

TOWN OF LOOMIS

RESOLUTION NO. 12 - __

**RESOLUTION OF THE COUNCIL OF THE TOWN OF LOOMIS
APPROVING AGREEMENT FOR PURCHASE OF REAL PROPERTY,
APN. 044-133-002 TAYLOR ROAD, LOOMIS, CA 95650
FROM PLACER COUNTY**

WHEREAS, the Town Council of the Town of Loomis does hereby approve an agreement for the purchase of real property from Placer County. The property, referred to as Assessor's Parcel Number 044-133-002, is more particularly described in the Agreement of Purchase, a true and correct copy of which is attached hereto as Exhibit "A."

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Town Council of the Town of Loomis authorizes the Town Manager to execute said agreement and any related documents on behalf of the Town of Loomis.

AYES:

NOES:

ABSENT:

OBSTAINED:

Sandra Calvert, Mayor

ATTEST:

Crickett Strock, Town Clerk

EXHIBIT "A"

AGREEMENT OF PURCHASE AND SALE OF SURPLUS REAL PROPERTY COUNTY OF PLACER and THE TOWN OF LOOMIS

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made by and between the COUNTY OF PLACER, a political subdivision of the State of California (the "COUNTY") and the TOWN OF LOOMIS, a public body, corporate and politic ("TOWN"). COUNTY and TOWN are sometimes hereinafter each singularly referred to as a "PARTY" and collectively referred to as the "PARTIES." The PARTIES hereby mutually agree as follows:

ARTICLE 1. GENERAL.

- 1.01 Definitions. Capitalized terms used in this Agreement which are not defined in this Agreement shall have the meaning subscribed to them in ordinary usage. This Agreement includes all exhibits, schedules and other attachments in the exhibits.
- 1.02 Purchase Property. COUNTY is the owner of ± 0.73 acres with a 2,064 square foot building and 17 space developed parking lot located at 3790 Taylor Road, Loomis CA, referred to as APN 044-133-002, as generally depicted on Exhibit A (Purchase Property).
- 1.03 Purpose. The purpose of this Agreement is to provide for the purchase and sale of the Purchase Property as conveyed through Grant Deed from COUNTY to TOWN.
- 1.04 Effective Date. The Effective Date of this Agreement (the "Effective Date") shall be the date upon which the last PARTY signs the Agreement. The Effective Date shall be immediately communicated, via facsimile as provided for herein, and a fully executed copy of this Agreement shall be delivered to the other PARTY within five (5) working days following the Effective Date. Said letter shall also indicate the date on which Close of Escrow must occur which shall be ninety (90) days following the Effective Date, (the "Escrow Deadline Date").
- 1.05 Execution and Delivery. The execution and delivery by COUNTY and TOWN and the performance under this Agreement, are within COUNTY's and TOWN's powers and have been duly authorized by all requisite actions. This Agreement constitutes the legal, valid, binding and enforceable obligation of COUNTY and TOWN.

ARTICLE 2. PURCHASE AND SALE.

- 2.01 Purchase and Sale. COUNTY shall sell the Purchase Property to the TOWN and TOWN shall purchase the Purchase Property from COUNTY on the terms and conditions specified in this Agreement.
- 2.02 Price. The purchase price for the Purchase Property shall be Two Hundred Ninety Thousand and No/100 Dollars (\$290,000.00) (the "Purchase Price"). The PARTIES agree that the Purchase Price has been negotiated based upon the appraised value as determined by Bender Rosenthal, Inc. and includes reasonable

compensation to the COUNTY for its staff, consultant, and appraisal expenses associated with the sale of the Purchase Property.

- 2.03 Payment. Upon the Close of Escrow, the entire Purchase Price shall be paid in cash, and as provided for hereunder.

ARTICLE 3. ESCROW.

