

**REAL PROPERTY
DONATION AGREEMENT**

This Real Property Donation Agreement (the “Agreement”) is entered into by and between the City of Sutter Creek, a California municipal agency (“City”), and Creekwood Capital LLC, a California limited liability company (“Donor”).

RECITALS

A. Donor is the owner of 18.3 acres of real property located in the City of Sutter Creek, in Amador County, California described as Amador County Assessor Parcel Nos. 018-020-031 and 018-020-032, and more particularly described in Exhibit “A” attached hereto and incorporated by reference. The real property, including improvements thereon, if any, are collectively referred to within as the “Donation Property.”

B. In accordance with Internal Revenue Code section 170 and other applicable federal or California law, Donor desires to donate, and City desires to accept, the Donation Property.

C. As of the Effective Date of this Agreement and as of the Closing Date, Donor was under no threat of City condemnation related to the Donation Property and was under no obligation otherwise to transfer the Donation Property for any reason or consideration whatsoever.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements within and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Effective Date. This Agreement shall be effective on June 4, 2024 (“Effective Date”).

2. Donation. In accordance with and subject to the terms and provisions of this Agreement, Donor is willing to donate the Donation Property to the City in its as-is condition. Other than as expressly set forth in this Agreement, (a) the City acknowledges and agrees that the City is acquiring the Property in its “AS IS” condition, with all faults. The City acknowledges that through this Agreement it has been afforded the opportunity to make such inspections (or have such inspections made by consultants) as it desires of the Donation Property and to obtain information regarding operative or proposed governmental laws and regulations (including, but not limited to, zoning, environmental and land use laws and regulations) to which the Donation Property is or may be subject to at the Close of Escrow. The City acknowledges that it has or will independently and with the assistance of the City’s professional advisors and consultants undertake whatever non-invasive studies, tests, and investigations the City desires to conduct relating to the Donation Property (including, without limitation, economic reviews, engineering analyses, environmental analyses, and analyses of the records of any governmental or quasi-governmental entity having jurisdiction over the Donation Property). The City is relying solely on its own investigation as to the Donation Property and its value and is assuming the risk that adverse physical, economic, or other conditions may not have been revealed by such investigation

Except for those terms and provisions that expressly survive the Close of Escrow, from and after the Close of Escrow, the City hereby completely releases and forever discharges Donor, Donor’s

employees, agents, or any other person acting on behalf of Donor, and Donor's partners and owners (collectively, the "Indemnitees") from and against all claims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen (collectively, "Claims"), arising from or in any way growing out of or connected with the physical condition of the Donation Property or any law or regulation applicable thereto (collectively, the "Released Matters"). In connection with such waiver and relinquishment, the City acknowledges that it is aware that it hereafter may discover Claims or facts in addition to or different from those which it now knows or believes to exist with respect to the Released Matters, but that it is the City's intention to fully, finally and forever to settle and release all of the Released Matters in accordance with the provisions of this section, and the release set forth herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different Claims or facts. The foregoing release of Claims shall be binding on the City and all subsequent owners, lessees, and other transferees of the Donation Property.

In connection with this section, the City expressly waives the benefits of Section 1542 of the California Civil Code 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.”

City signatory's Initials _____

3. Conditions to City's Performance. The City's obligation to perform under this Agreement is subject to the following conditions:

3.1 The City has had an adequate opportunity to independently conduct the inspections of the Donation Property provided for within;

3.2 Donor's representations and warranties in this Agreement being correct as of the Effective Date and as of Close of Escrow;

3.3 Donor's performance of all obligations under this Agreement; and

3.4 The vesting of title to the Donation Property in City by grant deed in fee simple absolute, free and clear of all liens, encumbrances, assessments, leases (recorded and/or recorded), and taxes.

If the City determines that any of these conditions have not been met, the City shall have the right to terminate this Agreement by delivering written notice to Donor, and, if applicable, to the Escrow agent.

4. Taxes and Assessments. Non-delinquent real property taxes and assessments and utility and other charges (to the extent such utility or other accounts cannot be transferred in the name of City as of the close of Escrow) shall be prorated between the Donor and City as of the Close of Escrow. All prorations shall be made on a per-diem basis using a thirty (30) day month and a three hundred sixty-five (365) day year. To the extent any apportionment cannot reasonably be completed by the Close of Escrow, the parties shall make such necessary proration in a commercially reasonable manner and pay such amounts to the party entitled hereto within a period of thirty (30) days after the Close of Escrow. Notwithstanding anything to the contrary herein, the provisions of this section shall survive the Close of

Escrow to the extent necessary to fully allocate such amounts. Notwithstanding anything to the contrary herein, Donor reserve the right to keep, collect and retain any refunds, rate or price reductions or other sums, including, without limitation, any property tax refund, reductions or rebate, which relate to the periods prior to the Close of Escrow whether or not such sums are collected after the Close of Escrow, and City shall promptly return to Donor any such sums received by City.

5. Escrow. By this Agreement, the City and Donor establish an escrow (“Escrow”) with Placer Title Company (“Title Company”). Donor hereby authorizes the City to prepare and file escrow instructions with this Title Company, on behalf of Donor, in accordance with this Agreement. This includes authorization of the Title Company to withhold pro rata taxes, liens, and assessments on the Donor Property conveyed.

5.1 Fees and Title Insurance. City shall pay the Closing Agent’s Escrow Fee, transfer tax and recording fees, if applicable, and the premium for title insurance if desired by City. Donor shall be responsible for any and all reconveyance or transfer fees for any deeds of trust, full release of mortgage, payment of liens, discharge of judgments, or any legal, administrative or other costs or expenses Donor may incur in delivering marketable title to City. All costs related to satisfying any “due diligence” requirements or requests that a party deems necessary to perform its obligations under this Agreement shall be the sole obligation of such party. All current property taxes on the Property shall be handled in accordance with Section 4986 of the Revenue and Taxation Code of the State of California and updates thereof. Any other costs or expenses not otherwise provided for in this Agreement shall be paid by the requesting party.

5.2 Property Review. City shall keep the Property lien free and shall immediately discharge and remove any liens placed thereon based upon the actions of the City or any party acting under or on behalf of the City.

5.3 Donor’ Deposit into Escrow. On or before Close of Escrow, Donor will deliver into Escrow with the Title Company the following documents:

A. A grant deed, in recordable form and properly executed on behalf of the City, in a form approved by City (“Grant Deed”) conveying to City the Property in fee simple absolute, subject only to the Approved Exception(s).

B. Copies of any effective leases, rental agreements or any other agreements, if any, which City has agreed in writing, are to remain in effect after City takes title.

C. Donor’s affidavit of nonforeign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended (“FIRPTA Affidavit”); and

D. Grantor’s affidavit as contemplated by the Revenue and Taxation Code Section 18662 (“Withholding Affidavit”).

5.4 Close of Escrow. Escrow shall close on or before August 30, 2024 (“Close of Escrow”). On the Close of Escrow date, the Title Company shall close Escrow as follows:

A. Record the Deed, marked for return to City in care of the City Manager (which shall be deemed delivery to City), and shall obtain at recording conformed copies of the Deed and deliver a copy thereof to Donor and City immediately after the Close of Escrow;

- B. Issue the title policy;
- C. Prorate taxes, assessments, rents, and other charges as provided by this Agreement; and
- D. Prepare and deliver to the City and to Donor one signed copy of the Title Company's closing statement showing all receipts and disbursements of the Escrow.

If the Title Company is unable to simultaneously perform all of the instructions set forth above, the Title Company shall notify Donor and the City and retain all funds and documents pending receipt of further instructions from Donor and the City. Either party may waive any and all objections to any condition precedent to its performance and proceed with this Agreement by giving written notice thereof to the other party and the Title Company.

6. Donor's Representations. Donor represents and warrants to the City that as of the Effective Date and as of the Close of Escrow:

6.1 Hazardous Substances. To the best of Donor's knowledge and except as set forth in any environmental reports delivered or made available to the City, the Donation Property is: (i) free from hazardous substances, as that term is defined in applicable federal and California law; (ii) contains no buried or partially buried storage tanks located on the Donation Property; (iii) has not been used for the generation, storage or disposal of any hazardous substance, as that term is defined under applicable federal or California law, and no hazardous substance has been spilled, disposed of, or stored on, under, or at the Donation Property; and (iv) has never been used as a dump or landfill;

6.2 Leases. To the best of Donor's knowledge, except as otherwise disclosed or indicated in a preliminary title report, there are no leases, licenses, or other agreements allowing any third-party rights to use the Donation Property that are now or will be in force as of the Close of Escrow;

6.3 Litigation and Investigations. There is no pending or, to the best of Donor's knowledge, threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Donation Property, and Donor has received no notice, warning, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Donation Property are or have been in violation of any laws, or informing Donor that the Donation Property is subject to investigation or inquiry regarding the violation of any laws;

6.4 No Insolvency Proceedings. Donor has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; (iv) suffered the attachment or other judicial seizure of substantially all of its assets; or (v) admitted in writing its inability to pay its debts as they come due;

6.5 No Other Agreements, Undertakings or Tenancies. Donor will not enter into any agreements or undertake any new obligations prior to the Close of Escrow that will in any way burden, encumber or otherwise affect the Donation Property without the prior written consent of the City; and

6.6 Warranty as to Donation Property Ownership. Donor represents and warrants that the individuals who have signed this Agreement on behalf of Donor have the legal power, right, and authority to make this Agreement.

7. Other Agreements. City agrees to cooperate with Donor's determination of the fair market value by an appraisal to be commissioned by and performed solely for Donor's purposes. City is under no obligation to confirm or agree upon any value derived from an appraisal conducted by Donor. Donor will obtain independent tax counsel and is solely responsible for compliance with the gift substantiation requirements of the tax code. City's obligation will be to acknowledge receipt of a donation of the Donation Property by executing IRS Form 8283 before Close of Escrow. City acknowledges that it has not provided Donor with anything of value in exchange for the Donation Property.

8. Termination of Agreement. Donor and City mutually agree that this Agreement shall be effective through August 30, 2024, unless further extended in writing by Donor and the City. The parties to this agreement mutually agree that if Close of Escrow does not occur on or before August 30, 2024, and if this Agreement is not extended by Donor and City, this Agreement shall terminate at midnight on August 30, 2024.

9. Survival. All of the terms, provisions, representations, warranties and covenants of the parties under this Agreement shall survive the assignment, expiration or termination of this Agreement and shall not merge in the deed or other documents following the delivery and recordation of said deed or other documents.

10. Possession of the Donation Property. Possession of the Donation Property shall be delivered to City at the Close of Escrow.

11. Attorney Fees. Should either party institute any action or proceeding to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to receive all costs and expenses, including reasonable attorney, consultant, and expert witness fees incurred by such prevailing party in connection with such action or proceeding, at trial and on any appeal.

12. Assignment and Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors, and assigns.

13. Notices. All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing. The place for delivery of all notices given under this Agreement shall be as follows:

Donor: Mark Egide
Creekwood Capital, LLC
474 Fairway Drive
Novato, CA 94949

City: Tom Dubois
City Manager
City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

Or to such other addresses as Donor and City may respectively designate by notice to the other.

14. Entire Agreement. The parties have herein set forth the whole of their agreement. The

performance of this agreement constitutes the entire consideration for this document and shall relieve City of all further obligation or claims. Donor has no other right or claim to compensation arising out of or connected with the acquisition of the Donation Property by City.

15. Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. The Recitals are and shall be enforceable as a part of this Agreement.

16. Further Assurances. Whenever requested to do so by the other party, each party shall execute, acknowledge and deliver all further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents and all further instruments and documents as may be necessary, expedient, or proper in order to complete all conveyances, transfers, sales, and assignments under this Agreement, and do all other acts and to execute, acknowledge, and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.

17. Donation Property Studies and Records. Donor shall deliver to City, within five (5) calendar days after execution of this Agreement by all Parties, complete, accurate and legible (hard and electronic) copies of all documents concerning the Donation Property that are in Donor's possession or control or are readily available to Donor, including, but not limited to, title reports, specifications, maps, drawings, surveys, engineering, soils, environmental, and geotechnical studies and reports, leases, estoppels, topographic surveys, grading plans, feasibility, marketing or other studies, investigations or reports, permits, approvals, affordable housing agreements, right of way and easement agreements, zoning and master plans, bonds, specific plans, initial studies, mitigated negative declarations and/or environmental impact reports, Phase I and II environmental assessments, entitlement documents; property tax bills; estoppels from tenants; and notices of any violation of any federal, state or local statutes, ordinances, affordable housing or inclusionary housing agreements, rules or regulations.

18. Waiver. A waiver or breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.

19. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

20. Counterparts. This Agreement and any amendments hereto may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument.

21. Costs, Expenses and Fees. City and Donor each agree to pay their own costs and expenses, including fees of attorneys, accountants, and consultants, incurred in the preparation of and carrying out of this Agreement.

22. Right To Enter Donation Property.

22.1 Access to Donation Property. Commencing with execution of this Agreement, the City or City's representatives, after written request(s) and approval(s), shall be allowed access to the Donation Property prior to the Close of Escrow, at all reasonable times for the purpose of obtaining data and making surveys, tests, inspections and other studies at City's sole expense, necessary to carry out this Agreement or as required by local and California state regulatory agencies.

22.2 The City shall procure and maintain (and require any of its representatives entering the Donation Property to procure and maintain): (i) workers' compensation insurance required by the laws of the State of California; (ii) commercial general liability insurance in the amount of at least Two Million Dollars (\$2,000,000) combined single limit, naming Donor as additional insureds and containing a cross liability endorsement or severability of interests clause; and (iii) with respect to any contractor or consultant conducting environmental, soils or geological tests, commercial general liability insurance, in the amount of at least One Million Dollars (\$1,000,000) combined single limit. The City shall, prior to any entry by City and/or its representatives, furnish certificates of such insurance coverage to Donor. Such certificates shall contain a clause providing for thirty (30) days' advance notice of cancellation or material change in coverage.

22.3 Restoration of Donation Property. The City shall, upon completion of data gathering, and making surveys, tests, inspections and other studies, restore the Donation Property to the extent reasonably possible to its condition prior to such data gathering, surveys, tests, inspections and other studies.

22.4 Indemnification Resulting From Access. The City shall indemnify and hold harmless Donor of and from any and all mechanic's liens, claims, actions, liabilities, costs, expenses, including attorneys' fees, and damages of any type or nature arising out of or in any way related to any such use of or entry onto the Donation Property by the City or by any other person or entity on behalf of, or at the request of, the City, excluding any losses or damages, including but not limited to a reduction in the value of the property, resulting from any finding or results of any surveys, tests, inspections or other studies, whether or not negligent.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

DONOR

CREEKWOOD CAPITAL, LLC

By: _____
Mark Egide
Owner

DONOR

CITY OF SUTTER CREEK

By: _____
Tom Dubois
City Manager

ATTEST:

Karen Darrow
City of Sutter Creek

APPROVED AS TO FORM:

Derek P. Cole
City Attorney

EXHIBIT A

Property Description

[To be inserted]