

PURCHASE AND SALE AGREEMENT

between

CITY OF HAYWARD
a California municipal corporation

“Seller”

and

AMG ASSOCIATES, LLC,
a California limited liability company

“Buyer”

October 28, 2015

2nd & Walpert Streets
Hayward, California
Project Name: Ward Creek Cottages

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made on July 1, 2015 (the “Effective Date”), by the City of Hayward, California a California municipal corporation (“Seller”), and AMG & Associates, LLC, a California limited liability company, or assignee (“Buyer”).

In consideration of the mutual covenants and representations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE 1

PURCHASE AND SALE

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller (the “Sale”), the property described in this Section 1.1 (the “Property”).

- (a) **Land.** That certain unimproved parcel of land containing approximately 4.2 acres (the “Land”), which is more particularly described in Exhibit A attached hereto located on the southeast corner of the intersection of 2nd Street and Walpert street in the City of Hayward, County of Alameda, State of California, together with all easements and other rights appurtenant to such Land, and all mineral or similar rights, riparian rights and water rights appurtenant to such Land.
- (b) **Improvements.** All improvements located on the Land (the “Improvements”).

ARTICLE 2

ESCROW

2.1 Escrow. Upon the execution of this Agreement by Buyer and Seller, in writing, this Agreement shall constitute the joint escrow instructions of Buyer and Seller to North American Title Company, Pleasanton, CA 94588 (the “Title Company” or “Escrow Holder”) to open an escrow, if not already opened, (the “Escrow”) for the consummation of the sale of the Property to Buyer pursuant to the terms of this Agreement. Upon Title Company’s receipt of the Deposit (as hereinafter defined) and Title Company’s written acceptance of this Agreement, Title Company is authorized to act in accordance with the terms of this Agreement. Prior to the Closing Date, Seller and Buyer each shall give appropriate written escrow instructions, consistent with this Agreement, to the Title Company for the Closing in accordance with this Agreement and upon giving such instructions such party need not be physically present at the Closing.

ARTICLE 3

PURCHASE PRICE

3.1 Purchase Price. The total purchase price (the “Purchase Price”) for the Property shall be based on a per City approved lot basis. The total price per lot shall be One Hundred Eighty Thousand Dollars (\$180,000), which shall be paid by Buyer to Seller through the Escrow in immediately available funds consisting of the Deposit and other funds delivered to the Title Company on the Closing Date. Thus, if there are 16 approved lots, the total purchase price will be Two Million, Eight Hundred and Eighty Thousand Dollars (\$2,880,000). Buyer and Seller shall negotiate a new price per lot if the total number of lots in the final approved plan is reduced to or below 14.

3.2 Deposit. Within five (5) business days after the full execution of this Agreement and the opening of Escrow, Buyer shall deliver to the Title Company cash in the amount of Ninety Thousand Dollars (\$90,000) (the “Deposit”). The Title Company shall deposit the Deposit in an interest bearing account as directed by Buyer, and all interest accruing on the Deposit shall become part of the Deposit. If this Agreement shall terminate for any reason during the Approval Period, or if the Approval Period has ended and Buyer has not delivered to Seller the Diligence Notice described in Section 4.1 below, the Deposit shall be returned to Buyer immediately and this Agreement shall terminate. If the Approval Period has ended and Buyer has delivered to Seller the Diligence Notice, the Deposit shall be non-refundable to Buyer except in the event of a default by Seller under this Agreement, but applicable to the Purchase Price.

ARTICLE 4

INSPECTION OF THE PROPERTY AND APPROVAL PERIOD

4.1 Buyer’s Due Diligence. Buyer shall have Thirty (30) days from the Effective Date to review and approve all aspects of the Property (the “Approval Period”). If Buyer is satisfied with the due diligence investigation, it shall notify Seller by giving written notice (the “Diligence Notice”) on or before the expiration of the Approval Period. If Buyer does not give the Diligence Notice it shall have the right to terminate this Agreement without liability to Seller.

(a) Inspection. Buyer shall have the right to commence Buyer’s physical inspection of the Property immediately after the Effective Date upon twenty-four (24) hours prior notice to Seller. Buyer’s physical inspection of the Property shall be conducted during normal business hours at times mutually acceptable to Buyer and Seller. No invasive testing or boring shall be done without the prior notification of Seller and Seller’s consent, which shall not be unreasonably withheld. Seller shall have the right, without limitation, to disapprove any and all invasive testing if, in Seller’s reasonable judgment, testing could result in any injury to the Property or breach of any agreement, or expose Seller to any liability, costs, liens or violations of applicable law, or otherwise adversely affect the Property or Seller’s interest therein. Buyer will advise Seller in advance of the dates of all tests and investigations and will schedule all tests and investigations during normal business hours whenever feasible unless otherwise requested by

Seller. Seller will have the right to have a representative of Seller accompany Buyer and Buyer's representatives, agents or designees while they are on the Property.

