



**Staff Report**

**Date:** April 4, 2024

**To:** Mayor Brekhus and Council Members

**From:** Richard Simonitch, Public Works Director

**Subject:** Purchase and Sale Agreement related to the Laurel Grove Safe Pathways Project Phase IIB

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**Recommendation:**

It is recommended that the Town Council authorize the Town Manager to execute a purchase-sale agreement (the Agreement) with the owners of APN 072-031-15 (the “Owners”) providing for the acquisition of a portion of said parcel for public right of way purposes, the construction and temporary maintenance of certain private landscape and frontage improvements, and the acquisition of temporary construction easements for the Laurel Grove Safe Pathways Project Phase IIB (the Project) and to make certain non-substantive edits, as needed, prior to executing the Agreement.

**Background:**

Preliminary design and public outreach for the project began in April of 2021 and the project consultants, BKF Engineering, worked with Town staff and residents to develop three alternatives for the alignment of the project, each with similar vehicular travel lane and pathway widths, and each presenting unique challenges to construction, property frontages, and regulatory permitting. On September 18, 2021 the Town hosted an on-site public outreach workshop on Laurel Grove to introduce and discuss the three most viable alternatives for the alignment. Based on a straw poll taken from attendees at the conclusion of the workshop, Alternative 2 was the preferred alignment of the three alternatives.

On November 4, 2021 the Town Council selected Alternative 2 which establishes the new pathway on the south and west side of Laurel Grove Avenue with the need to acquire additional right of way through a purchase of real property from the private property owners of 77 Laurel Grove. This option was favored over the potential environmental impacts associated with constructing within the ephemeral creek/riparian corridor that flows adjacent to and southwest of Laurel Grove (AKA “Kittle Creek”). Alternative 2 was selected as the preferred alignment over Alternatives 1 and 3 because:

1. It would not propose to impact any of the mapped environmentally sensitive areas along the project corridor adjacent to Kittle Creek, eliminating the need for elevated environmental CEQA review (\$200K+).
2. It would not require an expensive (\$250K+) retaining wall to be constructed along the creek bank.
3. The new pathway segment would not impact any of the residential driveways or street intersections between Sir Francis Drake and Canyon.

Phase IIA of the Project was completed in late summer of 2023 and no acquisition of right of way or easements were required to complete Phase IIA. To complete the remaining segment of the preferred Alternative 2 alignment (Phase IIB of the project) the Town will need to acquire (purchase) a 503-square foot portion of the 77 Laurel Grove lot frontage in fee. The Town will also need to acquire a temporary construction easement to enter the private property of 77 Laurel Grove for the purpose of constructing a retaining wall, remove trees, and install landscaping and other improvements within private property.

Under the terms of the Agreement, the Town intends to:

- Compensate the owners of 77 Laurel Grove in the amount of \$95,000 for the good and valuable consideration of acquiring the land necessary to achieve the preferred alternative alignment.
- Acquire a temporary construction easement over a portion of their property.
- Replace certain landscaping screening on 77 Laurel Grove that will be removed by construction of the Project and provide a 3-year warranty period for the landscape and irrigation.
- Replace a segment of driveway on 77 Laurel Grove as required to accommodate grade changes in the vicinity of the driveway entrance.
- Record an entitlement that provides for the construction of an additional driveway entrance off of Laurel Grove if desired by the Owners.
- Provide assurance that the design allows for a 19' long vehicle to park on the driveway out of the travelled way, access the gate control box, and clear the gate as it opens.

The draft purchase-sale agreement is attached to this staff report and has been reviewed by the Town Attorney's office, however, because the final design of the Project has not yet been completed, certain non-substantive edits (e.g. edits that do not alter the purchase price) may be required by staff to finalize the Agreement prior to execution.

**Fiscal, resource and timeline impacts:**

The purchase price for the right of way is \$95,000 and is funded by the fiscal year 23-24 Facilities and Equipment fund. The purchase price also provides for the acquisition of temporary construction easements. The remaining costs for landscaping and driveway improvements are included in the project costs to be paid out of the Roadway fund. Construction of the Project is expected to begin in June and be completed before the Fall 2024 school year begins.

