknowledges that it has been given a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Buyer's choosing, including, without limitation:

(i) All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes.

(ii) The physical condition of the Property, including, without limitation, the presence or absence of Hazardous Materials (as defined below), and all other physical and functional aspects of the Easement Areas. For the purposes hereof, "Hazardous Materials" shall mean any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency ordinance or law or any material that because of its quantity, concentration, or physical or

chemical characteristics, poses a significant, present or potential hazard to human health or safety or to the environment if released into the environment, or any regulation, order, rule or requirement adopted hereunder, as well as any formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 *et seq.*

(iii) Any easements and/or access rights affecting the Property.

(iv) All other matters of material significance affecting the Property.

(b) BUYER SPECIFICALLY ACKNOWLEDGES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE PROPERTY ON AN “AS IS WITH ALL FAULTS” BASIS AND THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ITS AGENTS, OR BROKERS AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION:

(i) The quality, nature, adequacy and physical condition of the Property.

(ii) The quality, nature, adequacy, and physical condition of soils, geology and any groundwater.

(iii) The existence, quality, nature, adequacy and physical condition of utilities serving the Property.

(iv) The development potential of the Property, and the Property’s use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose.

(v) The zoning or other legal status of the Property or any other public or private restrictions on use of the Property.

(vi) The compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity.

(vii) The presence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property.

(viii) The quality of any labor and materials used in any improvements on the Property.

(ix) The condition of title to the Property.

(x) The leases, service contracts, or other agreements affecting the Property.

(xi) The economics of the operation of the Property to be conveyed.

4.2 Release.

(a) Without limiting the above, Buyer waives its right to recover from Seller and from Seller's officers, employees and agents, and forever releases and discharges Seller from any and all damages, claims, losses, liabilities, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the subject property, or any portion thereof, or any law or regulation applicable thereto, including, without limitation, any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Materials.

(b) In connection with Paragraph 4.2(a) above, 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 DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.”

5. Closing and Escrow.

(a) It shall be the obligation of the Seller to open an Escrow for the purposes of this Agreement, and to pay all fees required for the opening. The Buyer shall pay all fees, taxes, and escrow fees required for the closing thereof.

(b) Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Title Company and this instrument shall serve as the instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such additional and supplementary escrow instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplemental escrow instructions, the terms of this Agreement shall control.

(c) The Closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the Title Company one hundred twenty (120) days from the date of this Agreement (the “Closing Date”). Such date may not be extended without the prior written approval of both Seller and Buyer, except as otherwise expressly provided in this Agreement.

(d) At or before the Closing, Seller shall deposit into escrow the following:

(i) A duly executed and acknowledged Grant Deed conveying rights to the Property to Buyer, subject to the Conditions of Title; and

(e) Before Closing, Buyer shall deposit into escrow the following items:

(i) An executed and acknowledged CDBG Deed of Trust and Promissory Note, in accordance with Paragraph 2 above.

(ii) An executed and acknowledged Seller Carry-Back Deed of Trust and Installment Note, in accordance with Paragraph 2 above.

(f) Seller and Buyer shall each deposit such other instruments as are reasonably required by the escrow holder, lender(s), or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

6. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Buyer is a public body, corporate and politic, duly organized and validly existing and in good standing under the laws of the State of California; and

(b) This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are or at the time of Closing:

(i) will be duly authorized, executed, and delivered by Buyer;

(ii) will be legal, valid, and binding obligations of Buyer; and

(iii) will not violate any provisions of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

7. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:

(a) Seller is a body corporate and politic, organized and existing under and by virtue of the laws of the State of California; and

(b) This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are or at the time of Closing:

(i) will be duly authorized, executed, and delivered by Seller;

(ii) will be legal, valid, and binding obligations of Seller; and

(iii) will not violate any provisions of any agreement or judicial order to which Seller is a party or to which it is subject.

8. Indemnification. Each party hereby agrees to indemnify the other party and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorneys' fees, resulting from any misrepresentations or breach of warranty or breach of covenant made by such party in this Agreement or in any document, certificate, or exhibit given or delivered to the other pursuant to or in connection with this Agreement. The indemnification provisions of this Paragraph 8 shall survive beyond the delivery and recordation of the Grant Deed, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement.

9. Miscellaneous.

9.1 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

Buyer: Sonoma County Community Development
Commission

P.O. Box 12025
Santa Rosa, CA 95406

Seller: Sonoma County Water Agency
404 Aviation Boulevard
Santa Rosa, CA 95403

or such other address as either party may from time to time specify in writing to the other.

9.2 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

9.3 Amendments. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

9.4 Applicable Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of California and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

9.5 Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the purchase and sale of the Easements and supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

9.6 Time of the Essence. Time is of the essence of this Agreement.

9.7 Headings. The headings used herein are for the purposes of convenience only and should not be used in construing the provisions hereof.

9.8 Partial Invalidity. If any term, covenant or condition of this Agreement or its application to any person or circumstances is held to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provisions to other persons or circumstances will not be affected.

9.9 No Waiver. No consent or waiver by either party to or of any breach or any representation, covenant or warranty will be construed as a consent to or waiver of any other breach of the same or any other representation, covenant, or warranty.

9.10 Interpretation. The parties hereby acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. The parties hereby acknowledge that they have each had an opportunity to consult with legal and other professional counsel in the negotiation and preparation of this Agreement.

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

Buyer: **Sonoma County Community Development Commission**

By: _____
Margaret Van Vliet
Executive Director

Seller: **Sonoma County Water Agency**

By: _____
Grant Davis
General Manager

APPROVED AS TO FORM:

By: _____
Alegria De La Cruz
Chief Deputy County Counsel

EXHIBIT A TO PURCHASE AGREEMENT

GRANT DEED

EXHIBIT B TO PURCHASE AGREEMENT

LONG FORM DEED OF TRUST

EXHIBIT C TO PURCHASE AGREEMENT

INSTALLMENT NOTE

EXHIBIT D TO PURCHASE AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Sonoma County Community
Development Commission
P.O. Box 12025
Santa Rosa, CA 95406

NOTICE OF AFFORDABLE HOUSING REQUIREMENT PER GOVERNMENT CODE SECTION 54233

NOTICE IS HEREBY GIVEN THAT:

By resolution of its governing board on May 12, 2015, the real property described in Exhibit “A” (hereinafter the “Property”) was declared surplus by the Sonoma County Water Agency (“Water Agency”), a body corporate and politic, organized and existing under and by virtue of the laws of the State of California. The Water Agency was unable to agree to price and terms for the sale of the Property with entities to which notice and an opportunity to purchase were given pursuant to the procedures specified by Government Code section 54220 *et seq.* As such, the Property is now subject to the requirements set forth in Government Code section 54233, which provides as follows:

“If the local agency does not agree to price and terms with an entity to which notice and an opportunity to purchase or lease are given pursuant to this article and disposes of the surplus land to an entity that uses the property for the development of 10 or more residential units, the entity or a successor-in-interest shall provide not less than 15 percent of the total number of units developed on the parcels at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Rental units shall remain affordable to, and occupied by, lower income households for a period of at least 55 years. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of Section 65915. These requirements shall be contained in a covenant or restriction recorded against the surplus land prior to land use entitlement of the project, and the covenant or restriction shall run with the land and shall be enforceable, against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5.”