- (b) Seller shall provide Buyer with adequate opportunity to make such surveys, test, studies and inspections of the Property as Buyer has, in Buyer's discretion, deemed necessary or advisable as a condition precedent to Buyer's purchase of the Property and to determine the physical, environmental and land use characteristics of the Property and its suitability for Buyer's intended use. In addition to any surveys, tests, studies and inspections of the Property as Buyer shall require, Buyer's inspection may include, without limitation, a complete and satisfactory physical review of the Property by Buyer's architectural and engineering staff and/or Buyer's designated third party consultants.
- (c) Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, costs, expenses, liabilities, including, without limitation, reasonable attorney's fees (collectively, "Liabilities"), for damages or injuries arising out of or resulting from the activities of Buyer or its agents on the Property, except to the extent caused by a pre-existing condition, or the sole negligence or willful misconduct of Seller. Buyer's indemnification obligations set forth herein shall survive the Closing and shall not be merged with the deed, and shall survive the termination of this Agreement prior to the Closing.
- (d) Buyer will provide Seller evidence of insurance with single occurrence limits of not less than \$1,000,000, with an insurance company licensed to do business in California having a Best financial rating of at least A, X covering all aspects of Buyer or its agents, designees or representative activities with respect to the matters described in this Section 4.1. and naming Seller as an additional insured. Buyer will provide evidence of such coverage in the form of an Acord certificate prior to any entry on the Property.
- (e) Buyer will restore the Property at Buyer's sole cost and expense. Until restoration is complete, Buyer will take all steps necessary to ensure that any conditions on the Property created by Buyer's testing will not interfere with the normal operation of the Property or create any dangerous, unhealthy, unsightly or noisy conditions on the Property.

4.1.6 Due Diligence Items. Seller, to the extent such due diligence items are in its possession or control, will make within ten (10) days of the Effective Date, the following due diligence items (the "Due Diligence Items") available to Buyer which shall review such Due Diligence Items for approval within the Approval Period: (i) Seller's existing policy of title insurance, if any; (ii) Seller's existing survey of the Property, if any; (iii) copies of all contracts pertaining to the Property (the "Contracts"); (vii) all other documentation required by Buyer to

assess the impact of the Sale on the Property's taxes (i.e., assessment); (viii) any engineering or environmental reports prepared by or on behalf of Seller, soil boring tests, as-built plans and specifications; (ix) documents, information and other materials as set forth in the Due Diligence List attached hereto as Exhibit D; and (x) any other agreements, documents, plans or information, including but not limited to environmental or hazardous material information, in the possession or control of Seller that materially affect the ownership, use or operation of the Property (provided that such information is not privileged or contains Seller's internal underwriting or financial analysis of the Property). The Buyer will execute a receipt and acknowledgment of the due diligence items delivered by or on behalf of Seller which shall be conclusive between the parties. All information provided by Seller to Buyer or obtained by Buyer relating to the Property in the course of Buyer's review, including, without limitation, any environmental assessment or audit (collectively, the "Reports") shall be treated as confidential information by Buyer and Buyer shall instruct all of its employees, agents, representatives and contractors as to the information's confidentiality. Should this Agreement be terminated for any reason, Buyer shall immediately return all information provided by or for Seller to Seller. Seller acknowledges that Buyer intends to apply for financing from public agencies and that information submitted to such agencies, including any Reports, may become public records that will not be subject to any agreement between Buyer and Seller regarding confidentiality. Buyer will use its best efforts to assure that financial information and information regarding tenants will be kept confidential by the recipient agencies in accordance with standard exemptions from public records.

