

CITY OF SANTA ROSA PLANNING AND ECONOMIC DEVELOPMENT  
ZONING ADMINISTRATOR MEETING

JANUARY 16, 2020

PROJECT NAME: PLAZA TEMPORAL - MITOTE FOOD PARK

DECLARATION OF ROBERT A. NELLESSEN

I, Robert A. Nellesen declare:

1. There is currently a Trial set for October 30, 2020 challenging the CDC and MidPen wish that the Recorded "Reciprocal Easements" negotiated by Santa Rosa Mayor Hugh Coddington and Vigo Paulsen be deemed irrelevant. Further and separately, at Trial the scope of the historical access and parking prescriptive easements in effect since 1956 will also be determined.
2. When I went to the City of Santa Rosa to review the Application file, I discussed the lawsuit existence with Shari Meads who was surprised and considered the lawsuit existence to have been a crucial Application omission. It is apparent the CDC and MidPen have little or no interest in being honest in this Application process. Accordingly, I and John Paulsen ask for objective standards to be proposed, identified in writing and a complete, honest Application be required by the City of Santa Rosa for this project to allow the City of Santa Rosa's consideration of this application.
3. I reviewed documents provided by the CDC in the current lawsuit. The withholding of crucial Deeded Easements from the Appraiser was specifically noted. **Exhibit 3** to the Declaration of John Paulsen, Appraisal p. 41, Access:  
  
"There is a single curb-out to the subject property from Sebastopol Road to the subject site. Also, the subject appears to be accessed via easement over the adjacent property to the east, which may also be accessed over the subject site. **There is no easement referenced or shown in the survey and it is unclear if either property owner has prescriptive rights.**" [emphasis added]  
  
**Easements Description:**  
  
"The appraisers reviewed the survey provided by the client and found no exceptions to title that would materially impact market value."  
[emphasis added]
4. The CDC likewise is withholding essential information for the City of Santa Rosa to make an informed decision. Where is the 1956 Recorded Reciprocal Easement in the

1 MidPen submittal package? Where is the discussion by **ANYONE**, MidPen, Mr. Octavio  
2 Diaz, or the Zoning Administration of the existing access and parking to be destroyed n  
3 the Mitote Food Park Plan? If MidPen and the City of Santa Rosa want to create a  
4 pedestrian-only oasis on a section of the CDC property, do so where it does not violate  
5 negotiated and historical commercial and patron vehicular access and parking. Fire trucs  
6 simply cannot navigate across the Roseland Village property, back or front with the  
7 proposed MidPen permanent or "Temporal" developments.

8 5. The CDC was repeatedly advised in the Baugh 2010 sale transaction that there existed  
9 Deeded and open and obvious prescriptive access and parking Easements limiting  
10 development potential. (**Exhibit 2** to the Declaration of John Paulsen). For example, I  
11 found no fewer than ten (10) specific **Easement** references in the Property Purchase  
12 Agreement alone (**Exhibit 1** hereto). The CDC inspected and knew of the access  
13 driveways and established parking.

14 6. I ask that MidPen be directed to actually answer the questions posed by concerned  
15 Roseland Village business owners and residents, that honest documentation be provided  
16 by MidPen to the City of Santa Rosa to allow informed decisions, that a long established  
17 and vibrant commercial center not be destroyed by dishonest fact and document  
18 manipulation and that there be no unseemly rush to approve a pie-in-the-sky bar plan that  
19 damages Roseland.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
21 true and correct. Executed this \_\_\_\_ day of January, 2020 in Santa Rosa, California.

22  
23 ROBERT A. NELLESSEN, Attorney for Plaintiffs  
24 JOHN PAULSEN, ROSELAND VILLAGE, PAULSEN LAND  
25 CO., LLC  
26  
27  
28

# EXHIBIT

1

## PROPERTY PURCHASE AGREEMENT

665 Sebastopol Rd.  
Santa Rosa, CA 95407

This Property Purchase Agreement ("Agreement") is dated as of July 22, 2010 ("Effective Date") by and between James T. Baugh, trustee of the Baugh Survivor's Trust (Trust 1)(collectively "Seller"), and the Sonoma County Community Development Commission, a public agency (the "Buyer").

