

Exhibit “A”

TRANSFER AGREEMENT

This **TRANSFER AGREEMENT** (“**Agreement**”) is dated as of February 15th 2022 (“**Effective Date**”) and is being entered into by and between **CIRCLE DRIVE ESTATES**, A California limited partnership (“**CDE**”) and the **CITY OF SALINAS**, a California municipal corporation and charter city (“**City**”) for the transfer of certain real property described below from CDE to City.

RECITALS

A. CDE is the owner in fee of that certain real property consisting of approximately 3.16 acres of land located at 901 Circle Drive (Monterey County Assessor’s Parcel Number [APN] 004-605-016-000) in the County of Monterey, State of California, and which is more precisely described in **Exhibit A** (the “**Property**”).

B. The Property is regulated by the terms and conditions of Planned Unit Development Permit 90-3 (“**PUD**”); Section 11 of the PUD provides that CDE is required to transfer the Property to the City upon the conditions specified in the PUD.

C. City has confirmed that the applicable conditions specified in the PUD as prerequisites to transfer the Property have been met.

D. CDE desires to transfer the Property to City, and City desires to receive said Property from CDE.

NOW, THEREFORE, CDE and City hereby agree as follows:

1. **Agreement to Transfer.** CDE agrees to transfer the Property to City and City agrees to receive the Property from CDE upon the terms and for the consideration set forth in this Agreement.
2. **Purchase Price.** CDE shall transfer the Property at no cost to City and shall receive no remuneration or compensation from City for the Property.
3. **Conveyance of Title and Possession.** CDE agrees to convey by Deed (defined below) to City all of its title and interest in and to the Property. Both parties agree to take whatever additional action and to execute whatever additional documents necessary to complete the transfer contemplated in this Agreement.
4. **Title Insurance Policy.** Escrow Holder shall, following recording of the Deed, provide City with a standard owner’s CLTA policy of title insurance in the amount of \$30,000, issued by the Title Company, together with any endorsements and additional coverage reasonably requested by City, showing fee simple title to the Property vested

in City, subject only to printed exceptions and stipulations in the policy. Title charges shall be evenly divided between CDE and City.

5. **Escrow.** CDE and City shall open an escrow ("**Escrow**") in accordance with this Agreement with a mutually acceptable Title Company ("**Escrow Holder**"). This Agreement, together with the escrow instructions prepared by Escrow Holder and executed by CDE and City, constitute the joint escrow instructions of CDE and City, and the Escrow Holder to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this Escrow on or before the Closing Date (defined below); provided, however, neither CDE nor City shall be obligated to waive any rights, conditions or contingencies under this Agreement in order to close the Escrow.
6. **Delivery of Deed.** CDE shall execute and deliver into the Escrow a Grant Deed ("**Deed**") to City, in substantially the form attached hereto as **Exhibit "B"** and incorporated herein.
7. **Escrow Account.** CDE and City agree to deposit with Escrow Holder any additional instruments as may be necessary to complete this transaction. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California.
8. **Escrow Holder Authorization.** Escrow Holder is authorized to, and shall:
 - a. **Fees, Charges and Costs.** Pay and charge CDE and City for Escrow fees, charges, and costs payable under Section 12.
 - b. **Disbursement.** Disburse funds, record the Deed, and deliver the title policy to City, when conditions of the Escrow have been fulfilled by CDE and City.
9. **Close of Escrow.** The terms "**Close of Escrow**," "**Close**" and "**Closing**," if and where written in these instructions, shall mean the date the Deed and other necessary instruments of conveyance are recorded in the Official Records of the Monterey County Recorder ("**Official Records**"). Recordation of instruments delivered through this Escrow is authorized, if necessary or proper for the issuance of the policy of title insurance pursuant to Section 4 hereof.
10. **Time Limits.** All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.
11. **Time of the Essence.** Provided that the conditions set forth in this Agreement have been satisfied, the Closing shall occur on or before March 15, 2022 ("**Closing Date**"). In the event the Closing does not occur on or before the Closing Date, either party that

is not in default hereunder shall be entitled to cancel Escrow, terminate this Agreement, and the Escrow Holder shall return to the depositor thereof all documents, instruments, and monies which were deposited hereunder. The foregoing shall not constitute an election of remedies for a non-defaulting party if the other party wrongfully fails to close Escrow.

12. Escrow Fees, Charges and Costs. CDE and City shall be jointly and equally responsible for and shall pay all transaction costs, including the applicable transfer taxes, if any, the cost of recording the Deed or any curative instruments, escrow fees, the costs associated with financing, if any, the cost of any title endorsements, and the cost of a CLTA standard coverage owner's policy as described in Section 4. Each party shall pay its own legal fees.

