STAFF REPORT

MEETING
DATE: September 23, 2014

TO: City Council

FROM: Michael Frank, City Manager
Scott Ward, Director of Hamilton Base Reuse

SUBJECT: HAMILTON HOSPITAL AGREEMENT OF PURCHASE AND SALE

REQUEST

Consider adopting a resolution authorizing the City Manager to execute an Agreement of Purchase and Sale with Avesta Development Group LLC for the sale of the Hamilton Hospital Property, APN 157-690-52.

RECOMMENDATION:

Adopt Resolution.

BACKGROUND

Per direction from City Council provided on June 4, 2014, Staff has negotiated an Agreement of Purchase and Sale (“Agreement”) with Avesta Development Group, LLC (“Buyer”) for approximately 3.4 acres of land (“Property”) for $1,750,000 or more, depending on the number of housing units eventually entitled (see attached Agreement of Purchase and Sale).

CONSIDERATIONS

1) Offer: $2 million, plus $30k/unit if more than 80 units are entitled, less any in-lieu Below Market Rate (BMR) housing fees. If fewer than 80 units are entitled, the purchase price would be reduced by $25k/unit, with a floor of $1.75M. There is no ceiling on the purchase price.

2) Buyer: The Buyer is a real estate investment and development group based in the Bay Area with extensive experience in the development of high-end resort and residential projects.

3) Proposal: The Buyer hopes to build a combined residential care facility for the elderly ("RCFE") and skilled nursing facility for memory care (dementia and Alzheimer's patients). Approximately 50 assisted-living units and 30 memory-care units are anticipated.

4) Deposit: A deposit of $50,000 will be paid by the Buyer and will become non-refundable 90 days
after execution of the Agreement.

5) Closing: Close of Escrow must occur within 30 days from the end of the Entitlement Period, extensible to 90 days if needed. The Entitlement Period expires on the earlier of (i) the issuance of all Project Approvals and the expiration of all applicable appeal periods and statutes of limitations or (ii) 18 months after the Effective Date. The Buyer may extend the Entitlement Period for up to four periods of six months each in exchange for making an Additional Extension Deposit of $25k per extension.

6) General Plan & Zoning: The General Plan designates the Property as Mixed-Use (MU) and with a small amount of Parkland (P). Establishment of an RCFE and skilled nursing facility is considered to be an acceptable mix of residential and commercial uses under the MU land use designation.

The Property is zoned Planned District (PD) and is subject to the Hamilton Reuse Plan, which assigns the following land use designations to the Property: Neighborhood Commercial (NC), Visitor-Serving Commercial (VC), and Parkland (P). The NC and VC designations are inconsistent with the land use designations assigned by the General Plan. The proposed development would require that both plans be amended to include a mixed-use land use designation and assign the same to the entire Property. A precise development plan would be required to establish development standards and operational requirements.

Attachments
1. Agreement of Purchase and Sale
2. Draft Resolution
AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale ("Agreement") is dated as of ______________, 2014, for identification purposes only, and is entered into by and between Avesta Development Group, LLC, a California Limited Liability Company ("Buyer") and the City of Novato, a California general law city ("Seller" or "City"), who hereby agree as follows:

ARTICLE 1. GENERAL

1.01 The Purchase Property. Seller is the owner of the improved real property commonly known as the "Hamilton Hospital Property" located at 516 Hospital Drive in Novato, California, bearing APN 157-690-52 and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Real Property"); any and all fixtures, equipment, signage, machinery, and other personal property owned by Seller, if any, located on or about the Property and used in the operation and maintenance thereof (the "Tangible Personal Property"); Seller’s right, title and interest in and to any intangible personal property, to the extent it is transferable, which is related to the ownership or operation of the Property, including, without limitation any warranties, permits, licenses, certificates of occupancy, plans and specifications, engineering plans, subdivision maps, development rights and other entitlements and studies, floor plans and landscape plans ("Intangible Personal Property"); and all right, title and interest of Seller in and to any condemnation award or other awards now pending or made after the Close of Escrow (as defined in Section 3.02), by any municipal, county, state or federal authority or board, or any public agency, with respect to the Real Property, and any rights and privileges pertaining thereto (the "Awards") (with the Real Property, the Tangible Personal Property, the Intangible Personal Property and the Awards being hereafter from time to time collectively called the "Property"). Seller desires to sell and Buyer desires to buy the Property, on the terms and conditions set forth herein.

1.02 Seller’s Acquisition of Title. By Quitclaim Deed recorded on March 10, 2011, the Seller acquired its interest in the Property from the City of Novato Public Finance Authority, a joint powers authority, which had previously acquired its interest in the Property from the United States of America, acting by and through the Secretary of the Army, by Quitclaim Deed ("Army Quitclaim Deed") recorded in the official office of records, Marin County, on ______________, as document no. ______________. Buyer acknowledges that it has reviewed said Army Quitclaim Deed, understands its terms and conditions, and agrees that the sale of the Property to Buyer is subject to the Army Quitclaim Deed and Buyer shall comply with all of the obligations set forth in the Army Quitclaim Deed as though Buyer were the original Grantee of that Army Quitclaim Deed.

1.03 Intent of the Parties. The Buyer intends to purchase the Property for the purpose of constructing thereon a combined residential care facility for the elderly ("RCFE") and skilled nursing facility for persons with memory disabilities (e.g., dementia and Alzheimer’s disease). Buyer anticipates providing a mix of units, which may include assisted-living and memory-care units, at market rate prices and/or rents, with the makeup and numbers of such units to be set.
forth in Buyer’s application for the Project Approvals (as defined in Section 4.04(a)) (the “Project” or “Development”).

1.04 Effective Date. For purposes of this Agreement, the term “Effective Date” shall be the latter date that both Buyer and Seller have fully executed and initialed all appropriate provisions of this Agreement.

ARTICLE 2. PURCHASE AND SALE

2.01 Purchase and Sale. Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller on the terms and conditions specified in this Agreement.

2.02 Price. The purchase price for the Property (the “Purchase Price”) shall be two million dollars ($2,000,000.00). This Purchase Price shall be increased or decreased (as applicable) by the amounts set forth in sections 4.04(c)(ii), 4.04(d) and 4.06 of this Agreement.

2.03 Deposit.

(a) Within three (3) business days following the Effective Date of this Agreement, Buyer shall deposit with Escrow Holder (defined below), the sum of Fifty Thousand Dollars ($50,000.00), which sum shall be placed in an interest-bearing account, and such sum and the interest accrued on such amount prior to the release of such amount to Seller, or the return of such amount to Buyer, shall be referred to as the “Deposit.” Notwithstanding anything stated to the contrary in this Agreement, at 5:00 P.M. Pacific Time on the ninetieth (90th) day after the Effective Date, said Deposit shall become non-refundable, (i) unless prior to said ninetieth day, Buyer delivers written notice to the Seller disapproving any item or items of Due Diligence (as defined in Section 4.03 below) in accordance with the applicable provisions of this Agreement which said delivery entitles Buyer to terminate this Agreement and receive a refund of said Deposit; or (ii) unless prior to 5:00 P.M. Pacific Time on the last day of the Entitlement Period (as defined below), Buyer delivers written notice to the Seller disapproving of any Project Approvals (defined below) in accordance with the applicable provisions of this Agreement, and the delivery of such notice shall entitle Buyer to terminate this Agreement and receive a refund of said Deposit.

(b) In the event the Buyer extends the Entitlement Period pursuant to section 4.04(b), below, Buyer shall increase the Deposit by Twenty-Five Thousand Dollars ($25,000.00) by depositing such sum into escrow with Title Company each time that Buyer extends the Entitlement Period (with each such increase to the Deposit being hereafter called an “Approval Extension Deposits”). Payment of said additional amount shall be a condition precedent to the efficacy of any such extension. Any such increase shall become part of the Deposit, shall accrue interest on the account of Buyer and, along with the original Deposit, and shall be credited towards the Purchase Price; and the term “Deposit” shall mean the original Deposit, any and all Approval Extension Deposits, any and all Approval Extension Deposits (as defined in section 4.04(b) below), and all interest accrued thereon.
2.04 Instructions Regarding Deposit. If Escrow Holder requires further written instructions as a condition to releasing the Deposit to either Seller or Buyer as required or permitted under this Agreement, Seller and Buyer shall promptly execute (and deliver to Escrow Holder) such additional instructions as are reasonably required by Escrow Holder.

2.05 Payment. The balance of the Purchase Price after applying the Deposit amount described in section 2.03 above, plus or minus prorations and adjustments, shall be paid into escrow by federally wired “immediately available” funds on or before the Closing Date and shall be paid to Seller by the Escrow Holder in accordance with the terms of this Agreement and escrow instructions, the latter of which must be consistent with and not in conflict with this Agreement.

