

Exhibit 'A'

**AGREEMENT FOR PURCHASE AND SALE  
OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is made this \_\_\_ day of \_\_\_\_\_, 2023, ("**Agreement Date**") by and between the CITY OF KERMAN, a municipal corporation ("**Buyer**"), Barcus Family Limited Partnership, a California limited partnership ("**Barcus FLP**") and S&K Moran Family Limited Partnership, a California limited partnership ("**Moran FLP**" and together with the Barcus FLP, collectively, "**Seller**") with Chicago Title Company, Fresno California, as escrow holder ("**Escrow Holder**"). Seller and Buyer are collectively referenced as Parties.

**RECITALS**

**A.** Seller owns that certain real property located in Fresno County, California and desires to sell said property in fee, more specifically identified as follows:

(i) an unimproved lot comprised of approximately 6,000 square feet, identified as APN 023-204-09 ("**Lot**"); and

(ii) the land, building and improvements, identified as 023-204-14SU and 023-204-16SU ("**Annex**").

The Lot and Annex are collectively referenced as "**Property**" and are more particularly described in **Exhibit A** and depicted in red and yellow on **Exhibit A-1** which are attached and incorporated by reference.

**B.** Seller and Buyer wish to enter an agreement for the purchase and sale of the Property upon the terms and conditions more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto agree as follows:

**TERMS AND CONDITIONS**

**1. PURCHASE AND SALE OF PROPERTY.** Pursuant to the terms and conditions of this Agreement, and for the consideration herein set forth, Buyer hereby agrees to purchase from Seller and Seller agrees to sell to Buyer, the Property in AS-IS condition. The parties agree that no personal property shall be included in this transaction.

**2. OPENING OF ESCROW.** Within five (5) days after the execution of this Agreement by both Buyer and Seller, the parties shall open an escrow ("**Escrow**") with Chicago Title Company ("**Title Company**") with an office located at 7330 N Palm Ave #101, Fresno, CA 93711, by causing an executed copy of this Agreement to be deposited with Escrow Holder together with Buyer's Deposit (as defined in Section 3.2 below) ("**Opening of Escrow**").

**3. PURCHASE PRICE; DEPOSIT; PAYMENT OF PURCHASE PRICE.**

**3.1 Purchase Price.** The purchase price for the Property is Two Million Eight Hundred Sixty Thousand and No/100 Dollars (\$2,860,000.00) for the Annex and Eighty-Five Thousand Seven Hundred Forty and No/100 Dollars (\$85,740.00) for the Lot, for a total purchase price of Two Million Nine Hundred Forty-Five Thousand Seven Hundred Forty and No/100 Dollars (\$2,945,740.00) (“**Purchase Price**”).

**3.2 Deposit.** Concurrently with Opening of Escrow, Buyer shall deposit with Escrow Holder the sum equal to Thirty Thousand and No/100 Dollars (\$30,000.00) (“**Deposit**”) to be held by Escrow Holder for the benefit of the parties and applied against the Purchase Price at Closing (as defined in Section 5) or released, refunded or forfeited in accordance with the terms of this Agreement. The deposit shall be refundable to Buyer if Buyer exercises its option to terminate this Agreement on or before the last day of the Due Diligence Period (as defined below). If Buyer does not exercise its option to terminate this Agreement, the Deposit shall become non-refundable and applicable to the Purchase Price. If escrow fails to close due to a material breach of this Agreement by Buyer, the Deposit shall be released from escrow to Seller as liquidated damages, and Seller agrees that this amount shall constitute Seller’s sole and exclusive remedy.

**3.3 Payment of Purchase Price.** On or before 1:00 p.m. on the business day preceding the Closing Date or such earlier time as required by Escrow Holder in order to close Escrow on the Closing Date, Buyer shall deposit into Escrow the balance of the Purchase Price in Good Funds (“**Balance**”).

**3.4 Good Funds.** Prior to Closing, all funds deposited in Escrow shall be in “**Good Funds**” which shall mean a wire transfer of funds from a financial institution located in the State of California.

**3.5 Financing.** Buyer has sufficient cash, available lines of credit, or other sources of immediately available funds to enable it to (a) deliver the amounts due at the Closing, (b) take such actions as may be required to consummate the contemplated transaction herein, and (c) timely pay and perform Buyer’s obligations under this Agreement. Buyer expressly acknowledges that the failure to have sufficient funds shall in no event be a condition to the performance of its obligations hereunder, and in no event shall the Buyer’s failure to perform its obligations hereunder be excused by failure to receive funds from any source.

