

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "**Agreement**") is effective as of October ____, 2020, (the "**Effective Date**") and is entered into by and between ORCHARD INN LLC, a California limited liability company ("**Seller**"), and the COUNTY OF MENDOCINO, a political subdivision of the State of California ("**County**"). Each of County and Seller are occasionally referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Seller is the owner of that certain improved real property located in the City of Ukiah, County of Mendocino, State of California, with APN 002-340-39, as more particularly described on Exhibit A (the "**Land**").

B. Seller desires to sell the Property to County, and County desires to purchase the Property from Seller, upon the terms and conditions set forth in this Agreement.

C. This Agreement is entered into in accordance with, and incorporates by reference, the March 4, 2020 Declaration of the Mendocino County Health Officer; the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom; the March 4, 2020 Proclamation of Local Emergency for the County of Mendocino issued by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County Regarding Novel Coronavirus 2019 (COVID-19); the March 10, 2020 Resolution of the Board of Supervisors of the County of Mendocino Ratifying and Extending the Declaration of a Local Health Emergency, and Ratifying and Extending the Proclamation of a Local Emergency. This Agreement is directly related to the COVID-19 emergency and is necessary for the preservation of public health and safety.

D. County recognizes its responsibility for consideration of relocation assistance pursuant to the Federal and State Relocation Assistance Acts, 42 U.S.C., Section 4601, et seq.; Government Code Section 7260, et seq., and Federal and State implementing regulations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by County and Seller, each intending to be legally bound, do hereby covenant and agree as follows:

(1) **Recitals.** All of the Recitals set forth above are true and accurate and are incorporated herein by reference.

(2) **Sale and Purchase of Property.** Seller agrees to sell and convey to County, and County agrees to purchase and accept from Seller, at the price and upon the terms, provisions and conditions set forth in this Agreement, all of Seller's right, title and interest in the Land, free and clear of all liens, encumbrances, assessments, easements, and taxes, together with all of Seller's right, title and interest in all of the following items in respect of the Land (collectively, the "**Property**"):

(a) all rights, privileges, easements, appurtenances, and other estates pertaining or appurtenant to the Land (collectively, the "**Appurtenances**");

(b) any and all improvements and fixtures located on the Land and Appurtenances (collectively, the "**Improvements**" and together with the Land and Appurtenances, the "**Real Property**");

(c) the personal property, equipment, supplies, fixtures, furniture, appliances, furnishings, and other items of personal property used by Seller in the operation of the Property as a hotel, including inventories of linen, cleaning supplies and other consumables used in the guest rooms' operation located in, on or under the Land and used in the operation of the Real Property as listed on Exhibit B of Exhibit E (the "**Personal Property**"); excluding all signs, logos, trade names, trademarks, service marks, styles or similar intellectual property owned by Seller with respect to the Property, which Seller shall, at its sole cost and expense, remove from the Land prior to Closing;

(d) all of Seller's right, title, and interest in any contracts and agreements relating to the ownership, operation or maintenance of the Real Property, as listed on Exhibit B (the "**Contracts**");

(e) all of Seller's right, title, and interest under any leases, license agreements, agreements for the occupancy of the Real Property, or other possessory interests by third parties on the Subject Property, as listed on Exhibit C (the "**Leases**");

(f) all of Seller's right, title and interest in any intangible property used and necessary in connection with the Real Property, including, without limitation, any warranties, guaranties, licenses, permits, entitlements, governmental approvals and certificates of occupancy which benefit the Real Property and/or the Personal Property, and all surveys, reports, plans, specifications, drawings, appraisals, reports and studies (collectively, the "**Intangible Property**"); and

(g) all oil, gas, air, water and mineral rights of Seller, if any, in and to the Land.

(3) Purchase Price; Deposit.

(a) **Purchase Price.** The purchase price for the Property is TEN MILLION SIX HUNDRED FORTY THOUSAND DOLLARS (\$10,640,000.00) (the "**Purchase Price**").

(b) **Deposit.** County has delivered to the Title Company (as defined in Section 6(a)), the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) (the "**Deposit**"). The Deposit shall be applied as a credit against the Purchase Price at the Closing (defined in Section 6(a)). Should the sale of the Property not be consummated for any reason, including but not limited to the lack of approval of this Agreement by the Board of Supervisors, failure of any condition, breach of a warranty or the default of either Seller or County, the Deposit shall be returned to the County in its entirety.

(c) **Purchase Price Balance.** Provided that all of the other conditions precedent to County's obligation to purchase the Property are timely satisfied, then no later than one (1) business day prior to the Closing Date, County shall deposit into Escrow (as defined in Section 6(a)) the balance of the Purchase Price (i.e., the Purchase Price less the Deposit) (the "**Purchase Price Balance**").

(4) Condition of Property.

(a) **Seller's Deliveries.** Within five (5) Business Days after the Effective date, Seller shall provide to County copies of all materials relating to the Property in Seller's possession or control, including but not limited to the following (the "**Due Diligence Materials**"):

(b) any existing plans for or surveys of the Land;

(c) any soils reports, reports pertaining to Hazardous Substances (as defined in Section 8(a)) or other environmental conditions (including, without limitation, any existing "Phase I" or "Phase II" environmental report prepared for the Land), improvement and landscape plans, permits and licenses issued by any local, regional, state or federal governmental entity, agency, court, judicial or quasi-judicial body, or legislative or quasi-legislative body (each, a "**Governmental Authority**"), and significant correspondence with Governmental Authorities, that relate directly to the Property;

(d) any and all easements, regardless of purpose or use, whether recorded or unrecorded, associated with the Property, or any development approvals thereto;

(e) all architectural and civil or structural engineering documents that relate directly to the Property, all environmental development approvals, and governmental approvals, including but not limited to, as built plans and specifications for the Improvements, copies of all permits, licenses, and certificates of occupancy for the Property, tentative maps, final maps, and California Department of Real Estate approvals;

(f) all Contracts, and any amendments and modifications thereto;

(g) all Leases, and any amendments and modifications thereto;

(h) all agreements relating to or concerning the Property or the proposed purchase, development and construction of the Property as contemplated herein, including any amendments or modifications thereto;

(i) any studies, reports, jurisdictional correspondence, or other documents relating to the physical aspects of the Property;

(j) all presently effective warranties or guaranties from any contractors, subcontractors, suppliers, manufacturers, servicemen or materialmen in connection with any of the Personal Property or any construction, renovation, repairs or alterations of the Improvements or any tenant improvements; and

(k) such other reasonable, usual and customary due diligence documents reasonably requested by County, to the extent in Seller's possession.]

(l) **Preliminary Title Report.** County shall open an escrow with the Title Company, as defined below, and obtain a preliminary title report or title commitment (in either case, the "**PTR**") for the Property issued by the Title Company, as defined below, and a legible and complete copy of each and every document referenced in the PTR. From the Effective Date and until the earlier of the Closing Date or the date of termination of this Agreement, Seller shall send County a copy of any correspondence concerning the Property that Seller receives from any Governmental Authority or that Seller sends to any Governmental Authority.

(m) **County's Inspections.** County and County's elected and appointed officers, employees, agents, attorneys, lenders, consultants, and contractors (collectively, "**County's Representatives**") shall have the right to enter the Property at reasonable times during the Due Diligence Period (defined in Section 4(n)(i)) and with reasonable advance notice to inspect the Property, to conduct environmental testing at the Property, and to conduct an ALTA/ASCM survey (the "**Survey**") of the Property (collectively, "**County's Inspections**"); provided that Seller shall have the right to be present during County's Inspections. County shall keep the Property free and clear of any mechanic's liens or materialmen's liens arising out of County's Inspections. County shall indemnify, protect, defend, and hold Seller and the Real Property free and harmless from and against any and all claims, actions, causes of action, suits, proceedings, costs, expenses (including, without limitation, attorneys' fees and costs), liabilities, damages, and liens of any type (collectively, "**Claims**") arising out of or resulting from (i) any entry and/or activities upon the Real Property by County or County's Representatives, excluding, however, the mere discovery of a pre-existing condition not exacerbated by County, or (ii) the enforcement of this agreement of indemnity or the assertion by County of any defense to its obligations hereunder. County shall promptly repair any damage to the Property caused by the performance of any inspection activities by County including, but not limited to, any intrusive tests. County shall comply with any and all applicable laws, court orders, governmental regulations, or demands or directives of any local, state or federal Governmental Authority (collectively, "**Applicable Law**") in performing County's Inspections of the Property.