ARTICLE 3. ESCROW, TRANSFER OF TITLE/ASSIGNMENTS AND TITLE INSURANCE

3.01 Opening. The purchase and sale of the Property shall be consummated by means of an escrow opened by Buyer at Old Republic Title Company, 275 Battery Street, Suite 1500, San Francisco, CA 94111, Attn: David Phillips, Escrow Officer (telephone number: 415 3979 0500) (referred to herein as the “Escrow Holder” and as the “Title Company”). When appropriate, Buyer and Seller shall execute escrow instructions prepared and reasonably requested by Escrow Holder, which escrow instructions shall conform to the terms of this Agreement. If there is any conflict between the terms of this Agreement and the escrow instructions, the terms of this Agreement shall prevail.

3.02 Close of Escrow. Escrow shall close (the “Closing Date,” “Closing” or “Close of Escrow”) within thirty (30) days from the end of the Entitlement Period; provided, however, that Buyer shall have the right to from time to time extend the Closing Date for a total of up to ninety (90) days if needed in order to finalize and secure the financing for the Project, by giving written notice to Seller of Buyer’s election to do so prior to the then-scheduled Closing Date.

3.03 Costs and Prorations.

(a) Buyer and Seller shall pay in equal amounts: (i) the escrow fee; (ii) all recording fees; (iii) all costs of drawing the Quitclaim Deed (defined below); (iv) all notary fees; (v) any state, County or City documentary transfer and similar taxes imposed on the deed, and (vi) all other costs incurred by the Escrow Holder in order to close escrow under this Agreement.

(b) Buyer shall pay the premium for the CLTA Owner’s Title Policy. Buyer will also pay for the additional cost of obtaining an ALTA Extended Coverage policy if desired by Buyer and the cost of any survey necessary therefor, and any endorsements requested by Buyer.

(c) Each party shall pay its own attorneys’ fees. The parties shall share equally any other miscellaneous costs payable upon Close of Escrow that are not specifically allocated above.
(d) Real property taxes, special taxes, bonds and assessments allocable to the Property (including assessments imposed by any community facilities districts, community service districts, and other district financing, if any) (collectively “Taxes and Assessments”) shall be prorated between Buyer and Seller as of the Closing Date based on the latest available information. Seller shall pay all Taxes and Assessments to the extent (and only to the extent) applicable to the Property for the period prior to the Closing Date. Buyer shall be responsible for all Taxes and Assessments resulting from any supplemental assessments or reassessments resulting from the purchase of the Property by Buyer, or resulting from any improvement to the Property performed by Buyer before or after the Closing Date. All prorations shall be based on a thirty (30) day month and a three hundred sixty (360) day year.

3.04 Expense Prorations. Except as provided by this Agreement, Buyer shall be responsible for all expenses of the Property, including, but not necessarily limited to, expenses relating to and incurred during the Due Diligence and Entitlement Periods as set forth in the Agreement; provided, however, that notwithstanding the foregoing, Buyer shall not be required to pay for any costs of operating, maintaining, or repairing the Property prior to the Closing Date, except to the extent such costs were caused by Buyer’s Due Diligence activities.

3.05 Escrow Cancellation; Cancellation Charges. Upon any termination of this Agreement and the Escrow, each party shall execute and deliver to Escrow Holder escrow cancellation instructions within five (5) business days of such party’s receipt of such escrow cancellation instructions from Escrow Holder. If either party terminates this Agreement and the escrow by reason of the other party’s breach, default or misrepresentation, then (without limiting the rights and remedies of the other party) such breaching, defaulting or misrepresenting party shall pay all escrow cancellation charges. If this Agreement and the escrow are terminated for any other reason, then the party terminating the Agreement shall pay all escrow and escrow cancellation charges. The provisions of this section shall survive any termination of this Agreement.

3.06 Transfer of Title and Assignments. At the Close of Escrow and upon payment of the Purchase Price to Seller, Seller shall convey to Buyer all of Seller’s right, title and interest in and to the Property by Quitclaim Deed in the same form as commonly used by Escrow Holder (the “Quitclaim Deed” or “Deed”), Buyer and Seller shall approve or disapprove all of the aforementioned documents within five (5) calendar days from submittal of same to Seller and/or Buyer, respectively. Any failure by Buyer or Seller to object to any of the documents within five (5) calendar days shall be treated as an approval of the documents.

(a) Title Policy. The Close of Escrow shall be conditioned upon Escrow Holder being prepared and committed as of the Close of Escrow to issue to Buyer its CLTA Owner’s Policy of Title Insurance (the “Title Policy”) with liability limits in the amount of the Purchase Price insuring title to the Property as vested in Buyer, free and clear of all liens and encumbrances and other matters of record affecting title to the Property, except the following: (i) the printed exceptions common to such title policies; (ii) a lien, if any, to secure payment of non-delinquent real property taxes, special taxes, bonds and assessments; (iii) a lien, if any, of supplemental taxes assessed pursuant Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code; (iv) all matters which by this Agreement survive the Close of
Escrow; (v) all instruments recorded by Escrow Holder in accordance with the terms of this Agreement; and (vi) all of the other exceptions to title, as reviewed and approved by Buyer, in its reasonable discretion, pursuant to this Agreement (collectively, the “Permitted Exceptions”). The premium for such CLTA Owner’s Policy of Title Insurance, and the cost of any endorsements requested by Buyer shall be paid by Buyer.

(b) **Option for Extended Coverage Title Policy.** Buyer may, at its option, obtain an ALTA Extended Coverage Title Policy from the Title Company instead of a CLTA Standard Coverage Title Policy so long as: (i) such election does not expand the scope of any conditions to Buyer’s obligations or delay or affect in any manner the title review period under section 4.02, the Due Diligence or Entitlement Periods, the Close of Escrow or any of Buyer’s rights or obligations under this Agreement; (ii) Buyer obtains any survey required by the Title Company to issue the ALTA Extended Coverage Title Policy; and (iii) Buyer pays the difference between the premium for such ALTA Extended Coverage Title Policy and the premium for the CLTA Owner’s Policy of Title Insurance and any and all additional costs of obtaining the ALTA Extended Coverage Title Policy, including the cost of any survey required by the Title Company to issue such ALTA Extended Coverage Title Policy. Seller shall execute such documents as are reasonably required by Escrow Holder, including without limitation, an Owner’s Affidavit, to issue the ALTA Extended Coverage Title Policy.

3.07 **Cash and Deed/Assignments.** Pursuant to section 2.05, Buyer shall deposit with Escrow Holder the balance of the Purchase Price and shall instruct Escrow Holder to deliver the Purchase Price to Seller at Close of Escrow.

Seller shall execute and deliver into escrow:

(i) the Quitclaim Deed for the Property conveying title subject to the Permitted Exceptions;

(ii) an affidavit or qualifying statement which satisfies the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the “Non-Foreign Affidavit”);

(iii) a “Withholding Exemption Certificate, Form 590,” pursuant to California Revenue and Taxation Code Sections 18805 and 26131 or its equivalent stating either the amount of withholding required from Seller’s proceeds or that Seller is exempt from such withholding requirement (the “Withholding Exemption Certificate”);

(iv) two (2) original counterparts of a Bill of Sale in a form mutually acceptable to Buyer and Seller, duly executed by Seller, with respect to the Tangible Personal Property (the “Bill of Sale”);

(v) two (2) original counterparts of a General Assignment, in a form mutually acceptable to Buyer and Seller, duly executed by Seller, with respect to any warranties, guaranties and indemnities relating to the Property (the “General Assignment”) (and Seller shall also deliver to
Buyer, outside of escrow, the originals of any licenses, warranties, guaranties and indemnities that are assigned to Buyer to the extent the same are in Seller’s possession;

(vi) All keys to all locks on the Property (to the extent that such are in the possession or control of Seller) and an accounting for keys in possession of others;

(vii) to the extent in Seller’s possession or control, any structural, mechanical and electrical plans and specifications pertaining to the improvements at the Real Property, and the originals of any permits for the Property, except that any permits that are required to be and are affixed at the Property shall be delivered to Buyer outside of escrow; and

(viii) two (2) original counterparts of the Assumption Agreement required pursuant to Section 4.03(c), below; and

(ix) such other documents as may be reasonably required by the Title Company in order to issue the Title Policy, and Seller shall instruct Escrow Holder to record the Quitclaim Deed at Close of Escrow and deliver to Buyer the Non-Foreign Affidavit and the Withholding Exemption Certificate at the Close of Escrow.

3.08 Seller’s Conditions to Close. Seller’s obligations to close escrow shall be conditioned upon the satisfaction of or written waiver by Seller of: (i) the timely performance of Buyer of each of Buyer’s obligations under this Agreement; (ii) the continuing accuracy of each of Buyer’s representations and warranties under this Agreement; (iii) Buyer’s timely written approval or waiver of the matters set forth in Article 4 below; and (iv) the execution and delivery to escrow of the following documents:

(i) written evidence that Buyer has authorized the persons signing this Agreement to execute this Agreement and that the Agreement is a lawful agreement binding upon the Buyer in accordance with its terms, reasonably satisfactory to the Title Company and Seller;

(ii) two (2) original counterparts of the General Assignment Agreement and Assumption Agreement, duly executed by Buyer; and

(iii) any other documents, instruments or funds reasonably required to be delivered by Seller under the terms of this Agreement or are otherwise required by the Escrow Holder or Title Company in order to close escrow which have not previously been delivered.

