

**FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING**

This First Amendment to Memorandum of Understanding, effective \_\_\_\_\_, 2019, is made and entered into by and between SANTA ROSA CITY SCHOOLS, a legal entity (“District”) and CITY OF SANTA ROSA, a California municipal corporation (“City”) (collectively, the “Parties”) on the basis of the following facts and circumstances:

**RECITALS**

- A. On May 26, 1988, City and Braewood Development Corporation (“Braewood”), entered into a Holding Agreement (“Holding Agreement”) pertaining to Braewood’s planned development of the real property located in the City of Santa Rosa and identified as Assessor’s Parcel No. 040-070-21 (“Real Property”), which Holding Agreement was recorded in the Official Records of Sonoma County as document numbered 88-063213.
- B. The Holding Agreement clarified that the Real Property was located within the City’s PC (“Planned Community”) zone and, as such, was subject to the requirements of the Fountaingrove Ranch Planned Community District Policy Statement, approved and adopted by the City in September 1981 (“Policy Statement”).
- C. Policy Statement, Section IV-I.1, required dedication to City of a +/- 7 acre site as identified on the Fountaingrove Ranch Land Use and Circulation Plan, and further stated that such site shall be used for school purposes, or, alternatively, if school facilities are not needed, the site shall be used for low and/or moderate-income housing, and if it is determined that neither school facilities nor low and/or moderate-income housing are needed, the site shall revert to the person or entity who originally dedicated the site.
- D. The Fir Ridge at Fountaingrove tentative map, approved by the City on May 14, 1987, by Resolution No. 6642 (“Tentative Map”), includes a parcel designated for use as a proposed school site or, alternatively, for use as low and/or moderate-income housing, and the proposed Final Map submitted by Braewood to City identifies this site as Lot F, containing 6.03 acres (“School Site”).
- E. A condition of the Tentative Map approval requires that the School Site be offered for dedication to the City.
- F. The Agreement required Braewood to transfer the School Site to the City and required the City to accept and hold title to the School Site subject to certain terms and conditions, including that the District could obtain title to the School Site for the purpose of constructing a school.
- G. The Holding Agreement further provided that if the District had not commenced construction of a school on the School Site on or before the tenth anniversary of the date of the Holding Agreement, title to the School Site would be recoverable by the City and the City shall have the right to use the School site for low and/or moderate-income housing,

provided that if the City did not enter into a binding agreement for the construction of such housing during a five year period, then Braewood (or its successor) could regain title to the School Site and the City would permit use of the land with an alternative land use compatible with the abutting residential uses consistent with the Policy Statement.

- H. The District timely requested that the School Site be offered for dedication and timely accepted the offer of dedication by City.
- I. In or about 1995, the District acquired all of Braewood's remaining rights and interests in the School Site including, but not limited to, the right to regain title to the School Site in the event District and City did not use the School Site for school or for low and/or moderate-income housing purposes.
- J. Between 1988 and 2015, the Holding Agreement was amended twelve times, and in or about 2003, District and City entered into the "Fourth Amendment to Holding Agreement" ("Fourth Amendment") to allow District to use the School Site to develop affordable housing for its employees. The Fourth Amendment further provided that if District did not develop affordable housing on the School Site, and the City exercised its right to use the School Site for low and/or moderate-income housing, the City would make reasonable efforts to provide a preference to qualified District employees for at least fifty percent (50%) of any residential units it constructed on the School Site.
- K. On June 28, 2016, City and District entered into a Memorandum of Understanding ("MOU") to extend some of the deadlines set forth in the Twelfth Amendment to Holding Agreement ("Twelfth Amendment") for an additional three years, such that the deadline by which the District must commence construction of affordable housing for lower income District Employees on the School Site is June 30, 2020.
- L. The MOU states that, in the event District fails to meet the agreed upon milestones set forth in the Twelfth Amendment, such failure shall "make the title to the School Site recoverable by the City through the exercise of the power of termination in the Holding Agreement."
- M. On October 8, 2017, and continuing for days thereafter, a series of wildfire events identified as the Tubbs and Nuns Fires burned over 90,000 acres in Sonoma County and damaged or destroyed approximately 3,000 homes within the City of Santa Rosa, including homes in the Fountaingrove neighborhood surrounding the School Site. As a result of the Fires, which largely devastated the Fountaingrove neighborhood, the School Site may be less marketable for sale to a third party.
- N. The Parties have determined that development of the School Site by District or City for low and/or moderate-income housing would not yield an efficient result for the following reasons: (1) the School Site is not geographically near any significant commercial centers that would be needed by residents, such as post offices, banks, supermarkets, day care facilities or public schools; (2) the topography of the School Site creates additional construction costs which, in turn, compromises the affordability of development on the Site; and (3) the School Site is not geographically near to public transportation and