(n) **County's Due Diligence Approvals**

(i) **Due Diligence Review.** County's obligations under this Agreement, including, but not limited to, its obligations to purchase the Property on the Closing Date, are subject to the approval or confirmation by County, in County's sole and absolute discretion, of its due diligence investigations of the Property, including without limitation, review and approval of the Due Diligence Materials and County's Inspections, during the period (the "**Due Diligence Period**") from the Effective Date through 5:00 pm Pacific time on the fifteenth day after the Effective Date (the "**Due Diligence Deadline**"). If, during the Due Diligence Period, County determines that it is dissatisfied, in County's sole and absolute discretion, for any reason or no reason whatsoever, with any aspects of the Property and/or its condition or suitability for County's intended use, or with any of the Due Diligence Materials or the results of County's Inspections, then County may terminate this Agreement, and the Escrow created pursuant hereto, by delivering written notice to Seller and Title Company on or before the Due Diligence Deadline of County's election to terminate (a "**Termination Notice**"), in which event this Agreement, the Escrow, and the rights and obligations of the Parties hereunder shall terminate, other than the Surviving Obligations (as defined in Section 6(e)), and neither party shall have any further right or obligation hereunder other than the Surviving Obligations.

(ii) **Assumed Contracts.** County shall, on or prior to the Due Diligence Deadline, advise Seller of which Contracts, if any, County elects to assume. Other than the Contracts that County has so elected to assume, Seller shall terminate all other Contracts effective as of the Closing.

(iii) **Title Review.**

A. County shall have until the Due Diligence Deadline to deliver to Seller written notice ("**County's Title Notice**") of County's approval, conditional approval, or disapproval, in County's sole and absolute discretion, of any matter in the PTR or disclosed by the Survey.

B. Seller shall have five (5) Business Days after receipt of County's Title Notice or County's deemed disapproval ("**Seller Response Period**"), to provide County with a written response ("**Seller's Title Response**") stating that Seller shall: (a) cause the matters disapproved by County to be removed of record, or commit to cause the Title Company to endorse over such matters pursuant to an endorsement or endorsements acceptable to County, in County's sole and absolute discretion, or otherwise cure such matters, prior to the Closing, and to give County and Title Company written notice of those matters that have been or will be cured on or before the Closing; or (b) not cause such matters to be so cured. If Seller does not, during the Seller Response Period, deliver a Seller's Title Response that is satisfactory to County in County's sole discretion, then Seller shall be deemed to have elected not to cure any matters disapproved by County. Notwithstanding the foregoing, Seller shall be obligated to remove as exceptions to title to the Property as of the Closing monetary liens (including mechanics liens) or encumbrances and all claims to fee title or leasehold or other possessory interests in the Property, other than those arising from County's Inspections.

C. If Seller does not state in Seller's Title Response that it shall cause all of the matters disapproved by County to be cured prior to the Closing Date, then County may, by not later than the later of (a) the expiration of the Due Diligence Period or (b) ten (10) Business Days after receipt of Seller's Title Response, (x) terminate this Agreement, in which case this Agreement, the Escrow and the rights and obligations of the parties hereto shall terminate, or (y) terminate its disapproval of those matters that Seller does not elect to cure by delivering written notice of such waiver (the "**Title Approval Notice**") to Seller and Title Company. If County does not deliver the Title Approval Notice in such case, County shall be deemed to have terminated this Agreement. A "**Business Day**" shall mean any day of the year that is not a County holiday (as such County holidays are disclosed on the 2020 Master Meeting Calendar posted on <https://www.mendocinocounty.org/government/board-of-supervisors/board-calendar-and-assignments>) and any other day in which commercial banks are either not required to open or are authorized to close in Ukiah, California.

D. If Title Company issues any supplement or amendment to the PTR after the Due Diligence Deadline, then County may issue a supplement to its County's Title Notice within ten (10) Business Days after County's receipt of legible copies of the title documents referenced in such supplement and, if such supplement includes disapproval of any matter, then Seller shall respond within five (5) Business Days with a supplement to Seller's Title Response.

(iv) County's failure to either disapprove or approve in writing any of the items described in this Section 4(d) within the time period allotted to such item shall be deemed to constitute County's disapproval of same.

(5) Prorations and Apportionments.

(a) Except as otherwise set forth below, the following shall be prorated and apportioned between Seller and County as of 11:59 p.m. (Pacific Time) on the day preceding the Closing Date, and all prorations shall be done on the basis of a three hundred sixty-five (365) day year and the actual number of days elapsed to the Closing Date or the actual number of days in the month in which the Closing occurs and the actual number of days elapsed in such month to the Closing Date, as applicable:

(i) Taxes payable by Seller relating to operations of the Property, including without limitation, business and occupancy taxes and sales taxes, if any, payable in respect to the current fiscal year of the applicable taxing authority in which the Closing Date occurs (the "**Current Tax Year**"). Such taxes shall be prorated on a per diem basis based upon the number of days in the Current Tax Year prior to the Closing Date (which shall be allocated to Seller) and the number of days in the Current Tax Year on and after the Closing Date (which shall be allocated to County). Seller shall be responsible for all such taxes payable in respect to periods prior to the Current Tax Year.

(ii) All real estate taxes and assessments on the Property payable in respect to the Current Tax Year. Such real estate taxes and assessments shall be prorated on a per diem basis based upon the number of days in the Current Tax Year prior to the Closing Date (which shall be allocated to Seller) and the number of days in the Current Tax Year on and after the Closing Date (which shall be allocated to County). Seller shall be responsible for all real estate taxes and assessments on the Property payable in respect to periods prior to the Current Tax Year. Any taxes which have been prepaid by Seller shall not be prorated, but Seller shall have the sole right after Closing to apply to the Mendocino County Treasurer for refund of the taxes attributable to the period after acquisition, pursuant to Revenue and Taxation Code Section 5096.7. Upon the Closing Date and subject to the adjustment provided for above, County shall be responsible for all unpaid real estate taxes and assessments on the Property payable in respect to the Current Tax Year, including any escape assessments occasioned by the sale contemplated by this Agreement, and all periods after the Current Tax Year.

(iii) All rent and receivables under the Leases, revenue, and other income, if any, from the Property (collectively, "**Rents**").

(iv) Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property (expressly excluding, however, any amounts paid as deposits to any utility provider, all of which shall be returned to Seller). Seller shall use reasonable efforts to cause any applicable utility meters to be read on the day prior to the Closing Date, and will be responsible for the cost of any applicable utilities used prior to the Closing Date. If the meters are not read as herein set forth, all such expenses shall be prorated.

(v) Such other items as are customarily apportioned between sellers and purchasers of real property and improvements located in Mendocino County, California.

(b) Seller shall deliver to County and Title Company a schedule of prorations not later than the date that is five (5) Business Days after the Effective Date, and if acceptable, County shall approve the same prior to the Closing. Non-disputed items shall be prorated at the Closing. Any disputes as to prorations shall not delay the Closing. All disputes concerning prorations shall be resolved outside of escrow, and if not resolved by the Parties within two (2) months after the Closing shall, at the election of either party, be resolved by arbitration in accordance with the rules then prevailing of the American Arbitration Association. Except as otherwise expressly set forth in Section 5(a), all prorations shall be made in accordance with customary practice in Mendocino County, California. Such prorations, if and to the extent known and agreed upon as of the Closing, shall be paid by County to Seller (if the prorations result in a net credit to the Seller) or by Seller to County (if the prorations result in a net credit to County) by increasing or reducing the cash to be paid by County at the Closing. This Section 5 shall survive the Closing.

(6) **Closing.**

(a) **Closing Date and Place.** For purposes of this Agreement, the "**Closing**" shall be defined as the date (the "**Closing Date**") on which the grant deed in the form of Exhibit D attached hereto (the "**Deed**"), conveying the Real Property to County, is recorded in the Official Records of Mendocino County, California, and on which possession of the Real Property shall be delivered to the County, with all guest rooms vacant. The Closing shall be conducted through an escrow (the "**Escrow**") with Redwood Empire Title Company of Mendocino County acting as both escrow agent and title agent, and whose contact information is set forth below ("**Title Company**"). The Closing Date shall occur on or before 2:00 p.m. (Pacific Time) on November 6, 2020. Time is of the essence with respect to each of the dates specified above. All funds necessary to consummate the Closing (the "**Funds**") shall be deposited by County into Escrow no later than one (1) Business Day prior to the Closing Date. The Title Company is located at: 405 S. Orchard Street, Ukiah, California, 95482, and the primary contact person is Debbie Niesen.