3.09 Buyer’s Conditions to Close. Buyer’s obligations to close escrow shall be conditioned upon the satisfaction of or written waiver by Buyer of: (i) the timely performance by Seller of each of Seller’s obligations under this Agreement; (ii) the continuing accuracy of each of Seller’s representations and warranties under this Agreement; (iii) the issuance of the Title Policies set forth in Section 3.06(a) or (b); (iv) Buyer’s timely, written approval or waiver of approval of all matters set forth in Article 4; (v) the full execution and delivery to escrow by Seller of the documents set forth in Section 3.07 (i), (ii), (iii), (iv), (v), (vii) and (viii) above; and (vi) the execution and delivery to escrow of the following documents:
(i) written evidence that Seller has authorized the persons signing this Agreement to execute this Agreement and that the Agreement is a lawful agreement binding upon the Seller in accordance with its terms, reasonably satisfactory to the Title Company and Buyer; and

(ii) any other documents, instruments or funds reasonably required to be delivered by Seller under the terms of this Agreement or are otherwise required by the Escrow Holder or Title Company in order to close escrow which have not previously been delivered.

3.10 Termination. If on the Closing Date, any condition precedent to the obligations of either party under this Agreement remains unsatisfied and has not been waived by the party entitled hereunder to waive such condition, then this Agreement and the escrow shall automatically terminate without need for any further action by either party, and except as provided below to the contrary in the following sentence, the Deposit, and any remaining unspent portion of the Cost Recovery Deposit (as defined in Section 4.04(c)(ii)), shall be returned to Buyer. If the failure of the condition to be satisfied results from a breach of any party as to its obligations hereunder, the other party, notwithstanding the termination of this Agreement, may, subject to sections 9.01 and 9.02 below, pursue any and all remedies it may have against the other party at law or in equity.

ARTICLE 4. BUYER’S DUE DILIGENCE PERIOD; ENTITLEMENT PERIOD; BUYER’S TITLE REVIEW

4.01 Written Notice Required to Terminate: Effect of Termination. Except as is otherwise expressly provided in this Agreement, whenever in this Agreement Buyer’s approval or disapproval of a condition or other matter is required on or before a certain date, Buyer shall deliver written notice to Seller on or before 5:00 p.m. Pacific Time on such date, stating either that: (i) Buyer approves such condition or matter, (ii) Buyer disapproves of such condition or matter, or (iii) Buyer waives such condition or matter as a condition to closing. Failure of Buyer to deliver said written notice(s) shall be deemed to be Buyer’s disapproval of such condition or matter. Except as may be expressly stated to the contrary elsewhere in this Agreement, whenever in this Agreement Buyer is deemed to have disapproved a condition or matter, or whenever in this Agreement Buyer is allowed to terminate this Agreement, upon Buyer’s termination in compliance with the provisions, conditions and requirements applicable to such termination right, this Agreement shall terminate and become null and void, the Deposit, and any remaining unspent portion of the Cost Recovery Deposit, shall be returned to Buyer, and neither Buyer nor Seller shall have any further or other rights, obligations or liability to the other under this Agreement except for any other obligation or liability of Buyer or Seller as contained in this Agreement which shall specifically survive any termination of this Agreement.

4.02 Title Review.

(a) Within twenty-four (24) hours after opening escrow with Escrow Holder, Buyer shall provide Seller written notice thereof. Within ten (10) days after escrow has been opened with Escrow Holder, the Seller shall order from Escrow Holder the preparation and delivery to Buyer and Seller of Escrow Holder’s standard preliminary title report (“Preliminary Report”)
showing the then condition of title to the Property and all exceptions thereto – as reflected in the public record. With said Preliminary Report, Seller shall cause the Escrow Holder to deliver to the parties copies of all underlying documents referenced in the Preliminary Report (collectively, the Preliminary Report, the underlying documents and all title exception matters referenced therein shall be referred to as “Title Documents”).

(b) Buyer shall, in writing, notify Seller on or before thirty (30) days following the receipt of the Title Documents (“Title Approval Period”) of Buyer’s approval of the exceptions to the condition of title to the Property. As to any Title Documents that Buyer disapproves, Buyer shall give written notice thereof (“Title Objection Notice”) to Seller prior to the end of the Title Approval Period. Upon receipt by Seller of a Title Objection Notice given in a timely manner, Seller shall have three (3) business days from receipt of such Title Objection Notice within which to notify Buyer as to each properly disapproved matter either that: (i) Seller elects not to cause such disapproved matter to be removed as of the Closing Date, or (ii) Seller intends to either: (A) use commercially reasonable efforts to cause such disapproved matter to be removed or released prior to the Closing Date; or (B) cause the Title Company to insure or endorse over such disapproved matter. Failure by Seller to deliver any written notification of its election within such period shall be deemed to be an election not to cause any disapproved matters to be removed. If Seller elects not to cause any or all such disapproved matters to be removed or insured over as aforesaid, Buyer shall have ten (10) business days from receipt of written notice thereof (or ten (10) business days from the date Seller is deemed to have elected not to remove any disapproved matter) to, in writing, either: (1) revoke its disapproval and proceed with the purchase of the Property without any reduction in the Purchase Price and taking the Property subject to such matter; or (2) terminate this Agreement. If Buyer timely disapproves of the Title Documents and elects to terminate this Agreement as a result thereof, the Deposit and all interest accrued thereon, and any remaining unspent portion of the Cost Recovery Deposit, shall be immediately returned to Buyer. In the event Buyer fails to give such timely notice of election to terminate, then Buyer shall be deemed to have waived its objections to the Title Documents. If the Escrow Holder revises the Preliminary Report after Buyer’s approval thereof to add or modify exceptions or to add or modify the conditions to obtaining any endorsement requested by Buyer during or after the Permitting Period and such additions or modifications are not approved by Buyer within seven (7) days after Buyer receives notice of such additions or modifications and are not removed by the Closing Date, Buyer shall be entitled, by written notice to Seller, to terminate this Agreement (subject to the obligations that specifically survive the termination of this Agreement) and cancel the escrow, and Buyer shall immediately thereafter receive a refund of the Deposit, and any remaining unspent portion of the Cost Recovery Deposit.

4.03 The Due Diligence Period. The Due Diligence Period shall commence on the Effective Date and terminate at 5:00 p.m. Pacific Time on the ninetieth (90th) day thereafter. Buyer shall have the right, during the Due Diligence Period, to: (i) review all of the public documents the Seller possesses pertaining to the Property; (ii) come upon the Property or direct its consultants to come upon the Property to conduct any and all surveys, inquiries, inspections, investigations, tests, engineering surveys and studies on, around or pertaining to the Property as Buyer may elect to make, conduct or maintain; (iii) conduct consultations and negotiations with persons of Buyer’s choosing; (iv) conduct consultations and negotiations pertaining to any third
party document contemplated by the Agreement, or that Buyer determines necessary or desirable; (v) make feasibility determinations and assessments, (vi) conduct environmental and soils studies, (vii) make financing arrangements, and (viii) conduct any other study, investigation or analysis Buyer desires (collectively, “Due Diligence”), provided that said Due Diligence shall be subject to the terms and conditions specified herein.