13. Tax Requirements. If appropriate, Escrow Holder shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

14. Closing Statement. City instructs Escrow Agent to release a copy of City's closing statement to CDE, and CDE instructs Escrow Agent to release a copy of CDE's closing statement to City.

15. Conditions Precedent to Close of Escrow.

a. City's Conditions Prior to Closing. City's obligation to complete the purchase of the Property is subject to the satisfaction or City's waiver in its sole and absolute discretion of each of the following conditions:

- i) CDE shall have delivered through Escrow an executed and recordable Deed sufficient to convey fee title to City as set forth in Section 6.
- ii) CDE shall have delivered through Escrow such other documents as are necessary to comply with City's obligations under this Agreement.
- iii) City shall have approved the condition of title to the Property and the Title Company shall have committed to deliver to City a title insurance policy as required by Section 4 hereof at or immediately after the Closing.
- iv) City shall not have terminated this Agreement as otherwise specifically permitted by the provisions of this Agreement.

- v) CDE shall not be in default of any of its obligations under the terms of this Agreement, and all representations of CDE herein shall be true and correct.

b. CDE's Conditions Precedent to Closing. CDE's obligation to complete the sale of the Property is subject to the satisfaction or City's waiver in its sole and absolute discretion of each of the following conditions:

- i) City shall have deposited with Escrow Holder immediately available funds for any applicable charges as defined in Section 12.
- ii) City shall not be in default of any of its obligations under the terms of this Agreement, and all representations of City herein shall be true and correct.
- iii) CDE shall not have terminated this Agreement as otherwise specifically permitted by the provisions of this Agreement.

16. Permission to Enter on Premises. CDE agrees to grant to City, or its authorized agents, permission to enter upon the Property at all reasonable times prior to Close of Escrow for the purpose of making necessary or appropriate inspections, tests, surveys, assessments and reports of the Property, at City's expense ("**Tests**"). City shall indemnify, defend, and hold harmless CDE and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities or damages, and including expert witness fees and reasonable attorney's fees and costs, caused by City's activities with respect to or arising out of such testing, inspection, or investigatory activity on the Property.

17. Warranties, Representations, and Covenants of CDE. CDE hereby warrants, represents, and/or covenants to City that:

- a. Pending Claims.** To CDE's Actual Knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.
- b. CDE's Title.** Until the Close of Escrow, CDE shall not do anything which would impair CDE's title to the Property or City's right of possession, development, or use of the Property after the Close of Escrow.
- c. Conflict with Other Obligation.** To CDE's actual knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which CDE or the Property may be bound.

- d. **Authority.** CDE has the full right, power, and authority to convey and transfer the Property to City as provided herein and to carry out CDE's obligations hereunder.
- e. **Bankruptcy.** CDE is not the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for CDE to be able to transfer the Property as provided herein.
- f. **Governmental Compliance.** CDE has not received any notice from any governmental agency or authority alleging that the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by CDE following the date this Agreement is signed by City, CDE shall, within ten (10) days of receipt of such notice notify City; CDE then, at its option, may either elect to perform the work or take the necessary corrective action prior to the close of Escrow or refuse to do so, in which case CDE shall notify City of such refusal and City shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement.
- g. **Right to Possession.** No person, firm, partnership or corporation has or will have the right to possess the Property or any portion of it as of the Effective Date or the Close of Escrow.
- h. **Change of Situation.** Until the Close of Escrow, CDE shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to City.

18. Condition of the Property.

- a. **Hazardous Materials.** As used in this Agreement, the term "**Hazardous Materials**" shall mean any substance, material, or waste which is or becomes, regulated by any local governmental authority, the County of Monterey, the State of California, any regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans

and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.* (42 U.S.C. §6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

- b. Compliance with Environmental Laws.** To CDE’s actual knowledge, CDE has not received any notice from any governmental agency that the Property is not in compliance with any applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environmental Quality Act, and the rules, regulations, and ordinances of the City of Salinas, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.
- c. As Is Sale.** Except as otherwise provided herein, the physical condition, possession and title of the Property is and shall be delivered from CDE to City in an “as is” condition, with no warranty expressed or implied by CDE, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Property for the development purposes intended hereunder.

19. Brokers. CDE and City each represent to the other that no brokerage commission, finder’s fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Each party agrees to and does hereby indemnify and hold the other free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in connection with this Agreement.

20. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by CDE and City shall be deemed both a covenant and a condition and shall be a material consideration for City’s and CDE’s performance hereunder, as appropriate,

21. Attorney's Fees. In the event any declaratory or other legal or equitable action is instituted between City, CDE and/or Escrow Holder in connection with this Agreement then, as between CDE and City, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs, reasonable attorneys' fees, expert witness fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

22. Notices. Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party, or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, or delivered through another reasonably acceptable method, and addressed to the party for whom intended, as follows:

With a copy to: City of Salinas
200 Lincoln Avenue
Salinas, California 93901
Attention: City Attorney

With a copy to: City of Salinas
200 Lincoln Avenue
Salinas, California 93901
Attention: Sr. Econ. Dev. Manager

If to CDE: Circle Drive Estates
337 San Vincente Avenue
Salinas, CA 93901
Attention: General Partner

With a copy to: Paul D Gullion, Attorney at Law
PO Box 1165
Cambria, CA. 93428

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

23. Breaches and Defaults. Subject to Enforced Delay, failure or delay by either party to perform any material term or provision of this Agreement (a "**Breach**") following written notice and failure to cure as described hereafter constitutes a "Default" under this Agreement.

The nondefaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the nondefaulting party ("**Notice of Default**"). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided that the party in Breach shall diligently pursue such cure to completion ("**Cure Period**"). Failure of the party in Breach to cure the Breach within the Cure Period set forth above shall constitute a "Default" hereunder.

Any failure or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

- 24. Gender and Number.** In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.
- 25. Entire Agreement.** This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.
- 26. Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.
- 27. Governing Law.** This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.
- 28. Counterparts.** This Agreement may be executed in counterparts, each of which when executed shall, regardless of the date of its execution and delivery, be deemed an original, and all counterparts together shall constitute one and the same instrument.
- 29. Invalidity of Provision.** If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.
- 30. Amendments.** No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by CDE and City.
- 31. Time of Essence.** Time is of the essence of each provision of this Agreement.
- 32. Binding Upon Successors.** The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CITY:

CITY OF SALINAS, a California municipal corporation and charter city

By: _____
Steven S. Carrigan, City Manager

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

CDE:

CIRCLE DRIVE ESTATES, a California limited partnership

By: _____
Michael L. Foletta, General Partner

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Salinas, County of Monterey, State of California, described as follows:

PARCEL "A", AS SHOWN ON THE MAP ENTITLED, "TRACT NO. 1186, CIRCLE DRIVE ESTATES", WHICH MAP WAS FILED FOR RECORD IN THE MONTEREY COUNTY RECORDERS OFFICE ON FEBRUARY 12, 1993 IN VOLUME 18 OF "CITIES AND TOWNS", AT PAGE 10.

EXCEPTING THEREFROM ANY AND ALL WATER, BUT WITHOUT THE RIGHT OF ENTRY OR TO MAKE ANY WITHDRAWAL OF WATER WHICH WILL RESULT IN DAMAGE TO ANY BUILDING OR STRUCTURE, AS GRANTED IN THE DEED TO CALIFORNIA WATER SERVICE COMPANY, RECORDED MARCH 20, 1993, INSTRUMENT NO. 1993-19849 IN BOOK/REEL 2922, PAGE/IMAGE 483, OFFICIAL RECORDS.