4.1.7 Title Policy and Survey.

- (a) Within fifteen (15) days following the Effective Date, Buyer shall obtain from Title Company, a title commitment or report (the "Title Commitment") to issue an ALTA Owner's Policy of Title Insurance (in the policy form and with such endorsements as Buyer may designate in Buyer's Objections (as defined below)) (the "Title Policy") insuring Buyer's fee simple title to the Property to be good and indefeasible as of the Closing in the amount of the Purchase Price, subject to only the Permitted Exceptions (defined below). A copy of the Title Commitment and legible copies of each of the documents of record reflected therein shall be furnished to the attorneys for Buyer and Seller at the respective addresses set forth in Section 10.1 hereof.
- (b) In the event (a) the survey of the Property obtained by Buyer shows any matter affecting the Property that is unacceptable to Buyer, or (b) any exceptions appear in the Title Policy, in any preliminary title report, or in any title commitment obtained by Buyer that are unacceptable to Buyer, Buyer may notify Seller in writing (the "Objection Notice") of such facts and the reasons therefore ("Buyer's Objections"). Buyer shall provide any Objection Notice during the Approval Period. Buyer's Objections will specify the required policy form of the Title Policy and any endorsements

to the Title Policy required by Buyer (collectively, the “Endorsements”). Within five (5) business days of receipt of Buyer’s Objections, Seller shall give Buyer notice (the “Initial Response Notice”) identifying any exceptions that Seller will not cause to be removed prior to Closing. Buyer shall then have ten (10) business days from receipt of the Initial Response Notice to either (i) terminate this Agreement by written notice to Seller or (ii) waive its prior notice as to the Buyer Objections which Seller has elected not to cure, in which event such exceptions shall be deemed Permitted Exceptions. The title exceptions that Buyer approves or is deemed to have approved pursuant to the foregoing provisions of this paragraph are herein called “Permitted Exceptions.”

- (c) Seller shall not be required to expend any money or bring any action or proceeding or do any other thing in order to cure any of Buyer’s Objections, except that Seller shall, to the extent it has refused to remove such exception to title, bond, discharge or cure any monetary lien created by Seller or any other voluntarily-created monetary encumbrances or indebtedness or mortgage shown on the Title Commitment to which Buyer objects in its Objection Notice on or before Closing, and shall reasonably cooperate with Buyer and use Seller’s reasonable and diligent efforts to cure any other Buyer Objections (including, without limitation, any monetary encumbrances or indebtedness not voluntarily created by Seller). If Seller thereafter determines in good faith that it is unable to cure any of Buyer’s Objections, Seller shall promptly give notice thereof to Buyer (the “Subsequent Response Notice”) and Buyer may, as its exclusive remedy, elect by written notice given to Seller within five (5) business days of receipt of a Subsequent Response Notice, either (a) to accept such title subject to the matters set forth in Seller’s Subsequent Response Notice without any reduction or abatement of the Purchase Price, or (b) to terminate this Agreement, in which event the Deposit shall be returned to Buyer.
- (d) Unpaid liens for real estate and personal property taxes for years prior to the fiscal year in which the Closing Date occurs and any other matters which Seller is obligated to pay and discharge at the Closing (which, for purpose of clarification, shall not include Permitted Exceptions) shall not be deemed objections to title, but the amount thereof chargeable to Seller, plus interest and penalties thereon charged by the taxing authority, if any, shall be deducted from the Purchase Price on Closing and paid to the Title Company with instructions to pay and discharge such matters.

4.2 Required Tract Map Approvals. The Closing and the Deposit referenced in Paragraph 3.2 of this purchase is contingent upon final nonappealable approval (“Map Approval”) of a tentative tract map (“Map”) for the Project by Seller, as per the proposed and potentially changed tract map attached hereto as Exhibit “B” providing for the development as proposed of a total of 97 single family homes as described in the Site Plan

attached as Exhibit “C” hereto, with conditions acceptable to Buyer in its reasonable discretion.

4.3 Conditions Precedent to Closing

In addition to a complete and satisfactory due diligence investigation by Buyer the obligations of Buyer to complete the transactions contemplated by this Agreement are conditioned upon the conditions precedent (collectively, the “Conditions Precedent”) set forth in subsections (a) through (h) below. The Conditions Precedent are intended solely for the benefit of Buyer and may only be waived by Buyer in writing. In the event any of the Conditions Precedent of this Agreement are not satisfied, Buyer may, in its sole and absolute discretion, terminate this Agreement by written notice to Seller and, subject to the provisions of Article 5 below, this Agreement shall wholly cease and terminate and no party to this Agreement shall have any further claim against, or obligation to, any other party to this Agreement except for any provisions herein that recite that they survive such termination.