- 3.01 ESCROW OPENING. The purchase and sale of the Purchase Property shall be consummated by means of an escrow opened at Placer Title Company, Escrow Order Number 102-36185, ATTN: Debbie Yu, 193 Fulweiler Avenue, Auburn, CA 95603, Telephone (530) 885-7722, Facsimile (530) 885-1592, ("Escrow Holder") within five (5) working days following the Effective Date.
- 3.02 ESCROW INSTRUCTIONS. The escrow instructions given to Escrow Holder shall be consistent with the terms of this Agreement and, as between the PARTIES, the terms of this Agreement shall prevail if there is any inconsistency, unless any instruction specifically states that it is intended to supersede a provision of this Agreement (or unless the typewritten rather than printed portion of the instructions specifically provides for the contrary), provided the instruction is contained in joint escrow instructions signed by both PARTIES.
- 3.03 CLOSE OF ESCROW. "Close," "Close of Escrow", "Closing", or "Closing Date" shall be defined as the date that the Grant Deed conveying the Purchase Property to TOWN is recorded in the Official Records of Placer County, California. If a PARTY fails to meet its performance conditions by the Escrow Deadline Date, then the PARTY who was to benefit from such performance shall have the option to cancel escrow and terminate this Agreement or extend the Close of Escrow to a mutually agreed upon date. The benefited PARTY shall notify the other PARTY of its intent to exercise this option ten (10) days prior to the Escrow Deadline Date.
- 3.04 ESCROW COSTS AND EXPENSES. TOWN shall pay all escrow and title costs associated with this transaction, including the premium for title insurance as determined by TOWN. Such costs shall include recording fees, escrow fees, title insurance, transfer taxes, and all costs associated with clearing title. Prior to Close of Escrow, TOWN shall deposit the Purchase Price into escrow that includes the negotiated price for the Purchase Property.
- 3.05 TAXES/ASSESSMENTS. All real estate taxes, assessments and any similar charges imposed upon the Purchase Property by the County of Placer, or any other governmental or special district, organization or body shall be prorated as of the Close of Escrow, on the basis of a 30-day month.
- 3.06 DELIVERY OF DOCUMENTS AND FUNDS.
- A. By COUNTY. Prior to and as a condition to TOWN's performance of its obligations set forth in this Agreement, COUNTY shall:
- (1) Deposit with Escrow Holder the Grant Deed, in a form approved by TOWN's General Counsel, conveying the Purchase Property to

TOWN, fully executed and notarized. COUNTY shall additionally deliver to Escrow Holder the following documents:

- (2) Deposit with Escrow Holder a Transferor's Certificate of Non-foreign Status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, certifying that COUNTY is not a foreign person;
- (3) Deposit with Escrow Holder California Form 590 RE, Withholding Exemption Certificate for Real Estate Sales; and
- (4) Execute and deliver to Escrow Holder such other instructions and documents as may be required by Escrow Holder to close escrow in accordance with this Agreement.

B. By TOWN. Prior to and as a condition to COUNTY's performance of its obligations set forth in this Agreement, TOWN shall:

- (1) Deposit with Escrow Holder the Purchase Price in accordance with Article 2, plus or minus allowable pro-rations, by cashier's or certified check or electronic transfer of federal funds to Escrow Holder;
- (2) Execute and deliver to Escrow Holder such other instructions, documents and funds as may be required by Escrow Holder to close escrow in accordance with this Agreement.

C. By Escrow Holder. When all conditions for the Close of Escrow have been met, Escrow Holder shall promptly:

- (1) Cause the Grant Deed to TOWN to be recorded in the Official Records of Placer County;
- (2) Disburse the Purchase Price as directed in writing by COUNTY;
- (3) Deliver to TOWN the policy of title insurance as selected and paid for by the TOWN insuring title in TOWN subject only to exceptions consistent with the terms of this Agreement.

ARTICLE 4. CONDITIONS TO CLOSE ESCROW.

4.01 General. The provisions of this Article 4 are conditions to the Close of Escrow and, unless otherwise provided expressly or by context, are covenants of the PARTY responsible for causing the condition to be satisfied. If any of such conditions are not fulfilled by either the date stated, or, where no specific date is stated, on or before the Close of Escrow, then, except as otherwise provided in this Agreement, the PARTY benefited by the condition shall have the right to cancel and terminate this Agreement and the Escrow, in which event all rights and obligations of the COUNTY and TOWN hereunder shall be terminated and be of no further force and effect and all funds and instruments deposited into escrow shall be returned to the PARTY who deposited the same.

4.02 Title; Title Policy. At the Close of Escrow, COUNTY shall convey title to the Purchase Property to the TOWN by Grant Deed, subject only to the "Permitted Exceptions" defined below.

