

**SUPPLEMENTAL AGREEMENT
BETWEEN
CITY OF SANTA ROSA (Elementary) SCHOOL DISTRICT
AND
THE CITY OF SANTA ROSA**

This Supplemental Agreement, dated _____, is made and entered into by and between CITY OF SANTA ROSA (Elementary) SCHOOL DISTRICT, 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. The Parties executed a Memorandum of Understanding in 2019 (the “2019 MOU”) outlining the requirements for the District to either (a) notify the City of its intent to develop the School Site with housing for District employees; or (b) sell the Fir Ridge Site (“School Site”) within three (3) years, October 23, 2022, a copy of which MOU is attached as Exhibit A.
- B. In November 2021, the District notified the City, along other governmental agencies, of its intent to surplus the site.
- C. The District has notified the City that they are in escrow to sell the Property to Christopherson Builders with close of escrow anticipated to occur by October 1, 2022
- D. This Supplemental Agreement is to memorialize the Parties’ agreement that certain provisions of the 2019 MOU survive the City’s release of its property interests in the School Site under the 2019 MOU, through a quitclaim deed recorded in conjunction with the sale of the Site to a third party.

AGREEMENT UNDER THE 2019 MEMORANDUM OF UNDERSTANDING

It is the Parties’ intent that this Agreement clarify that the spending rights and obligations under section 3 of the 2019 MOU will survive the close of escrow on the School Site and the recording of a quitclaim deed by the City. The Parties further agree that this Agreement shall not affect their current rights and obligations under the 2019 MOU.

- 1. If District sells the School Site to a third party pursuant to section 1(b) of the 2019 MOU, 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) of the 2019 MOU, 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.

2022 SUPPLEMENTAL AGREEMENT

1. Upon sale of the Site to a Third Party, the District will create a separate account with its own code with the County Auditor-Controller and place the proceeds from the sale less any customary fees or costs required to close the transaction, into this separate account .
 - a. On a quarterly basis, the District will provide the City with a statement for the funds, allowing the City to monitor the status of monies.
2. The District shall, in accordance with the identified use of the sale proceeds, provide the City with notice of the intended use of the proceeds at least 90 days prior to any such use. The City shall have the right to review the proposed use of the sale proceeds to confirm it complies with the 2019 MOU and its intent to provide a meaningful benefit to a reasonable number of District employees. The City’s confirmation (not to be unreasonably withheld) of the proposed use will be provided within 60 days of submittal to the City.

3. If the District determines not to proceed with development of housing units or the creation of a Loan Program, the funds will be returned to the City of Santa Rosa within 12 months of the District's determination on the terms and conditions stated in the 2019 MOU.

IN WITNESS WHEREOF, City and District have executed this Supplemental Agreement effective as of the date first above written.

CITY OF SANTA ROSA (Elementary) SCHOOL DISTRICT, a legal entity

By: _____

Name: _____

Title: _____

CITY OF SANTA ROSA, a municipal corporation

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
(ATTACH 2019 MOU)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, effective October 23, 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 ("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 Agreement was recorded in the Official Records of Sonoma County as document numbered 88-063213.
- B. The 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 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 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 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 ("2016 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 2016 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 Agreement, 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.

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


SANTA ROSA CITY SCHOOLS, a legal entity

By: 

Name: Rick Edson

Title: Deputy Superintendent

CITY OF SANTA ROSA, a municipal corporation

By: 

Name: Sean McGlynn

Title: City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM

CITY ATTORNEY

BY 

City Attorney