**Attachments:**

1. Draft Purchase-Sale agreement

# ATTACHMENT 1

**AGREEMENT FOR PURCHASE OF REAL PROPERTY  
(INCLUDING ESCROW INSTRUCTIONS)**

THIS AGREEMENT FOR THE PURCHASE OF REAL PROPERTY (INCLUDING ESCROW INSTRUCTIONS) (the “**Agreement**”) is entered into as of [REDACTED], 2024 “**Effective Date**”), by and between THE TOWN OF ROSS, a municipal corporation of the State of California (“**Town**”), and ELKHOURY TRUST, (“**Elkhoury**”). Town and Elkhoury may hereinafter each be referred to as a “**Party**” or collectively as the “**Parties.**”

RECITALS

A. Elkhoury owns certain real property known as 77 Laurel Grove Avenue in Ross, Marin County, California, Assessor Parcel Number 072-031-15 identified and depicted in Exhibit A, attached hereto and incorporated herein by this reference (the “**Elkhoury Property**”).

C. Town is engaged in a project to reconfigure the travel lanes on Laurel Grove Avenue to provide an asphalt pedestrian pathway on one side of the road, with an asphalt or concrete berm installed to separate pedestrian and vehicular travel, all of which is known as the Laurel Grove Avenue Safe Pathways to School, Phase IIA and Phase IIB (the “**Project**”).

D. To facilitate the Project, Town desires to acquire a perpetual right-of-way to a 503 square foot portion of the Elkhoury Property (the “**Elkhoury ROW Property**”) by way of an offer of dedication, and Elkhoury desires to convey, by offer of dedication, the Elkhoury ROW Property to Town, all pursuant to the terms, conditions and covenants set forth in this Agreement. The proposed acquisition of the Elkhoury ROW Property shall be referred to herein as the “**Acquisition**”.

E. In connection with the Acquisition, Town and Elkhoury desire that Town, at its expense, will (i) pay to Elkhoury the sum of Ninety-Five Thousand and no/100 Dollars (\$95,000.00); (ii) complete all of the improvements identified and depicted in Exhibit B, attached hereto and incorporated herein by this reference (the “**Elkhoury Improvements Plan**”); (iii) install the landscape improvements on the Elkhoury Property identified and depicted in Exhibit C, attached hereto and incorporated herein by this reference (the “**Landscape Plans**”); (iv) provide an entitlement to Elkhoury, that runs with the land, that a second driveway shall be allowed from Laurel Grove Avenue to the northwest of the existing driveway allowing ingress and egress from Laurel Grove Avenue to the Elkhoury Property; (v) amend the Town’s parking ordinance (Chapter 10.28) to prohibit vehicular parking on Laurel Grove Avenue between Canyon Road and the private driveway known as “Monte Alegre”; and (vi) maintain all landscape improvements shown on the Landscape Plans for a period of three (3) years from the completion of the landscape improvements.

F. In connection with the Acquisition, Town and Elkhoury desire that Elkhoury, will (i) execute a Grant Deed conveying the Elkhoury ROW Property to the Town, in the form as attached hereto as Exhibit D (the “**Elkhoury ROW Property Grant Deed**”); and (ii) grant a temporary access and construction easement to the Town and the Town’s contractors, consultants and representatives, for the Town to construct a driveway, retaining wall and

landscape improvements pursuant to this Agreement, all as set forth in the Temporary Access and Construction Easement attached hereto as Exhibit E, and incorporated herein by this reference (the “**Temporary Access and Construction Agreement**”).

## A G R E E M E N T

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby mutually agreed between the parties as follows:

1. Agreement to Convey the Elkhoury ROW Property. Elkhoury shall convey the Elkhoury ROW Property to Town, all pursuant to the terms, provisions and covenants of this Agreement.

2. Purchase Price. Town and Elkhoury agree that pursuant to the Appraisal and other considerations, the Town shall, subject to the obligations of each Party as expressly set forth in this Agreement and the satisfaction of all of the Conditions to Closing under this Agreement, pay the sum of \$95,000.00 to Elkhoury as consideration for the Acquisition (the “**Purchase Price**”), in addition to the other covenants expressly set forth in this Agreement.