- 4.03 Preliminary Report; TOWN 's Title Notice. COUNTY shall order from Escrow Holder and cause to be delivered to TOWN within ten (10) working days after the Effective Date a copy of a Preliminary Report covering the Purchase Property ("the Preliminary Report") and legible copies of all documents referred to in the Preliminary Report (collectively, the "Title Documents"). COUNTY shall convey to TOWN the Purchase Property free and clear of all monetary liens or encumbrances, including deeds of trust except: a) the lien for non delinquent real property taxes; b) the standard printed exceptions or exclusions on the form of title insurance policy issued pursuant to Section 4.05; and c) any other matters approved in writing by TOWN.
- 4.04 TOWN 's Review Of Title. Within ten (10) working days of receipt of the Preliminary Report described in Section 4.03 above, TOWN shall notify COUNTY in writing as to whether TOWN approves or disapproves the condition of title of the Purchase Property. If TOWN disapproves the condition of title of the Purchase Property, then within five (5) working days after such notice of disapproval, COUNTY shall notify TOWN as to whether COUNTY will agree to eliminate the title matters to which TOWN objected. TOWN's failure to give such written notice of approval or disapproval to COUNTY shall be deemed to be complete approval. . If COUNTY notifies TOWN that it will not remove a title exception objected to by TOWN, TOWN may elect to either terminate this Agreement, or to waive TOWN's objection. All title matters accepted by TOWN pursuant to this paragraph shall be defined as "Permitted Exceptions."
- 4.05 TOWN's Title Policy. The title insurance policy issued at the Close of Escrow (the "TOWN Title Policy") shall be a CLTA Owners Policy (or ALTA Title Policy if the TOWN so requests) with liability in an amount solely determined by the TOWN, insuring title to the Purchase Property in TOWN subject only to: (1) the Permitted Exceptions; and (2) the printed exceptions and exclusions common to CLTA Coverage policies. The decision regarding the type of title insurance policy to be obtained shall be at TOWN's sole discretion.
- 4.06 Taxes. Taxes shall be apportioned and cleared in the manner requested by Section 5081, et seq., of the California Revenue and Taxation Code; the date of apportionment shall be the same as the time of Close of Escrow.
- 4.07 Delivery of COUNTY's Documents. Within five (5) working days after the Effective Date of this Agreement, COUNTY shall deliver copies of all tests, surveys, maps, plans, records, permits, correspondence reports or other materials affecting the Purchase Property which are within the COUNTY's possession or control and which have not already been provided to the TOWN. Such reports will include the August 1, 2000 Groundwater Sampling Report and Case Closure Report/Checklist and the February 14, 2001 Proposed Groundwater Monitoring Well Abandonment reports prepared by Kleinfelder, Inc. for the COUNTY regarding the Purchase Property, as well as, a copy of the California Regional Water Quality Control Board's Notice of No Further Action letter. Since the date of the above mentioned letters and studies, the COUNTY is unaware of any release or discharge of Hazardous Materials in, upon, on or below any portion of the Purchase Property, including, but not limited to, soils and ground or surface water in and around its property. Additional documents to include an Estoppel Certificate prepared by the COUNTY signed by Scott Paris Enterprises, Inc (Tenant), acknowledging that the Tenants rental or lease agreements are unmodified and in full force and effect (or if

modified, stating all such modifications), that no lessor defaults exist, and stating the amount of any prepaid rent or security deposit.

- 4.08 Due Diligence Reports. TOWN shall be permitted to investigate the Purchase Property in conformance with the Limited Right of Entry provisions of Article 5, at its sole expense, to determine in TOWN's sole and absolute discretion, the suitability of the property for its intended uses. Such investigations may include boundary surveys, environmental assessments, soil tests, topography studies, etc. Copies of reports resulting from the work performed under this Agreement shall, at the COUNTY's sole discretion and request, be provided to the COUNTY at no cost.
- 4.09 Performance. COUNTY and TOWN shall have timely performed all of its obligations under this Agreement.
- 4.10 TOWN's Conditions to Close Escrow. TOWN's obligation to purchase and the Close of Escrow shall be conditioned on all of the following; (1) TOWN's written acceptance of the condition of title and physical and environmental conditions of the Purchase Property pursuant to Section(s) 4.04 and 9.01 herein; and, (2) TOWN's acceptance of the Purchase Property subject to the current Lease Agreement No. CN028068 between Scott Paris Enterprises, Inc. (Tenant) and Placer County and the unpermitted encroachment by W&W Moulding.
- 4.11 COUNTY's Conditions to Close. COUNTY's obligation to transfer the Purchase Property and the Close of Escrow shall be conditioned on TOWN's delivery of the Purchase Price as described in Section 3.06 B.

ARTICLE 5. TOWN LIMITED RIGHT OF ENTRY.

- 5.01 General. Terminating at Close of Escrow, TOWN shall have the right, upon forty-eight (48) hours notice as provided herein, to enter onto the Purchase Property in order to conduct inspections, tests, surveys and other studies as TOWN may deem necessary (the "Work").
- 5.02 Permits. TOWN shall be responsible for obtaining any required permits for all Work performed on the Purchase Property. All Work shall be performed in compliance with all applicable laws and regulations. TOWN shall be responsible for performing all Work on the Purchase Property in a safe, professional manner, and shall take all reasonable precautions to avoid damage to the Purchase Property. TOWN shall be solely responsible for any damage that occurs to the Purchase Property or to adjacent properties caused by the Work. Upon the completion of the Work, all debris generated by TOWN's Work, shall be removed from the Purchase Property by TOWN, and disposed of in an appropriate and legal manner.
- 5.03 No Interference. Neither TOWN nor its contractors shall interfere with any ongoing, or future, operations of the COUNTY, its tenants, its agents, or its contractors.
- 5.04 TOWN's Sole Cost. All Work shall be performed under the direction of TOWN, at the sole cost of TOWN, and TOWN is responsible for payment of contractors, subcontractors and costs of lawful disposal of all materials.
- 5.05 Tools and Equipment. All tools, equipment and vehicles used to perform the Work shall be the property of, or hired by, TOWN and shall be removed promptly upon completion of the Work.