- (a) All of Seller’s representations and warranties contained in or made pursuant to this Agreement shall be materially true and correct as of Closing.
- (b) Seller shall have complied with all of Seller’s duties and obligations contained in this Agreement.
- (c) Buyer shall have received a title insurance commitment satisfactory to Buyer in which the title insurer agrees to issue an ALTA Extended Coverage Owner’s Policy with such endorsements as Buyer may require and an ALTA survey satisfactory to Buyer.
- (d) During the Approval Period, Buyer shall have received results of a seismic analysis and inspection of the Property to be performed at Buyer’s expense satisfactory to Buyer.
- (e) During the Approval Period, Buyer shall have received an appraisal of the Property to be performed at Buyer’s expense acceptable to Buyer.
- (f) Buyer shall have issued or waived the Required Approval Notice.

4.4 Seller’s Condition Precedent to Closing. The obligations of Seller to sell the Property and consummate the transaction contemplated hereby are subject to the satisfaction at or before Closing of all of the conditions set out below in this paragraph (the “Seller Conditions”), which conditions are solely for the benefit of Seller. Seller may waive any or all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Seller of any of its other rights and remedies at law or in equity if Buyer shall be in default of any of its representations, warranties or covenants under this Agreement:

- (a) All material representations and warranties by Buyer in this Agreement or in any written statement that shall be delivered to Seller by Buyer under this Agreement shall be materially true and correct as of Closing.
- (b) Buyer shall have complied with all of Buyer's duties and obligations contained in this Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that as of the date it executes this Agreement and as of Closing:

- (a) Buyer is duly organized, validly existing and in good standing under the laws of the state of its formation.
- (b) Buyer has the full power and authority to execute, deliver and perform its obligations under this Agreement.
- (c) This Agreement and all agreements, instruments and document provided to be executed by Buyer are and as of the Closing will be herein duly authorized, executed and delivered by and are and will be binding upon Buyer.
- (d) Buyer has not retained any brokers or agents in connection with this Agreement.

BUYER ACKNOWLEDGES THAT BUYER HAS INSPECTED AND INVESTIGATED THE PROPERTY (OR PRIOR TO THE CLOSING WILL HAVE INSPECTED AND INVESTIGATED THE PROPERTY) AND HAS ENTERED INTO THIS AGREEMENT BASED UPON SUCH INVESTIGATION AND INSPECTION AND BUYER'S RIGHT TO CONDUCT THE INSPECTION AND INVESTIGATION. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY DOCUMENTS OR INSTRUMENTS DELIVERED TO BUYER AT CLOSING AND THE WARRANTIES OF TITLE SET FORTH IN THE DEED, BUYER ACKNOWLEDGES THAT IT IS RELYING SOLELY ON ITS OWN INVESTIGATION AND INSPECTION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED FOR OR ON BEHALF OF SELLER WITH RESPECT TO THE PHYSICAL CONDITION OF THE PROPERTY OR ITS USE, OPERATION, INCOME OR COMPLIANCE WITH LAWS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY DOCUMENTS OR INSTRUMENTS DELIVERED TO BUYER AT CLOSING AND THE WARRANTIES OF TITLE SET FORTH IN THE DEED, THE SALE OF THE PROPERTY IS MADE ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, AND BUYER EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF

SELLER AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY DOCUMENTS OR INSTRUMENTS DELIVERED TO BUYER AT CLOSING AND THE WARRANTIES OF TITLE SET FORTH IN THE DEED, SELLER HAS NOT MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO THE PHYSICAL CONDITION, USE, ZONING, INCOME OR LEGAL COMPLIANCE OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF SUITABILITY, HABITABILITY, CONDITION, ELIGIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF AND SELLER HAS NO LIABILITY OF ANY KIND TO BUYER ON ACCOUNT OF THE FOREGOING. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING.

5.2 Seller's Representations and Warranties. Seller represents and warrants to Buyer that as of the date it executes this Agreement and as of Closing:

- (a) Seller is duly organized, validly existing and in good standing under the laws of the state of its formation.
- (b) Seller has the full power and authority to execute, deliver and perform its obligations under this Agreement.
- (c) This Agreement and all agreements, instruments and documents herein provided to be executed by Seller are and as of the Closing will be duly authorized, executed and delivered by and are and will be binding upon Seller.
- (d) Seller has or will deliver all due diligence materials in its possession or control to Buyer.
- (e) There is no litigation or arbitration or other legal or administrative suit, action or proceeding of any kind (each, a "Proceeding") pending (or, to the knowledge of Seller, threatened) against Seller or the Property that:
 - (i) could detrimentally and materially affect the value, ownership, use, or operation of the Property or the ability of Seller to perform its obligations under this Agreement or (ii) has an uninsured claim for damages in excess of Five Thousand Dollars (\$5,000) or, when taken together with all other Proceedings, have uninsured claims for damages in excess of Fifteen Thousand Dollars (\$15,000). There are no condemnation, environmental or zoning proceedings instituted or, to Seller's knowledge, planned to be instituted that would affect the Property and Seller has not received notice of any special assessment proceedings affecting the Property. Seller shall notify Buyer promptly of any such proceedings or litigation of which Seller becomes aware.