(a) Seller agrees that it will conduct a reasonable search of Seller’s records and has provided or, within thirty (30) days after the Effective Date, will provide to Buyer all of the documents discovered in said search relating to the Property (collectively, “Seller’s Documents”) except the financial information submitted to the Seller by other developers who have submitted proposals to Seller relating to the Property, if any. Buyer acknowledges that Seller’s Documents are being made available to Buyer solely as a courtesy, and that except as is otherwise provided in this Agreement, Seller has not and does not verify or warrant the accuracy of any statements or other information contained within the documents provided to Buyer by Seller. Seller shall provide Buyer with a Notice of Disclosure within thirty (30) days of the Effective Date of this Agreement, confirming that it has disclosed all documents which its reasonable search has discovered (“Seller’s Notice of Disclosure”). Buyer shall, in writing, notify Seller on or before the expiration of the Due Diligence Period of Buyer’s approval or disapproval of Seller’s Documents. If for any reason Buyer has not delivered to Seller written notice of approval of Seller’s Documents or written waiver of the right to conduct said review or to approve the results thereof on or before the expiration of the Due Diligence Period, then it shall be deemed that Buyer has disapproved the Seller’s Documents, the Deposit, and any remaining unspent portion of the Cost Recovery Deposit, shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(b) During the Due Diligence Period, Buyer shall specifically review and approve or disapprove all existing conditions of the Property, including but not limited to, the condition or safety of the Property and/or any improvements thereon. Buyer shall, in writing, notify Seller on or before the expiration of the Due Diligence Period, of Buyer’s approval or disapproval of the results of the investigation of the items identified in this section 4.03, and shall provide Seller with any non-privileged reports or other documents obtained by Buyer as a result of the investigations set forth in this section 4.03. Unless otherwise expressly required by applicable law, Buyer shall not disclose said reports or other documents, their contents or the results thereof, to any person (other than Buyer’s consultants, advisors, attorneys, brokers, and potential investors, partners and lenders) without the prior, written consent of Seller. If Buyer delivers to Seller written notice of Buyer’s disapproval of the results of the investigation of the items identified in this section 4.03 on or before expiration of the Due Diligence Period, and any such disapproved items are reasonably amenable to cure by Seller, then Seller shall have five (5) business days from receipt of such notice within which to give Buyer a written notice (a “Cure Notice”) as to each disapproved item either that: (i) Seller elects not to attempt to cure such disapproved item, or (ii) Seller will attempt to use commercially reasonable efforts to cure such disapproved item. Failure by Seller to deliver any a Cure Notice within such five (5) business day period shall be deemed to be an election not to attempt to cure any disapproved items. If Seller elects (or is deemed to have elected) not to attempt to cure any or all such disapproved items, then as of the expiration of such five (5) business day period the Deposit and all interest accrued thereon, and any remaining unspent portion of the Cost Recovery Deposit, shall be
immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination). If Seller gives Buyer a Cure Notice within such five (5) business day period, then Seller shall have until the expiration of the Due Diligence Period, or fifteen (15) business days after Buyer delivers such disapproval notice to Seller, whichever is later (as applicable, the "Cure Period"), to cure such disapproved items. If Seller cures the disapproved items to Buyer’s commercially reasonable satisfaction within the Cure Period, then this Agreement shall remain in full force and effect. If Seller fails to cure the disapproved items to Buyer’s commercially reasonable satisfaction within the Cure Period, then as of the expiration of the Cure Period the Deposit and all interest accrued thereon, and any remaining unspent portion of the Cost Recovery Deposit, shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination). If for any reason Buyer has not delivered to Seller written notice of approval of the results of Buyer’s review relating to the items identified in this section 4.03 or written waiver of the right to conduct said review or to approve the results thereof on or before the expiration of the Due Diligence Period, then Seller shall provide Buyer a written notice of Buyer’s failure to deliver such approval or disapproval. On or before the fifteenth (15th) day following Seller’s notice to Buyer of such failure, if for any reason Buyer has still not delivered to Seller written notice of approval of the results of Buyer’s review or written waiver of the right to conduct said review or to approve the results thereof, it shall be deemed that Buyer has disapproved the results of Buyer’s Due Diligence, the Deposit and all interest accrued thereon, and any remaining unspent portion of the Cost Recovery Deposit, shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(c) The Army Quitclaim Deed imposes various obligations on the Seller pertaining to, among other things, environmental remediation, inspections, and indemnification. Buyer agrees to assume all of these obligations as they pertain to the Property. The parties agree that a separate assumption agreement ("Assumption Agreement") under which Buyer agrees to assume said obligations must be entered by the parties and recorded simultaneously with the Quitclaim Deed. Therefore, during the Due Diligence Period, Seller and Buyer shall negotiate the terms and conditions of the Assumption Agreement, and memorialize any agreement that they reach in a document that is mutually acceptable to both parties. Buyer shall, in writing, notify Seller on or before the expiration of the Due Diligence Period of Buyer’s approval or disapproval of the results of said negotiations and the Assumption Agreement. If for any reason Buyer has not delivered to Seller written notice of approval of the items identified in this section 4.03(c) or written waiver of the right to approve said items, then Seller shall provide Buyer with a written notice of Buyer’s failure to deliver such approval or disapproval. On or before the fifteenth (15th) day following Seller’s notice to Buyer of such failure, if for any reason Buyer has still not delivered to Seller written notice of approval of said items or written waiver of the right to approve said items, it shall be deemed that Buyer has disapproved said items and the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(d) The Seller and Buyer acknowledge that Buyer may need to gain entry to the Property in order to determine the feasibility of the Project, and that it is Seller’s intention to provide Buyer and its representatives, agents, consultants, advisors, and lenders with full and complete access during normal business hours to the Property. The Buyer agrees that before

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entering the Property for any purpose the Buyer shall obtain the prior written approval and consent of the Seller, which shall not be unreasonably withheld, conditioned or delayed. In seeking such approval, the Buyer shall provide the Seller with information regarding the purpose of the entry, an identification of any tests Buyer wants to perform on or to the Property, and the date, time and duration of such entry. Buyer’s activities on the Property shall conform to the scope of the Seller’s written consent and approval and the Buyer shall restore the Property to its same condition it was in prior to Buyer’s entry onto the Property, normal wear and tear and damage by the elements excepted. In the event Buyer conducts any tests to the Property, Buyer shall provide the Seller with copies of all test reports and analyses of such testing within 10 days of the Buyer’s receipt of such test reports and analyses. Unless otherwise expressly required by applicable law, Buyer shall not disclose said reports and analysis to any person (other than Buyer’s consultants, advisors, attorneys, brokers, and potential investors, partners and lenders) without the prior, written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that escrow fails to close, Buyer shall restore or repair any damage to the Property that arises out of or relates to Buyer’s or Buyer’s representatives’ inspection or testing of the Property, normal wear and tear and damage by the elements excepted. The Buyer agrees to indemnify, defend (with counsel reasonably acceptable to the Seller) and hold the Seller, its officers, employees and agents harmless from any and all liability, damages, clean up costs, fines, penalties, injuries, costs or claims for damages to persons or property which result from on-site activities of the Buyer, its employees, offices, agents, representatives, contractors, subcontractors or consultants. Said indemnification shall survive Close of Escrow and/or the termination of this Agreement.

4.04 The Entitlement Period.

(a) Immediately following the expiration of the Due Diligence Period, Buyer shall have the period of time described below (the “Entitlement Period”) to investigate, apply for and obtain all Project Approvals. The term “Project Approvals” means all discretionary approvals, consents, permits and/or authorizations from any and all governmental agencies with jurisdiction over the Project (including the City) necessary for the Buyer to effect the construction and occupancy of the Property as generally described in Section 1.03 hereof (“Buyer’s Development Work”). The term “City Approvals” means all discretionary approvals, consents, permits and/or authorizations from the City necessary for the Buyer to effect the Buyer’s Development Work. Project Approvals include, but are not limited to, zoning changes, CEQA and other environmental approvals, design review (if applicable), and conditional use permits. Project Approvals and City Approvals do not include building permits, among other non-discretionary, governmental authorizations. As a condition precedent to Close of Escrow, and in granting any and all City Approvals, the City must fully comply with CEQA.

(b) The Entitlement Period shall expire on the earlier of (i) the issuance of all required Project Approvals and the expiration of all applicable appeal periods and statutes of limitations without the filing of an appeal or the filing of litigation, respectively, with respect to the granting of the Project Approvals in question (provided, that if any appeal or litigation is timely filed, then the date governed by this sub-subsection (i) shall be extended to the date on which any such appeal or litigation has been resolved to Buyer’s reasonable satisfaction), or (ii) eighteen (18) months after the Effective Date; provided, however, that the Entitlement Period

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may be extended by Buyer for up to four (4) periods of six (6) months each, provided that Buyer makes an Approval Extension Deposit upon each such extension. In order to exercise its right to extend the Entitlement Period, the Buyer must deliver written notice to the Seller of Buyer’s election to do so, and contemporaneously deposit an Approval Extension Deposit into escrow with Title Company, within five (5) days after the expiration of the previous Entitlement Period (with each such increase to the Deposit being hereafter called an “Approval Extension Deposit”). Any such increase shall become part of the Deposit, shall accrue interest on the account of Buyer and, along with the original Deposit, and shall be credited towards the Purchase Price. The Buyer may notify the Seller in writing of the Buyer’s intent not to close escrow during the Entitlement Period in Buyer’s sole and absolute discretion. In the event that escrow does not close due to no act or omission on the part of the Buyer or the Buyer gives notice to the Seller of Buyer’s intentions not to close escrow within the Entitlement Period, this Agreement shall terminate, neither party shall have any further liability to the other under this Agreement (except for obligations that survive the termination of this Agreement) and the Deposit, and any remaining unspent portion of the Cost Recovery Deposit, shall be returned to the Buyer.

(c) During the Entitlement Period, Buyer shall determine the nature and estimated cost of obtaining and complying with the Project Approvals in order for the Buyer to effect Buyer’s Development Work. Except as otherwise provided by this Agreement, Buyer agrees to be solely responsible for (i) obtaining the Project Approvals and paying all the costs incurred to obtain same, (ii) paying fees necessary to obtain said Project Approvals, and (iii) commencing and completing Buyer’s Development Work permitted under and pursuant to the Project Approvals.