**3.6 1031 Exchange.** Each party may engage in an Internal Revenue Code Section 1031 exchange with respect to the sale and purchase of the Real Property and will cooperate with the other Party (at no cost to the other Party) to the extent necessary to accomplish such exchange.

**3.7 Special Conditions.**

(a) **Separation of Power.** Seller owns the real property parcel located next to the Annex as depicted in green on **Exhibit A-1**. As a result, both parcels have been using the same power grid and meter provided by Pacific Gas and Electric Company (“**PG&E**”). Seller is in the process of separating the power systems between the two parcels, with the goal of installing a separate meter for the Annex. Buyer understands and acknowledges that the timeline for securing a separate meter for the Annex is conditioned on the approval and cooperation of PG&E, which is outside Seller’s control. Both parties understand and agree that completing the separation of power between the two parcels may occur after the Closing of Escrow. Seller agrees to continue to share electrical service with the Annex for the benefit of Buyer, with Buyer to reimburse the monthly pro-rated share of its electrical usage following Close of Escrow and

during renovation of Property until such time that electrical service can be separated and each building can be served separately by PG&E with cost of such retrofit to be shared equally by Buyer and Seller.

(b) **Records.** Seller shall provide any records, documents service logs maintenance records, and warranties that pertain to the Annex its equipment or other pertinent documents including UST storage tank decommissioning records, if any.

(c) **Leaseback.** As a material inducement to Seller entering into this Agreement, Buyer, as landlord, agrees to enter into a lease with an entity related to Seller, known as Kerman Telephone Co., a California corporation, as tenant, said lease to be negotiated during the Due Diligence Period ("**Lease**"). The Lease shall commence on the Closing Date and continue for a period of up to nine (9) months, and shall comprise approximately 3,660 square feet of the shop portion of the Annex, which shall be leased at a rate of \$1.10 per square foot ("**Leaseback Space**"), as depicted on **Exhibit B**, attached hereto and incorporated herein by this reference.

(d) **Generator Removal.** Seller has informed Buyer that there is a generator affixed to the Annex property that is currently being used by the Annex and Seller's adjoining parcel. The Seller agrees to remove the generator before expiration of the Lease.

#### **4. CLOSING FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.**

**4.1 Seller.** Seller agrees that on or before 12:00 noon on the day preceding the Closing Date, Seller will deposit or cause to be deposited with Escrow Holder all of the following:

- a. A grant deed in the form attached hereto as **Exhibit C** executed by Seller ("**Grant Deed**").
- b. A Non-Foreign Affidavit as required by federal law.
- c. Such funds and other items and instruments as may be necessary in order for Escrow Holder or the Title Company to comply with this Agreement, including Seller's Charges, defined below.
- d. An executed copy of the Lease.

**4.2 Buyer.** Buyer agrees that on or before 12:00 noon on the day preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds, required under this Agreement, and all of the following:

- a. A Preliminary Change of Ownership Statement completed in the manner required in Fresno County.
- b. Such funds and other items and instruments as may be necessary in order for Escrow Holder or the Title Company to comply with this Agreement, including, but not limited to, the Deposit, the Balance, and Buyer's Charges, defined below.
- c. An executed copy of the Lease.

**4.3 Recordation, Completion and Distribution of Documents.** Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine

the signature pages thereof so as to create fully executed documents. Escrow Holder will date all the documents with the date of Close of Escrow. Escrow Holder will cause the Grant Deed to be recorded when it can issue the Owner's Title Policy in accordance with Section 6.2, and holds for the account of Buyer and Seller, respectively, the funds and items described above to be delivered to Buyer and Seller, respectively, through Escrow, less costs, expenses and disbursements chargeable to the parties pursuant to this Agreement.

## **5. CLOSING DATE; OPTIONS TO EXTEND CLOSING; TIME IS OF ESSENCE.**

**5.1 Closing Date.** Escrow shall close within sixty (60) days after Opening of Escrow ("**Closing Date**").

**5.2 Definition of Closing.** The terms "**Close of Escrow**" and/or "**Closing**" mean the time Grant Deed is recorded in the Official Records of Fresno County.

**5.3 Time is of Essence.** The parties specifically agree that time is of the essence of this Agreement.

**5.4 Possession.** Subject to the terms and conditions of the Lease, upon the Close of Escrow, possession of the Property shall be delivered to Buyer.