- (f) To Seller's knowledge, there are no obligations in connection with the Property which could be binding upon Buyer or affect the Property after Closing and there are no assessments or bonds assessed or proposed to be assessed against the Property other than obligations disclosed to Buyer. To Seller's knowledge, there are no existing or proposed easements, covenants, conditions, restrictions, agreements or other documents which affect title to the Property and which are not disclosed by the Title Policy. Seller has not granted any option or right of first refusal or first opportunity to any party to acquire any interest in any of the Property.
- (g) To Seller's knowledge, no proceedings, for insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against Seller, nor are any such proceedings contemplated by Seller.
- (h) To Seller's knowledge, neither Seller nor any prior owner or occupant of the Property has engaged in or permitted any activity on the Property involving the handling, manufacture, treatment, storage, use, release, or disposal of any "Hazardous Materials" (as hereinafter defined), or has transferred Hazardous Materials from the Property to another location in violation of any applicable codes, laws, rules or regulations. Seller has not received written notice (and to the knowledge of Seller, Seller's fee manager has not received notice), and otherwise Seller has no knowledge, that removal or other remedial action with respect to Hazardous Materials in, on, under or about the Property is required by any governmental authority having jurisdiction over the Property. For purposes of this Agreement, the term "Hazardous Materials" shall mean any toxic or hazardous waste, material or substance, including, without limitation, asbestos, asbestos containing materials, petroleum, petroleum products, underground storage tanks now or previously containing any other Hazardous Materials, substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and/or hazardous substances in applicable state or local laws and/or in any regulations and publications promulgated pursuant to said laws and shall also include mold (which has been or is proven to be harmful to human beings), fungus (which has been or is proven to be harmful to human beings) and toxic and mycotoxin spores.
- (i) To Seller's knowledge, there are no underground storage tanks or other storage tanks on, in or under the Property that contain, or were designed or used to store, Hazardous Materials.
- (j) Seller has not received any notice (and to the knowledge of Seller, Seller's fee manager has not received notice), of any liens, or other legal actions to

be assessed or which anyone claims or has a right to claim, against the Property.

- (k) Seller has not retained any brokers or agents in connection with this Agreement.

If, at any time prior to Closing, Seller shall discover that any representation or warranty contained in this Section 5.2 is, or has become, inaccurate in any material respect, Seller shall so notify Buyer in writing (the "Correction Notice"), and Buyer shall have the right by notice given in writing not more than five (5) business days after receipt of the Correction Notice to terminate this Agreement, receive a refund of the Deposit.

ARTICLE 6

CLOSING

6.1 Place and Date. The Closing (the "Closing") shall occur on or before Ninety (90) days after the Map Approval is final and not subject to any appeal but not more than eight months after the Effective Date (the "Closing Date") at the offices of the Title Company, unless the parties mutually agree in writing upon another place, time or date, and at Seller's or Buyer's election, the Closing may be effectuated by forwarding all executed documents and other items necessary to effect the Closing to the Title Company, without the necessity of the parties actually being present at the office of the Title Company for the Closing. Notwithstanding the foregoing, Buyer shall have the right, exercisable not later than five (5) days before the then scheduled Closing Date, to extend the Closing Date by one (1) month, six (6) separate times, for a total of six (6) months, each time upon the delivery into Escrow of an additional deposit of Thirty Thousand Dollars (\$30,000.00), which deposit shall become part of the Deposit, and shall be non-refundable except in the event of a Seller default under this Agreement, but shall be credited toward the Purchase Price of the Property on the Closing Date.