3. Escrow. Upon the Effective Date, Elkhoury and Town shall open an escrow (the “**Escrow**”) with \_\_\_\_\_, located at \_\_\_\_\_ Attn: \_\_\_\_\_ (“**Escrow Agent**”) by delivering a fully executed copy of this Agreement to Escrow Agent. Escrow Agent will execute copies of this Agreement and return fully executed copies to Town and Elkhoury. This Agreement, together with any supplemental escrow instructions prepared by Escrow Agent, Town and/or Elkhoury and executed by Escrow Agent, Town and Elkhoury, constitutes the joint escrow instructions of Town and Elkhoury, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The term “**Close of Escrow**” or “**Closing**”, if and where written in these instructions, shall mean the date Grant Deed conveying the Elkhoury ROW Property to Town are recorded in the Official Records of Marin County. The Parties agree to do all acts necessary to close this Escrow in the shortest possible time.

4. Conveyance of Title and Temporary Access and Construction Easement.

4.1. Elkhoury ROW Property Grant Deed. Prior to Closing, Elkhoury shall execute, acknowledge and deliver into Escrow the Elkhoury ROW Property Grant Deed conveying the Elkhoury ROW Property to Town. Escrow Agent shall hold the Elkhoury ROW Property Grant Deed until Closing.

4.2. Temporary Access and Construction Easement Agreement. Prior to Closing, Elkhoury shall execute, acknowledge and deliver into Escrow the Temporary Access and Construction Easement Agreement. Escrow Agent shall hold the Temporary Access and Construction Easement Agreement until Closing.

4.3. Title to Elkhoury ROW Property. If all Conditions to Closing are met and the Parties proceed to Closing: (A) Elkhoury shall convey the Elkhoury ROW Property by the Elkhoury ROW Property Grant Deed to the Town free and clear of all recorded liens, encumbrances, assessments, easements, leases and taxes, except (i) the lien for current real

property taxes not yet due and payable; (ii) all exceptions listed on the Preliminary Title Report No. \_\_\_\_\_, dated \_\_\_\_\_, (the “**Elkhoury ROW Property Title Report**”) issued by \_\_\_\_\_ Title Company (the “**Title Company**”) with respect to the Elkhoury ROW Property; (iii) matters created by, through or under Town; and (iv) matters approved by Town in its discretion (collectively, “**Town's Permitted Exceptions**”). Neither Elkhoury nor the Town shall voluntarily create any new exceptions to title on the Elkhoury ROW Property, following the Effective Date.

5. Project Improvements and Elkhoury Property Driveway. Town agrees to complete, at Town’s expense, all of the improvements as shown on the Elkhoury Improvements Plan, and to rebuild a portion of the driveway on the Elkhoury Property, as necessary, as a result of the impact of the Project on such driveway, pursuant to the drawings of the Town’s engineers. The design shall ensure that a 19’ long vehicle can park on the driveway out of the travelled way, access the gate control box, and clear the gate as it opens. In addition, Town agrees to provide an entitlement to Elkhoury that runs with the Elkhoury Property that a second driveway shall be allowed to be constructed from Laurel Grove Avenue to the northwest of the existing driveway allowing ingress and egress from Laurel Grove Avenue to the Elkhoury Property.

6. Landscaping Improvements. Town agrees to install, at the Town’s expense, the landscape improvements on the Elkhoury Property as shown on the Landscape Plans, which Landscape Plans may be revised pursuant to a written agreement of the Parties prior to the installation of the landscape improvements, and Town agrees to maintain, at the Town’s expense, all landscape improvements shown on the Landscape Plans for a period of three (3) years from the completion of the landscape improvements. Town will provide written notice to Elkhoury at least ten (10) days’ in advance of commencing any landscaping improvements pursuant to the Landscape Plans.

7. Title Insurance Policy. Following recordation of the Elkhoury ROW Property Grant Deed, Escrow Agent shall provide Town with an ALTA or CLTA, at Town’s discretion, owner's policy of title insurance, in an amount to be determined by the Town, issued by the Title Company, together with any endorsements that Town may reasonably request, showing title to the Elkhoury ROW Property vested in the Town, subject only the Town’s Permitted Exceptions and the printed exceptions and stipulations in the policy. Town shall pay the title policy premium for the title insurance policy.

7.1. Other Documents. Town and Elkhoury agree to deposit with Escrow Agent any additional documents as may be necessary to complete this transaction.

7.2. Insurance. Insurance policies for fire or casualty are not to be transferred at the Close of Escrow.

7.3. Escrow Account. 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. All disbursements shall be made by check from such account.

8. Taxes.

8.1. Delinquent Taxes. Escrow Agent shall pay and charge Elkhoury for any unpaid delinquent property taxes, assessments or bonds and/or penalties and interest thereon, payable, if any, with respect to the Elkhoury ROW Property.

