

FIRST ADDENDUM TO REAL ESTATE PURCHASE AGREEMENT

This First Addendum to Real Estate Purchase Agreement ("Addendum") is entered into as of this 2nd day of June 2020 (the "Effective Date"), by and between the Town of Los Gatos, a Municipal Corporation, ("Town"), and Sarah Chaffin ("Buyer"). The Agency and the Buyer (sometimes collectively referred to as the "parties") have entered into this Agreement on the basis of the following facts:

RECITALS

A. WHEREAS, the Town and/or the Successor Agency to the Los Gatos Redevelopment Agency ("Successor Agency") own the property located at 20 Dittos Lane, Los Gatos, CA; APN: 529-29-034 ("Dittos Property"); and

B. WHEREAS, the Dittos Property was purchased by the former Redevelopment Agency for the Town of Los Gatos for the purpose of providing below market price residential uses; and

C. WHEREAS, the Town desires to develop an Affordable Residential Housing Project with a preference for Teacher & School Employees ("Project") on the Dittos Property and has selected Sarah Chaffin, the Developer for the Project; and

D. WHEREAS, the Town and Buyer desire for the Buyer to develop improvements on the Dittos Property, consisting of two (2) single-family residential units and two (2) accessory dwelling units on two lots which shall be made available to and occupied by households who earn no more than 120% of Area Median Income; and

E. WHEREAS, The Buyer intends to finance the costs of development of the Improvements with sources that include but are not limited to a Town Loan and Tax Credit Funds; and

F. WHEREAS, the Buyer represents that it has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement. This Agreement will materially contribute to the implementation of the Town by increasing the supply of affordable housing; and

G. WHEREAS, the Project has generated enthusiasm from a broad range of community members, and will help implement a number of Town goals, including those set forth in the Town's General Plan and Housing Element.

AGREEMENT

THEREFORE, in consideration of the mutual promises, agreements, understandings, and undertakings in this Addendum, the Parties to this Addendum agree as follows:

ARTICLE 1.

GENERAL PROVISIONS

Section 1.1 Good Faith Collaboration. The Town and the Buyer shall collaborate diligently and in good faith, during the Escrow Period to meet the terms of this Addendum.

Section 1.2 Escrow Period. The escrow period (the "Escrow Period") under this Agreement shall be 365 days, commencing on the Effective Date. The Escrow Period may be extended on the Town's behalf for up to an additional 180 days by the Town Manager ("Manager"), if sufficient progress toward completion of the Addendum has been made during the initial 365 day escrow period to merit such extension. The requirements set forth in this Addendum are conditions precedent to the closing of escrow and the Town's obligation to sell the Property to the Buyer.

Section 1.3 Exclusive Negotiations. During the Escrow Period, the Town and the Buyer shall not negotiate with any entity, other than the parties hereto, regarding development of the Project, or solicit or entertain bids or proposals to do so.

Section 1.4 Off Site Improvement. The Buyer will not be responsible for any Off Site Improvements.

Section 1.5 Fees. The Town will be responsible for all Town related fees related to subdivision, lot line adjustment, New Parcel Map, Site Work and Architecture Plans. These fees include but are not limited to building permits, connection fees, HCP etc.

Section 1.6 Condition of Property. The Buyer specifically acknowledges and agrees that the Town is conveying, and the Buyer is obtaining the property on an "AS IS" basis and that the buyer is not relying on any representations or warranties of any kind whatsoever, expressed or implied from the Town as to any matters concerning the property.

Section 1.7 Buyer's Release of the Town. The Buyer, on behalf of itself and anyone claiming by, through or under the Buyer hereby waives its right to recover from and fully and irrevocably releases the Town and its councilmembers, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Buyer may have or hereafter acquire against any of the Town Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, (2) any presence of Hazardous Materials, and (3) any information furnished by the Town Parties under or in connection with this Agreement. The release set forth in this Section includes claims of which the Buyer is presently unaware or which the Buyer does not presently suspect to exist which, if known by the Buyer, would materially affect the Buyer's release of the Town Parties. The Buyer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Buyer agrees, represents and warrants that the Buyer realizes and acknowledges that factual matters now unknown to the Buyer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown,

unanticipated and unsuspected, and the 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 the Buyer nevertheless hereby intends to release, discharge and acquit the Town from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Buyer, on behalf of itself and anyone claiming by, through or under the Buyer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Buyer and anyone claiming by, through or under the Buyer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Buyer's Initials: _____

Notwithstanding the foregoing, this release shall not apply to, nor shall the Town be released from, the Town's actual fraud or misrepresentation.

Section 1.8 No Fault Termination Prior to Closing. Either Party may terminate this Agreement prior to the Closing without the fault of the other if the Buyer, despite good faith and diligent efforts, is unable to meet any condition to Closing set forth in this Agreement within the time and in the manner specified. Upon the happening of any of terminating event and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After termination, neither Party shall have any rights against or liability to the other under this Agreement.

Section 1.9 Assignment. The Buyer, or each of them, shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to third party during the term of this Agreement with the approval of the Town. Town approval shall not be unreasonably withheld provided:

- (a) The assignee (or the guarantor(s) of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and
- (b) The proposed assignee has adequate experience with developments of comparable scope and complexity to the portion of the Project that is the subject of the assignment.