6.2 Possession. Possession of the Property shall be delivered to Buyer at the Closing.

6.3 Prorations. All real estate and personal property taxes and other assessments and any payments in lieu of taxes with respect to the Property for the year in which the Closing occurs, shall be prorated to the date Seller receives the Purchase Price in immediately available funds, with Buyer receiving the benefits and burdens of ownership on Closing. Prorations shall be made consistent with local customs and practices, including, without limitation, proration of real estate taxes based on the fiscal year. Attorneys' Fees; Closing Costs. Each party shall pay its own attorneys' fees, accounting fees, and other expenses incurred by it in connection with the transactions. Except as otherwise expressly provided herein, Buyer shall pay, on Closing, one-half (1/2) of any escrow fees and other customary charges of the Title Company. Seller shall pay, on Closing, the cost of all recording fees, city, county and state transfer and excise taxes, the CLTA portion of the title insurance premium for the owner's policy (with Buyer paying for the additional cost of ALTA coverage, and for extended ALTA coverage, any endorsements requested by Buyer and the cost of a survey or the updating of any survey furnished by Seller) and one-half (1/2) of any escrow fees and other customary charges of the Title Company. Notwithstanding the foregoing, in the event of a default by Seller or Buyer hereunder, all

cancellation fees and other Escrow charges shall be borne by the defaulting party. The 202 prepayment amount is to be deducted from Seller's proceeds at Closing.

6.5 Seller's Deliveries at Closing. At least one (1) day before the Closing, Seller shall deliver the following:

- (a) **Deed.** A grant deed (the "Deed"), duly authorized, executed and acknowledged, conveying the Land and Improvements to Buyer in the form attached to this Agreement as Exhibit E.
- (b) **Evidence of Authority.** Such organizational and authorizing documents of Seller as shall be required by the Title Company to evidence Seller's authority to consummate the transactions contemplated by this Agreement.
- (c) **Costs and Fees.** All sums, costs and fees required to be paid by Seller pursuant to Sections 6.3
- (d) **Other Seller Deliveries.** Such other instruments, affidavits and tax returns as are customarily executed by Seller of an interest in real property in connection the recording of a deed.

6.6 Buyer's Deliveries at Closing. At least one (1) day before the Closing, Buyer shall deliver to Title Company for delivery to Seller or recording, as applicable, the following:

- (a) **Purchase Price.** The balance of the Purchase Price plus All sums, costs and fees required to be paid by Buyer pursuant to Section 6.3 by wire transfer of immediately available funds.
- (b) **Evidence of Authority.** Such organizational and authorizing documents of Buyer as shall be reasonably required by the Title Company, authorizing Buyer's acquisition of the Property pursuant to this Agreement and the execution of this Agreement and any documents to be executed by Buyer at the Closing.

6.7 Documents to be Executed by Seller and Buyer. At least one (1) day before the Closing, Seller and Buyer shall also execute and deliver to the Title Company the following for delivery of an original, fully executed counterpart to Seller and Buyer, respectively, at Closing:

- (a) **Bill of Sale and Assignment of Personal Property.** Assignment in the form attached to this Agreement as Exhibit E.
- (b) **Closing Statements.** Closing statements prepared by the Title Company reflecting all payments, prorations, charges, and costs of transfer.

6.8 Escrow Holder's Duties. On the Close of Escrow, subject to Escrow Holder having received the documents and monies required to be deposited into Escrow pursuant to this

Agreement and Escrow Holder not having received written notice by a party that a condition precedent to its obligation to close has not been satisfied, Escrow Holder shall do each of the following:

- (a) **Recording of Deed.** Duly record the Deed and arrange for the delivery to the parties of certified copies thereof as soon as available.
- (b) **Bill of Sale and Assignment of Personal Property** Deliver to Buyer originals of the Assignment and Bill of Sale.
- (c) **Payment of Purchase Price.** Deliver the Purchase Price to Seller, less any deductions provided in Section 6.3.
- (d) **Other Actions.** Such other actions reasonably requested by the parties hereto and not inconsistent herewith.

6.9 Risk of Loss. If between the Effective Date and the Closing the Property or any material portion thereof is taken or threatened by eminent domain, Seller shall promptly, and in any event prior to the Closing, notify Buyer of same. Buyer may elect, by written notice delivered to Seller within fifteen (15) days after receipt of such notice to terminate this Agreement without further liability to Seller in which event the Deposit and any interest thereon shall be returned to Buyer and neither party shall have any further obligation to the other hereunder. In the event that the Closing Date is less than fifteen (15) days after receipt of such notice regarding threatened eminent domain the Closing Date shall be extended as necessary to permit Buyer the full fifteen (15) days to determine whether or not it will terminate this Agreement. As used herein “material portion” means a taking, as applicable, the costs of which in Buyer’s reasonable judgment is One Hundred Thousand Dollars (\$100,000.00) or more for repair. If Buyer does not so terminate, in the case of an actual taking of a material portion of the Property, Seller shall assign to Buyer at the Closing Seller’s entire right, title and interest in the proceeds from any judgment or settlement related to the eminent domain taking.