9. Escrow Agent Authorization. Escrow Agent is authorized to, and shall:

9.1. Pay and Charge Town. Pay and charge Town for Town's share of Escrow fees, recording fees and other costs and expenses of Escrow payable under Section 9.7 below.

9.2. Pay and Charge Elkhoury. Pay and charge Elkhoury for (i) any amount necessary to place title to the Elkhoury ROW Property in the condition necessary to satisfy Section 4.3 above; and (ii) Elkhoury's share of Escrow fees, recording fees and other costs and expenses of Escrow payable under Section 9.7 below.

9.3. Recordation and Disbursement of Purchase Price. When Conditions of Closing and the conditions of the Escrow have all been fulfilled, record the Elkhoury ROW Property Grant Deed, and the Temporary Access and Construction Easement Agreement, disburse the Purchase Price to Elkhoury and deliver the title policy and the Non-Foreign Transferor Declaration to Town.

9.4. 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.

9.5. Time of the Essence. TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE ON OR BEFORE July 31, 2024. If this Escrow is not in condition to close by such date, then the Party who has fully complied with this Agreement may, in writing, demand the return of its money or property; provided, however, no demand for return shall be recognized until five (5) days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown in Section 20, below, and if any objections are raised within such five (5) day period, Escrow Agent is authorized to hold all money, papers and documents until instructed by a court of competent jurisdiction or mutual instructions.

9.6. Escrow Agent Responsibility. The responsibility of the Escrow Agent under this Agreement is expressly limited to Sections 1, 2, 3, 4, 7, 8, 9 and 10 of this Agreement and to its liability under any policy of title insurance issued in regard to this Escrow.

9.7. Escrow Fees, Charges and Costs. Town and Elkhoury shall each pay one-half of all usual fees, charges, and costs which arise in this Escrow.

9.8. FIRPTA. Elkhoury and Town agree to execute and deliver as directed by Escrow Agent any instrument, affidavit, and statement, including without limitation a Non-Foreign Transferor Declaration, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. If the provisions of FIRPTA or similar state act apply to the transaction memorialized in this Agreement, and unless is Elkhoury not a "foreign person" or an exemption applies, the Escrow Agent shall charge and collect from Elkhoury all amounts necessary to comply with all applicable provisions of FIRPTA and any similar state act.

9.9. Tax Requirements. Escrow Agent 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.

9.10. Transfer Taxes. Town will pay transfer taxes, if any, due in connection with the Acquisition.

10. Conditions Precedent to Close of Escrow.

10.1. Town's Conditions Prior to Closing. The obligation of the Town to complete the Acquisition is subject to the satisfaction or waiver by Town of all of the following conditions:

a. Town shall have made all required findings and issued all required approvals, in its sole discretion, with regard to this Agreement and the proposed Acquisition.

b. Town shall have made all required findings and issued all required approvals, in its sole discretion, with regard to the proposed acceptance of the Elkhoury ROW Property.

c. Elkhoury shall have delivered through Escrow the executed, acknowledged and recordable form (i) the Elkhoury ROW Property Grant Deed sufficient to convey title to the Elkhoury ROW Property as set forth in Section 4.3; and (ii) the Temporary Access and Construction Easement Agreement.

d. Elkhoury shall have delivered through Escrow a Non-Foreign Transferor Declaration duly executed and in the form provided by Escrow Agent.

e. Elkhoury shall have delivered through Escrow such other funds and documents as are necessary to comply with Elkhoury's obligations under this Agreement.

f. Elkhoury shall not be in default of any of its obligations under the terms of this Agreement, and all of Elkhoury's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the close of Escrow.

g. Town shall have approved the condition of title to the Elkhoury ROW Property and Escrow Agent shall have committed to deliver to Town a title insurance policy as required by Section 7 hereof.

On failure of any of the conditions set forth above, Town may terminate its obligations under this Agreement with no further liability to Elkhoury by giving notice to Elkhoury on or before the expiration of the time allowed for each condition. Town's failure to elect to terminate its obligations shall constitute a waiver of the condition by Town.