APN: 004-605-016-000

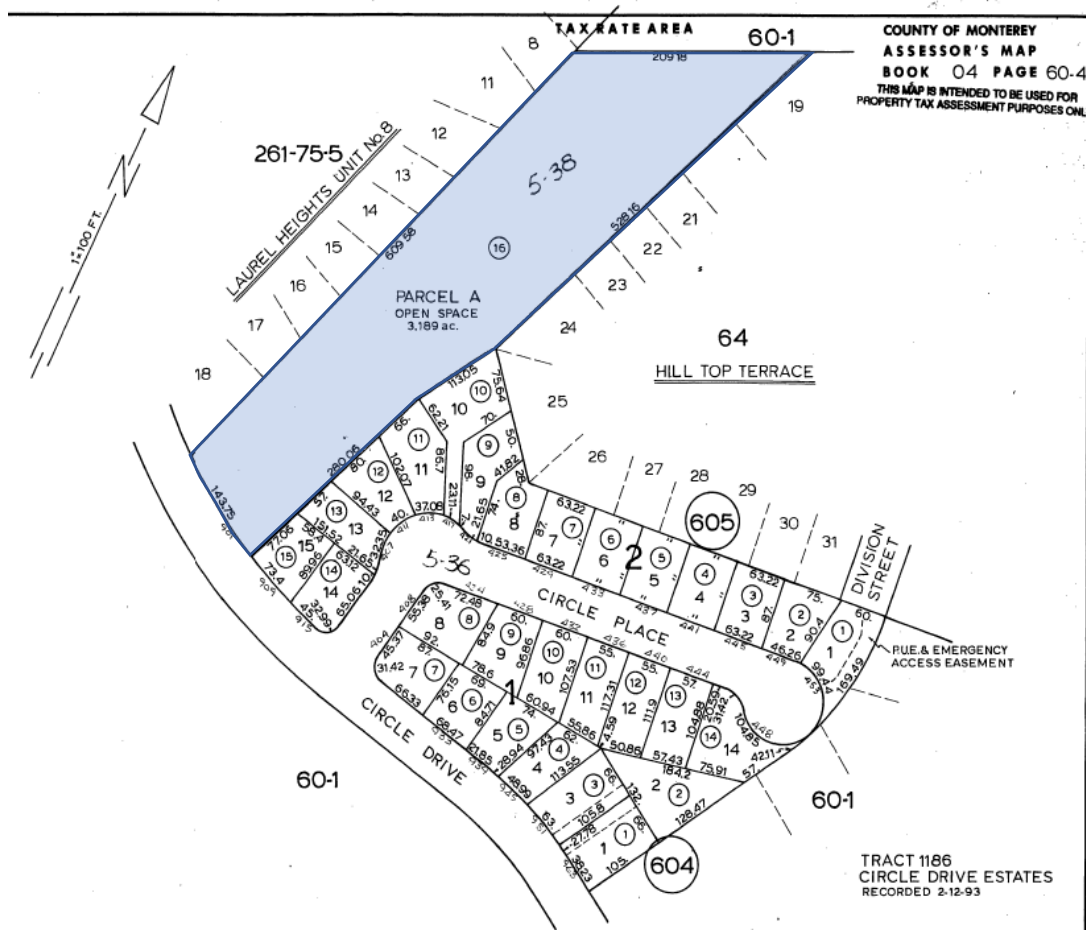


EXHIBIT "B"

RECORDING REQUESTED BY

City of Salinas
200 Lincoln Avenue
Salinas, California 93901

WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:

City of Salinas
200 Lincoln Avenue
Salinas, California 93901
Attention: Administration Department

(ABOVE SPACE FOR RECORDER'S USE ONLY)

No Documentary Transfer Tax Required – Acquiring Agency is a Political Subdivision of the State of California (Rev. and Tax 11922)
No Fee – Government Code 27383

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, **CIRCLE DRIVE ESTATES**, a California limited partnership ("**Grantor**"), does hereby **GRANT** to the **CITY OF SALINAS**, a California municipal corporation and charter city, all of the right, title and interest of Grantor in and to that certain real property situated in the City of Salinas, County of Monterey, State of California, more particularly described on Attachment No. 1 attached hereto and incorporated herein by this reference.

Dated this ____ day of _____, 2022.

GRANTOR:

CIRCLE DRIVE ESTATES, a California limited partnership

By: _____
Michael L. Foletta, General Partner

ATTACHMENT NO. 1 TO GRANT DEED

Legal Description of the Land

Real property in the City of Salinas, County of Monterey, State of California, described as follows:

PARCEL "A", AS SHOWN ON THE MAP ENTITLED, "TRACT NO. 1186, CIRCLE DRIVE ESTATES", WHICH MAP WAS FILED FOR RECORD IN THE MONTEREY COUNTY RECORDERS OFFICE ON FEBRUARY 12, 1993 IN VOLUME 18 OF "CITIES AND TOWNS", AT PAGE 10.

EXCEPTING THEREFROM ANY AND ALL WATER, BUT WITHOUT THE RIGHT OF ENTRY OR TO MAKE ANY WITHDRAWAL OF WATER WHICH WILL RESULT IN DAMAGE TO ANY BUILDING OR STRUCTURE, AS GRANTED IN THE DEED TO CALIFORNIA WATER SERVICE COMPANY, RECORDED MARCH 20, 1993, INSTRUMENT NO. 1993-19849 IN BOOK/REEL 2922, PAGE/IMAGE 483, OFFICIAL RECORDS.

APN: 004-605-016-000



CERTIFICATE OF ACCEPTANCE

City Resolution No.: 5849

THIS IS TO CERTIFY THAT the interest in real property conveyed by the deed or grant dated _____, 2022 from

CIRCLE DRIVE ESTATES

to

CITY OF SALINAS, A POLITICAL CORPORATION AND/OR GOVERNMENTAL AGENCY

is hereby accepted by order of the Salinas City Council on February 15, 2022, (or by the undersigned officer or agent on behalf of the City of Salinas pursuant to authority conferred by Resolution 5849 of the Salinas City Council adopted on November 22, 1965), and the grantee consents to recordation thereof by its duly authorized officer.

DATE: _____

Kimbley Craig, Mayor