(i) The cost of any Due Diligence and the processing of Project Approvals, including but not limited to any surveys, inquiries, inspections, investigations, application fees, attorneys’ fees, consultant costs, analysis and report costs, tests and/or studies, shall be borne solely by Buyer. As part of processing applications for Project Approvals, Buyer shall be required to comply with the City’s fee and cost recovery program. Buyer shall pay for all costs incurred in connection with the processing of the Project Approvals, including but not limited to, noticing all hearings, preparing and delivering the notices, staff reports, environmental documents and performing all other tasks required of the City under CEQA and the City’s own land use (and other agencies’) processing rules and regulations, along with all other costs incurred in applying for and obtaining the Project Approvals.

(ii) Notwithstanding the foregoing to the contrary, upon expiration of the Due Diligence Period and the satisfaction of and/or Buyer’s waiver of its Due Diligence contingencies, Buyer shall deposit the sum of $36,107 (the “Initial Cost Recovery Deposit”) with the City which will be used solely by the City for the purposes described below in this Section 4.04(c)(ii). Once the Initial Cost Recovery Deposit has been exhausted, the City can require Buyer to deposit and the Buyer agrees to timely deposit additional sums with the City from time to time (with the total of all sums so deposited by Buyer being called the “Cost Recovery Deposit”), provided however that the City shall not require Buyer to deposit more than a total aggregate of One Hundred Thirty Thousand Dollars ($130,000.00) as the Cost Recovery Deposit. Costs applicable to the Cost Recovery Deposit include without limitation all payments required by the City related to the review and processing of applications to obtain the right to
develop the Property. These include, but are not limited to, costs and fees associated with a
general plan amendment, master plan amendment, precise development plan, design review, and
those costs, expenses and fees required by the City to complete environmental review
documentation and processing for a California Environmental Quality Act (“CEQA”) document.
Costs not covered by the Cost Recovery Deposit and which must be separately paid by Buyer,
include without limitation all payments required by the City for Buyer to obtain permits for
construction or to off-set service and infrastructure demands, including, but not limited to,
construction permit and plan check fees and surcharges, traffic impact fees, development impact
fees, fire facilities impact fees, residential development taxes, school taxes, utility connections
fees, and/or any other payments required by the City that are not associated with the review and
processing of applications to obtain the right to develop the Property. Without limiting the
generality of the foregoing, City shall charge against and pay from the Cost Recovery Deposit
the fully burdened hourly rate of those City personnel, the actual costs of those consultants
retained by the City, and the actual costs of legal counsel retained by the City who perform work,
services or tasks in connection with Buyer’s applications for Project Approvals and non-
discretionary approvals pertinent to the Project. Also to be charged against the Cost Recovery
Deposit will be the City’s and its consultant’s and counsel’s commercially reasonable out of
pocket costs incurred in providing the services described above. Upon request, Buyer shall be
entitled to review and obtain copies of all invoices and bills charged against the Cost Recovery
Deposit, except those that are privileged, such as the bills submitted by the City’s legal counsel.
As to such privileged billings, summaries of the amounts charged to the City for the work
performed by such advisors and consultants shall be provided to the Buyer upon request. Any
Cost Recovery Deposit funds that are unexpended at the end of the Entitlements Period shall be
credited toward the Purchase Price or, in the event that the Buyer timely and properly elects not
to close, such funds shall be promptly refunded to Buyer without interest. Buyer shall not be
obligated to reimburse the City for any costs or expenses the City incurs in connection with the
performance of Buyer’s Due Diligence, or in processing the Project Approvals and non-
discretionary approvals, or for other costs applicable to the Cost Recovery Deposit (collectively,
the “City Expenses and Fees”), in excess of the Cost Recovery Deposit. Notwithstanding
anything to the contrary stated herein: (aa) Buyer shall be liable and pay for all costs, legal fees
and expenses incurred by and/or awarded against the City in defending any of the Project
Approvals or non-discretionary approvals in accordance with the City’s development
indemnification policies and procedures and the limitation of One Hundred Thirty Thousand
Dollars ($130,000.00) described above shall not include nor in any way be applicable to said
costs, fees and expenses; and (bb) said limitation of One Hundred Thirty Thousand Dollars
($130,000.00) shall not include nor be applicable to any costs or fees incurred or paid by Buyer
in connection with processing any Project Approvals other than City Approvals. For the
purposes of arriving at the limitation of One Hundred Thirty Thousand Dollars ($130,000.00)
described above, the parties have assumed that under CEQA a mitigated negative declaration
will be required for the Project, at an estimated cost of Seventy Thousand Dollars ($70,000) (the
“Estimated Neg Dec Costs”). If it is determined through the CEQA process that an
environmental impact report (“EIR”) is required for the Project, the parties anticipate that the
costs that will be incurred by the City associated with the EIR will exceed the Estimated Neg
Dec Costs (with the amount of such excess being hereafter called the “Excess EIR Costs”).
Therefore, notwithstanding anything to the contrary stated herein, if and to the extent that the
Excess EIR Costs cause the City Expenses and Fees to exceed the limitation of One Hundred
Thirty Thousand Dollars ($130,000.00) described above, then (x) the amount by which the Excess EIR Costs cause the City Expenses and Fees to exceed the limitation of One Hundred Thirty Thousand Dollars ($130,000.00) described above shall be called the “Cost Overrun”; (y) the City may require Buyer to deposit into the Cost Recovery Deposit an amount equal to the Cost Overrun; and (z) the Purchase Price shall be reduced by an amount equal to Fifty Percent (50%) of the Cost Overrun.

(d) In the event that as a result of the Buyer’s applications for Project Approvals, Buyer is granted final approvals to construct more or less than eighty (80) residential units on the Property, the Purchase Price shall be adjusted as follows: (1) in the event the number of units approved in the Project Approvals is more than eighty (80), then the Purchase Price shall be increased by thirty thousand dollars ($30,000.00) for each for each and every unit approved in excess of eighty (80) units; and (2) in the event the number of units approved in the Project Approvals is less than eighty (80), then the Purchase Price shall be decreased by twenty-five thousand dollars ($25,000.00) for the difference between eighty (80) and the number of units that are actually approved; and (3) in no event shall the Purchase Price be reduced under this Section 4.04(d) to be less than one million seven hundred fifty thousand dollars ($1,750,000.00) irrespective of the number of units ultimately approved; provided, however, that the provisions of this Section 4.04(d) shall not limit or otherwise affect any reductions to the Purchase Price pursuant to Section 4.06 below. If for any reason Buyer has not delivered to Seller written notice of approval of the Project Approvals on or before the expiration of the Entitlement Period; or if, prior to the expiration of the Entitlement Period, Buyer has delivered to Seller written notice of Buyer’s determination to withdraw its applications for said Project Approvals; then in either event it shall be deemed that Buyer has disapproved the Project Approvals and the Deposit, and any remaining unspent portion of the Cost Recovery Deposit, shall be immediately returned to Buyer and this Agreement shall terminate (excepting only those obligations that survive termination).

(e) Consistent with applicable laws, Seller will make reasonable efforts and cooperate with Buyer to assist Buyer in facilitating the processing of Buyer’s applications for the City Approvals. Seller shall execute any documents reasonably necessary for Buyer to submit the applications for the City Approvals, provided that the Cost Recovery Deposit is current and Buyer indemnifies the Seller for any and all liability arising out of Buyer’s processing and pursuit of said approvals. Notwithstanding the above, Buyer understands and agrees that Seller is not committing to the approval of any or all of the necessary City Approvals and that Buyer will apply for all said necessary Project Approvals consistent with all applicable Federal, State and Local governmental laws, rules and regulations and that the Seller shall be entitled to as much time as state and local law permit to process said City Approvals. Moreover, Buyer acknowledges and agrees that in reviewing and acting upon all of Buyer’s applications for the City Approvals, the Seller retains all of its discretionary land use authority and police powers and no limitations shall be imposed on the exercise of said discretion by this Agreement.

4.05 Reports to City. No less than once every four weeks, Buyer shall contact Seller to provide Seller with reports on the progress of Seller’s Due Diligence and Seller’s processing and pursuit of Project Approvals. For purposes of this subsection, an e-mail summary
to the City Manager and Director of Hamilton Base Reuse of the City of Novato shall be deemed sufficient.

4.06 Affordable Housing Obligation. In the event the Buyer is required to pay to the City any affordable housing in-lieu fees as a condition to Project approval, the amount of those fees shall operate to reduce the Purchase Price pro tanto, on a dollar-for-dollar basis. In addition, if the project approvals require Buyer to include affordable or below market rate housing units in the project, the purchase price shall be reduced by an amount equal to the number of affordable or below market rate housing units required to be constructed on the Property as part of the Project, multiplied by the then current per unit affordable housing in-lieu fees applicable to similar projects in the City.