## **6. TITLE POLICY.**

### **6.1 Approval of Title.**

(a) Promptly following execution of this Agreement but in no event later than ten (10) days following Opening of Escrow, a preliminary title report shall be issued by ("**Title Company**"), describing the state of title of the Property, together with legible copies of all exceptions and a map plotting all easements ("**Preliminary Title Report**"). Within twenty (20) business days after Buyer's receipt of the Preliminary Title Report, Buyer shall notify Seller in writing ("**Buyer's Title Notice**") of Buyer's disapproval of any matters contained in the Preliminary Title Report ("**Disapproved Exceptions**").

(b) In the event Buyer delivers Buyer's Title Notice within said period, Seller shall have a period of ten (10) days after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election to either (i) agree to attempt to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions ("**Seller's Notice**"). If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, or if Seller is unable to remove the Disapproved Exceptions (other than any obligations of Buyer under Section 7), Buyer may elect either to terminate this Agreement and the Escrow or to accept title to the Property subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within five (5) days following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller declines to remove such Disapproved Exception(s).

(c) Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to five (5) days following receipt of notice of such additional exceptions.

(d) Nothing to the contrary herein withstanding, Buyer shall be deemed to have automatically objected to all leases, deeds of trust, mortgages, judgment liens, federal and state income tax liens, delinquent general and special real property taxes and assessments and similar monetary encumbrances affecting the Property (excluding any such items caused by Buyer), and Seller shall discharge any such non-permitted title matter of record prior to or concurrently with the Close of Escrow except as otherwise specifically provided in this Agreement.

**6.2 Owner's Title Policy.** At the Close of Escrow, an ALTA owner's non-extended policy of title insurance shall be furnished to Buyer ("**Owner's Title Policy**") insuring title to the Property vested in Buyer, containing only (i) non-delinquent real property taxes and assessments and (ii) exceptions approved by Buyer in accordance with Section 6.1. The amount of the insurance coverage shall be in the amount of the Purchase Price. The cost of the Owner's Title Policy shall be paid by Seller. If Buyer elects to obtain an extended ALTA owner's policy, Buyer shall be responsible to secure a survey at its own cost and expense which shall be delivered to the Title Company not less than thirty (30) days prior to Closing and Buyer shall be responsible to pay for any additional premium. The Title Policy shall include extended coverage or endorsements that Buyer may request but at Buyer's expense.

**7. DUE DILIGENCE AND DUE DILIGENCE PERIOD.** For a period of thirty (30) days following the Opening of Escrow ("**Due Diligence Period**"), Buyer shall have the right to perform any investigations, inspections, and review of documents as Buyer may reasonably determine in order to assess its willingness to purchase the Property pursuant to the terms of this Agreement.

**7.1 Review and Approval of Documents and Materials.** Within five (5) days of the Opening of Escrow, Seller shall deliver to Buyer any and all documents, reports, surveys, environmental assessments, engineering reports for the Property and other materials in Seller's possession or under its control or that of its agents, respecting the Property, including any hazardous substance conditions report concerning the Property, any natural hazard zone disclosure report, (collectively, "**Materials**"). During the Due Diligence Period, Buyer may review and evaluate the Materials to determine whether the Property is appropriate for Buyer's proposed use, in its sole discretion. Buyer is advised that there are no leases affecting the Property and there are no third parties in possession of the Property.

**7.2 Buyer's Due Diligence.** During the Due Diligence Period, Buyer and its agents may, at Buyer's sole expense, conduct tests and physical inspections of the Property, including building inspections and environmental site assessments desired by Buyer. Buyer shall also conduct such investigations with regard to zoning, building codes, and availability of permits and approvals for its intended construction and use of the Property, as it deems prudent in its sole discretion. Buyer shall provide evidence to Seller that Buyer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000) which insurance names Seller as additional insured. Buyer shall keep the Property free and clear of all mechanic liens, lis pendens and other liens arising out of the entry and work performed under this paragraph and shall maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of California. Buyer shall promptly restore the Property to the condition that it was in prior to those tests and inspections and shall indemnify, defend and hold Seller harmless from all damages, costs, loss, expense (including attorney fees) and liability resulting from Buyer's activities, acts, and omissions on the Property, including, but not limited to, mechanic liens.