### R E C I T A L S

WHEREAS, Buyer desires to purchase from Seller certain real property commonly known as 665 Sebastopol Road, Santa Rosa (APN 125-111-037) for purposes of redeveloping the property as provided in the California Community Redevelopment Law, Health & Safety Code sections 33000 et seq.;

WHEREAS, the parties desire to close escrow and transfer the property (hereinafter the "Closing") on or before the Closing Date (as defined in Section 5 below); and

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

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

### A G R E E M E N T

1. Property Included in Sale. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, all that certain real property comprising approximately 6.89 acres, commonly known as 665 Sebastopol Road, Santa Rosa (APN 125-111-037), and as more particularly described in Exhibit A attached hereto, together with all rights, privileges and easements appurtenant thereto, including, without limitation, all improvements on the real property, all minerals, oil, gas and other hydrocarbon substances on and under the real property, as well as all development rights, air rights, water, water rights and water stock relating to the real property and any other easements, rights-of-way or appurtenances used in connection with the beneficial use and enjoyment of the real property.

(ii) Buyer shall pay Three Million Seven Hundred Fifteen Thousand Dollars \$3,715,000.00, the balance of the Purchase Price, by depositing such payment into escrow in immediately available funds at least one (1) business day before the Closing Date (as defined in Section 5 below).

3. Title to the Property. At the Closing, Seller shall convey to Buyer marketable and insurable fee simple title to the Real Property, by duly executed and acknowledged grant deed in a form acceptable to Buyer. Evidence of delivery of marketable and insurable fee simple title shall be the issuance by Title Company of an ALTA Owner's Policy of Title Insurance, in the full amount of the purchase price, insuring fee simple title to the Real Property in Buyer, subject only to such exceptions as Buyer shall approve pursuant to Section 4(b) below. Said policy shall provide full coverage against mechanics' or materialmen's liens arising out of the construction of any improvements and shall contain such special endorsements as Buyer may reasonably require.

4. Conditions to Closing. Buyer's obligation to close escrow and purchase the Property is subject to the condition that Buyer in its sole and absolute discretion shall have approved each of the conditions described in this Section. During the period commencing on the Effective Date and ending 120 calendar days thereafter (the "Contingency Period") Buyer shall have the right to terminate this agreement and obtain a refund of its deposit, together with the accrued interest, by giving written notice to Seller. If Buyer elects to terminate the Agreement pursuant to this section then neither party shall have any further duties or obligations thereunder, except that Buyer shall pay any title or escrow charges arising from the termination of the Agreement. The following conditions are precedent to Buyer's obligation to purchase the Property:

(a) [Reserved]

(b) Buyer's review and approval of title to the Property, as evidenced by a current extended coverage preliminary title report, accompanied by copies of all documents referred to in the report. Within five days of the Effective Date, Seller shall cause the Title Company to deliver to Buyer a preliminary title report with respect to the Property (the "Preliminary Report"). Buyer shall have until August 30, 2010 (the "Title Review Period") to prepare a title objection letter describing all items in the preliminary title report to which Buyer objects (the "Objection Letter"). Seller may, at its option, attempt to diligently cure all such disapproved items within 10 days from receipt of the Objection Letter. Seller shall give Buyer written notice of the status of its cure of the title items to which Buyer has objected by the close of business of the 10<sup>th</sup> day of the Title Review Period, and Buyer shall then have 5 days to accept Seller's report

and the status of title to the Property or to state Buyer's disapproval of some or all of the title items to which Buyer previously objected. If Buyer states in writing its approval of Seller's report and the status of title to the Property, then title shall be deemed approved subject to the Seller's cures. If Buyer objects in writing to Seller's report and cure efforts, or fails to respond in writing to Seller's report, then title shall be deemed disapproved.

Notwithstanding the foregoing, should Buyer object to any reference in the Title Report regarding that certain Memorandum of Lease recorded November 6, 1969 as Instrument No. L-41341, Book 2428, Page 176, Official Records, or any assignment of the unrecorded lease referenced in said Memorandum of Lease, said objection shall be made no later than August 31, 2010 or it shall be deemed waived. In the event Buyer objects to the Memorandum of Lease then Seller shall be given a reasonable time in which to cure the objection.

Alternatively, Seller may choose to notify Buyer that it is unwilling to remove, cure or otherwise satisfy Buyer's title objections, in which case title shall be deemed to be disapproved.

Seller shall not be deemed to be in breach of this agreement by virtue of its inability or unwillingness to cure Buyer's title objections. In the event that title is disapproved by Buyer, then this Agreement shall be deemed terminated. In the event of such termination, all of Buyer's Deposits in escrow shall be returned to Buyer and this Agreement shall have no further force and effect except for those obligations specifically stated in this Agreement to survive termination of this Agreement due to no fault of either party.

Notwithstanding anything contained herein to the contrary, Seller covenants to cause to be released and reconveyed from the Property and to remove as exceptions to title prior to the Closing the following (the "Pre-Disapproved Exceptions"): any mortgages, deeds of trust, or other monetary encumbrances, mechanic's liens, assessments and/or indebtedness, except for the current installment of non-delinquent real property taxes and assessments payable as a part of the real property tax bill.