- 5.06 Indemnification. TOWN agrees to indemnify and defend COUNTY and hold it and the Purchase Property harmless from any costs or liability relating to personal injury, physical property damage and/or mechanics' liens, and attorney's fees related thereto, incurred by reason of such investigations, and to repair any damages caused to the Purchase Property by reason of any entry or investigation thereof. Notwithstanding the foregoing, TOWN's indemnity obligations set forth in the preceding sentence shall not extend to the negligent acts, omissions or willful misconduct of COUNTY, or to the discovery of any pre-existing Hazardous Materials (defined in Section 9.01 below) present in, on, or under the Purchase Property.
- 5.07 Further Indemnity. In addition to the foregoing general indemnification obligations and without in any way limiting it, TOWN agrees to indemnify, defend, and hold COUNTY harmless from any costs, damages, claims, liabilities and judgments arising from any past, present or future acts or omissions of TOWN, its employees, agents, contractors or lessees, arising out of or in connection with TOWN's Work under this Agreement or subsequent property possession which may hereafter result in a violation of federal, state and local laws and regulations which are applicable and are related to the release on or into land, Property and other interests of COUNTY of asbestos and/or an other hazardous substance(s) as defined by federal or state environmental laws.
- 5.08 Judgment. If any judgment is rendered against the COUNTY for any injury, death or damage caused by TOWN or resulting from the activities allowed pursuant to this Agreement, TOWN shall at their expense satisfy and discharge any judgment.
- 5.09 Sole Negligence. None of the foregoing paragraphs shall be applicable if the injury, death or damage is caused by the COUNTY's sole negligence or willful misconduct.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES.

- 6.01 Representations and Warranties in General. COUNTY acknowledges that the execution of this Agreement by the TOWN is made in material reliance by TOWN on each and every one of the representations and warranties made by COUNTY in this Article 6. TOWN acknowledges that the execution of this Agreement by COUNTY is made in material reliance by the COUNTY of each and every one of the representations and warranties made by TOWN in this Article 6.
- COUNTY shall provide no warranties as to the current condition of the Purchase Property. As a matter of disclosure COUNTY will provide TOWN with all reports and studies in COUNTY's possession. Such reports will include the August 1, 2000 Groundwater Sampling Report and Case Closure Report/Checklist and the February 14, 2001 Proposed Groundwater Monitoring Well Abandonment reports prepared by Kleinfelder, Inc. for the COUNTY regarding the Purchase Property, as well as, a copy of the California Regional Water Quality Control Board's Notice of No Further Action letter. Since the date of the above mentioned letters and studies, the COUNTY is unaware of any release or discharge of Hazardous Materials in, upon, on or below any portion of the Purchase Property, including, but not limited to, soils and ground or surface water in and around its property.

Except as otherwise expressly stated herein, TOWN agrees that it is purchasing the Purchase Property "as is" and "with all faults," with no warranties by COUNTY of any kind, express or implied, with respect to the Purchase Property or the condition thereof. By closing this transaction, TOWN hereby: (1) releases COUNTY and assumes all damages, claims, liabilities and obligations, whether known or unknown, arising from or related in any way to the Purchase Property or the condition thereof, including without limitation the physical condition of the Purchase Property, the presence and/or absence of Hazardous Materials in, on, under or affecting the Purchase Property, and the compliance of the Purchase Property with laws, ordinances, rules or regulations relating to the condition thereof; and, (2) releases COUNTY from all damages, claims, liabilities and obligations arising after Close of Escrow from or related to the current parties in possession of the Purchase Property pursuant to current Lease Agreement No. CN028068 between the County and Scott Paris Enterprises, Inc. and the unpermitted encroachment by W&W Moulding. The parties agree that each representation and warranty in this Section shall survive the Closing Date. For purposes hereof, "Hazardous Material" shall have the meaning ascribed to it in paragraph 9.01 below.

6.02 County's Representations and Warranties. COUNTY represents and warrants to TOWN that each and every one of the matters set forth in this Section 6 are true and correct as of the Effective Date.