Notwithstanding anything to the contrary contained in this Agreement, (i) the defense, indemnity, and hold harmless provision contained in this Section shall not apply to the extent such liabilities arise in connection with the sole negligence or willful misconduct of Seller, its employees, agents, contractors, licensees or invitees and (ii) provided further that Buyer shall have no liability to Seller or to its employees, agents, or contractors by reason of, nor shall Buyer have any duty to indemnify, defend, or hold any person or entity harmless from or against, any liabilities, including, without limitation, any claim for diminution in value of the Property or for environmental remediation or clean-up costs, resulting directly from Buyer having merely discovered and/or reported (to the extent required by applicable law) any adverse physical condition, title condition, environmental condition, or other defect with respect to the Property. The foregoing provisions shall survive the Closing or any termination of this Agreement. At Closing, Buyer shall take the Property subject to any title exceptions caused by Buyer exercising this license to enter the Property.

Copies of any final non-privileged, non-attorney-client work product reports including any survey prepared for Buyer this Agreement shall be delivered to Seller (at no cost to Seller) and, if the Closing does not occur, Seller shall be entitled to use without the consent of the preparer.

**7.3 Buyer's Termination Right.** Buyer shall have the right at any time on or before the expiration of the Due Diligence Period to terminate this Agreement if, during the course of Buyer's due diligence investigations of the Property, Buyer determines in its sole and absolute discretion that the Property is not acceptable to Buyer. Buyer may exercise its right to terminate by delivering written notice of termination to Seller and Escrow Agent ("**Termination Notice**") on or before the expiration of the Due Diligence Period. Upon the timely delivery of such Termination Notice, (i) Escrow Agent shall immediately return the Deposit (less any cancellation charges) to Buyer without the need for further instruction or approval of the parties, and (ii) this Agreement shall automatically terminate and be of no further force or effect and neither party shall have any further rights or obligations hereunder. Notwithstanding anything contained herein to the contrary, if Buyer fails to provide a Termination Notice, then Buyer shall be conclusively deemed to have elected to approve its Due Diligence of the Property.

## **8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.**

**8.1 Conditions to Buyer's Obligations.** The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent ("**Buyer's Conditions Precedent**"):

- (a) Title Company will issue the Owner's Title Policy as specified in Section 6.2.
- (b) Buyer has not issued a Termination Notice in accordance with Section 7.3.
- (c) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- (d) Seller is not in default of its obligations under this Agreement.

**8.2 Conditions to Seller's Obligations.** The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent ("**Seller's Conditions Precedent**"):

(a) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.

(b) Title Company will issue the Owner's Title Policy as specified in Section 6.2.

(c) Buyer is not in default of its obligations under this Agreement.

(d) Buyer shall have performed each of the acts to be performed by it under this Agreement, including, without limitation, depositing the Purchase Price (as set forth in Section 3) and Buyer's Charges (as defined below) into Escrow by the Closing Date.

**9. DISCLAIMER OF WARRANTIES.** Buyer specifically acknowledges, represents and warrants that, prior to Closing, Buyer and Buyer's agents, consultants, contractors and representatives will have thoroughly inspected the Property and observed the physical characteristics and condition of the Property. Notwithstanding anything to the contrary contained in this Agreement, Buyer further acknowledges and agrees that Buyer is purchasing the Property subject to all applicable laws, rules, regulations, codes, ordinances and orders. Buyer further acknowledges and agrees that except for any representations and warranties expressly made by Seller in this Agreement, Seller did not make any representations, warranties or agreements of any kind whatsoever, whether oral or written, express or implied, statutory or otherwise, as to any matters concerning the Property, the condition of the Property, the size of the Property and/or the improvements thereon, the present use of the Property or the suitability of Buyer's intended use of the Property. Buyer hereby acknowledges, agrees and represents that the Property is to be purchased, conveyed and accepted by Buyer in its present condition, "AS IS", "WHERE IS" AND WITH ALL FAULTS. Buyer further acknowledges and agrees that any documents or information provided by Seller to Buyer are being made available to Buyer for informational purposes only, and, Seller is making no representations or warranties regarding such documents or other information, including the accuracy or completeness of any information contained therein. Buyer hereby represents and warrants to Seller that Buyer will, prior to expiration of the Due Diligence Period, perform an independent inspection and investigation of the Property and will also have investigated and have knowledge of operative or proposed governmental laws and regulations including land use laws and regulations to which the Property may be subject. Buyer further represents that, except for any representations (if any) expressly made by Seller in this Agreement, Buyer shall acquire the Property solely upon the basis of Buyer's independent inspection and investigation of the Property. Without limiting the generality of the foregoing, Buyer expressly acknowledges and agrees that Buyer is not relying on any representation or warranty of Seller, whether implied, presumed or expressly provided at law or otherwise, arising by virtue of any statute, common law or other legally binding right or remedy in favor of Buyer, except as may be expressly provided in this Agreement.