10.2. Elkhoury's Conditions Precedent to Closing. The obligation of Elkhoury to complete the Acquisition is subject to the satisfaction or waiver by Elkhoury of all of the following conditions:



a. Town shall have delivered through Escrow the executed, acknowledged and in recordable form (i) the Temporary Access and Construction Easement Agreement.

b. Town shall not be in default of any of its obligations under the terms of this Agreement, and all of Town's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the close of Escrow.

c. Town shall have delivered through Escrow such other funds and documents as are necessary to comply with Town's obligations under this Agreement.

d. The final gross acreage of the Elkhoury property after the offer of dedication is greater than 1.0 Acres.

On failure of any of the conditions set forth above, Elkhoury may terminate its obligations under this Agreement with no further liability to Town by giving notice to Town on or before the expiration of the time allowed for each condition. Elkhoury's failure to elect to terminate its obligations shall constitute a waiver of the condition by Elkhoury.

11. Permission to Enter onto Elkhoury ROW Property. Town shall have until the Close of Escrow to enter upon the Elkhoury ROW Property and, at its expense, to perform any and all studies that Town desires on the Elkhoury ROW Property, including a Phase I toxics test, soils tests, and any other related investigations Town elects to perform, provided Town notifies Elkhoury in advance of what tests will be performed, the time of such tests, and the entity performing such tests. Town shall enter into a right of entry agreement with Elkhoury, indemnifying Elkhoury from and against any claims, demands, expenses or liabilities which arise from or relate to Town inspections and/or testing of the Elkhoury ROW Property, except to the extent such claims result from Town's sole or active negligence.

12. Acceptance of Properties As-Is.

12.1. Town acknowledges and agrees that prior to the Close of Escrow it will have had full opportunity to inspect and investigate every aspect of the Elkhoury ROW Property, including all matters related to legal status or requirements, physical condition, zoning, environmental condition, title and all other matters of significance. Town specifically acknowledges and agrees that the Elkhoury ROW Property is being conveyed in an "AS IS" condition and "WITH ALL FAULTS" as of the Close of Escrow. Except as expressly set forth in this Agreement, no statements, representations or warranties have been made or are made and no responsibility has been or is assumed by Elkhoury, or by any officer, employee, person, firm, agent or representative acting or purporting to act on behalf of Elkhoury, as to any matters concerning, or that might in any manner affect, the Elkhoury ROW Property, including the condition or repair of the Elkhoury ROW Property or the value or income potential thereof, and Town is not relying upon any such statement, representation or warranty. Town acknowledges that Elkhoury has requested Town to inspect fully the Elkhoury ROW Property and investigate all matters relevant thereto and to rely solely upon the results of Town's own inspections or other information obtained or otherwise available to Town, rather than any information that may have been provided by Elkhoury to Town, other than Elkhoury's express representations and warranties set forth in this Agreement or in the documents executed in connection with this Agreement.

13. Warranties, Representations, and Covenants of Town. Town hereby warrants, represents, and/or covenants to Elkhoury that:

13.1. Conflict with Other Obligation. To the best of Town's 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 Town may be bound.

13.2. Authority. Town has the full right, power, and authority to carry out Town's obligations hereunder. Each party executing this Agreement on behalf of Town is duly and validly authorized to do so on behalf of Town.

13.3. Change of Situation. Until the Close of Escrow, Town shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 13 not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to Elkhoury, in which case Elkhoury shall be entitled to either close Escrow with knowledge of such fact or condition or terminate this Agreement.

As used herein, the phrase "to the best of Town's knowledge" means the current, actual knowledge of Richard Simonitch, Public Works Director/Town Engineer.

14. Warranties, Representations, and Covenants of Elkhoury. Elkhoury hereby warrants, represents, and/or covenants to Town that:

14.1. Pending Claims. To the best of Elkhoury's knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Elkhoury ROW Property, or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

14.2. Encroachments. To the best of Elkhoury's knowledge, there are no encroachments onto the by improvements on any adjoining property.

14.3. Elkhoury's Title. From the Effective Date through the Close of Escrow, Elkhoury shall not do anything which would impair Elkhoury's title to the Elkhoury ROW Property.

14.4. Conflict with Other Obligation. To the best of Elkhoury's 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 Elkhoury or the Elkhoury ROW Property may be bound.

14.5. Authority. Elkhoury has the full right, power, and authority to sell, convey, and grant the Elkhoury ROW Property and Temporary Access and Construction Easement Agreement to Town as provided herein and to carry out Elkhoury's obligations hereunder. Each party executing this Agreement, the Elkhoury ROW Property Grant Deed, and the Temporary Access and Construction Agreement on behalf of Elkhoury is duly and validly authorized to do so on behalf of Elkhoury.