(b) **Seller's Closing Deliveries.** At or before the Closing (except as otherwise set forth herein), Seller shall execute, acknowledge and/or deliver, as applicable, the following items into Escrow (collectively, the "**Seller's Deliveries**");

- (i) The Deed, executed and acknowledged by Seller;
- (ii) A bill of sale in the form of Exhibit E attached hereto (the "**Bill of Sale**"), duly executed by Seller;
- (iii) An assignment and assumption in the form of Exhibit F attached hereto ("**General Assignment**"), executed by Seller;
- (iv) A Certificate of Non-Foreign Status in the form of Exhibit G attached hereto ("**FIRPTA**"), executed by Seller;
- (v) A California FTB Form 593-C ("**Form 593-C**"), executed by Seller;
- (vi) A California Natural Hazard Disclosure Statement in accordance with California Civil Code Section 1102;
- (vii) A closing statement prepared by Title Company, reflecting all credits, prorations, apportionments and adjustments contemplated hereunder (the "**Closing Statement**"), executed by Seller; and
- (viii) Such evidence of Seller's authority, the owner's affidavit in the form of Exhibit H attached hereto and other documents reasonably required by the Title Company.

(c) **County's Closing Deliveries.** At or before Closing, County shall execute, acknowledge and/or deliver, as applicable, the following items into Escrow (collectively, the "**County's Deliveries**");

- (i) The Purchase Price Balance;

Section 5:

- (ii) County's share of any prorations and expenses as provided in
- (iii) The General Assignment, executed by County;
- (iv) The Closing Statement, executed by County; and
- (v) Such evidence of County's authority and other documents reasonably required by the Title Company.

(d) **Closing Expenses.** At Closing, Seller shall pay (i) all documentary transfer taxes required to be paid as to the Deed, if any (ii) all costs regarding the satisfaction and discharge of any Seller Liens, (iii) the premium for the CLTA Policy, and (iv) one-half of the Escrow fees and the recording charges with respect to the Deed, if any. At Closing, County shall pay (1) the additional premium costs to obtain an ALTA Policy, if requested by County, and any endorsements desired by County, (2) the cost of any Survey (as defined below) ordered by County, and (3) one-half of the Escrow fees and the recording charges with respect to the Deed, if any. Each party shall be responsible for its own attorney fees (if any). Any Closing expenses not specified herein shall be paid as customary in Mendocino County.

(e) **County's Conditions Precedent to Closing.** County's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions (the "**County Conditions Precedent**"):

(i) The due performance by Seller of each and every undertaking and agreement to be performed by it pursuant to this Agreement, in all material respects, and the truth of each representation and warranty made by Seller in this Agreement in all material respects at the time as of which the same is made and as of the Closing Date as if made on and as of the Closing Date.

(ii) That at no time on or before the Closing Date shall have occurred a bankruptcy or any other event of dissolution with respect to Seller.

(iii) Seller shall have delivered Seller's Deliveries into Escrow in accordance with Section 6(b) above.

(iv) The Title Company shall unconditionally commit to County at Closing to issue the Title Policy to County pursuant to Section 7(c) herein.

(v) County shall have obtained all approvals required by any Governmental Authority (including County, specifically including approval of this Agreement by the Mendocino County Board of Supervisors at a duly noticed public meeting) having jurisdiction over the acquisition of the Property, in compliance with all applicable laws, rules and regulations.

(vi) County's obligations under this Agreement are contingent upon County obtaining a binding commitment for funding for the purchase of the Property from the State of California's through grant funds procured under HomeKey Program, which HomeKey Program is to be administered by the California Department of Housing and Community Development. County shall use good faith efforts to obtain financing conforming to the terms of this paragraph.

In the event that any of the County Conditions Precedent are not satisfied as of the Closing Date (a) County may waive such contingency by giving written notice thereof to Title Company and proceed with the Closing (provided, however, Sections 6(e)(v) and 6(e)(vi) are nonwaivable County Condition Precedents), or (b) in the absence of such waiver, this Agreement, the Escrow, and the rights and obligations of the Parties hereunder shall terminate, other than the Surviving Obligations (as hereinafter defined)), and neither party shall have any further right or obligation hereunder other than the Surviving Obligations; provided, however, that notwithstanding the foregoing, if the failure of condition is the result of a default by Seller or County of their respective obligations under this Agreement, the disposition of the Parties' respective rights and remedies shall be governed by Section 9 below. Should the Mendocino County Board of Supervisors not approve this Agreement, County may terminate this Agreement and doing so shall not be considered a default of County. **"Surviving Obligations"** shall mean, collectively: (x) any indemnities and any other indemnification obligations of Seller to County, or of County to Seller, under this Agreement that are designated by their terms to survive the termination of this Agreement or the Closing hereunder; (y) those costs, expenses, and payments specifically stated herein to be the responsibility of County or Seller, respectively, and (z) and any other obligations by the Parties under this Agreement that are designated by their terms to survive the termination of this Agreement or the Closing, it being the intention of the Parties that the Parties shall nonetheless be and remain liable for their respective obligations under clauses (x) through (z) above, notwithstanding the termination of this Agreement for any reason or the Closing hereunder.

(f) **Seller's Conditions Precedent to Closing.** Seller's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions (the **"Seller Conditions Precedent"**):

(i) The due performance by County of each and every undertaking and agreement to be performed by it pursuant to this Agreement, in all material respects, and the truth of each representation and warranty made by County in this Agreement in all material respects at the time as of which the same is made and as of the Closing Date as if made on and as of the Closing Date.

(ii) That at no time on or before the Closing Date shall have occurred a bankruptcy or any other event of dissolution with respect to County.

(iii) County shall have delivered the Purchase Price and County's Deliveries into Escrow in accordance with Sections 6(c) and 6(d) above, respectively.

In the event that any of the Seller Conditions Precedent are not satisfied as of the Closing Date (a) Seller may waive such contingency by giving written notice thereof to Title Company and proceed with the Closing, or (b) in the absence of such waiver, this Agreement and the obligations of the Parties hereunder shall terminate (other than the Surviving Obligations), and neither party shall have any further right or obligation hereunder other than the Surviving Obligations; provided, however, if the failure of condition is a result of a default by Seller or County of their respective obligations under this Agreement, the Parties' respective rights and remedies shall be governed by Section 9 below.

(g) **Title Company Actions at Closing.** At Closing, upon Title Company's receipt of (i) the Purchase Price and applicable prorations and expenses, (ii) the County's Deliveries and the Seller's Deliveries, (iii) the final Closing Statement approved and signed by

County and Seller, and (iv) final authorization from each of Seller and County to proceed with Closing, Seller and County hereby instruct Title Company to:

(i) Prorate all matters referenced in Section 5 based upon the Closing Statement delivered to Title Company and signed by the Parties.

(ii) Disburse from funds deposited by County with Title Company towards payment of all items chargeable to the account of County pursuant to this Agreement (as reflected in the Closing Statement), including the payment of the Purchase Price and all other amounts required to be paid by County to Seller pursuant to this Agreement, net of any amounts required to be paid by Seller to County pursuant to this Agreement and the approved Closing Statement, and disburse the balance of such funds, if any, to County.

(iii) Record the Deed, and deliver to the County Assessor any off-record transfer tax declaration and/or change of ownership statement that may be required by law.

(iv) Issue the Title Policy to County.

(v) Deliver to Seller: (i) copies of all documents recorded at Closing by Title Company; (ii) at least one (1) fully executed original of the General Assignment; and (iii) a certified copy of the approved Closing Statement; and

(vi) Deliver to County: (i) copies of all documents recorded at Closing by Title Company; (ii) at least one (1) fully executed original of the General Assignment; (iii) a certified copy of the approved Closing Statement; and (iv) copies of the FIRPTA and Form 593-C.