ARTICLE 5. POSSESSION

Possession of the Property, free of any tenancies, contracts, or other agreements whatsoever, shall be given to Buyer upon the Close of Escrow unless otherwise negotiated between the parties and approved by the Seller, in writing. Seller shall remove all personal property and furnishings (if any) from the Property. Access to the Property shall be provided upon the signing of this Agreement and such access shall be governed by the applicable provisions of this Agreement.

ARTICLE 6. BROKERS

6.01 Buyer and Seller have not been represented by any broker and do not have any agency relationship with any real estate agents or brokers in connection with the sale of the Property, and Buyer and Seller shall not be responsible or have any liability for any commission payable to any such broker or agent.

6.02 Buyer and Seller hereby agree to save, defend (with legal counsel reasonably acceptable to the indemnified party) and hold each other harmless from any real estate brokerage commission, finder’s fee, and all costs and expenses (including attorneys’ fees) of investigating and/or defending any such claims, payable as to any broker, realtor or finder which such indemnifying party may engage or is claimed to have engaged in connection with the transaction set forth in this Agreement. The provisions of this Article shall survive any termination of this Agreement and Close of Escrow.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

7.01 Seller’s Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to buy the Property from Seller, Seller makes the following representations and warranties the continued truth and accuracy of which shall constitute a condition precedent to Buyer’s obligations hereunder.

(a) Authority. Seller has full power and authority to enter into this Agreement and to complete the transaction contemplated by this Agreement.
(b) Binding Agreement. Seller’s acceptance and performance of the terms and provisions of this Agreement have been duly authorized and approved by all necessary parties. Upon Seller’s execution and delivery of this Agreement, this Agreement shall be binding and enforceable against Seller in accordance with its terms, and upon Seller’s execution of the additional documents contemplated by this Agreement, they shall be binding and enforceable against Seller in accordance with their terms.

(c) Consents. To Seller’s knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction is subject to any requirement that Seller obtain any consent, approval or authorization of, or make any declaration or filing with, any governmental authority or third party which has not been obtained or which, in any case or in the aggregate, if not obtained or made would render such execution, delivery or consummation illegal or invalid, or would result in the creation of any lien, charge or encumbrance upon the Property.

(d) Litigation. To Seller’s knowledge, there is no litigation, arbitration or administrative proceeding pending, threatened against Seller with respect to the Property nor is there any basis known to Seller for any such action or proceeding.

(e) Prior Agreement. Seller has not committed nor obligated itself in any manner whatsoever to sell the Property or any portion thereof to any party other than Buyer.

(f) Environmental Hazards/Hazardous Materials.

1. Seller acquired the Property on or about June 23, 2003, from the United States of America, but never used, improved or occupied the Property for any purpose. The Seller acquired the Property for the purpose of disposing of it for development to assist in the revitalization of the Hamilton Base reuse. Thus, the Seller’s knowledge of the Property and its conditions is limited. Seller further represents that except as is disclosed in the documents provided to Buyer pursuant to Section 4.03(a), to Seller’s knowledge no additional Hazardous Substances or Materials (defined below) exist on the Property which would violate any federal, state or local statutes, regulations, ordinances or other requirements. Additionally, to Seller’s knowledge, since the date that the Seller acquired title to the Property, the Property has not been used for the generation, manufacture, treating, refining, transporting, handling, producing, processing, storage or disposal of Hazardous Substances. “Used” shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

2. It shall be the sole responsibility of the Buyer, at the Buyer’s sole expense, to investigate and determine the soil, ground water and other conditions of the Property and the suitability of such conditions for the improvements to be constructed by the Buyer. If the soil conditions or any other condition of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put by Buyer, then it is the sole responsibility and obligation of the Buyer to take such action as may be necessary to place the soil and other conditions of the Property in a condition suitable for the development of the Property.
3. Buyer warrants and represents that the Property and its improvements shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Substances or Materials (defined below) or solid waste, except in compliance with all applicable federal, state, and local laws, rules and regulations, City Approvals or Government Approvals. For the purposes of this Agreement, “Hazardous Substances” and “Hazardous Materials” shall include, without limitation, asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof), and materials or substances defined as “hazardous waste”, “hazardous substances”, “hazardous materials”, “pollutants”, or “toxic substances” in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq.; any other environmental law promulgated by the United States; any environmental law promulgated by the State of California; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws. “Release” shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

(g) Notice of Violations, Condition of Property and Condemnation. To Seller’s knowledge, Seller has received no notice from any governmental authority of any pending or threatened (i) zoning, building, fire or health code violations or violations of other governmental regulations concerning the Property that has not previously been corrected, or (ii) any condemnation of the Property or any part of the Property; provided, however, that by making these representations the Seller is not warranting that the Property meets current zoning or building code requirements or is otherwise in compliance with all applicable laws and regulations.

(h) Close of Escrow. As a condition to Buyer’s obligations herein to close escrow but not as a covenant of Seller to ensure their continuing truth and accuracy, the representations and warranties of Seller set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and of such time.

(i) “As is” Conveyance. Other than those expressly made herein, Seller has not made any express or implied representations, guarantees, promises, statements, assurances or warranties as to the suitability for any purpose or the profitability of owning and operating any or all of the Property, or as to the physical condition thereof, or as to the net or gross acreage contained therein, or as to the zoning thereof, or any other past, present or future matter whatsoever, or as to the completeness or accuracy of any report issued by any third party. Whenever Seller’s warranty or representation is qualified by the phrase “to Seller’s knowledge” or “to Seller’s actual knowledge” or any similar phrase implying a limitation on the basis of knowledge, it is intended to indicate that during the ownership of the Property by Seller, no information has come to the attention of the City Manager, Michael Frank, or to the Director of Hamilton Base Reuse, Scott Ward, that would give them actual knowledge of the existence of a state of facts contrary to that indicted in the warranty or representation. However, Seller has not undertaken any independent investigation to determine the existence or non-existence of such
facts, and no inference as to Seller’s knowledge of the existence or non-existence of such facts should be drawn from the fact that Seller has owned the Property and/or not undertaken such an investigation. The parties further agree that Seller is under no obligation or duty to undertake any such investigation. Except as provided in this Agreement, Buyer acknowledges that except as to those representations and warranties made and given by Seller as contained in this Agreement, no other representations or warranties have been made and that the Property is being purchased on an “AS IS WITH ALL FAULTS” basis. Buyer further acknowledges that, as of the Closing Date, Buyer (1) will have had a full, complete and unfettered right to inspect the Property to its entire satisfaction, and (2) shall have investigated, to Buyer’s complete satisfaction, all items, matters and conditions described in Article 4. Buyer further acknowledges that it is entering into this Agreement on the basis of Buyer’s own investigation of the physical and environmental conditions of the Property, and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its own investigations. Buyer further acknowledges and agrees that it has investigated and has knowledge of operative or proposed governmental laws, regulations and requirements (including but not limited to those pertinent to the Project Approvals, City Approvals and/or building code, disability access, zoning, environmental and land use laws and regulations) (collectively, “Applicable Laws”) to which the Property is or may be subject and accepts the Property solely upon the basis of Buyer’s review and determination of the applicability and effect of such Applicable Laws. Notwithstanding anything to the contrary stated herein, Buyer further acknowledges that Seller, its agents and employees and other persons acting on Seller’s behalf have made no representations or warranty of any kind in connection with any matter relating to the physical or environmental condition of, value of, fitness of, suitability of or Applicable Laws pertinent to the Property upon which Buyer has relied directly or indirectly for any purpose, except to the extent set forth above in this Section 7.01. Buyer acknowledges that the Seller takes the position that Cal. Gov’t Code sections 54222 et seq. do not apply to the Property or to this transaction, and as such, did not comply with its provisions with respect to the disposition of the Property to Buyer pursuant to this Agreement and Buyer agrees that Seller’s failure to so comply does not constitute a breach of this Agreement and that Seller shall not be responsible to Buyer for any liability, damages, or claims of any sort arising out of such failure. Buyer hereby waives, releases and forever discharges Seller and Seller’s Representatives, and any other person acting on behalf of Seller, of and from any claims, actions, causes of action, demands, rights, damages, costs, and liabilities of any sort, known or unknown, foreseen or unforeseen, which Buyer now has or which may arise in the future on the account of or in any way growing out of or connected with the physical or environmental condition of the Property or any Applicable Laws, including but not limited to Cal. Gov’t Code sections 54222 et seq., excepting only those claims, actions, causes of action, demands, rights, damages, costs, and liabilities resulting from a breach by Seller of this Agreement.

(j) No Occupancy. The Property is, and as of the Closing Date will remain, completely vacant and free of tenants or other occupants.

(k) No Leases or Contracts. There are no leases or other agreements affecting or encumbering the Property, and no party has been granted by Seller any license, lease or other right relating to the use or possession of the Property or any part thereof.
Warranties Survive Close of Escrow. The above warranties and representations made by Seller shall survive Close of Escrow.

Buyer’s Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes and gives the following representations and warranties, the continued truth, accuracy and completeness of which shall constitute a condition precedent to Seller’s obligations hereunder:

(a) Authority and Binding Effect. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement.