**Sellers' Initials:** \_\_\_\_\_ **Buyer's Initials:** \_\_\_\_\_

**9.1 Release.** To the maximum extent permitted by law, Seller, and its shareholder(s), partners, members, managers, directors, officers, employees, representatives, property managers, asset managers, agents, attorneys, affiliated and related entities, heirs, successors and assigns (collectively, the "**Released Parties**") shall not be liable for any claim of any kind or character to any person or property arising from or caused by any of the condition of the Property. Buyer on Buyer's own behalf and on behalf of Buyer's agents, members, partners, shareholders, employees, representatives, related and affiliated entities, successors and assigns (collectively, the "**Buyer Parties**") hereby releases, waives, discharges, and covenants not to sue Seller or the

Released Parties, and each of them, from and against any and all claims arising from, related to or caused by the condition of the Property. Buyer agrees that the above waiver and release extends to all claims of any nature and kind whatsoever, known or unknown, suspected or unsuspected, and Buyer, for itself and for the Buyer Parties, waives the benefits of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

and all similar provisions or rules of law. Buyer elects to and does assume all risk for such claims against the Released Parties which may be brought by Buyer or Buyer Parties heretofore and hereafter arising, whether now known or unknown by Buyer. In connection therewith and to the greatest extent permitted by law, Buyer hereby agrees, represents and warrants that Buyer realizes and acknowledges that factual matters now unknown to Buyer may have given or may hereafter give rise to claims which are presently unknown, unanticipated and unsuspected, and Buyer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release Seller from any such unknown claims which might in any way be included as a material portion of the consideration given to Seller by Buyer in exchange for Seller’s performance hereunder. Without limiting the foregoing, if Buyer has knowledge of (i) a default in any of the covenants, agreements or obligations to be performed by Seller under this Agreement and/or (ii) any breach or inaccuracy in any representation of Seller made in this Agreement, and Buyer nonetheless elects to proceed to Closing, then, upon the consummation of the Closing, Buyer shall be conclusively deemed to have waived any such default and/or breach or inaccuracy and shall have no claim against Seller or hereunder with respect thereto. Notwithstanding anything to the contrary herein, Seller shall not have any liability whatsoever to Buyer with respect to any matter disclosed to or discovered by Buyer or the Buyer Parties prior to the Closing Date.

Without limiting the generality of the foregoing, but subject to the immediately following paragraph, Buyer hereby expressly waives, releases and relinquishes any and all claims, rights and remedies Buyer may now or hereafter have against the Released Parties, whether known or unknown, under any environmental law(s), or common law, in equity or otherwise, with respect to (1) any past, present or future presence or existence of hazardous materials on, under or about the Property (including in the groundwater underlying the Property) or (2) any past, present or future violations of any environmental laws.

Notwithstanding anything in this Section to the contrary, the releases contained in this Section are not intended to and do not include (i) any claims arising from a breach of Seller’s express representations or warranties in this Agreement (subject to the limitations, disclaimers and other provisions of this Agreement), or (ii) any obligation or other covenant of Seller under this Agreement which by its express terms survives the Closing.

Seller has given Buyer material concessions regarding this transaction in exchange for Buyer agreeing to the provisions of this Section. Seller and Buyer have each initialed this Section to further indicate their awareness and acceptance of each and every provision hereof. The provisions of this Section shall survive the Closing.

**Sellers’ Initials:** \_\_\_\_\_ **Buyer’s Initials:** \_\_\_\_\_



## 10. ESCROW PROVISIONS.

**10.1 Escrow Instructions.** Sections 1 through 6, inclusive; 8, 10, 13 and 14 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provide by Escrow Holder that are reasonably necessary to close Escrow.

**10.2 General Escrow Provisions.** Escrow Holder shall deliver the Owner's Title Policy to the Buyer and instruct the Fresno County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 14 after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Fresno County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

**10.3 Real Property Taxes.** All general and special real property taxes and assessments shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty-day (360) year.

### **10.4 Payment of Costs.**

(a) **Cost Allocation.** Seller shall pay the costs for the Owner's Title Policy, documentary transfer taxes and one-half (1/2) of the escrow costs ("**Seller's Charges**"). Buyer shall pay one-half (1/2) of the escrow costs and be responsible for any recording charges ("**Buyer's Charges**"). All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder for major commercial real estate transactions in the Fresno area.