(c) Seller shall disclose to Buyer within five (5) days of the Effective Date of this Agreement all surveys of the Property in Seller's possession. Buyer may at its discretion order a further survey of the Property at Buyer's expense. Buyer reserves the right to object to anything shown on any survey. Buyer shall have ten (10) days from

(h) Receipt by Buyer of any documentation required under California Government Code Section 65402.

(i) Compliance by Buyer with the California Environmental Quality Act of 1970, as determined to be necessary by Buyer.

(j) [Reserved]

(k) Buyer shall be satisfied that the Property is suitable for its intended uses including, without, limitation that there is at least one point of legal and sufficient access to the Property which will accommodate use of the Property for redevelopment purposes.

(l) All of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

(m) A legal description of the Property shall be approved by the County Surveyor.

The foregoing conditions contained in items (a) through (m) are intended solely for the benefit of Buyer. If any of the foregoing conditions are not satisfied, ~~Buyer shall have the right at its sole election either to waive the condition in question and proceed with the purchase or, in the alternative, terminate this Agreement and obtain refund of the Deposit plus accrued interest thereon.~~ The Contingency Period may only be extended, for a reasonable period of time if required to allow said conditions to be satisfied, with the written consent of Seller. Seller shall have an absolute right to refuse to extend the Contingency Period and shall not be required to extend the Contingency Period if, in the ~~sole judgment of Seller, an extension is not in the best interests of Seller.~~ If Buyer does not give written notice of its satisfaction with or waiver of all of the foregoing conditions within the Contingency Period, then Buyer shall be deemed to have exercised its right to terminate the agreement within the Contingency Period.

~~The Seller hereby grants the Buyer, and the Buyer's employees, representatives, and agents, a right of entry during the Contingency Period (and such other times mutually acceptable to the Parties) to enter the Property for the purposes of conducting examinations and investigating the Property.~~ During regular business hours, the Seller shall provide the Buyer reasonable access to the Property, including all improvements, for the purpose of conducting examinations. The Buyer shall notify the Seller and obtain the Seller's approval, which approval shall not be unreasonably withheld, prior to inspecting the Property or conducting any invasive testing of the Property. The Buyer shall cooperate with the Seller and make diligent efforts to ensure that any such access results in a minimum of disruption of the Seller's ongoing operations on the Property. The

Buyer shall repair any damage to the Property caused by the Buyer's inspections and tests and shall restore the Property to the condition existing as of the date of the inspection; provided, however, the Buyer shall have no obligation to repair any damage to the Property which is revealed (but not caused by) such inspection. The Buyer shall not have any liability to the extent incurred by the Seller as a result of the discovery by the Buyer of any existing state of facts relating to the Property. Buyer shall provide or cause to be provided, at Buyer's sole expense, a policy of general liability insurance with an aggregate limit of liability no less than \$1 million which names the Seller as an insured prior to (and solely with respect to) any activity on the Property which involves boring, digging, sampling, destructive testing or similar activity. Buyer shall indemnify and hold Seller harmless from any mechanic's liens or other charges assessed against Seller or Seller's property as a result of examinations and inspections of the Property conducted by Buyer.

5. Closing and Escrow.

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

(b) The Closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of the Title Company, within 20 days (i.e., November 19, 2010) from the Effective Date, or such other date as Buyer and Seller may mutually agree in writing (the "Closing Date"). Except as otherwise expressly provided in this Agreement, such date may not be extended without the prior written approval of both Seller and Buyer. In the event the Closing does not occur on or before the Closing Date, the escrow holder shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, relieve either party hereto of any liability it may have for its wrongful failure to close.

(c) At or before the Closing, ~~Seller shall deliver to Buyer the following:~~

(i) A duly executed and acknowledged ~~grant deed conveying to the Buyer the Real Property, and all rights, privileges and easements appurtenant thereto, as required by Section 3 above;~~



11. Maintenance of Property. Between the Seller's execution of this Agreement and the Closing, Seller shall maintain the Property in the same condition as it is on the date of the execution of this Agreement.

12. Buyer's Consent to New Contracts Affecting the Property. Seller shall not, after the date of Seller's execution of this Agreement, enter into any lease, amendment of lease, contract or agreement or permit any tenant of the Property to enter into any sublease, assignment of lease, easement, contract, or agreement pertaining to the Property, or modify any lease, easement, contract or agreement pertaining to the Property or waive any rights of Seller thereunder, without in each case obtaining Buyer's prior written consent thereto, which consent Buyer agrees shall not be unreasonably withheld.

13. "As-Is" Nature of Sale.