(h) **Operation of the Property Prior to the Closing Date.** Between the Effective Date and the Closing Date, Seller shall continue to operate and maintain the Property in the usual and ordinary course of business consistent with past practices. Seller shall take no action, and shall not cause any third party to take, any action that would materially alter or affect the condition of the Property. Seller shall maintain all Personal Property in its present condition and permit no further damage or deterioration thereto or thereof other than as may occur in the ordinary course of operation of the Personal Property, ordinary wear and tear excepted. Seller shall not place or permit to be placed on or remove or permit to be removed from the Land any buildings, structures or other improvements of any kind (other than items excepted from the definition of Personal Property in Section 2(c) above) without the prior written consent of County. Seller shall not remove nor permit to be removed from the Land any of the Personal Property, other than those consumables expended in the ordinary course of business. Seller shall not enter into, amend, or terminate any leases, licenses or occupancy agreements without obtaining County's prior written consent, which shall be subject to County's sole and absolute discretion; provided, however, that Seller is permitted to operate the Property as a hotel until the day before close of escrow, at which time all rooms shall be vacant. Seller shall not enter into or amend any contract that is not reasonably necessary for the normal operation of the Property and that cannot be terminated on thirty (30) or fewer days' notice, or waive, compromise or settle any rights of Seller under any contract or other agreement affecting the Property without, in each case, obtaining County's prior written consent, which shall be subject to County's sole and absolute discretion. Seller shall keep in full force and effect all of the existing insurance policies maintained by Seller respecting the Property or policies providing similar coverage to the existing insurance policies.

(7) **Title Policy; Permitted Exceptions**

(a) A condition precedent to County's obligation to purchase the Property shall be the willingness of Title Company to issue to County at the Closing, a standard CLTA owners policy of title insurance ("**CLTA Policy**"), or equivalent form acceptable to County, in the face amount of the Purchase Price and dated as of the date the Deed is recorded, indicating title to the Property to be vested of record in County, subject solely to the Permitted Exceptions (as defined herein), and containing endorsements and additional coverages as reasonably requested by County; provided, however, County may elect to obtain from the Title Company an ALTA extended coverage owner's policy of title insurance insuring fee title to the Property vested in County (an "**ALTA Policy**"), subject only to the Permitted Exceptions. The selected policy (whether it be a CLTA Policy or an ALTA Policy) shall be referred to herein as the "**Title Policy**," and the issuance of the Title Policy shall be a condition to the Closing for the benefit of County. "**Permitted Exceptions**" shall mean: the specific exceptions as County has approved or may approve in writing, in County's sole discretion; and any exceptions caused by County, its agents, representatives or employees; provided, however, that the "Permitted Exceptions" shall in no event include any existing mortgage liens, mechanics liens or other monetary liens created or assumed by Seller against the Property (collectively, "**Seller Liens**").

(b) In the event that County elects to obtain an ALTA Policy, County shall pay the difference in cost between a CLTA Policy and an ALTA Policy and the cost of the Survey. County shall pay the cost of any endorsements to the CLTA Policy or ALTA Policy that County may elect to obtain.

(8) **Representations, Warranties, Covenants and Acknowledgments.**

(a) **Seller Representations and Warranties.** Seller represents and warrants to County, as of the Effective Date and again as of the Closing Date, as follows:

(i) Seller is the sole owner of the entire right, title and interest in and to the Property.

(ii) Seller is a duly formed and validly existing limited liability company organized and in good standing under the laws of the State of California, and is qualified to do business in the State of California.

(iii) Seller has the full power and authority to enter into and comply with the terms of this Agreement and has, or at Closing will have, obtained all necessary consents and approvals required for Seller to enter into and consummate the transaction described in this Agreement.

(iv) This Agreement, and all instruments referenced herein to be executed by Seller in connection with the transaction described in this Agreement, are or at the time of Closing will be, duly authorized, executed and delivered by Seller, and are, or at Closing will be, legal, valid and binding obligations of Seller and do not, and at the time of Closing will not, violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller is subject.

(v) The execution and delivery of this Agreement, and consummation of the transaction described in this Agreement do not, and at Closing will not constitute a default under any contract or agreement to which Seller is a party.

(vi) The acts of Seller's directors, members, managers, officers, employees, agents, attorneys, affiliates, lenders, consultants and contractors who sign this Agreement, and all instruments referenced herein to be executed by Seller in connection with the transaction described in this Agreement, or perform any obligation of Seller hereunder or thereunder, and the transactions contemplated hereby and thereby, have been duly authorized by all requisite action on the part of Seller.

(vii) Seller has obtained, or will obtain before Closing, all required consents, releases, and permissions, and has complied with or will comply with all material statutes, laws, ordinances, and regulations of any kind or nature, in order to effectively vest in County good and indefeasible title to the Property.

(viii) There are no pending or, to Seller's actual knowledge, threatened legal actions or arbitrations or reference proceedings at law or in equity, against Seller or affecting the Property.

(ix) To Seller's actual knowledge, all laws, ordinances, rules, and regulations (including, but not limited to, those relating to flood control, zoning, building, fire, health, and safety) of any government or any agency, body, or subdivision thereof, bearing on the construction, operation, ownership, or use of the Real Property, have been complied with by Seller and, except as disclosed in the Due Diligence Materials, Seller has not received any written notice from any Governmental Authority that the Property or any condition existing thereon or any present use thereof currently violates any law or regulations applicable to the Property, including, without limitation, environmental statutes, ordinances or regulations governing hazardous substances, and to Seller's actual knowledge, no such violations exist.

(x) Seller has not received any notice that Seller is in default of its obligations under any declarations, reciprocal easement agreements and other similar cross-easements, use agreements, covenants or similar agreements with adjacent property owners governing the use, maintenance or operation of any part of the Property.

(xi) The Property shall be vacated as of the Closing Date, and there are no leases, license agreements, or other agreements for the occupancy of the Property. The Leases made available to County pursuant to this Agreement are true, correct and complete in all material respects. Seller, to Seller's actual knowledge is not in default in its obligations under a Lease. To Seller's actual knowledge: (1) no rent has been paid by any occupant or tenant more than one month in advance, (2) except as set forth on in the Due Diligence Materials, there are no concessions, bonuses, free month's rental, rebates or other matters affecting the future rent under any Lease, and (3) there are no outstanding notices to quit or other eviction proceedings with respect to any tenant under a Lease. No finder's fee or other compensation will be due or payable with respect to any of the leases after the Closing. No commitments have been made to any tenant for repairs or improvements, other than a general landlord requirement for normal maintenance in the future.

(xii) Except for the Contracts, and any information disclosed to County in writing prior to the expiration of the Due Diligence Period, there are no service or maintenance agreements affecting the Real Property

(xiii) Except as disclosed in the Due Diligence Materials, there are no other agreements for the sale, exchange, or transfer of the Property, or any portion thereof, or the business operated thereon.

(xiv) Seller has not received written notice from any Governmental Authority of any pending condemnation action against any of the Real Property.

(xv) To Seller's actual knowledge, there are no Hazardous Substances present at, on, in, under or about the Real Property (including, without limitation, the air, land, soil, surface water, and ground water); there has not been any generation, transportation, storage, treatment, or disposal of any Hazardous Substance at, the Real Property, or within one-half mile thereof, or any migration of Hazardous Substances to or from the Real Property, now or in the past; there is no pending or threatened litigation in which any person or entity alleges, or threatens to allege, the presence, release, threat of release, placement at, on, in, under or about, or migration from or to, the Real Property, or the generation, transportation, storage, treatment, or disposal on the Real Property, of any Hazardous Substance; Seller has not received any notice of and has no actual knowledge that any Governmental Authority or any employee or agent thereof has determined or alleged, or is investigating the possibility, that there is the presence, release, threat of release, placement at, on, in, under or about, the Real Property, or the generation, transportation, storage, treatment, or disposal on the Real Property, of any Hazardous Substance; Seller has no actual knowledge of any communications or agreements with any Governmental Authority or agency (federal, state, or local) or any private person or entity (including, without limitation, any prior owner of the Real Property or any present or former occupant of the Real Property) relating in any way to the presence, release, threat of release, placement at, on, in, under or about, or migration from or to, the Real Property, or the generation, transportation, storage, treatment, or disposal at, on, in, under or about, the Real Property, of any Hazardous Substance.

"Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to the safety, welfare and protection of human health or the environment or any natural resource, relating to any Hazardous Substances, relating to liability for or costs of other actual or threatened danger to the safety, welfare or human health or the environment or any natural resource and includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations adopted and publications promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (as amended, including, but not limited to, the Superfund Amendments and Reauthorization Act of 1986, "**CERCLA**"), 42 U.S.C. §9601 et seq; the Emergency Planning and Community Right-to-Know Act of 1986; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801 et seq; the Resource Conservation and Recovery Act, as amended (including, but not limited to, Subtitle I relating to underground storage tanks), 42 U.S.C. §6901 et seq; the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq.; the California Hazardous Waste Control Law, California Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, California Health & Safety Code Section 25300 et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 et seq.; the California Air Resources Law, California Health and Safety Code Section 39000 et seq.; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term **"Environmental Law"** also includes, but is not limited to, any present and future federal, state and local laws, statutes ordinances, rules, regulations and the like, as well as common law conditioning transfer of property upon a negative declaration or other approval of a

Governmental Authority of the environmental condition of the Property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any Governmental Authority or other Person, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

"Hazardous Substances" shall mean all chemicals materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, that because of the physical, chemical, or other characteristics may pose a risk of endangering human health or safety or of degrading the environment and are regulated under any Environmental Law, including not limited to: petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, lead based paint, radon, radioactive materials, mold, flammables and explosives, infectious substances or any other substances or materials now or hereafter regulated by any Environmental Law.

(xvi) To Seller's actual knowledge, Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 23, 2001) (the **"Order"**) and other similar requirements contained in the rules and regulations of the office of Foreign Assets Control, Department of the Treasury (**"OFAC"**) and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the **"Orders"**).

(xvii) Neither Seller, nor to Seller's actual knowledge, any beneficial owner of Seller (a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the **"Lists"**) or (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (c) is owned or controlled by, or acts for or on behalf of, any person on the Lists or any other person who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

(xviii) By providing copies of the Due Diligence Materials to County, Seller has provided or made available to County all due diligence materials that materially affect the Property and that were in Seller's possession or control, including but not limited to all soils reports, reports pertaining to hazardous materials or other environmental conditions, government permits, licenses, approvals and significant correspondence with any Governmental Authority, architectural and civil or structural engineering documents, and other studies, reports and information that relate to the Property.

As used herein, the term **"Seller's actual knowledge"** means the current, actual and personal knowledge of all current officers, in his or her capacity as an officer of Seller and does not include knowledge imputed to Seller from any other person or entity. The named individual is acting for and on behalf of Seller and in a capacity as an officer or employee of Seller or one or more of Seller's affiliates and is in no manner expressly or impliedly making any representations or warranties in an individual capacity. County waives any right to sue or to seek any personal judgment or claim against the named individual.

Except for the representations and warranties of Seller set forth in Sections 8(a)(i), 8(a)(ii), 8(a)(iii), and 8(a)(iv), which shall survive indefinitely, the representations and warranties of Seller set forth in this Section 8(a) shall survive the Closing for a period of twelve (12) months following the Closing Date (the "**Survival Period**").

(b) **County Representations and Warranties.** County warrants and represents to Seller, as of the Effective Date and again as of the Closing Date, as follows:

(i) County is a political subdivision of the State of California.

(ii) County has the full power and authority to enter into and comply with the terms of this Agreement and has, or at Closing will have, obtained all necessary consents and approvals required for County to enter into and consummate the transaction described in this Agreement.

(iii) This Agreement, and all instruments referenced herein to be executed by County in connection with the transaction described in this Agreement, are, or at the time of Closing will be, duly authorized, executed and delivered by County, and are, or at Closing will be, legal, valid and binding obligations of County and do not, and at the time of Closing will not, violate any provisions of any agreement or judicial order to which County is a party or to which County is subject.

(iv) The execution and delivery of this Agreement, and consummation of the transaction described in this Agreement, will not, to County's actual knowledge, constitute a default under any contract or agreement to which County is a party.

As used herein, the term "**County's actual knowledge**" means the current, actual and personal knowledge of (and only of) all current officers, in his or her capacity as an officer of County, and does not include knowledge imputed to County from any other person or entity. The named individual is acting for and on behalf of County and in a capacity as an employee of County and is in no manner expressly or impliedly making any representations or warranties in an individual capacity. Seller waives any right to sue or to seek any personal judgment or claim against the named individual.

Except for the representations and warranties of County set forth in Sections 8(b)(i), 8(b)(ii) and 8(b)(iii), which shall survive indefinitely, the representations and warranties of County set forth in this Section 8(b) shall survive the Closing for the Survival Period.

(c) **Remade on Closing Date.** The representations and warranties of County and Seller set forth in this Agreement shall be true, accurate and correct upon the execution of this Agreement, and shall be deemed to be re-made on and as of the Closing Date (except as they relate only to an earlier date).

(9) Rights and Remedies Upon Default.

(a) **Seller's Remedies Upon Default of County.** If the Closing does not occur because of a default under or breach of this Agreement on the part of County, Seller may terminate this Agreement, in which case neither Party shall have any further right or obligation hereunder other than the Surviving Obligations, Title Company shall return the entirety of the Deposit to the County, and thereupon, Seller shall have all rights and remedies at law or in equity, including, without limitation, the right to seek damages (except for any punitive,

speculative or special damages). Notwithstanding the foregoing or any language to the contrary contained within this Agreement, this Agreement is contingent on the County being awarded grant funds, and failure of the County to be awarded grant funds to purchase the Real Property shall not be a default under or breach of this Agreement, and Seller agrees that it shall not make any claims for monetary damages against County for termination of this Agreement for failure to procure grant funds required to purchase the Real Property.

(b) **County's Remedies Upon Default of Seller.** If the Closing does not occur because of a default under or breach of this Agreement on the part of Seller, County may: (i) terminate this Agreement, in which case neither Party shall have any further right or obligation hereunder other than the Surviving Obligations, and thereupon, County shall have all rights and remedies at law or in equity, including, without limitation, the right to seek damages (except for any punitive, speculative or special damages); or (ii) pursue the remedy of specific performance of Seller's obligations to proceed to Closing under Section 6. Seller acknowledges the unique and special character of the Property and its utility to County and agrees that specific performance is an appropriate remedy for Seller's default under this Agreement. The foregoing options are mutually exclusive and are the exclusive rights and remedies available to County at law or in equity in the event the sale of the Property is not consummated because of Seller's default under or breach of this Agreement. In any event, should the sale of the Property not be consummated because of Seller's default under or breach of this Agreement, Title Company shall return the entirety of the Deposit to the County.

(10) Risk of Loss; Eminent Domain.

(a) **Damage.** County and Seller each waive the provisions of any applicable law (including, without limitation, the Uniform Vendor and Purchaser Risk Act, as enacted in California (Cal. Civil Code § 1662)) that would render this Agreement unenforceable, or provide for any reduction in, or credit toward, the Purchase Price, in the event any of the Property is damaged or destroyed prior to the Closing.

(i) If prior to the Closing, the Real Property or any part thereof, is damaged, and such damage shall cost in excess of Fifty Thousand Dollars (\$50,000.00) to repair, County has the right, exercisable by giving written notice to Seller within ten (10) Business Days after receiving written notice of such damage or destruction (but in no event later than one (1) Business Day prior to the Closing), either to (a) terminate this Agreement, or (b) accept the Property in its then-current condition and to proceed with the Closing, without any abatement or reduction in the Purchase Price, and receive an assignment of all of Seller's right to any insurance proceeds payable by reason of such damage or destruction. In the event any damage occurs costing less than Fifty Thousand Dollars (\$50,000.00) to repair, if the Closing occurs, County shall receive an assignment of any insurance proceeds payable by reason of such damage or destruction.

(ii) Notwithstanding anything to the contrary in the foregoing, if, prior to the Closing any damage to the Real Property occurs as the result of a release of Hazardous Substances to, on, under or in the Property (by a party other than County or a County's Representative), County shall have the option to terminate this Agreement upon written notice to Seller given not later than twenty (20) Business Days after County's receipt of written notice thereof from Seller.

(iii) In the event that this Agreement is terminated in accordance with this Section 10(a), then this Agreement and the obligations of the Parties hereunder shall

terminate (other than the Surviving Obligations), and neither party shall have any further right or obligation hereunder other than the Surviving Obligations.