(b) **Closing Statement.** At least two (2) days prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary escrow closing statement which shall include each party's respective shares of costs. The preliminary closing statement shall be approved in writing by the parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the parties.

(c) **Prorations.** Seller shall be responsible for any supplemental assessments or reassessments made to the extent attributable to any period prior to the Closing Date, and Buyer shall be responsible for all periods thereafter. Buyer shall pay any supplemental taxes assessed pursuant to the laws of the State of California resulting from the sale of the Property to Buyer. Escrow Holder shall prorate rents, interest, premiums on insurance acceptable to Buyer, and real and personal property taxes or assessments relating to the Property, including water district charges and assessments, if any, to the extent attributable to any period prior to the Closing Date to Seller, and to Buyer for all periods thereafter.

**10.5 Termination and Cancellation of Escrow.** If Escrow fails to close as provided above, either party may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

**10.6 Information Report.** Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report (“**Information Report**”) and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Buyer and Seller also agree that Buyer and Seller, their respective employees and attorneys, and escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

**10.7 No Withholding as Foreign Seller.** Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder’s standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

**11. NON-COLLUSION.** No official, officer, or employee of the Seller has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the Seller participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of “financial interest” shall be consistent with State law and shall not include interest found to be “remote” or “non-interest” pursuant to California Government Code Sections 1091 and 1091.5. Seller warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any official, officer, or employee of Buyer, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Seller further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Buyer, as a result or consequence of obtaining or being awarded any agreement. Seller is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

**Sellers’ Initials:** \_\_\_\_\_

**12. DEFAULT**

**12.1. DEFAULT of BUYER; LIQUIDATED DAMAGES.** IF BUYER SHOULD DEFAULT UNDER THIS AGREEMENT, THEN BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH DEFAULT BY BUYER OR FAILURE OF ESCROW TO CLOSE ON OR BEFORE THE CLOSING DATE, WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF SUCH DEFAULT BY BUYER HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT THE DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTIONS 1671, 1676 and 1677 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. IN THE EVENT OF AND FOR SUCH DEFAULT BY BUYER, THE DEPOSIT SHALL BE SELLER'S SOLE MONETARY REMEDY THEREFOR, UNLESS BUYER WRONGFULLY REFUSES TO CAUSE ESCROW HOLDER TO CANCEL THE ESCROW, IN WHICH INSTANCE SELLER SHALL ALSO BE ENTITLED TO ALL COSTS AND EXPENSES, INCLUDING ACTUAL ATTORNEYS' FEES INCURRED BY SELLER WHICH MAY RESULT FROM BUYER'S WRONGFUL FAILURE TO CANCEL THE ESCROW AND THIS AGREEMENT. FURTHERMORE, THE FOREGOING LIMITATION OF DAMAGES SHALL NOT APPLY TO ANY INDEMNIFICATION OBLIGATIONS OF BUYER.

**Sellers' Initials:** \_\_\_\_\_ **Buyer's Initials:** \_\_\_\_\_

**12.2 Default by Seller.** If all conditions precedent to Seller's obligations to sell the Property have occurred but Seller fails to Close under this Agreement for any reason other than the default by Buyer under this Agreement, Buyer shall have the right to terminate this Agreement and receive the return of the Deposit.

**13. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, (iii) electronic mail, or (iv) by personal delivery. Notice deposited in the mail in the manner hereinabove described shall be effective upon receipt or rejection of such notice. Notice given in any other manner shall be effective only if and when received (or rejected) by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. California time of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; however, no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

**To Seller:** Barcus Family Limited Partnership and  
S&K Moran Family Limited Partnership  
Attn: William Barcus  
7600 N. Palm Avenue  
Suite 101  
Fresno, CA 93711  
Email: [bbarcus@sebastiancorp.com](mailto:bbarcus@sebastiancorp.com)

**With a copy to:** Anna Allen

Whitney, Thompson & Jeffcoach, LLP  
970 W. Alluvial Avenue  
Fresno, CA 93711  
Email: [aallen@wtjlaw.com](mailto:aallen@wtjlaw.com)

**To Buyer:** City of Kerman  
850 S. Madera Avenue  
Kerman, CA 93630  
Attention: John Jansons, City Manager  
Email:

**To Escrow Holder:** Chicago Title Company  
Sue Meyer  
7330 N Palm Ave #101  
Fresno, CA 93711  
Email: meyers@CTT.com

## 15. **GENERAL PROVISIONS.**

**15.1 Assignment.** Neither party shall have the right to assign this Agreement or any interest or right hereunder or under the Escrow without the prior written consent of the other party. Notwithstanding the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

**15.2 Attorney's Fees.** In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

**15.3 Interpretation; Governing Law.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement, (without giving effect to its choice of law principles). Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

**15.4 No Waiver.** No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

**15.5 Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

**15.6 Severability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**15.7 Merger.** This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements (including letters of intent), oral or written, are merged herein and shall be of no further force or effect.