ARTICLE 7

DEFAULT

7.1 Liquidated Damages — Deposit. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF BUYER HAS NOT TERMINATED THIS AGREEMENT PRIOR TO THE EXPIRATION OF THE APPROVAL PERIOD AND IF THE SALE OF THE PROPERTY TO BUYER IS NOT CONSUMMATED DUE TO A DEFAULT OF BUYER, SELLER SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS SELLER’S LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER’S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, HOWEVER, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH

SELLER WILL INCUR AS A RESULT OF SUCH FAILURE, PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHTS TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES, NOR WAIVE OR AFFECT SELLER'S RIGHTS AND BUYER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION.

SELLER'S INITIALS

BUYER'S INITIALS

7.2 Buyer's Remedies. In the event Seller fails to perform any material act required to be performed by Seller pursuant to this Agreement on or before the Closing, then Buyer shall execute and deliver to Seller written notice of such breach, which notice shall set forth complete information about the nature of the breach. Seller shall have a period of thirty (30) days to cure such breach. If such breach remains uncured beyond the thirty (30) day period described above, then Buyer's sole and exclusive remedy shall be either (but not both): (i) to cancel this Agreement, in which event the Deposit shall be returned to Buyer and Buyer shall be entitled to seek recovery of its out-of-pocket costs or (ii) to specifically enforce the provisions of this Agreement.

ARTICLE 8

OPERATING COVENANTS

8.1 Maintenance of Property. Between the Effective Date and the Closing, Seller shall maintain the Property in the same order and condition consistent with past practices. Seller Cooperation. Seller shall cooperate and do all acts as may be reasonably required or requested by Buyer with regard to the fulfillment of any Condition Precedent set forth in Section 4 hereof and with regard to obtaining any necessary consent and approval to transfer the Property as contemplated hereunder, without cost or expense to Seller. Seller hereby irrevocably authorizes Buyer and its agents to make all inquiries with and applications to any third party, including any governmental authority, as Buyer may reasonably require to complete its due diligence or to fulfill any such Conditions Precedent.

8.3 No Modification to Title. From and after the Effective Date, Seller shall not take any actions that would (i) create any additional, or modify, amend or terminate any existing, covenants, conditions, restrictions, easements, liens, rights, rights of way or other encumbrances affecting title to the Property, except in accordance with Section 4.1.3 above, or (ii) modify the current zoning, land use entitlements or permits affecting the Property, inconsistent with the Map Approval..

8.4 No Marketing. From and after the Effective Date, Seller will cease all efforts to market the Property either directly or through its agents and will not entertain or accept any offers to purchase the Property or any interest therein, until such time as the Buyer defaults or request the return of the Deposit.

ARTICLE 9

MISCELLANEOUS

9.1 Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be given by either: (a) personal delivery to the address below, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed with a copy via email or facsimile; (b) email or facsimile delivery as provided below, upon confirmation from the recipient of the same (which shall include any response thereto), (c) certified mail, return receipt requested, addressed to the intended recipient at the address specified below, whether or not actually received by the person to whom addressed with a copy via email or facsimile; or (d) by a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address specified below, whether or not actually received by the person to whom addressed with a copy via email or facsimile. Such notices shall be deemed delivered on the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the item was returned as undeliverable. For purposes of this Section 9.1 the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to Seller:

CITY OF HAYWARD
777 B Street
Hayward, CA 94541
Attention: Morad Fakhrai
Fax:
Email: Morad.Fakhrai@hayward-ca.gov

With a Copy to:

Michael Lawson, City Attorney 777 B Street
Hayward, CA 94541 Attention: Michael Lawson
Fax: (510) 583-3660
Email: Michael.lawson@hayward-ca.gov

If to Buyer:

AMG & Associates, LLC 16633 Ventura Blvd., Suite 1014
Encino, Ca 91436
Attention: Gene Broussard
Fax: (818) 380-2603
Email: gbroussard@amgland.com

With a Copy to:

Michael M. Stein, Inc.
18757 Burbank Blvd., Suite 102
Tarzana, CA 91356
Attention: Michael Stein
Facsimile: (818) 774-1400
Email: mstein@mmsteininc.com

If to Title Company:

North American Title Company

Attention: _ Evelyn Bowens-Chambers_____
Facsimile: _ (925) 847-0663_____
Email: _ ebowens@nat.com_____

9.2 Real Estate Commissions. Buyer and Seller acknowledge that there are no brokers in connection with the Sale except for Seller's Broker. Seller shall indemnify and hold harmless Buyer from and against all claims for brokerage fees in connection with the sale of the Property due from any party engaged by or claiming to have been engaged by Seller in connection with the sale of the Property. Buyer shall indemnify and hold harmless Seller from and against all claims for brokerage fees in connection with the sale of the Property due from any party engaged by or claiming to have been engaged by Buyer in connection with the sale of the Property.