(b) **Taking**. If prior to the Closing, all or any significant portion of the Property is subject to a taking by any public authority, County has the right, exercisable by giving written notice to Seller within ten (10) Business Days after receiving written notice of such taking (but in any event no later than one (1) Business Day prior to the Closing), at County's sole and absolute discretion, either to (i) terminate this Agreement, in which case neither Party shall have any further rights or obligations under this Agreement, except for the Surviving Obligations, or (ii) proceed to consummate the transaction provided for by this Agreement, in which event Seller shall assign and turn over, and County shall be entitled to receive and keep, any and all awards made or to be made in connection with the condemnation or eminent domain, and this Agreement shall remain in effect without any reduction in the Purchase Price. A failure by County to notify Seller in writing within such ten (10) Business Day period shall be deemed County's election to proceed under clause (i) above, and this Agreement and the obligations of the Parties hereunder shall terminate (other than the Surviving Obligations), and neither party shall have any further right or obligation hereunder other than the Surviving Obligations. If County elects to proceed under clause (ii) above, Seller shall not compromise, settle, or adjust any claims to such award without County's prior written consent. As used in this Section 10, "**taking**" means any transfer of the Property or any portion thereof to a Governmental Authority or other party (other than a Party) with appropriate authority, by exercise of the power of eminent domain. Seller shall give County written notice of any taking, threatened taking (provided in writing), damage or destruction of the Property promptly after Seller obtains knowledge thereof.

(11) **Termination**. If Closing does not occur on or before 11:59 pm Pacific time November 30, 2020, unless otherwise extended in writing by County, at its sole and absolute discretion, for up-to an additional 120-days, this Agreement shall automatically terminate.

(12) **Binding Effect**. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by, the Parties and their respective successors and permitted assigns.

(13) **Governing Law**. This Agreement shall be governed by and construed under and in accordance with the laws of the State of California. Any litigation with respect to this Agreement shall be conducted in the County of Mendocino, California.

(14) **Time of Essence**. Time shall be deemed of the essence with respect to consummating the transactions contemplated under this Agreement on the Closing Date and with respect to all other obligations of County and Seller hereunder.

(15) **Counterparts**. This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which shall constitute one and the same Agreement.

(16) **Waiver**. Except as otherwise provided herein, the failure of Seller or County to insist upon or enforce any of their respective rights hereunder shall not constitute a waiver thereof.

(17) **Construction.** Each Party acknowledges that the Parties have participated equally in the drafting of this Agreement and that accordingly, no court construing this Agreement shall construe it more stringently against one party than the other.

(18) **Headings.** The captions used herein have been included for convenience of reference only and shall not be deemed to vary the content of this Agreement or limit the provisions or scope of any section or paragraph hereof.

(19) **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but in the event that any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(20) **Broker.** The Parties hereby warrant that they have dealt with no real estate broker in this transaction and that no broker or other person is entitled to any commission, finder's fee or other similar compensation by virtue of the Parties entering into or consummating this Agreement. Each Party hereby defends and indemnifies the other Party against any claims, losses, liability and damages, including reasonable attorneys' fees and costs, in connection with any commissions, finders' fees or other similar compensation sought, based upon some obligation of the indemnifying Party with respect to this transaction. This Section 20 shall survive the Closing.

(21) **Assignment.** This Agreement shall not be assigned by County without the prior written consent of Seller. Notwithstanding the foregoing, County may assign this Agreement to an affiliate of County without Seller's consent. Any permitted assignee shall succeed to all of County's rights and remedies hereunder and no such assignment shall relieve County from its liability under this Agreement.

(22) **Merger.** All prior statements, understandings, letters of intent, representations and agreements between the Parties, oral or written, are superseded by and merged in this Agreement, which alone fully and completely expresses the agreement between Seller and County in connection with this transaction and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement.

(23) **Meanings of Words Not Specifically Defined/General Rules of Interpretation.** Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in this Agreement, are to be construed according to such technical, peculiar, and appropriate meaning or definition. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. As used in this Agreement, the word "includes or "including" means including without limitation, the word "or" is not exclusive and the words "herein," "hereof," "hereto" and hereunder refer to this Agreement as a whole unless the context otherwise requires, and references herein: (a) to articles, paragraphs, sections and exhibits mean the articles, paragraphs, sections and exhibits which are part of this Agreement as amended, supplemented or modified from time to time to the extent permitted by the provisions thereof and by this Agreement, (b) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented or modified from time

to time to the extent permitted by the provisions thereof and by this Agreement, and (c) to a statute means such statute as amended, supplemented or replaced from time to time. The exhibits, schedules, addenda, and attachments which are attached to this Agreement are made a part of this Agreement.

(24) Date of Performance. If the date of the performance of any term, provision or condition of this Agreement shall happen to fall on a Saturday, Sunday or other non-Business Day, the date for the performance of such term, provision or condition shall be extended to the next succeeding Business Day immediately thereafter occurring.

(25) Third Parties. This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the Parties intending by the provisions hereof to confer no such benefits or status.

(26) Acceptance of the Deed. The delivery by Seller of the Deed into Escrow, and the recording thereof by the Title Company in accordance with the terms and conditions of this Agreement, shall be deemed to be the full performance and discharge of every agreement, obligation, and covenant, guaranty, representation, or warranty on the part of Seller and County, respectively, to be performed pursuant to the provisions of this Agreement in respect of the Property, except for the Surviving Obligations. Certain provisions of this Agreement, as expressly provided herein, shall survive Closing or termination. This Section 26 shall survive the Closing.

(27) Notices. All notices, elections, consents, approvals, demands, objections, requests or other communications which Seller or County may be required or desire to give pursuant to, under or by virtue of this Agreement (collectively, "**Notices**") must be in writing and sent by (a) personal delivery, (b) registered or certified mail, return receipt requested, with postage prepaid, or (c) nationally recognized overnight courier service that provides receipted delivery service, delivery charges prepaid, addressed to the respective party at the address for each set forth below. Notices shall be deemed received upon the earlier of (a) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, or (b) if mailed, on the date of delivery as shown on the sender's registry or certification receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the Notice. Seller or County may designate another addressee or change its address for notices and other communications hereunder by a notice given to the other in the manner provided in this Section 26.

To County: County of Mendocino
Attn: Janelle Rau, Deputy CEO
501 Low Gap Road, Room 1010
Ukiah, CA 95482
E-mail: rauja@mendocinocounty.org

To Orchard Inn, LLC
Seller: Attn: Mitesh Jivan
555 South Orchard Avenue
Ukiah, CA 95482
m6ukiah@gmail.com

(28) No Modification. This Agreement constitute the entire agreement between the Parties with respect to the transactions contemplated hereby and supersedes all prior understandings or agreements between the Parties as to the subject matter hereof. No term or provision of this Agreement may be changed or waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or termination is sought.

(29) Rights of Title Company. If there is any dispute as to whether the Title Company is obligated to deliver any monies and/or documents which it now or hereafter holds (collectively, the "**Escrowed Property**") or as to whom any Escrowed Property are to be delivered, the Title Company shall not be obligated to make any delivery, but, in such event, may hold same until receipt by the Title Company of an authorization, in writing, signed by all of the parties having an interest in such dispute directing the disposition of same; or, in the absence of such authorization, the Title Company may hold any Escrowed Property until the final determination of the rights of the parties in an appropriate proceeding. Within three (3) Business Days after receipt by the Title Company of a copy of a final judgment or order of a court of competent jurisdiction, certified by the clerk of such court or other appropriate official, the Escrowed Property shall be delivered as set forth in such judgment or order. A judgment or order under this Agreement shall not be deemed to be final until the time within which to take an appeal therefrom has expired and no appeal has been taken, or until the entry of a judgment or order from which no appeal may be taken. If such written authorization is not given or proceeding for such determination is not begun and diligently continued, the Title Company shall have the right to bring an appropriate action or proceeding for leave to deposit the Escrowed Property in court, pending such determination. In the event that the Title Company places any Escrowed Property in the registry of the governing court in and for Mendocino County, California and files an action of, interpleader, naming the Parties, the Title Company shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. If, without gross negligence on the part of the Title Company, the Title Company shall become a party to any controversy or litigation with respect to the Escrowed Property or any other matter respecting this Agreement, Seller and County shall jointly and severally hold Title Company harmless from any damages or losses incurred by Title Company by reason of or in connection with such controversy or litigation. The provisions of this Section 29 shall survive the Closing or termination of this Agreement.