**15.8 Execution of Documents.** The parties agree to execute such instructions to Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

**15.9 Inducement.** The making, execution and delivery of this Agreement by the parties hereto have been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

**15.10 Relationship of Parties.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of Seller and Buyer with respect to the Property to be conveyed as contemplated hereby.

**15.11 Survival.** Notwithstanding the Closing, delivery of instruments, conveyances of Property, and payment of consideration therefor, the parties agree that the respective representations, warranties, covenants, indemnities, and agreements made by each party pursuant to this Agreement, or any document delivered pursuant to this Agreement, shall survive the Closing.

**15.12 Indemnification of Seller.** Buyer shall indemnify, defend, and hold harmless Seller, and Seller's successors and permitted assigns, and each of them, against and in respect of any or all claims, demands, losses, costs, expenses, obligations, liabilities, and damages of every nature (including, without limitation, the investigation and/or defense thereof, and reasonable attorneys', paralegals', and other professionals' fees and costs resulting from Seller's or its Agent's actions or inactions), that any of them shall incur or suffer that arise out of, in connection with, or are related to (i) any debts, liabilities, responsibilities or obligations relating to the Real Property arising or accruing after the Closing, or (ii) any threatened or actual breach of any representation, warranty or covenant under this Agreement by Buyer.

**15.13 Indemnification of Buyer.** Seller shall indemnify, defend, and hold harmless Buyer, and Buyer's successors and permitted assigns, and each of them, against and in respect of any or all claims, demands, losses, costs, expenses, obligations, liabilities, and damages of every nature (including, without limitation, the investigation and/or defense thereof, and reasonable attorneys', paralegals', and other professionals' fees and costs, resulting from Buyer's or its Agent's actions or inactions), that any of them shall incur or suffer that arise out of, in connection with, or are related to (i) any debts, liabilities, responsibilities or obligations relating to

the Real Property arising or accruing on or before the Closing, or (ii) any threatened or actual breach of any representation, warranty or covenant under this Agreement by Seller.

**15.14 No Personal Liability.** No member, official, employee, agent or contractor of Seller shall be personally liable to Buyer in the event of any default or breach by Seller or for any amount which may become due to Buyer or on any obligations under the terms of the Agreement.

**15.15 Material Damage or Condemnation Prior to Close of Escrow.** Seller will bear the risk of condemnation and of damage to the Property or any portion thereof from any and all causes whatsoever except any damage caused by Buyer or Buyer's representatives, employees, independent contractors or agents, up to the Close of Escrow. Buyer shall have the option, in the event that damage to the Property is material, or a material portion of the Property is taken by condemnation prior to the Close of Escrow, to terminate this Agreement, and if Buyer exercises its option to terminate, the Deposit shall be disbursed by Escrow Holder to Buyer within fifteen (15) days after a written demand from Buyer to Escrow Holder. If Buyer does not elect to terminate or if such condemnation or damage is not material, this Agreement shall remain in full force and effect, Seller shall assign to Buyer, at the Close of Escrow, any and all such condemnation or insurance proceeds, and Buyer shall take title to said Property subject to such condemnation or damage.

**15.16 Representation by Counsel.** Each party hereto represents and agrees with each other that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party's respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

**15.17 Execution in Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

**15.18 Exhibits.** Exhibits A, A-1, B, and C are attached hereto and incorporated herein by reference.

**15.19 Brokers.** Buyer and Seller each represent and warrant to and for the benefit of the other that such party has not caused any liability for payment of any broker's commission or finder's fee to be incurred with respect to the transaction which is the subject of this Agreement, and both Buyer and Seller agree to indemnify and save the other party harmless from and against any liability for such commission or fee.