- (A) Breach of Other Agreements. Neither the execution of this Agreement nor the consummation of the transactions contemplated herein will constitute a breach under any contract or agreement to which COUNTY is a party or by which COUNTY is bound or affected which affects the Purchase Property or any part thereof.
- (B) No Other Parties. Except as provided for in Section 10.01 herein, at the Close of Escrow, there are no other parties with any interest in the Purchase Property (marital, homestead or otherwise), and no other signatures are required to make this Agreement fully enforceable by the TOWN.
- (C) Rights of Others. Except for COUNTY's tenants' Scott Paris Enterprises, Inc as provided for in Section 10.01 herein, there are no parties in possession of any portion of the Purchase Property as lessees, tenants, tenants at sufferance, or trespassers, and no party has been granted any license, lease or other right relating to use or possession of the Purchase Property.
- (D) No Grant of Other Rights. COUNTY has not granted to any party, other than the TOWN, any option, contract, or other agreement with respect to a purchase or sale of the Purchase Property or any portion thereof or any interest therein.
- (E) No Bankruptcy or Litigation. COUNTY represents and warrants that there are no attachments, executions, assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy, or under any applicable debtor relief laws, or any other litigation contemplated by, pending or threatened against COUNTY or the Purchase Property.

- (F) Authority; Binding Obligation. The execution and delivery by COUNTY of and COUNTY's performance under this Agreement are within COUNTY's powers and have been duly authorized by all requisite action.
- (G) No Retained Rights. To the best knowledge of COUNTY, no previous owner of any portion of the Purchase Property has any right to create any easements, rights-of-way or other interest in any portion of the Purchase Property, except as otherwise may be disclosed in the Preliminary Report.
- (H) Disclosure. COUNTY has disclosed to TOWN any and all matters known to COUNTY that may have a material adverse impact on the Purchase Property and the TOWN's ability to use and/or develop the Purchase Property. All of the documents and materials supplied by COUNTY are in all material respects true, accurate and complete; and, COUNTY has no knowledge of any facts which would render any information in such documents and materials untrue in any significant respect.
- (I) Notice of Changed Circumstances. If COUNTY becomes aware prior to close of escrow of any fact or circumstance which would render false or misleading a representation or warranty made by COUNTY, then COUNTY shall immediately give written notice of such fact or circumstance to the TOWN, but such notice shall not relieve COUNTY of any liabilities or obligations with respect to any representation or warranty.

6.03 TOWN 'S Representations and Warranties. TOWN represents and warrants to the COUNTY that each and every one of the matters set forth in this Section 6 are true and correct as of the Effective Date.

- (A) Authority; Binding Obligation. The execution and delivery by TOWN of, and TOWN 's performance under, this Agreement are within TOWN 's powers and have been duly authorized by all requisite action.

6.04 Survival of Warranties. COUNTY and TOWN agree that each representation and warranty in this Article 6, shall survive the Closing Date.

ARTICLE 7. TERMINATION.

7.01 Agreement Termination Provisions. Either PARTY to this Agreement may elect to terminate this Agreement in the event of the following conditions not being met, with no further obligations of any PARTY.

7.02 County's Termination. In addition to the conditions for COUNTY's obligation to sell, the Purchase Property is subject to the satisfaction of the following condition which is for the COUNTY's benefit only:

- (A) TOWN's payment of the Purchase Price for the Purchase Property and compliance with all material obligations hereunder prior to, or at, the Close of Escrow.

7.03 TOWN 's Termination. In addition to the Conditions to Close pursuant to Section 4.10, the TOWN 's obligation to purchase the Purchase Property is subject to the satisfaction of the following conditions which are for the TOWN's benefit only:

- (A) TOWN's approval of inspections, tests, surveys and other studies as the TOWN may deem necessary.
 - (B) TOWN's approval of COUNTY's documents, as provided in Section 4.07.
- 7.04 Should the TOWN elect to terminate this Agreement, the TOWN agrees to compensate the COUNTY for its staff, consultant, and escrow expenses at an amount not to exceed Ten Thousand and No/100 Dollars (\$10,000). The TOWN shall remit such payment to the COUNTY within thirty (30) days following receipt of an invoice detailing such expenses.

ARTICLE 8. MISCELLANEOUS.

8.01 Notices.

- (A) "Notice" means any notice, demand, request or other communication or document to be provided under this Agreement to a PARTY to this Agreement.
- (B) The Notice shall be in writing and shall be given to the PARTY at its address or facsimile number set forth below, or such other address or facsimile number as the PARTY may later specify for that purpose by Notice to the other PARTY. Each Notice shall, for all purposes, be deemed given and received:
 - (1) If given by facsimile, when the facsimile is transmitted to the PARTY's facsimile number specified below and confirmation of complete receipt is received by the transmitting PARTY during normal business hours or on the next business day if not confirmed during normal business hours;
 - (2) If hand-delivered to a PARTY against receipted copy, when the copy of Notice is receipted;
 - (3) If given by a nationally-recognized and reputable overnight delivery service, the day on which the Notice is actually received by the PARTY; or
 - (4) If given by any other means, or if given by certified mail, return receipt requested, postage prepaid, two business days after it is posted with the United States Postal Service, at the address of the PARTY specified below:

If to TOWN: Town Of Loomis
 3665 Taylor Road
 Loomis, CA 95650
 Telephone No. (916) 652-1840
 Facsimile No. (916) 652-1847

If to the COUNTY: County of Placer
 Department of Facility Services
 Mailing Address: 11476 C Avenue
 Physical Address: 2855 2nd Street
 Auburn, CA 95603

Attn: Property Manager
Facsimile No. (530) 886-4964

Copies on any Notice

If to COUNTY shall also be sent to:
County of Placer
Office of County Counsel
Attention: Rob Sandman
175 Fulweiler Avenue
Auburn, CA 95603
Facsimile No. (530) 889-4069

If to TOWN shall also be sent to:

Jeffrey Mitchell, Loomis Town Attorney
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

- (C) If any Notice is sent by facsimile, the transmitting PARTY as a courtesy may send a duplicate copy of the Notice to the other PARTY by regular mail. In all events, however, any Notice sent by facsimile transmission shall govern all matters dealing with delivery of the Notice, including the date on which the Notice is deemed to have been received by the other PARTY.
 - (D) The provisions above governing the date on which a Notice is deemed to have been received by a PARTY to this Agreement shall mean and refer to the date on which a PARTY to this Agreement, and not its counsel or other recipient, to which a copy of the Notice may be sent, is deemed to have received the Notice.
 - (E) If Notice is tendered under the provisions of this Agreement and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided in this Agreement. The contrary notwithstanding, any Notice given to either PARTY in a manner other than that provided in this Agreement that is actually received by the noticed PARTY, shall be effective with respect to such PARTY on receipt of the Notice.
- 8.02 No Brokers. Each of the PARTIES hereto represents that it has dealt with no broker or finder in connection with this sale, and insofar as they know, no broker or other person is entitled to any commission or finder's fee in connection with this sale. The COUNTY and TOWN each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying PARTY.
- 8.03 Interpretation. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the PARTIES and are not a part of the Agreement.

Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the PARTIES, but rather as if both PARTIES had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement.

- 8.04 Time of Essence. COUNTY and TOWN hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either PARTY shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the PARTY so failing to perform.
- 8.05 Integration; Amendments to Agreement. This Agreement contains the entire agreement of the PARTIES hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, relating to the subject matter which are not fully expressed herein. This Agreement may be amended, modified or supplemented only by a written instrument signed by all PARTIES.
- 8.06 Additional Documents. From time to time prior to and after the Close of Escrow, each PARTY shall execute and deliver such instruments of transfer and other documents as may be reasonably requested by the other PARTY to carry out the purpose and intent of this Agreement.
- 8.07 Dependency and Survival of Provisions. The respective warranties, representations, covenants, agreements, obligations and undertakings of each PARTY hereunder 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 Grant Deed.
- 8.08 California Law. The PARTIES hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The PARTIES hereto expressly agree that this Agreement shall be governed by, interpreted under and construed and enforced in accordance with laws of the State of California. Venue for any disputes shall be the Superior Court for the State of California, Placer County. The PARTIES hereby waive any federal court removal rights and/or rights based on original jurisdiction that they may have.
- 8.09 Possession. As set forth in Section 6.02 (C), the COUNTY's delivery of possession shall be subject to the rights held by the COUNTY's tenant Scott Paris Enterprises, Inc. and the unpermitted encroachment by W&W Moulding.
- 8.10 Reporting to Internal Revenue Service. The escrow instructions for this transaction shall obligate Escrow Holder to report this transaction to the Internal Revenue Service pursuant to Section 6045 of the Internal Revenue Code of 1986, as amended.
- 8.11 Calculation of Time Periods. If any date for performance under this Agreement falls on a Saturday, Sunday or bank holiday, then the date for performance shall be the next day which is not a Saturday, Sunday or bank holiday, and the next time

period shall be calculated from and after the date of such actual performance. Unless specifically described herein as calendar days, all time periods shall be calculated as working days.

- 8.12 Exhibits. All exhibits to which reference is made in this Agreement are incorporated in this Agreement by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the PARTIES. Reference to "this Agreement" includes matters incorporated by reference.
- 8.13 Force Majeure. If either PARTY hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the PARTY obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing contained in this Section shall excuse TOWN from the prompt payment of any charge required of TOWN hereunder, except as may be expressly provided elsewhere in this Agreement.
- 8.14 Mutual Contribution. This Agreement has been drafted on the basis of mutual contribution of language and is not to be construed against any PARTY hereto as being the drafter or causing the same to be drafted.
- 8.15 Representation. Each PARTY acknowledges that it has had the opportunity to review this Agreement with an attorney, and has either done so, or knowingly declined the opportunity to do so.
- 8.16 Counterparts. This Agreement may be executed in counterparts.
- 8.17 Successors and Assigns. This Agreement and the rights and obligations contained herein shall be binding on the successors, heirs and assigns of the parties.