(30) Solicitation of Consideration. It is improper for any County officer, employee or agent to solicit consideration in any form from Seller with the implication, suggestion or statement that Seller's provision of the consideration may secure more favorable treatment for Seller in the award of this Agreement or that Seller's failure to provide such consideration may negatively affect the County's consideration of the Seller's offer to sell the Property. Seller shall not offer or give, either directly or through an intermediary, consideration in any form to a County officer, employee or agent who has had any involvement in the negotiation, consummation or administration/management of this Agreement. Seller shall immediately report any attempt by a County officer, employee or agent to solicit such improper consideration. The report shall be made either to the County Manager charged with the supervision of the employee. Failure to report such solicitation may result in the Seller's submission being eliminated from consideration.

(31) No Offer or Binding Contract. The Parties agree that the submission of an unexecuted copy or counterpart of this Agreement by one party to another is not intended by either party to be, or be deemed to be a legally binding contract or an offer to enter into a

legally binding contract. The Parties shall be legally bound pursuant to the terms of this Agreement only if and when the Parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the Parties in their respective sole discretion, and both Seller and County have fully executed and delivered this Agreement.

(32) Tax Deferred Exchange. The Parties hereby acknowledge that it is the intent of the Seller to structure its sale as a tax deferred exchange under Internal Revenue Code ("IRC") section 1031, as amended. The Seller's rights under this Agreement may be assigned to Legal 1031 Exchange Services, Inc, a qualified intermediary for IRC section 1031 tax deferred exchanges. County agrees to cooperate with the Seller in connection with such exchange, including the execution of such documents as maybe reasonably necessary to complete the exchange; provided, that: (a) Seller covenants that structuring its sale as a tax deferred exchange shall not delay the close of escrow; (b) Seller shall bear any additional costs in connection with the exchange and County shall have no additional expenses; (c) County will not be obligated to execute any note, contract, deed or other document providing for any personal liability which would survive the exchange; and (d) County will not take title to any property other than the property described in this Agreement. County will be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the exchange.

[Signatures on following page]

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

Janelle Ramey 10/13/2020

DEPARTMENT HEAD DATE

Budgeted: ☐ Yes ☐ No

Budget Unit: DR2910

Line Item: 862239

Grant: ☒ Yes ☐ No

Grant No.: Project Homekey

SELLER

By: [Signature]

Date: 10/13/2020

NAME AND ADDRESS OF CONTRACTOR:

Orchard Inn LLC

555 South Orchard Ave

Ukiah, CA 95482

COUNTY OF MENDOCINO

By: JOHN HASCHAK, Chair
BOARD OF SUPERVISORS

Date: _____

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By: Matthew Kiedrowski
Deputy

Date: 10/13/2020

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management
10/13/2020

Date: _____

EXECUTIVE OFFICE/FISCAL REVIEW:

By: Darcie Antle
Deputy CEO
10/13/2020

Date: _____

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed ☐ _____
Mendocino County Business License: Valid ☐ _____
Exempt Pursuant to MCC Section: _____

ACCEPTANCE BY TITLE COMPANY

The undersigned hereby accepts the duties of Title Company, as escrow agent and as title agent, under that certain Agreement of Purchase and Sale between Orchard Inn, LLC, as Seller, and the County of Mendocino, as County, dated _____, 2020, and relating to the property located at 555 S. Orchard Avenue, Ukiah, California, as more particularly described in said Agreement, subject to and in accordance with all the terms and conditions thereof.

Dated _____, 2020

By: _____
Its Duly Authorized Representative

LIST OF EXHIBITS

Exhibit A	Legal Description of the Land
Exhibit B	Contracts
Exhibit C	Leases
Exhibit D	Grant Deed
Exhibit E	Bill of Sale
Exhibit F	General Assignment
Exhibit G	FIRPTA
Exhibit H	Owner's Affidavit

Exhibit A

LEGAL DESCRIPTION OF THE LAND

The land situated in the State of California, County of Mendocino, City of Ukiah and is described as follows:

Tract One:

Lot A2, as numbered and designated upon the Parcel Map of Minor Subdivisions 91-26 and 91-29, filed for record September 4, 1991 in Map Case 2, Drawer 54, Pages 14 and 15, Mendocino County Records.

APN: 002-340-39

Tract Two:

A non-exclusive easement as an appurtenance to Tract One above for access purposes over those portions of Lot A1, Lots B1, and B2 designated "Non-exclusive access easement for common use by and between all parcels shown hereon of MS 91-26 and MS 91-29" as shown upon the Parcel Map filed for record September 4, 1991 in Map Case 2, Drawer 54, Pages 14 and 15, Mendocino County Records.

EXHIBIT B

CONTRACTS

ALSCO (LINEN DELIVERY SERVICE)

DISH TV SERVICE (CAN BE TRANSFERRED)

AT&T PHONE SERVICE (CAN BE TRANSFERRED)

CANTEEN SERVICES (CANCELLABLE ANYTIME)

Exhibit C

LEASES

[None]

Exhibit D

FORM OF GRANT DEED

**RECORDING REQUESTED BY
COUNTY OF MENDOCINO**

WHEN RECORDED MAIL TO:

County of Mendocino
501 Low Gap Road, Room 1010
Ukiah, CA 95482
Attention: Janelle Rau

Space above this line for Recorders use

THE UNDERSIGNED GRANTOR DECLARES: DOCUMENTARY TRANSFER TAX IS \$0.00; COUNTY OF MENDOCINO, STATE OF CALIFORNIA; GOVERNMENTAL AGENCY ACQUIRING TITLE, R & T 11922.

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **ORCHARD INN, LLC ("Grantor")**, does hereby grant to the **COUNTY OF MENDOCINO**, a body corporate and politic ("**Grantee**"), all of Grantor's rights, title and interests to that certain real property located at 555 South Orchard Avenue, in the City of Ukiah, County of Mendocino, State of California, legally described on Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**"), together with all improvements thereon and appurtenances thereto.

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of the ____ day of _____, 2020.

"Grantor"

_____,
a _____

By: _____
Name: _____
Title: _____

[Attach Acknowledgements]

Exhibit A to Grant Deed

LEGAL DESCRIPTION OF THE PROPERTY

The land situated in the State of California, County of Mendocino, City of Ukiah and is described as follows:

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Exhibit E

Form of Bill of Sale

THIS BILL OF SALE (this "**Bill of Sale**") is made as of _____, by and between Orchard Inn, LLC ("**Seller**"), and County of Mendocino, a political subdivision of the State of California ("**County**").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby quitclaim, remise, release, sell, and deliver to County, pursuant to that certain Agreement of Purchase and Sale dated as of _____, between Seller and County (the "**Agreement**"), all of Seller's right, title and interest, if any, in and to all (collectively, the "**Personal Property**") personal property, machinery, equipment, and fixtures (if any) located on and used in connection with the ownership and operation of, or otherwise relating to, the real property located in the City of Ukiah, County of Mendocino, State of California, as more particularly described on Exhibit A attached hereto (the "**Real Property**"). An illustrative list of Personal Property is provided on Exhibit B attached hereto, but this Bill of Sale shall be construed as conveying all Personal Property that was used as part of the operations of the Real Property subject to this sale that would naturally be a part of operating a transient occupancy facility, less items specifically branded with a trademark or provided to Seller under a franchise agreement. The Personal Property, is conveyed to County free and clear of all liens, claims, and encumbrances, and accepted by, County in its "AS IS" condition, with no warranties or representations, as further set forth in the Agreement. The Agreement is incorporated herein and by this reference made a part hereof.

[SIGNATURES ON NEXT PAGE]

SELLER:

ORCHARD INN, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

BUYER:

COUNTY OF MENDOCINO,
a political subdivision of the State of California

By: _____

Name: _____

Title: _____

Exhibit A (to Exhibit E)

Exhibit E

Legal Description of the Real Property

The land situated in the State of California, County of Mendocino, City of Ukiah and is described as follows:

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APN: 002-340-39

Tract Two:

A non-exclusive easement as an appurtenance to Tract One above for access purposes over those portions of Lot A1, Lots B1, and B2 designated "Non-exclusive access easement for common use by and between all parcels shown hereon of MS 91-26 and MS 91-29" as shown upon the Parcel Map filed for record September 4, 1991 in Map Case 2, Drawer 54, Pages 14 and 15, Mendocino County Records.

Exhibit B (to Exhibit E)

Personal Property

Furnishings, fixtures and equipment in common areas and guest rooms, including but not limited to tables, chairs, light fixtures, beds, dressers, nightstands and artwork.

Appliances in guest rooms, including refrigerators and microwaves.

Electronics in common areas and guest rooms, including televisions, telephones and clocks.

Camera security system.

Hotel room keys and any electronic key card machine.

Clothes washers and dryers.

Towels and linens to the extent owned by the Seller.

Swimming pool related equipment.

EXHIBIT F

FORM OF GENERAL ASSIGNMENT

ASSIGNMENT AND ASSUMPTION

THIS ASSIGNMENT AND ASSUMPTION (this "**Assignment**") is made as of this day of _____, 2020, by and between _____ ("**Assignor**") and COUNTY OF MENDOCINO, a political subdivision of the State of California ("**Assignee**").

RECITALS

A. Assignor and Assignee have entered into that certain Agreement of Purchase and Sale dated _____ (the "**Purchase Agreement**"), for the purchase and sale of certain real property more particularly described on Schedule 1 hereto (the "**Real Property**"); and

B. This Assignment is being made pursuant to the terms of the Purchase Agreement for the purpose of assigning to Assignee all of Assignor's rights, title and interest in and to the Leases (defined below), the Contracts (defined below) and the Intangible Personal Property (defined below).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor hereby grants, conveys, transfers, and assigns to Assignee all of Assignor's right, title, and interest in and to the following:

(a) All leases, license agreements, and other agreements for occupancy of the Real Property identified on Schedule 2 attached hereto (the "**Leases**"); provided, however, that Assignor hereby retains all contract rights under the Leases that accrued prior to the transfer of the Real Property to Assignee, including without limitation, any and all rights and causes of action to recover past-due rent or other charges due under the Leases;

(b) All service agreements, maintenance agreements, and other contracts listed on Schedule 3 attached hereto (the "**Contracts**"); and

(c) any and all intangible property used and necessary in connection with the Real Property, including, without limitation, surveys, reports, plans and specifications, contract rights, warranties, guaranties, licenses, permits, entitlements, governmental approvals and certificates of occupancy (if any) that benefit the Real Property (collectively, the "**Intangible Property**").

2. Assignee hereby assumes and agrees to perform (or cause to be performed) all of Assignor's obligations under the Leases and Contracts.

3. This Assignment shall be binding on and inure to the benefit of the parties herein, their successors-in-interest and assigns.

4. This Assignment shall be governed by and construed in accordance with the laws of the State of California without reference to choice of law principles, which might indicate that the law of some other jurisdiction should apply.

5. Nothing contained herein shall be deemed or construed as relieving the Assignor or Assignee of their respective duties and obligations under the Purchase Agreement. In addition, it is expressly understood and agreed by and between the parties hereto that any liability of Assignor hereunder shall be limited as set forth in the Purchase Agreement.

6. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, and all of which shall constitute one and the same instrument as if all parties had signed the same signature page.

*[Remainder of page intentionally left blank,
signatures commence on following page]*

IN WITNESS WHEREOF, this Assignment is made as of the day and year first
above written.

ASSIGNOR:

ORCHARD INN, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

COUNTY OF MENDOCINO,
a political subdivision of the State of California

By: _____
Name: _____
Title: _____

SCHEDULE 1

LEGAL DESCRIPTION OF THE REAL PROPERTY

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SCHEDULE 2

LEASES

[None]

SCHEDULE 3

CONTRACTS

ALSCO (LINEN DELIVERY SERVICE)

DISH TV SERVICE (CAN BE TRANSFERRED)

AT&T PHONE SERVICE (CAN BE TRANSFERRED)

CANTEEN SERVICES (CANCELLABLE ANYTIME)

EXHIBIT G

CERTIFICATE OF NON-FOREIGN STATUS

Section 1445 of the United States Internal Revenue Code (the "Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity that has legal title to a U.S. real property interest under local law, and not the disregarded entity itself, is treated as the transferor of the property. _____ ("Seller") is conveying certain U.S. real property rights to the County of Mendocino, a political subdivision of the State of California ("Transferee"). Seller is owned one hundred percent (100%), either directly or indirectly, by _____ ("Transferor"). To inform Transferee that withholding of tax will not be required upon the transfer of a U.S. real property interest to Transferee by Seller, Transferor hereby certifies to Transferee the following:

1. Seller is a disregarded entity and Transferor is not a disregarded entity (each as such term is defined in Section 1.1445-2(b)(2)(iii) of the Income Tax Regulations promulgated thereunder).

2. Transferor is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as these terms are defined in the Code and the Income Tax Regulations promulgated thereunder).

3. Transferor's United States employer identification number is: _____.

4. Transferor's office address is: _____.

[Signature page follows.]

Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct and complete.

Dated as of: _____, 20__

TRANSFEROR:

By: _____

Name: _____

Title: _____

EXHIBIT H

FORM OF OWNER'S AFFIDAVIT

Mendocino County, California

Order/File No. _____

That certain real property described on Exhibit "A" attached hereto (the "**Land**")

OWNER'S AFFIDAVIT

The undersigned (hereafter "**Owner**") does hereby state that the following facts and statements are true and correct to its actual knowledge:

1. That the person executing this Affidavit is fully authorized and qualified to make this Affidavit on Owner's behalf.

2. That during the period of one hundred eighty (180) days immediately preceding the date of this Affidavit, neither Owner nor its agents has caused any work to be done or any materials to be furnished in connection with the erection, repair, or removal of any building or other structure on the Land or in connection with the improvement of the Land, which has not been paid for in full prior to the close of escrow.

3. The following are all of the persons or entities having leases or other occupancy rights affecting the Land or are tenants under leases with rights of possession only: NONE.

4. The undersigned has not entered into any unrecorded sale contracts, deeds, mortgages, rights of first refusal or purchase options affecting the Land or improvements thereon, which are presently in effect and will survive the transfer to the County of Mendocino, a political subdivision of the State of California ("**County**"), except as set forth in that certain preliminary title report (with an effective date of _____, 2020) (the "**Title Commitment**") and the purchase agreement with County.

5. In order to effectuate a New York style closing, Owner will not voluntarily create any defect, lien, encumbrance, adverse claim, or other matter (each a "**Title Defect**") being filed or recorded against the Land between the effective date of the last date down of the Title Commitment and the date of recording of the Grant Deed pursuant to which County acquires the Land (the "**Gap Period**"). In consideration of the Company (as defined below) issuing its policy or policies of title insurance, without an exception on Schedule B thereof for any Title Defect arising or being recorded during the Gap Period, Owner hereby agrees to promptly defend, remove, bond, or otherwise dispose of any Title Defect arising or recorded during the Gap Period, and to indemnify and hold harmless the Company against actual loss or damage, including attorneys' fees, which the Company may sustain under its policy or policies of title insurance by reason of such Title Defect; provided that the liability of Owner under this Section 5 shall cease six (6) weeks after the date of the above described policy or policies of title insurance.

This Affidavit is made with the intention that Redwood Empire Title Company (the "**Company**") and its policy issuing agents will rely upon it in issuing their title insurance policies and endorsements. Any statement "to the undersigned's knowledge" (or similar phrase) shall mean the present actual knowledge (excluding constructive, implied or imputed knowledge) of

[_____] , who is familiar with the facts and circumstances regarding the undersigned's use and possession of the Land (but such individual shall not have any liability in connection herewith). Notwithstanding anything to the contrary herein, any cause of action for a breach of this Affidavit shall survive, until any obligations under a title policy issued by the Company in reliance of this Affidavit have terminated pursuant to the terms of such policies at which time this Affidavit shall terminate; provided, however, that in no event shall Owner be liable under this Affidavit for any loss or damage arising out of any actions taken by, or at the direction of County or any of County's affiliates, agents, invitees or licensees.

[Signature Page Immediately Follows]

Owner declares under penalty of perjury that the foregoing is true and correct to its actual knowledge.

Dated this ____ day of _____, 2020.

"Owner":

_____,

By:

Name: _____

Its: _____

EXHIBIT "A" TO OWNER'S AFFIDAVIT

Description of Land

The land situated in the State of California, County of Mendocino, City of Ukiah and is described as follows:

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