14.6. Bankruptcy. Neither Elkhoury nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Elkhoury to be able to transfer the Elkhoury ROW Property or grant the Temporary Access and Construction Easement Agreement, as provided herein.

14.7. Governmental Compliance. Elkhoury has not received any notice from any governmental agency or authority alleging that the Elkhoury ROW 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 Elkhoury following the Effective Date, Elkhoury shall notify Town within ten (10) days of receipt of such notice. Elkhoury then, at its expense, shall perform the work or take the necessary corrective action prior to the Close of Escrow.

14.8. Right to Possession. As of the Effective Date and as of the Close of Escrow, no person or entity other than Elkhoury has the right to possess the Elkhoury ROW Property, or any portion thereof.

14.9. Non-Foreign Transferor. Elkhoury is not a “foreign person” within the meaning of the Foreign Investment in Real Property Act or any similar state statute, and Elkhoury will comply with all of the requirements of the Foreign Investment in Real Property Act and any similar state statute in connection with this transaction.

14.10. Change of Situation. Until the Close of Escrow, Elkhoury shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 14 are not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to Town, in which case Town shall be entitled to either close Escrow with knowledge of such fact or condition or terminate this Agreement.

As used herein the phrase, “to the best of Elkhoury’s knowledge” means the current and actual knowledge of Jad and/or Stacie Elkhoury.

15. Reserved.

16. Contingency. It is understood and agreed between the Parties hereto that the completion of this transaction, and the Escrow created hereby, is contingent upon the specific acceptance and approval of this Agreement by the Town. The execution of this Agreement by Town and the delivery of same to Escrow Agent constitutes said acceptance and approval.

17. Full and Complete Settlement. Any rights or obligations which exist or may arise out of the grant of the Elkhoury ROW Property for public purposes, including without limitation, Elkhoury’s interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, relocation assistance, any alleged pre-condemnation or inverse condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Elkhoury or Elkhoury’s Parties (defined below) which might arise out of or relate in any respect to the grant of the Elkhoury ROW Property to Town.

The Parties agree and acknowledge the consideration for the Acquisition described in this Agreement. Elkhoury, on behalf of itself and all Elkhoury’s Parties (defined below), fully

releases and discharges Town from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to (i) Town's acceptance of the Elkhoury ROW Property, or the relocation, if any, of any person or persons, business or businesses, or other occupant or occupants located on the Elkhoury ROW Property, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under California Government Code Section 7260, *et seq.*, notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under said sections or other state or federal law; and (ii) compensation for any interest in the Elkhoury ROW Property, or the business operations conducted thereon, if any, including, but not limited to, land and improvements, fixtures, furniture, or equipment thereon, goodwill, severance damage, attorney's fees or any other compensation of any nature whatsoever. The term "**Elkhoury's Parties**" means Elkhoury and Elkhoury's heirs, devisees, executors, representatives, successors and assigns. It is hereby intended that the above release relates to both known and unknown claims that Elkhoury or Elkhoury's Parties may have, or claim to have, against the Town with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown, which are related to or which arise under or in connection with the items set out above, Elkhoury expressly waives on behalf of himself and Elkhoury's Parties any rights under California Civil Code Section 1542, which provides:

"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."

\_\_\_\_\_ **Initials of Elkhoury**

18. Broker's Commission. Elkhoury and Town each warrant and represent that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the Acquisition. Elkhoury and Town agree to and do hereby indemnify and hold the other harmless from and against any and all costs (including attorney's fees and costs), liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.

19. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Town and Elkhoury shall be deemed both a covenant and a condition and shall be a material consideration for Elkhoury's and Town's performance hereunder, as appropriate, and any breach thereof by Town or Elkhoury shall be deemed a material default hereunder. Either Party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving Party may at any time thereafter require further compliance by the other Party with any breach or provision so waived. The consent by one Party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure

of a Party to act, except as otherwise specified in this Agreement. Except as otherwise specified herein, either Party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other Party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

20. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by facsimile, reputable overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, three (3) business days after the date of posting by the United States post office; or (iii) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day. Notice of change of address shall be given by written notice in the manner described in this Section 20. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Elkhoury:           Jad and Stacie Elkhoury  
                                  P.O. Box 1653  
                                  Ross, CA 94957

If to Town:                Town of Ross  
                                  P.O. Box 320  
                                  Town of Ross, CA 94957  
                                  Attention: Richard Simonitch

21. Default. Failure or delay by either Party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the Party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within ten days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such ten day period.