9.3 Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representation made by either party relative to the subject matter hereof, which are not expressly set forth herein.

9.4 Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

9.5 Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

9.6 Time of Essence. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provisions of this Agreement falls on a Saturday, Sunday, or legal holiday under the law of the United States or the State of California, then, in

such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

9.7 Governing Law. This Agreement shall be governed by the laws of the State of California without regard to principles of conflicts of laws.

9.8 Assignment. This Agreement shall bind and inure to the benefit of Seller and Buyer and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns. Any assignment of Buyer's purchase rights under this Agreement is subject to Seller's written consent.

9.9 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never compromised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

9.10 Facsimile Deemed Original. This Agreement and any amendment hereto, may be executed and distributed by facsimile or electronically and a copy of this Agreement and any amendment thereto executed and distributed by facsimile or electronically shall be deemed an original for all purposes.

9.11 Dispute Resolution/Attorneys' Fees. In the event it becomes necessary for either party hereto to take legal action to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, reasonable attorneys' fees incurred in such legal action.

Should any dispute arise out of this Agreement, the Parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid equally by the Parties. If a mediated settlement is reached, neither Party shall be deemed the prevailing party for purpose of the settlement and each Party shall bear its own legal costs.

9.12 Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

9.13 No Recordation. Seller and Buyer hereby acknowledge that neither this Agreement nor any memorandum of affidavit thereof shall be recorded of public record in any county.

9.14 Merger Provision. Except as otherwise expressly provided herein, any and all rights of action of Buyer for any breach by Seller of any representation, warranty or covenant contained in this Agreement shall merge with the Deed and other instruments executed at Closing, shall terminate at Closing and shall not survive Closing.

9.15 Confidentiality. Buyer shall keep confidential and shall not disclose the terms of the transfers contemplated in this Agreement, including, without limitation, the Purchase Price

and all other financial terms, without the written consent of Seller, except to Buyer's directors, officers, parties, investors, lenders, employees, legal counsel, accountants, engineers, architects, financial advisors and similar professionals and consultants to the extent such party deems it necessary or appropriate in connection with the transaction contemplated hereunder.

Notwithstanding the foregoing, Buyer acknowledges and agrees that this Agreement, including any attachments and/or exhibits hereto, is a public record subject to the disclosure requirements of the California Public Records Act, California Government Code Section 6250 et. seq. imposed upon Seller. Buyer shall segregate any record or information it considers confidential trade secret and/or proprietary and clearly label any such record or information as "Confidential: Trade Secret/Proprietary." Buyer agrees to indemnify, save harmless and defend CITY from all claims, liability, damage, loss, costs and obligation, including court costs and counsel fees, on account of or arising out of Buyer's assertion that a record is confidential trade secret and/or proprietary.

9.16 Survival. Except as specifically provided to the contrary in this Agreement, each and every agreement, obligation, warranty, representation, covenant and indemnification of Seller and Buyer contained herein shall survive, for any claims made, for six (6) months after the Closing hereunder and the transfer and conveyance of the Property and any and all performances hereunder.

9.17 Utilities. Seller shall expedite, if possible for the Buyer's connection to the City of Hayward's utilities district. In the event that an external utility district protests such connection, the Buyer shall be responsible for to all fees associated with, but not limited to legal fees and consultant fees.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

BUYER:

AMG & Associates, LLC, a California limited liability company

By: _____

Name: Alexis Gevorgian

Its: Member/Manger

SELLER:

CITY OF HAYWARD
a California municipal corporation

Recommended By

Approved By:

MORAD FAKHRAI
Director of Public Works

FRANCES DAVID
City Manager

Dated: _____

Dated: _____

Approved as to form:

MICHAEL LAWSON
City Attorney

Attest: _____
MIRIAM LENS
City Clerk

Exhibit A – Legal Description

Exhibit B –Proposed Tentative Map Exhibit C – Site Plan

Exhibit D – Due Diligence List

Exhibit E – Grant Deed

Exhibit F –Bill of Sale