**15.20 Authority.** Buyer and Seller each represent and warrant to and for the benefit of the other that such party is a duly organized and validly existing corporation formed under the laws of the State of California, duly qualified to transact business in the State of California, and all of its obligations in connection herewith have been duly and validly authorized by all necessary action(s). Buyer and Seller further represent and warrant that each has the authority to sell or purchase the Property, and pay the Purchase Price, as the case may be, and to carry out the terms of this Agreement as set forth herein. Each party further warrants and represents that

execution of this Agreement and performance of each party's obligations under this Agreement will not violate any agreement, option, covenant, condition, obligation, or undertaking of said party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions as of the Agreement Date.

**Note: Sections 9, 11, and 12 need to be separately initialed by the parties.**

**SELLER**

BARCUS FAMILY LIMITED PARTNERSHIP, a California limited partnership

By: \_\_\_\_\_  
Ruth Barcus, General Partner

Date: \_\_\_\_\_

S&K FAMILY LIMITED PARTNERSHIP, a California limited partnership

By: \_\_\_\_\_  
Susan Moran, General Partner

Date: \_\_\_\_\_

**BUYER**

CITY OF KERMAN, a municipal corporation

By: \_\_\_\_\_  
John Jansons, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Marci Reyes, City Clerk

APPROVED AS TO FORM:

MONTOY LAW CORPORATION

By: \_\_\_\_\_  
Hilda Cantu Montoy, City Attorney

Date: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**ANNEX BUILDING**

Lots 1, 2, 3, and 4 in Block 13 of the Town of Kerman, in the City of Kerman, County of Fresno, State of California, as per map recorded March 27, 1906, in Book 3, Page 31 of Record of Surveys, Fresno County Records.

APN 023-204-14SU

Lots 5 and 6 in Block 13 of the Town, (now City), of Kerman, according to the map thereof recorded in Book 3 Page 31 of Record of Surveys, Fresno County Records.

EXCEPTING THEREFROM all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in Deeds of record.

APN 023-204-16SU

**LOT**

Lots 8 and 9 in Block 13 of the Town of Kerman, in the City of Kerman, County of Fresno, State of California, according to the map thereof recorded in Book 3, Page 31 of Record of Surveys, Fresno County Records.

APN 023-204-09



**EXHIBIT A-1**  
**DEPICTION OF PROPERTY**



EXHIBIT B

DEPICTION OF LEASEBACK SPACE



**EXHIBIT C**  
**GRANT DEED**

APN. 023-204-14SU; 023-204-16SU; 023-204-09

(Space Above This Line for Recorder's Office Use Only)

THE UNDERSIGNED GRANTOR DECLARES that the documentary transfer tax (computer on full value) is \$\_\_\_\_\_.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged and subject to the covenants set forth below the Barcus Family Limited Partnership, a California limited partnership and S&K Moran Family Limited Partnership, a California limited partnership ("**Grantors**") grant to CITY OF KERMAN, a municipal corporation ("**Grantee**"), that certain improved real property in the City of Kerman, County of Fresno, State of California, as more particularly described in Exhibit A attached hereto and incorporated by this reference ("**Property**"), together with Seller's right, title and interest in and to any and all privileges, easements, rights of way and other rights and appurtenances solely related to the ownership of the Property.

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed on its behalf as of the date written below.

BARCUS FAMILY LIMITED PARTNERSHIP,  
a California limited partnership

By: \_\_\_\_\_  
Ruther Barcus, General Partner

\_\_\_\_\_, 2023

S&K MORAN FAMILY LIMITED  
PARTNERSHIP, a California limited  
partnership

By: \_\_\_\_\_  
Susan Moran, General Partner

\_\_\_\_\_, 2023

## **EXHIBIT A TO GRANT DEED**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

### **ANNEX BUILDING**

Lots 1, 2, 3, and 4 in Block 13 of the Town of Kerman, in the City of Kerman, County of Fresno, State of California, as per map recorded March 27, 1906, in Book 3, Page 31 of Record of Surveys, Fresno County Records.

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Lots 5 and 6 in Block 13 of the Town, (now City), of Kerman, according to the map thereof recorded in Book 3 Page 31 of Record of Surveys, Fresno County Records.

EXCEPTING THEREFROM all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in Deeds of record.

APN 023-204-16SU

### **LOT**

Lots 8 and 9 in Block 13 of the Town of Kerman, in the City of Kerman, County of Fresno, State of California, according to the map thereof recorded in Book 3, Page 31 of Record of Surveys, Fresno County Records.

APN 023-204-09

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF FRESNO                    )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

SEAL: