# RESOLUTION NO. OB-32

## A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY AUTHORIZING THE EXECUTIVE DIRECTOR OF THE SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY TO SIGN THAT CERTAIN SALE AND PURCHASE AGREEMENT BETWEEN THE SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY AND CORBETT WRIGHT AND/OR HIS ASSIGNS FOR THE SALE OF CERTAIN REAL PROPERTY LOCATED AT 260 MT. HERMON ROAD (APN NO. 022-231-03)

**WHEREAS,** the City of Scotts Valley (the "City") adopted its General Plan in 1994 which provided for the development of a Town Center on property located between Mt. Hermon Road and Kings Village Road; and

**WHEREAS,** the City approved a Town Center Specific Plan in December 2008, which further refined the design and plans for the Town Center; and

**WHEREAS,** the former Redevelopment Agency of the City of Scotts Valley acquired a certain property located within the Town Center Specific Plan Area to facilitate the development of the Town Center; and

**WHEREAS,** the formed Redevelopment Agency of the City of Scotts Valley was eliminated and the Successor Agency of the Scotts Valley Redevelopment Agency is now charged with winding down the obligations of the former Redevelopment Agency; and

**WHEREAS,** part of the winding down process requires the sale of certain parcels of land owned by the former Redevelopment Agency, including that certain parcel identified as Assessor Parcel No. 022-231-03 located at 260 Mt. Hermon Road in the City of Scotts Valley (the "Property"); and

**WHEREAS,** on July 15, 2014, the California Department of Finance recently approved the Agency's Long Range Property Management Plan which provided for the sale of the Property for the appraised value; and

**WHEREAS,** on June 1, 2016, Ron Zeller, certified appraiser, prepared an appraisal of the Property and determined the Property was worth $1,000,000.00 if sold without entitlements or $1,650,000.00 if sold with entitlements; and

**WHEREAS,** Corbett Wright ("Wright"), is interested in acquiring the Property prior to obtaining the necessary approvals to develop the Property; and

**WHEREAS,** although the Property must be developed consistent with the General Plan and the Town Center Specific Plan, there is no guarantee that Wright's proposed use will be approved by the City; and

**WHEREAS,** because Wright will purchase the Property without the entitlements necessary to develop such property, which creates a significant risk, it is appropriate to sell the Property to him for the unentitled price, $1,000,000.00, as outlined in the Appraisal; and

**WHEREAS,** on September 21, 2016, the Successor Agency of the Scotts Valley Redevelopment Agency approved the Purchase Agreement between the Successor Agency of the Scotts Valley Redevelopment Agency and Corbett Wright for the sale of 260 Mt. Hermon Road, APN 022-231-03, for the unentitled price of $1,000,000.00; and

**WHEREAS,** such sale is consistent with the Long Range Property Management Plan; and

**WHEREAS,** the City Council previously approved an Environmental Impact Report for the Town Center Specific Plan and any development of the Property must be consistent with the Town Center Specific Plan.

**NOW THEREFORE,** the Board of the Successor Agency of the Scotts Valley Redevelopment Agency, hereby resolves as follows:

1. That the aforementioned findings are approved.

2. That the sale of the Property is consistent with the Long Range Property Management Plan.

3. That the property is being sold for the appraised value.

4. That the Executive Director is authorized to execute that certain purchase agreement for the sale of the Property.

**PASSED, APPROVED, AND ADOPTED** this 29th day of September, 2016, by the following vote:

| | |
|---|---|
| AYES: | BUSTICHI, BATEMAN, DILLES, MCPHERSON, RAMIREZ, SMITH |
| NOES: | NONE |
| ABSENT: | ZIEL |
| ABSTAIN: | NONE |

Dene Bustichi, Chair

ATTEST:

Tracy A. Ferrara, Board Secretary

# PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is made this 29th day of September, 2016 ("Agreement") by and between the Successor Agency of the former Scotts Valley Redevelopment Agency (hereinafter "Seller"), and Corbett Wright and/or approved assigns (hereinafter "Buyer") (collectively "the Parties").

Whereas, Seller is the owner of that certain property located at 260 Mount Hermon Road, Scotts Valley, APN 022-231-03 (the "Property"), which is located within the Scotts Valley Town Center Specific Plan Area;

Whereas, the Scotts Valley Town Center Specific Plan ("Specific Plan") envisions a mixed use project which will create a destination for retail, civic and residential uses;

Whereas, Seller desires to sell the Property for development in accordance with the Specific Plan;

Whereas, on July 15, 2014, the California Department of Finance approved the Long Range Property Management Plan for the assets of the former Scotts Valley Redevelopment Agency;

Whereas, the Long Range Property Management Plan calls for the sale of the Property for the development of the Town Center project at the appraised value;

Whereas, Buyer desires to buy the Property at the appraised value and to develop the Property as a restaurant and bar with related supportive and ancillary amenities;

Whereas, Seller has provided to Buyer a copy of the appraisal prior to the execution of this Agreement upon which Seller relies to establish the appraised value of the Property;

Whereas, the Specific Plan allows restaurants and bars to be developed in the Scotts Valley Town Center Specific Plan Area;

Whereas, the Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, Buyer and Seller agree as follows:

1. Effective Date. This Agreement shall be effective upon the approval of this Agreement by both the Successor Agency of the Scotts Valley Redevelopment

Agency ("Successor Agency") and the Oversight Board for the Successor Agency ("Effective Date").

2. **Purchase Price.**

The Purchase Price for the Property to be paid by Buyer to Seller for the Property shall be One Million Dollars ($1,000,000.00), which shall be payable in cash at the Closing (as defined below).

3. **Deposits.**

Within three (3) business days after full execution of this Agreement, Buyer shall deposit in escrow with First American Title Company located at 330 Soquel Avenue, Santa Clara California 95062 Attention Sharon Oster (831) 460-3265, (408) 488-0736 (fax), soster@firstam.com(the "Title Company") the sum of Five Thousand Dollars ($5,000) (the "Initial Deposit"). Within one (1) business day after Buyer notifies Seller that it has waived the Due Diligence Conditions (as defined below), Buyer shall deposit with Title Company an additional Twenty Thousand Dollars ($20,000) (the "Second Deposit") The Initial and Second Deposits shall collectively be referred to as the "Deposits" in this Agreement. The Deposits shall be applied to the Purchase Price at Closing. In the event this transaction fails to close due to Buyer's breach or default, Seller shall be entitled to retain all of the Deposits as liquidated damages.

4. **Escrow.**

(a) Within three (3) business days of the execution of this Agreement, the Parties will open an escrow account with the Title Company, to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement. Buyer shall be promptly provided a preliminary title report, the review of which will be handled as a Due Diligence Condition. This Agreement shall constitute the escrow instructions, provided, however, Buyer and Seller agree to execute and not to unreasonably withhold their consent to any additional provisions required by the Escrow Holder as a condition to conducting the escrow. Each party shall pay one half (½) of the escrow fee and escrow costs shall be paid by the parties as is customary in Santa Cruz County. Taxes, bonds, assessments, rents and insurance, if any, shall be prorated by the Escrow Holder to the date of COE, with Buyer assuming any non-delinquent bonds or assessments. As a condition to COE, Buyer shall be provided with a CLTA extended coverage owner's policy of title insurance in an amount equal to the Purchase Price, to be issued by the Escrow Holder, showing fee title to the Property vested in Buyer, or nominee, and subject only to

such liens and encumbrances as are accepted and agreed to, in writing, by Buyer, at Closing pursuant to Section 6 as a Due Diligence Condition. The premium for the title insurance policy shall be divided on a 50%-50% basis between Seller. and Buyer. Seller shall pay the cost of any city or county transfer taxes. Said CLTA title policy shall contain, at Buyer's option, endorsements insuring that the Property abuts upon, and has access to, all adjoining streets and rights of way. Should Buyer require an ALTA Owner's policy, any excess premium and the cost of an ALTA Survey shall be paid by Buyer.

(b) Upon COE, Buyer shall be provided with a grant deed conveying good and marketable fee title to the Property, and all rights associate therewith.

(c) The form of the grant deed shall be subject to the approval of Buyer. The grant deed shall convey all of Seller's right, title and interest in and to all mineral rights, oil and/or gas in, on and below the Property and all rights of surface entry thereto for access to said mineral and oil and/or gas located in on or below the Property. The Escrow Holder shall be instructed not to indicate the documentary transfer tax on the grant deed.

5. **Buyer's Due Diligence.**

Within five (5) business days of the Effective Date, Seller shall provide Buyer with a copy of all documents in Seller's possession or control regarding the Property ("Seller's Materials")Seller shall within five (5) business days of the Effective Date submit the necessary documentation to the California State Department of Finance ("DOF") to approve the sale of the Property to Buyer and to authorize Seller to proceed with the sale. Upon approval of the sale by DOF and the expiration of any applicable appeal period, Seller shall notify Buyer of the date for the commencement of the Due Diligence Period. Buyer shall have Sixty (60) days from Seller's notice (the "Due Diligence Period") to complete the review of Seller's Materials, review the condition of title of the Property, inspect the Property, and investigate the suitability of all aspects of the Property to Buyer's satisfaction, in Buyer's sole and absolute discretion, including without limitation, zoning, hazardous materials, economic viability, feasibility for Buyer's intended purpose, and the verification of the Seller's ability to deliver the Property as Successor Agency to the Redevelopment Agency (the "Due Diligence Conditions").

Immediately upon full execution of this Agreement, Buyer and its agents shall have the right to enter upon the Property for the purpose of doing any tests, surveys, inspections, or related work required by Buyer

for the inspection and development of the Property. Buyer shall provide Seller with 24-hour notice prior to entry on the Property. Buyer, at its sole cost and expense, shall restore the Property to a condition at least equal to the condition existing immediately prior to the commencement of any testing, surveying, inspecting or related work. The Buyer shall not permit to be placed against the Property, or any part thereof, any liens with regard to Buyer's actions upon the Property. The Buyer agrees to hold the Seller harmless for any loss or expense, including reasonable attorney's fees and costs, arising from any such liens which might be filed against the Property. Buyer agrees to indemnify, defend and hold harmless Seller and its officers, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities, damages to the Property, environmental claims or injuries to persons, which may be caused by Buyer's activities pursuant to this section except that Buyer will have no responsibility to Seller for the remediation of Hazardous Materials (as defined in paragraph 9) discovered to be present in, on, or under the Property as a result of tests, inspections or studies performed by Buyer including any residual contamination determined to be present by the prior existence of underground tanks on the Property.. Buyer shall require that any contractors working on the Property maintain general liability insurance with limits of at least $1,000,000. Said insurance shall name Seller as an additional insured. Prior to the last day of the Due Diligence period, Buyer shall notify Seller of any conditions of the Property which are unacceptable to Buyer. At that time, the Seller may agree to remedy said conditions or may refuse to remedy said conditions. In the event the City refuses the remedy said conditions, Buyer may elect to waive any objections and proceed with the purchase of the Property or terminate this agreement. Buyer shall notify Seller in writing on or before the last day of the Due Diligence Period if the Due Diligence Conditions are satisfied or waived. If Buyer fails to notify Seller in writing that the Due Diligence Conditions have been waived or satisfied on or before the last day of the Due Diligence Period, the Due Diligence Conditions shall be deemed not satisfied, Buyer shall be entitled to the return of the First Deposit and this Agreement shall be of no further force and effect.

6. **Closing.**

The closing of this transaction ("Closing") shall occur upon the delivery of written notice from Seller to Buyer (the "Notice to Close") on or before the date that is fifteen (15) days after the Buyer has delivered to the Seller the written notice of the satisfaction, exception or waiver of the Due Diligence Conditions , Seller shall pay all transfer taxes and the cost of the CLTA policy of title insurance. All other closing costs shall be divided between Buyer and Seller pursuant to the local closing practices. At

Closing, Buyer shall deliver the amount of the Purchase Price less the Deposits and Seller shall deliver a grant deed for the Property and such other usual and customary instruments as Buyer may reasonably request. Property taxes and other income and expenses shall be prorated as of Closing on the basis of actual days elapsed and a 360-day year.

7. **Extension to Closing.**

If in the event Buyer wishes to extend the close of escrow to facilitate the Buyer's contemplated 1031 exchange or any other reason in Buyer's sole discretion, then Buyer may elect to extend the Close of Escrow for an additional thirty (30) days, (the "Closing Extension Period").

8. **Seller's Representations and Warranties.**

Seller represents, warrants and covenants to Buyer the following as of the time of the Effective Date and date of Closing: (a) that Seller is the owner, in fee, of the Property and that the person(s) executing this Agreement on behalf of Seller have the full authority to execute this Agreement and will have received the necessary consents from the Successor Agency to the Redevelopment Agency and State Department of Finance; (b) no leases, rental agreements and/or service contracts are in effect with respect to the Property; (c) Seller has no knowledge of nor has Seller received notice of any pending or contemplated litigation affecting the Property; (d) as of the date hereof, Seller has not received nor is Seller aware of any notification from any building, safety or health department or any other governmental agency of any existing violation of any applicable law, ordinance, rule or regulation over which such department has or claims jurisdiction and which requires any work to be done with respect thereto affecting the Property; (e) the Property is not, and shall not become, subject to the provisions of the Land Conservation Contract pursuant to the Williamson Act; (f) to Seller's best knowledge and except as disclosed to Buyer in writing, no Hazardous Materials as defined below regulated under any federal, state, or local law or regulations, as amended from time to time, as toxic, hazardous, contaminated, or similarly harmful or dangerous material or substance (including without limitation, petroleum products, solvents, asbestos, and radon) are or were located on, in or under the Property or have affected the Property or waters on or under the Property at any time; (g) to Seller's best knowledge, the Property contains no cemetery or burial site or a site of historical significance; (h) to Seller's best knowledge, the Property is not occupied or used by and does not constitute the habitat of an endangered or threatened species; (i) to Seller's best knowledge, the Property has

never been used for garbage or land fill; (j) to Seller's best knowledge, there are adequate City services to allow for development of the property; and (k) to Seller's best knowledge, Seller has no actual knowledge of any liens, easements, licenses or other rights not disclosed by the public record. These warranties shall survive COE and delivery of the grant deed to Buyer. Seller hereby represents that underground fuel tanks were previously located on the Property, but to the best of Seller's actual knowledge, such tanks have been removed in their entirety from the Property. In addition, Seller hereby represents that levels of arsenic have been located on the Property.

9. **Hazardous Materials. Definition**.

The term "**Hazardous Materials**" means and refers to any "hazardous waste" or "hazardous substance," as such terms are set forth in, under or pursuant to the Environmental Laws and Regulations, oil or petroleum products or their derivatives, polychlorinated biphenyls, asbestos, arsenic, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, explosive, contaminating or polluting materials which are now or in the future subject to governmental regulation. "**Environmental Laws and Regulations**" means any federal, state or local laws now or hereafter in effect relating to pollution or protection of the environment or emissions, discharges, spills, releases or threatened releases of any Hazardous Substance into the environment (including without limitation indoor air, ambient air, surface water, ground water or land), including without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.,* as amended, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §§ 9601 *et seq.,* as amended, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.,* as amended, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.,* as amended, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.,* as amended, the Toxic Substance Control Act, 15 U.S.C. §§ 2601 *et seq.,* as amended, and any rules and regulations now or hereafter promulgated under any of such acts. **Brokers.**

Each of the Parties hereto represents to the other that it has dealt with no broker in connection with the transaction contemplated herein and that the parties shall not be required to pay any commission whatsoever with regard to the transaction contemplated herein resulting from the actions of the party making such representations.

10. **Time is of the Essence.**

Time is EXPRESSLY of the essence of every provision of this Letter of Intent.

11. **Assignment.**

Buyer, without the consent of Seller, may freely assign this Agreement to a partnership or affiliate or development entity created by Buyer for the purpose of Buyer's developing, holding or leasing the Property as contemplated hereunder without regard to the Right of First Refusal set forth in paragraph 12. Should Buyer desire to assign the Agreement to a non Buyer affiliated third party, Buyer shall obtain the consent of Seller, which shall not be unreasonably withheld or delayed.

12. **Right of First Refusal.**

In the event Buyer desires to sell the Property prior to development of the restaurant and bar with related ancillary amenities , before it may sell the Property to a third party, Buyer shall first offer in writing, the Property to Seller for the Purchase Price under this Agreement plus development and entitlement costs incurred by Buyer, then to date. Seller shall have 30 days from the receipt of such notice in which to accept said offer. If Seller does not accept said offer within said period, Buyer shall be free to sell the Property to a third party on terms no less favorable than the terms offered to Seller.

13. **Cross Easements**.

Seller shall work with Buyer and adjacent property owners to provide for the grant of mutual and reciprocal cross easements for ingress and egress and parking for the Property and adjacent properties in order to facilitate the orderly development of the Town Center project. However the placement of any such reciprocal easements for ingress and egress and parking shall not compromise the access to the Property or parking requirements such that Buyer's project or any future adjacent project must rely upon shared rather than on-site parking for approval.

14. **Oral and Written Agreements**.

This Agreement represents the entire agreement between the Parties hereto and supersedes all prior negotiations, representations, agreements, brochures and understandings, whether written or oral, with respect to the

subject matter hereof and none shall be used to interpret or construe this Agreement. Any changes to this Agreement shall be in writing and shall be executed by both Buyer and Seller.

15. **Binding Effect.**

This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the Parties hereto.

16. **Notices.**

All notices and other communications under this Agreement shall be in writing, addressed to the Parties at the addresses set forth below, and delivered by personal service, or by Federal Express or other overnight delivery service, or by facsimile transmission, or by registered or certified mail, postage prepaid, return receipt requested:

BUYER:
Corbett Wright
174 West Cliff Drive
Santa Cruz CA 95060

SELLER:
SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY
One Civic Center Drive
Scotts Valley, CA 95066

Attn. Executive Director

With copy to:
William B. Clayton, Jr.
Clayton & McEvoy P.C.
333 W Santa Clara Street #950
San Jose CA 95113

With a copy to:
Kirsten M. Powell
City Attorney
One Civic Center Drive
Scotts Valley, CA 95066

Any such notice shall be deemed delivered as follows: (a) if personally delivered, the date of delivery to the address of the person to receive such notice; (b) if sent by Federal Express or other courier service, the date of delivery to the address of the person to receive such notice; (c) if sent by facsimile transmission, the date transmitted to the person to receive such notice if sent by 5:00p.m. (San Francisco time) and the next business day if sent after 5:00pm (San Francisco time); (d) if mailed, three (3) calendar days after depositing same in the mail. Any notice sent by facsimile transmission must be confirmed by personally delivering or mailing a copy of the notice sent by facsimile transmission. Any party may change its address for notice by written notice given to the other at least five (5) calendar days before the effective date of such change in the manner provided in this Section.

17. **Attorneys' Fees.**

In the event of any controversy, claim, or dispute between the Parties hereto, including arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to recover, in addition to all other remedies at law or in equity, costs of any proceeding relating to such controversy, including expert witness fees and reasonable attorneys' fees.

18. **Possession.**

Buyer shall take possession of the Property as of the Close of Escrow.

19. **Interpretation.**

Words in the singular shall be deemed to include the plural and vice-versa and words in a particular gender shall be deemed to include each other gender. The captions and headings of the Sections of this Agreement are for convenience of reference only and shall not be deemed to define or limit the provisions hereof. Time shall be of the essence of every provision of this Agreement.

20. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the internal laws, without regard to the conflicts of law provisions of such laws, of the State of California applicable to agreements made and to be performed in such state.

21. **Counterparts.**

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

[signature page follows]

## SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated above.

BUYER:
Corbett Wright

By: Corbett Wright

SELLER:
Successor Agency of the Scotts Valley Redevelopment Agency

By: Jenny D. Haruyama,
Executive Director