therefore would not benefit from funding opportunities made available to affordable housing projects proximate to transit.

- O. The Parties believe the objectives of developing housing for District employees would be better achieved by developing the project on a different site within the City limits, or creating a Loan Program as discussed herein.

## **AGREEMENT**

NOW, THEREFORE, the Parties agree as follows:

1. The District shall, within three (3) years of the date of this First Amendment to Memorandum of Understanding, do one of the following:

(a) notify the City of its intent to develop the School Site with housing for District employees; or

(b) sell the School Site to a third party. If District sells the School Site to a third party, and if requested by the District, City shall execute a Quitclaim deed relating to the School Site to facilitate its sale.

2. If District fails to comply with Section 1(a) or 1(b) above within the three-year designated timeframe, the City shall have the right to request the District execute a deed transferring title to the School Site to the City and, upon City's request, District shall execute the deed to effectuate transfer of title. In such event, City shall have the right to develop the School Site for low and/or moderate-income housing and City shall make reasonable efforts to provide a preference to qualified District employees for at least fifty percent (50%) of any residential units it constructs.

If City exercises its rights to obtain title to the School Site, but fails to enter into a binding agreement for the construction of low and/or moderate-income housing within five years following its assumption of title, then City shall engage in a sale of surplus property to sell the School Site and shall use all proceeds from such sale to finance construction of low income and/or moderate-income housing units in the City.

3. If District sells the School Site to a third party pursuant to section 1(b), above, it shall deposit all proceeds received from the sale, less any customary fees or costs required to close the transaction, into a separate account. Such proceeds shall be referred to hereinafter as the "Proceeds."

a. If District sells the School Site to a third party, it shall use the Proceeds for either:

(i) financing the construction or acquisition of housing for District employees; or

- (ii) creating a revolving fund loan program (“Loan Program”) to provide down payment assistance to District employees;

b. If the District uses the Proceeds to create a Loan Program pursuant to section 2(a)(ii) above, the District shall:

- (i) establish criteria to qualify for assistance under the Loan Program, which shall comply with all Federal, State and Local laws, and shall limit the potential recipients of loans from the Loan Program to District employees; and
- (ii) ensure that the units and/or loan proceeds remain a viable resource for District employees through a Resale Restriction Agreement recorded against the property which outlines the occupancy requirements of the unit, and the disposition of loan proceeds in the event of the sale of the property, default, or payoff of the loan.

If the District determines that it cannot, or will not, use the Proceeds to finance the construction or acquisition of housing for District employees, or to create a Loan Program, then District shall provide 100% of the Proceeds to City within 12 months of the District’s determination. In such event, City shall use the Proceeds for the sole purpose of financing construction of low and/or moderate-income housing units and shall make reasonable efforts to provide a preference to qualified District employees for at least fifty percent (50%) of any residential units constructed.

- 4. Except as provided herein, all other terms and conditions of the Holding Agreement, as amended, and Memorandum of Understanding shall remain in full force and effect.

IN WITNESS WHEREOF, City and District have executed this First Amendment to Memorandum of Understanding effective as of the date first above written.

SANTA ROSA CITY SCHOOLS, a legal entity

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

CITY OF SANTA ROSA, a municipal corporation

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

APPROVED AS TO FORM:

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City Attorney