ARTICLE 9. HAZARDOUS MATERIALS.

- 9.01 The term "Hazardous Material(s)" as used in this Agreement means any substance which is: (1) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law; (2) a petroleum hydrocarbon, including crude oil or any fraction thereof; (3) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or reproductive toxicant; (4) regulated pursuant to any "Environmental Law(s)" (5) any pesticide regulated under state or federal law; or (6) any tank or container which contains or previously contained any Hazardous Material(s). The term "Environmental Law(s)" means each and every federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety or the environment, now and forever.

ARTICLE 10. CONDITIONS SUBSEQUENT

Each and every one of the following Conditions Subsequent shall survive the Closing Date.

10.01 Continued Occupancy of Current Tenant(s). The TOWN agrees that the acquisition of the Purchase Property shall be subject to Lease Agreement No. CN028068 between the COUNTY and Scott Paris Enterprises, Inc., for a 9 year term that commenced on 9/1/2007 and expires on 8/31/2016; and a non-permitted encroachment over a portion of the remaining 11,680 square foot area at the southern tip of the Purchase Property. TOWN shall be solely responsible for any relocation assistance which may be due to this tenant and party encroaching on the Purchase Property. TOWN acknowledges receipt from COUNTY of Lease Agreement No. CN028068. In addition, the TOWN acknowledges there remains, after Close of Escrow, the unpermitted encroachment by W&W Moulding and further acknowledges, any relocation cost associated with this unpermitted use will be the responsibility of the TOWN.

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IN WITNESS WHEREOF, the PARTIES have duly executed this Agreement, together with the herein-referred-to Exhibits, which are attached hereto, on the day and year of the last signature below.

TOWN: TOWN of Loomis, a public body, incorporated and politic

By: _____
Date of Town Council Approval

Approved As to Form

By: _____ Date: _____
General Counsel

COUNTY: COUNTY OF PLACER
a political subdivision of the State of California

By: _____ February 14, 2012
James Durfee Date of Board of Supervisors Approval
As authorized by the Board of Supervisors
Resolution No. 2012-035

Approved As to Form

By: _____ Date: _____
County Counsel

Attachments:

- Exhibit A: Purchase Property Map
- Exhibit B: Purchase Property Legal Description

PURCHASE PROPERTY LEGAL DESCRIPTION

Order No. 102-36185
 AMEND
 Version 2

EXHIBIT "A"
 LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF PLACER, CITY OF LOOMIS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT A POINT ON THE NORTHWESTERLY BOUNDARY OF THE VICTORY HIGHWAY RIGHT OF WAY NEAR THE TOWN OF LOOMIS, PLACER COUNTY, CALIFORNIA, FROM WHICH POINT THE 1/4 SECTION COR. BETWEEN SECTION 9 AND 10, TOWNSHIP 11 NORTH, RANGE 7 EAST, M.D.B.&M., BEARS SOUTH 83 DEGREES 42 MINUTES EAST A DISTANCE OF 1404.0 FEET AND RUNNING THENCE NORTH 53 DEGREES 38 MINUTES WEST 100.0 FEET, THENCE SOUTH 36 DEGREES 22 MINUTES WEST 75.0 FEET THENCE EAST 125.0 FEET TO THE POINT OF BEGINNING, BEING THE SAME LAND CONVEYED TO THE COUNTY OF PLACER NOVEMBER 8, 1923 IN BOOK 211, PAGE 88.

PARCEL TWO:

BEGINNING AT A POINT ON THE NORTHWESTERLY BOUNDARY OF THE STATE HIGHWAY, FROM WHICH POINT ENGINEER'S STATION 360-92.1 BEARS SOUTH 36 DEGREES 38 MINUTES WEST 187.12 FEET, AND RUNNING THENCE NORTH 35 DEGREES 57 MINUTES EAST 72.7 FEET; THENCE NORTH 88 DEGREES 45 MINUTES EAST 43.8 FEET TO A POINT ON THE NORTHWESTERLY BOUNDARY OF SAID HIGHWAY; THENCE SOUTH 55 DEGREES 19 MINUTES WEST 104.25 FEET ALONG SAID BOUNDARY OF SAID HIGHWAY TO THE PLACE OF BEGINNING; BEING FURTHER DESCRIBED AS BEING A FRACTIONAL PART OF THE NORTH EAST QUARTER OF SECTION 9, TOWNSHIP 11 NORTH, RANGE 7 EAST M.D.B.&M., BEING THE SAME LAND CONVEYED TO THE COUNTY OF PLACER, IN DEED RECORDED SEPTEMBER 6, 1923 IN BOOK 209, PAGE 449 OFFICIAL RECORDS.