(b) Condition of Property. This Agreement affords Buyer a reasonable period of time to perform such due diligence as Buyer believes is reasonably necessary to make the decision to consummate the transactions described in this Agreement. Except as to the express representations and warranties made by Seller as contained and qualified in this Agreement, Buyer is relying and shall rely solely upon its own investigation and inspection of the Property and upon the aid and advice of Buyer’s independent expert(s) in purchasing the Property, and (except as otherwise specifically provided to the contrary in this Agreement) shall take title to the Property without any other warranty, express or implied, by Seller or any employee or agent of Seller.

(c) Buyer Experience. Buyer represents and warrants to Seller that Buyer is acquiring the Property for commercial or business use, has knowledge and experience in financial and business matters that enable Buyer to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement on terms which make the limitations of Buyer’s recourse against Seller acceptable. Buyer warrants and represents that Buyer is an experienced purchaser and/or owner/manager/operator of property similar to the size and function of the Property, and is familiar with matters that typically impact the operation and management of similar residential property.

(d) Hazardous Materials and “As is” Sale. Buyer re-affirms and re-states the representations and warranties it makes in sections 7.01(f) and (i).

(e) Close of Escrow. The representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Closing Date as if those representations and warranties were made on and of such time.

(f) Warranties Survive Close of Escrow. The above warranties and representations made by Buyer shall survive Close of Escrow.

Discovery of Inaccuracy.
(a) **Notice.** If, after the date of this Agreement, either party discovers any inaccuracy in any representation or warranty under this Agreement, whether made by that party or the other party, the discovering party shall promptly notify the other party in a written notice setting forth the particular representation or warranty which is inaccurate, and the nature of the inaccuracy discovered.

(b) **Right to Terminate.** If the inaccuracy in any representation or warranty under this Agreement is material, then the party in whose favor the representation or warranty runs (the “**Benefitted Party**”) shall have the right to terminate this Agreement within thirty (30) calendar days of learning of such inaccuracy by giving written notice to the other party (the “**Representing Party**”). Failure of the Benefitted Party to terminate this Agreement within such 30-day period shall be deemed a waiver of the right to terminate, but not a waiver of any other right or remedy available at law or equity. If the Representing Party had no knowledge of the inaccuracy on the date of execution of this Agreement, then the Benefitted Party’s sole remedy shall be to terminate this Agreement (and if the Benefitted Party is Buyer the Deposit, and any remaining unspent portion of the Cost Recovery Deposit, shall be returned to Buyer upon Buyer’s termination due to an inaccuracy in any representation or warranty by Seller and if the Benefitted Party is Seller, Seller shall have the remedies specified in section 9.01), and the parties shall have no further obligation to each other except as to those obligations that specifically survive the termination of this Agreement.

(c) **Other Rights.** If the Representing Party did have knowledge of the inaccuracy on the date of execution of this Agreement, then the Benefitted Party shall also have all other rights and remedies afforded by law and equity.

**7.04 Buyer’s Indemnification.** Buyer, on behalf of itself as well as Buyer’s successors and assigns, hereby agrees to indemnify, defend and hold harmless Seller and Seller’s agents, personal representatives, employees, spouses, heirs, partners, officers, directors, officials, successors and assigns (collectively, “Sellers Representatives”), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct, contingent or consequential, incurred or suffered by or asserted or awarded against Seller or Sellers Representatives relating to or arising from (i) the ownership, operation or possession of the Property by Buyer or Buyer’s Representatives (defined below) subsequent to the Close of Escrow, (ii) the acts or omissions of Buyer or Buyer’s Representatives (iii) any entry on the Property by Buyer or Buyer’s Representatives, (iv) Buyer’s performance of its Due Diligence, including, but not limited to any act or omission by Buyer or Buyer’s Representatives in the course of performing the inspections, testings or inquiries provided for in this Agreement (v) any material breach of any covenant, representation or warranty of Buyer contained in this Agreement, (vi) Buyer’s or Buyer’s agents’ violation of any federal, state or local law, ordinance or regulation, occurring or allegedly occurring with respect to the Property (vii) any Release of Hazardous Substances (as defined in this Agreement) at the Property subsequent to the Close of Escrow by Buyer or Buyer’s Representatives, (viii) the Seller’s failure to comply with Cal. Gov’t Code section 54222 et. seq. and/or (ix) any service contracts, leases and/or any tenant security deposit which accrued subsequent to the Close of Escrow, and in each instance, except to the extent such matters arise from the sole negligence or the willful
misconduct of Seller or Seller’s breach of a representation, warranty or obligations in this Agreement.

Upon consummation of the closing hereunder, the foregoing indemnity shall be deemed to be restated and made again as of the Closing Date and shall survive the Close of Escrow and the delivery and recording of the Deed.

7.05 Seller’s Indemnification. Seller, on behalf of itself as well as Seller’s successors and assigns, hereby agrees to indemnify, defend and hold harmless Buyer and Buyer’s agents, personal representatives, partners, officers, directors, officials, employees, spouses, heirs, successors and assigns (collectively, “Buyer’s Representatives”), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct, contingent or consequential, incurred or suffered by or asserted or awarded against Buyer or Buyer’s Representatives relating to or arising from (i) the ownership or operation of the Property by Seller or Seller’s Representatives, predecessors, successors or assigns prior to the Close of Escrow, (ii) the acts or omissions of Seller or Seller’s Representatives, (iii) any material breach of any covenant, representation or warranty of Seller contained in this Agreement, (iv) the violation of any federal, state or local law, ordinance or regulation, occurring or allegedly occurring with respect to the Property during Seller’s ownership, prior to the Close of Escrow, (v) the existence and/or Release of Hazardous Materials or Hazardous Substances (as defined in this Agreement) handled, transported, generated, disposed of, or released from, emanating from, or in the vicinity of the Property prior to the Close of Escrow; or (vi) any contract claims which accrued during Seller’s ownership prior to the Close of Escrow, and in each instance, except to the extent such matters arise from the sole negligence or the willful misconduct of Buyer or Buyer’s breach of a representation, warranty or obligations in this Agreement.

Upon consummation of the closing hereunder, the foregoing indemnity shall be deemed to be restated and made again as of the Closing Date and shall survive the Close of Escrow and the delivery and recording of the Deed.

ARTICLE 8 USE OF THE PROPERTY

8.01 Obligation to Refrain From Discrimination

To the extent required by law, the Army Quitclaim Deed and/or the Assumption Agreement, the Buyer covenants by and for itself alone that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Buyer itself establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees of the Property. Nothing in this Section 8.01 limits Buyer’s right to develop the Project described at section 1.03.
ARTICLE 9 DEFAULTS, REMEDIES AND TERMINATION

9.01 By Buyer. SELLER AND BUYER HAVE DISCUSSED THE POSSIBLE CONSEQUENCES TO SELLER IN THE EVENT THAT THE CLOSE OF ESCROW DOES NOT OCCUR BY REASON OF BUYER’S DEFAULT. SELLER AND BUYER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO FIX THE ACTUAL DAMAGES TO SELLER IN SUCH EVENT. SELLER AND BUYER AGREE THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, A REASONABLE REMEDY FOR SELLER AS TO SUCH DAMAGES IS THAT SELLER SHALL BE RELEASED FROM ITS OBLIGATIONS TO SELL THE PROPERTY TO BUYER AND SELLER SHALL KEEP THE DEPOSIT PLUS ANY INTEREST EARNED THEREON. ACCORDINGLY, SHOULD THE SUBJECT TRANSACTION FAIL TO BE CONSUMMATED ACCORDING TO THE TERMS OF THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELIEVED OF ANY OBLIGATION TO SELL THE PROPERTY TO BUYER, BUYER SHALL HAVE NO RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT, AND THE DEPOSIT AND ANY AND ALL INTEREST THEREON SHALL BE RETAINED BY SELLER. SUCH REMEDY IS NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, OR SIMILAR AUTHORITY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO THE REQUIREMENTS OF CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE LIQUIDATED DAMAGES PROVIDED FOR UNDER THIS SECTION SHALL BE SELLER’S SOLE AND EXCLUSIVE REMEDY EXCEPT THAT SELLER SHALL ALSO HAVE THE RIGHT TO ENFORCE BUYER’S OBLIGATIONS TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS UNDER THIS AGREEMENT AS WELL AS BUYER’S WAIVERS AND RELEASES SET FORTH IN THIS AGREEMENT AND ANY OTHER OF BUYER’S OBLIGATIONS THAT SURVIVES TERMINATION OF THIS AGREEMENT. BY PLACING THEIR INITIALS BELOW, SELLER AND BUYER SPECIFICALLY ACKNOWLEDGE, CONSENT TO AND CONFIRM THE ACCURACY OF THE STATEMENTS MADE WITHIN THIS SECTION 9.01 AND THE FACT THAT SELLER AND BUYER WERE BOTH REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Seller’s Initials _________  Buyer’s Initials _________

9.02 By Seller. IN THE EVENT SELLER FAILS TO CONVEY THE PROPERTY TO BUYER AS REQUIRED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR OTHERWISE FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, FOR ANY REASON OTHER THAN BUYER’S DEFAULT OR AS OTHERWISE PERMITTED BY THIS AGREEMENT, BUYER SHALL BE PAID THE DEPOSIT PLUS ACCRUED INTEREST, PLUS ANY REMAINING UNSPENT PORTION OF THE COST RECOVERY DEPOSIT, AND SELLER SHALL REIMBURSE BUYER FOR ALL OUT-OF-POCKET THIRD PARTY COSTS INCURRED BY BUYER IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY (UP TO A MAXIMUM AMOUNT OF THREE HUNDRED THOUSAND DOLLARS ($300,000.00)), AND BUYER SHALL ALSO

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HAVE THE RIGHT TO SEEK AND OBTAIN SPECIFIC PERFORMANCE OF THIS AGREEMENT, AND BUYER MAY ALSO PURSUE AS AGAINST SELLER ALL OTHER REMEDIES AVAILABLE TO BUYER AT LAW OR IN EQUITY.