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

23. 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.

24. 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.

25. 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, without reference to its choice of law provisions.

26. Severability. 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.

27. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Town and Elkhoury.

28. Counterparts; Facsimile or E-Mail Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. In order to expedite the transaction contemplated herein, telecopied signatures or signatures transmitted as a PDF attachment to an e-mail may be used in place of original signatures on this Agreement or any document delivered pursuant hereto, and Town and Elkhoury intend to be bound by the signatures on the telecopied or e-mailed document.

29. Time of Essence. Time is of the essence of each provision of this Agreement.

30. 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.

31. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

32. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

33. Cooperation. Each Party agrees to cooperate with the other in the Closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

**ELKHOURY:**

**ELKHOURY TRUST**, a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TOWN:**

**TOWN OF ROSS**, a municipal corporation of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk

Approved as to Form:

\_\_\_\_\_  
\_\_\_\_\_, Town Attorney



CONSENT OF ESCROW AGENT

Escrow Agent hereby acknowledges receipt of a copy of a fully executed original of this Agreement. Escrow Agent hereby agrees (i) to be and serve as Escrow Agent pursuant to this Agreement; and (ii) subject to further escrow instructions mutually agreeable to the parties and Escrow Agent, to be bound by the Agreement in the performance of its duties as Escrow Agent and to hold and disburse all funds received by Escrow Agent in accordance with the provisions of this Agreement; provided, however, Escrow Agent shall have no obligation, liability, or responsibility under any amendment to the Agreement unless and until the same is accepted by Escrow Agent in writing.

\_\_\_\_\_ TITLE COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT A**

**Depiction of the Elkhoury Property**

**[to be inserted]**

**EXHIBIT B**

**Intentionally Omitted**

**EXHIBIT D**

**Form of Grant Deed Transferring Elkhoury ROW Property to Town**

Recording Requested by and )  
After Recordation Mail to: )  
 )  
Town of Ross )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
Attention: \_\_\_\_\_ )  
 )

This document is exempt from the payment of a recording  
fee pursuant to Government Code § 27383

**GRANT DEED**

For valuable consideration, the receipt of which is hereby acknowledged, the ELKHOURY TRUST, a \_\_\_\_\_, (“**Grantor**”), hereby GRANTS to the TOWN OF ROSS, a municipal corporation of the State of California (“**Grantee**”), the real property in the County of Marin, State of California, described in Attachment No. 1 attached hereto.

Dated: \_\_\_\_\_, 2024

**GRANTOR:**

ELKHOURY TRUST, a

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT NO. 1**

**[legal description to be inserted]**

**ACKNOWLEDGMENT**

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

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.

\_\_\_\_\_

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by Grant Deed dated \_\_\_\_\_, 2024, from Elkhoury Trust, a \_\_\_\_\_, as grantor, to the Town of Ross, a municipal corporation of the State of California, as grantee, is hereby accepted by the \_\_\_\_\_ pursuant to authority conferred by Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 2024, and the Town, as grantee, consents to recordation of said Grant Deed.

Dated: \_\_\_\_\_, 2024

TOWN OF ROSS

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT E**  
**Form of**  
**Temporary Access and Construction Easement Agreement**

**RECORDING REQUESTED BY:**

\_\_\_\_\_ Title Company

**WHEN RECORDED, RETURN TO:**

Town of Ross  
P.O. Box 320  
Ross, CA 94957

**TEMPORARY ACCESS AND CONSTRUCTION EASEMENT AGREEMENT**

This Temporary Access and Construction Easement Agreement (this “**Agreement**”) is executed as of \_\_\_\_\_, 2024 (the “**Effective Date**”), by and between the Town of Ross, a municipal corporation of the State of California (“**Town**” or “**Grantee**”) and Elkhoury Trust, a \_\_\_\_\_ (“**Elkhoury**” or “**Grantor**”). Town and Elkhoury are each individually referred to herein as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