PARCEL THREE:

THAT PORTION OF STATE HIGHWAY RIGHT OF WAY IN SECTION 9, TOWNSHIP 11 NORTH RANGE 7 EAST M.D.B.&M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF A TRIANGULAR PARCEL OF LAND OWNED BY THE COUNTY OF PLACER WITH A CURVE CONCENTRIC WITH AND 40.0 FEET WESTERLY, MEASURED RADially, FROM THE CENTER LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY BETWEEN LOOMIS AND NEWCASTLE, ROAD III-PLA-17-A, FROM WHICH POINT ENGINEER'S EQUATION STATION 369+89.5 = 369+90.9 OF SAID SURVEY BEARS NORTH 44 DEGREES 56 MINUTES 30 SECONDS EAST 326.14 FEET, AND FROM WHICH POINT THE EAST QUARTER CORNER OF SAID SECTION 9 BEARS NORTH 89 DEGREES 10 MINUTES EAST 12.0 FEET AND SOUTH 83 DEGREES 42 MINUTES EAST 1404.0 FEET; THENCE, FROM A TANGENT THAT BEARS SOUTH 39 DEGREES 45 MINUTES 30 SECONDS WEST ALONG SAID CONCENTRIC CURVE, TO THE RIGHT WITH A RADIUS OF 4960 FEET, THROUGH AN ANGLE OF 0 DEGREES 55 MINUTES 20 SECONDS, A DISTANCE OF 79.8 FEET; THENCE, SOUTH 64 DEGREES 29 MINUTES WEST 176.2 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC COMPANY; THENCE, ALONG SAID SOUTHEASTERLY LINE NORTH 35 DEGREES 45 MINUTES EAST 166.8 FEET TO THE MOST WESTERLY CORNER OF SAID TRIANGULAR PARCEL; THENCE, ALONG THE SOUTH LINE OF SAID TRIANGULAR PARCEL NORTH 89 DEGREES 10 MINUTES EAST 113.0 FEET TO THE POINT OF BEGINNING; BEING

P.L.S. LEGAL

CLTA Preliminary Report

Order No. 102-36185
AMEND
Version 2

EXHIBIT "A"
LEGAL DESCRIPTION continued

THE SAME LAND RELINQUISHED TO THE COUNTY OF PLACER BY INSTRUMENT RECORDED
NOVEMBER 29, 1937 IN BOOK 375, PAGE 74 OFFICIAL RECORDS.

PARCEL FOUR:

ALL THAT PORTION OF STATE HIGHWAY 40 AS CONVEYED TO THE COUNTY OF PLACER FROM
THE STATE OF CALIFORNIA IN THAT CERTAIN "RELINQUISHMENT OF SUPERCEDED STATE
HIGHWAY IN THE COUNTY OF PLACER, ROAD III PLA 17-A", RECORDED JUNE 30, 1960 IN
VOLUME 840 AT PAGE 426, OFFICIAL RECORDS OF PLACER COUNTY THAT LIES
NORTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE MOST EASTERLY CORNER OF THE ABOVE DESCRIBED PARCEL TWO BEING
ON A CURVE CONCENTRIC WITH AND 40.0 FEET WESTERLY, MEASURED RADially, FROM
THE CENTER LINE OF THE DEPARTMENT OF PUBLIC WORKS SURVEY BETWEEN LOOMIS AND
NEWCASTLE, ROAD III PLA-17-A, FROM WHICH POINT ENGINEERS EQUATION STATION
369+89.5 - 369+90.9 OF SAID SURVEY BEARS NORTH 44 DEGREES 56 MINUTES 30
SECONDS EAST, 326.14 FEET, AND FROM WHICH POINT THE EAST QUARTER CORNER OF
SAID SECTION 9 BEARS NORTH 89 DEGREES 10 MINUTES EAST, 12.0 FEET AND SOUTH 83
DEGREES 42 MINUTES EAST 1404.0 FEET; THENCE FROM SAID POINT OF COMMENCEMENT,
ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL FROM A TANGENT THAT BEARS SOUTH 39
DEGREES 45 MINUTES 30 SECONDS WEST, ALONG SAID CONCENTRIC CURVE, TO THE RIGHT,
WITH A RADIUS OF 4960 FEET, THROUGH AN ANGLE OF 0 DEGREES 55 MINUTES 20
SECONDS, A DISTANCE OF 79.8 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL TWO,
THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE ARC SAID CONCENTRIC
CURVE, WITH A RADIUS OF 4960 FEET, FOR A DISTANCE OF 520 FEET, MORE OR LESS,
TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD (FORMLY
SOUTHERN PACIFIC RAILROAD).

APN: 044-133-002

CLTA Preliminary Report

LEGAL.0