Seller’s Initials ___________  Buyer’s Initials ___________

ARTICLE 10. MISCELLANEOUS

10.01 Interpretation. This Agreement has been executed in Marin County, California. Venue and jurisdiction for any litigation arising out of or in connection with this Agreement shall be in Marin County, California. This Agreement shall be construed and enforced pursuant to the laws of the State of California. The captions of the Articles and Sections in this Agreement are for convenience only. The provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of Seller and Buyer.

10.02 Time of Essence. Time is of the essence in this Agreement and of the escrow set forth in this Agreement.

10.03 Integration. This Agreement and its exhibits contain the entire agreement between Seller and Buyer, superseding any and all prior written or oral agreements between Seller and Buyer concerning the subject matter contained in this Agreement, and Seller and Buyer hereby release each other from any and all rights, obligations and claims under such prior agreements.

10.04 Notice. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given as of the following: (i) on the date of personal service on Seller or Buyer; (ii) on the third business day after mailing, if the document is mailed by registered or certified mail, return receipt requested; (iii) one day after being sent by professional or overnight courier or messenger service guaranteeing one-day delivery, with receipt confirmed by the courier; or (iv) on the date of transmission if sent by telegram, email or other means of electronic transmission resulting in written copies, with receipt confirmed (and with a copy of such notice, demand or communication deposited on the same day in a United States post office with first class postage prepaid and addressed to the party or parties). Any such notice shall be delivered or addressed to Seller or Buyer at the addresses set forth below or at the most recent address specified by the addressee through written notice under this section 10.04. Failure to give notice in accordance with any of the foregoing methods shall not defeat the effectiveness of notice actually received by the addressee.

To Buyer: Mohammad Javanbakht
Avesta Development Group, LLC
229 Brannan Street, Unit 4C
San Francisco, CA 94107
Fax: (415) 796-3926
Email address: mjavan@avestadev.com

With copies to: Kawakami Barron & Lam, LLP

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10.05 Attorneys’ Fees: Prejudgment Interest. If the services of an attorney are required by Seller or Buyer to secure the performance of this Agreement or otherwise upon the breach or default of Seller or Buyer, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement or the rights and duties of any person in relation thereto, the prevailing party shall be entitled to reasonable attorneys’ and expert fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of the Agreement’s provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

10.06 [Intentionally Deleted].

10.07 Assignment. Buyer may assign Buyer’s rights under this Agreement to purchase the Property prior to the Close of Escrow to an entity formed by Buyer or the members of Buyer which may, at Buyer’s election, include other members and/or partners) to acquire title to the Property. Any other assignment prior to Close of Escrow may only be done with the prior written approval of the City, which may not be unreasonably withheld.

10.08 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in this Agreement shall remain in full force and effect.

10.09 Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the
provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

10.10 Rule of Construction. Buyer and Seller have each read and fully understand the terms of this Agreement, and each has had the opportunity to have this Agreement reviewed by its own counsel. The rule of construction providing that ambiguities in an agreement shall be construed against the party drafting the same shall not apply.

10.11 Dates. If any dates hereunder fall on a Saturday, Sunday or legal holiday, such date shall be the next following business day.

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

10.13 Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

10.14 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties thereto, to any person or entity other than the parties hereto. This agreement does not intend to create any third party beneficiaries.

10.15 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

10.16 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

10.17 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

10.18 No Offer. The parties agree that no offer and acceptance can occur until the parties mutually execute this document hereto, it being understood that the delivery of this document does not constitute an offer of any kind.

10.19 Dependency and Survival of Provisions. Except as otherwise provided herein, the respective covenants, agreements, obligations and undertakings of each party hereunder (whether to be performed before or after the Close of Escrow) shall be construed as dependent upon and given in consideration of those of the other party and shall survive the Close of Escrow and delivery of the Quitclaim Deed or termination of this Agreement for any reason.
10.20 Condemnation. If the Property, or any portion thereof is taken by eminent domain, or any proceeding for the same is commenced, prior to the Close of Escrow (collectively, “Taking”), then Buyer shall have the option to proceed with this transaction and to receive an assignment of any condemnation award, or terminate this Agreement and the escrow established hereby by written notice delivered to Seller upon the earlier of: (a) the Closing Date or (b) within fifteen (15) days after Buyer is notified in writing by Seller of the Taking. Failure of Buyer to timely deliver said notice shall be deemed a conclusive waiver of Buyer’s rights to terminate this Agreement on the basis of a Taking. If Buyer exercises its right to terminate this Agreement in accordance with the requirements of this section, then, subject to section 2.03, the Deposit, and any remaining unspent portion of the Cost Recovery Deposit, shall be returned to Buyer.

10.21 Authorization. Each individual executing this Agreement, or its counterpart, on behalf of an entity, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents.

10.22 Exhibits.

The following exhibits are attached hereto and incorporated by this reference.

Exhibit A Legal Description of Real Property

10.21 Exclusivity. The City agrees that, for a period commencing on the Effective Date and ending on the first to occur of the Closing Date, or the termination of this Agreement (the "Exclusivity Period"), (A) the City will negotiate solely with Purchaser and proceed toward the consummation of a transaction as set forth in this Agreement in good faith; and (B) the City will not, and will cause its employees, representatives, contractors and agents not to, (i) discuss, pursue or enter into any oral or written agreement regarding a possible sale, recapitalization, lease, contribution or other disposition or transfer of the Property or any interest therein with any other party, nor provide any information to any other party in connection therewith; nor (ii) market the Property as being available for sale, lease, contribution or other disposition or transfer; nor (iii) disclose to any other party the terms of this Agreement, except to the extent that the City is legally required to do so. Notwithstanding the foregoing to the contrary, the parties acknowledge and agree that final action in approving this Agreement by the City Council can only take place in the context of a public hearing and that this Agreement shall become a public document, fully open to the public for inspection and copying. The City represents that, from and after the Effective Date, it will not, by pursuing the transaction contemplated hereby, violate the terms of any other agreement or obligation to which it is subject.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the dates indicated below.

SELLER: BUYER:
THE CITY OF NOVATO

By: ___________________
Name: ___________________
Title: ___________________
Dated: ___________________

Approved as to form:

By: ___________________

Jeffrey A. Walter, City Attorney

AVESTA DEVELOPMENT GROUP, LLC,
a California Limited Liability Company

By: ___________________
Name: ___________________
Title: ___________________
Dated: ___________________

Approved as to form:

By: ___________________

Paul Kawakami, Esq.
EXHIBIT A - Legal Description of Real Property

[To be attached]
CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT OF PURCHASE AND SALE WITH AVESTA DEVELOPMENT GROUP LLC FOR THE HAMILTON HOSPITAL PROPERTY, APN 157-690-52

WHEREAS, the City Council of the City of Novato, on June 4, 2014, authorized the City Manager to negotiate an Agreement of Purchase and Sale ("Agreement") with Avesta Development Group, LLC ("Buyer") for the parcel known as the "Hamilton Hospital Property", APN 157-690-52 ("Property").

WHEREAS, the City of Novato has negotiated an Agreement with the Buyer which would sell the Property to the Buyer for an amount not less than $1,750,000 and reflecting the terms described to and approved by the City Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Novato hereby authorizes the City Manager or his designee to execute the aforementioned Agreement of Purchase and Sale and all other documents necessary to the closing of the transaction and to make immaterial changes and amendments to the agreement with the approval of the City Attorney.

*  *  *  *  *  *  *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the 23rd day of September, 2014, by the following vote, to wit:

AYES:  Councilmembers
NOES:  Councilmembers
ABSTAIN:  Councilmembers
ABSENT:  Councilmembers

Sheri Hartz, City Clerk

Approved as to form:

City Attorney of the City of Novato