- (a) Buyer hereby acknowledges that, except as otherwise expressly set forth in this Agreement, Seller has made and makes no representations or warranties of any kind or nature, express or implied, with respect to the Property, including but not limited to any representations or warranties concerning (i) the quality, nature, adequacy and physical condition of soils, geology and groundwater on the Property, (ii) the development potential of the Property, (iii) the habitability or merchantability of the Property or the suitability of the Property for any particular purpose, (iv) the zoning of the Property or any other restriction on use of the Property, (v) the compliance of the Property with Applicable Laws including Environmental Laws, (vi) that there are no structures or other uses encroaching upon the property or that the apparent property boundaries visible upon an inspection of the property match the property boundaries which would be shown by a survey performed by a licensed surveyor; (vii) that the property is of any specific area other than the size which can be calculated using the legal description.
- (b) The Property is known to be contaminated with Hazardous Materials. The Property was formerly the site of a gasoline station and a dry cleaners, both of which may have caused the deposit of Hazardous Materials on the property. Hazardous Materials may have migrated onto the property from adjoining property. The improvements on the property were constructed in the 1950s and 1960s and may contain lead based paint, asbestos, and other Hazardous Materials. Some of the structures have been vacant for many years. Some structures have significant amounts of deferred maintenance. The extent of compliance with current building codes

is unknown. The cost of rehabilitating existing structures and obtaining government approvals needed to lease or make other economically productive use of them may be prohibitive. Seller shall disclose to Buyer all information in the possession or control of Seller or the Seller Parties regarding the foregoing matters.

- (c) The property is subject to restrictive zoning which, among other things, appears to prohibit issuance of any building permits for any improvements upon the property unless a comprehensive plan for improvement of the entire property is approved by the appropriate governmental authority. A Specific Plan for the property has been approved which envisions construction of a park and a new street on the Property. The Property has been the focus of considerable public debate and interest. Obtaining government approvals necessary to make any use or improvements of the existing buildings may be politically difficult or impossible. Obtaining government approvals necessary to construct any new improvements may be difficult, time consuming, and the result of any attempt to obtain such approvals is impossible to predict. Seller shall disclose to Buyer all information in the possession or control of Seller or the Seller Parties regarding the foregoing matters.
- (d) Seller hereby expressly disclaims (i) all warranties of habitability, merchantability and suitability for a particular purpose, (ii) any warranties implied or arising from a course of dealing or usage of trade, and (iii) any warranties that the Property now or in the future will comply with any applicable law.
- (e) The transaction contemplated by this Agreement has been negotiated between Buyer and Seller, and this Agreement reflects the mutual agreement of Buyer and Seller. Buyer hereby acknowledges that Buyer has conducted or shall conduct all such Feasibility and Due Diligence Review that it deems necessary or desirable, and, except for the representations, warranties and covenants of Seller set forth in this Agreement, Buyer shall rely solely on Buyer's Feasibility and Due Diligence Review and Buyer's own judgment in determining whether to purchase the Property. Buyer shall purchase the Property "as-is" with all faults and conditions, including but not limited to any patent or latent defects or conditions existing with respect to the Property and any Hazardous Materials that may be located in, on, under or around the Property. Except for Buyer's reliance on Seller's representations and warranties, Buyer hereby assumes all risk and liability resulting or arising from or relating to

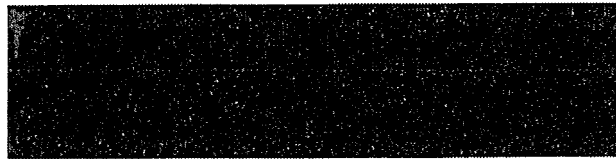
the ownership, use, condition, location, maintenance, repair, operation and development of the Property, including but not limited to all risk and liability resulting or arising from or relating to any Hazardous Materials that may be located in, on, under or around the Property.

14. Miscellaneous.

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

Seller: James T. Baugh  
125 West Peck Street  
Lake Elsinore, CA 92350

With Copy to:



Buyer: Sonoma County Community Development Commission  
1440 Guerneville Road,  
Santa Rosa, California 95403  
Attn: Executive Director

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

(b) Brokers and Finders. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the sale contemplated herein. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contract, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for said commission or fee and all costs and expenses (including reasonable attorneys' fees) incurred by the other party in defending against the same. The provisions of this Section shall survive the Closing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SELLER:

James T. Baugh Trustee  
James T. Baugh, Trustee  
Baugh Survivor's Trust (Trust 1)

BUYER:

Sonoma County Community  
Development Commission

By:

Kathleen H. Kane  
Kathleen H. Kane  
Executive Director

APPROVED AS TO FORM FOR BUYER:

By:

Steven S. Shupe  
Steven S. Shupe  
Deputy County Counsel