Any request for Town approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identify, financial condition and experience of the assignee as the Town may reasonably request. All detailed financial information submitted to the Town shall constitute confidential trade secret information if the information is maintained as trade secret by the assignee and if such information is not available through other sources. If the Town wishes to disapprove any proposed assignment, the Town shall set forth in writing and in reasonable detail the grounds for such disapproval.

ARTICLE 2. ESCROW PERIOD TASKS

Section 2.1 Overview. To facilitate consummation of the Purchase Agreement, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support consummation of the Purchase Agreement prior to the expiration of the Escrow Period. The Buyer acknowledges that execution of this Agreement by the Town does not constitute approval by the Town of any required Town Land Use Entitlements, and in no way limits the discretion of the Town in the permit allocation and approval process. The Buyer shall construct the Improvements in accordance with the requirements set forth in the Town's Land Use Entitlements.

Section 2.2 New Parcel Map. During the Escrow Period the Buyer and Town will work collaboratively on the review and approval of a New Parcel Map, identified in Exhibit A. Town will grant 18 Dittos Lane land as described in Exhibit A, (labeled LANDS TO BE GRANTED TO #18 DITTOS), in exchange for ingress easement, egress easement, emergency vehicle easement, public utility easement, sanitary sewer easement. The New Parcel map will be recorded prior to Closing.

Section 2.3 Crib Wall Easement. Prior to Closing, Buyer will execute a "Grant Easement" for maintenance of the "Crib Wall" identified in Exhibit A attached.

Section 2.4 Water Meter & Public Service Easement. Prior to Closing, the Town will grant to Buyer an easement of ingress and egress to access the water meter identified in Exhibit A, ready the meter, and for its maintenance, repair and replacement.

Section 2.5 Identity of Parcel 1 and Parcel 2. Prior to Closing, Town will execute a deed to Buyer to the two parcels identified in Exhibit A. The Town, at its own cost and expense, agrees to take all of the necessary steps for any lot line adjustment, and the preparation and recording of a new Parcel Map.

Section 2.6 Loan Agreement. Prior to Closing, Town agrees to loan Buyer the sum of \$600,000.00, with zero interest, amortized over 55 Years from the Inclusionary Fund. The Buyer's obligation to pay the Town Loan shall be evidenced by a Promissory Note and secured Deed of Trust, and shall be used solely for construction and permanent financing of the Improvements. The Town agrees to subordinate the Town's Deed of Trust to Senior Liens,

Section 2.7 Tree Removal. Prior to Closing, the Town will be responsible for all Tree Removal at its sole cost and expense.

Section 2.8 Deed Restriction & Below Market Rate Guidelines. Prior to Closing, Buyer agrees to execute a "Deed Restriction" for Below Market Housing with a preference for Teachers & School Employees along with special Below Market Rate Guidelines on terms consistent with all laws and ordinances and consistent with the reasonable expectations of both Parties for a period of 55 years with an opportunity to extend for the longest feasible time.

Section 2.9 Option to Repurchase. Prior to Closing, the Buyer and Town will execute an Option to Repurchase Agreement which will be in effect if the Project has not been built within 5 Years after Closing.

Section 2.10 Financial Proforma. Prior to Closing, Buyer shall submit a detailed financial proforma for the Project containing, among other matters, a detailed development cost budget, which will be used to evaluate the financial feasibility of the Project.

Section 2.11 Access Easements and Lot Line Adjustments Prior to the Closing, Buyer shall obtain ingress and egress easements to the Project from adjoining property owners in exchange for a lot line adjustment/parcel map from the Town.

Section 2.12 Ratification of The Purchase Agreement. Except as modified by this Addendum, all provisions of the Purchase Agreement are ratified and affirmed and govern the relationship of the Parties with respect to the subject matter of this Addendum.

Section 2.13. Costs of Escrow and Closing. Seller, as customary in Santa Clara County, shall pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the Escrow.

ARTICLE 3. REQUIREMENTS FOLLOWING CLOSING

Section 3.1 Construction. The Buyer hereby agree to develop the Project in accordance with the Project Approvals and shall construct the Improvements in accordance with the requirements set forth in the Town Land Use Entitlements for the project, including the conditions of approval and the mitigation measures for the Project as adopted by the Town, and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement.

Section 3.2 Project as Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is separately undertaken private development. No partnership, joint venture or other association of any kind between the Developers and the Town is formed by this Agreement.

Section 3.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Buyer shall cause construction of the Improvements to be undertaken and completed: (i) by no later than five years from the date of close of escrow is granted for the project.; or by such other date as the parties shall mutually agree upon in writing. Buyer agrees that it shall permit designated representatives of the Town, upon reasonable notice (which does not have to be written), to enter upon the Property during the construction of the Improvements to inspect such construction and the progress thereof.

BUYER:

Sarah Chaffin

By: _____

TOWN OF LOS GATOS

By: _____
Laurel Prevetti, Town Manager

APPROVED AS TO FORM:

Robert Schultz, Town Attorney