- A. Elkhoury owns certain real property known as 77 Laurel Grove Avenue in Ross, California, identified and depicted in **Exhibit A**, attached hereto and incorporated herein by this reference (the “**Elkhoury Property**”).
- B. Town is engaged in a project to reconfigure the travel lanes on Laurel Grove Avenue to provide an asphalt pedestrian pathway on one side of the road, with an asphalt berm installed to separate pedestrian and vehicular travel, all of which is known as the Laurel Grove Avenue Safe Pathways to School, Phase IIA and Phase IIB (the “**Project**”).
- C. To facilitate the Project, Town has acquired a right-of-way to a portion of the Elkhoury Property (the “**Elkhoury ROW Property**”). The acquisition of the Elkhoury ROW Property shall be referred to herein as the “**Acquisition**”.
- E. In connection with the Acquisition, Town has agreed to (i) install the landscape improvements on the Elkhoury Property as shown on the Landscape Plans, , (ii) rebuild a portion of the driveway on the Elkhoury Property, as necessary, as a result of the impact of the Project on such driveway, pursuant to the Elkhoury Improvement Plan; (iii) provide an entitlement to Elkhoury, that runs with the land, that a second driveway shall be allowed from Laurel Grove Avenue to the northwest of the existing driveway allowing ingress and egress from Laurel Grove Avenue to the Elkhoury Property; (iv) amend the



Town's parking ordinance (Chapter 10.28) to prohibit vehicular parking on Laurel Grove Avenue between Canyon Road and the private driveway known as "Monte Alegria"; and (v) maintain all landscape improvements shown on the Landscape Plans for a period of three (3) years from the completion of the landscape improvements.

F. In order to complete the driveway reconstruction and landscaping and other improvements referenced herein, the Parties acknowledge and agree that Town and its consultants, contractors, subcontractors, employees, agents and other representatives will need temporary access to the Elkhoury Property.

## AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Grant of Temporary Access and Construction Easement. Grantor hereby grants to Grantee, for the benefit of the Town, and to Grantee's consultants, contractors, subcontractors, employees, agents, representatives, and any other persons or parties working on behalf of Grantee (collectively, "**Grantee Parties**") a temporary non-exclusive easement for ingress and egress onto, upon, over, and across that certain portions of the Elkhoury Property more particularly described and illustrated on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Easement Area**") to permit the reconstruction of the existing driveway on the Elkhoury Property and the construction of landscaping improvements pursuant to the Landscape Plans, and any other related construction (collectively, the "**Improvements**").
2. Permits and Licenses; Compliance with Law. In connection with its use of the Easement Area, Grantee shall comply, and shall cause all of the Grantee Parties to comply, with all applicable legal requirements including all applicable federal, state, and local laws and regulations ("**Applicable Laws**"), and at Grantee's sole cost and expense, shall obtain and maintain all necessary permits and licenses required in connection with the installation of the Improvements.
3. Duration of Easement. The easements granted to Grantee pursuant to this Agreement are temporary, and shall terminate upon Grantee's completion of the Improvements. Promptly following Grantor's request which may be delivered at any time following completion of the Improvements, Grantor and Grantee shall execute and record in the Official Records of Marin County an instrument terminating this Agreement.
4. Liens. Grantee shall pay or shall cause to be paid, when due, all persons furnishing labor or materials in connection with Grantee's installation of the Improvements or use of the Easement Area, and shall keep the Elkhoury Property, including the Easement Area, free and clear of mechanics' liens in connection with Grantee's installation of the Improvements or use of the Easement Area. If any such lien is filed, Grantee shall cause such lien to be released and removed or bonded over within

ten (10) business days of Grantee's receipt of written notification of the filing of such lien, and if Grantee fails to do so, after Grantor has provided Grantee with written notice of such lien and Grantee has failed to cause such lien to be released and removed or bonded over within twenty (20) business days of Grantee's receipt of Grantor's written notification, Grantor may take such action as may be necessary to remove or bond over such lien, without the duty to investigate the validity of it (unless Grantee has commenced an action to contest, dispute or defend the claims of lienholders and has provided written notice of the pendency of the action), and Grantee shall reimburse Grantor for Grantor's reasonable third party expenses incurred in connection with removing such lien.

5. Indemnity. Grantee shall indemnify, defend and hold Grantor and its present and future general and limited partners, officers, employees, consultants, contractors, agents, affiliates and lenders (all of the foregoing, collectively, the "**Grantor Indemnitees**") for, from and against all claims, losses, demands, liabilities, actions, suits, judicial or administrative proceedings, damages, judgments, fines, penalties, orders, costs and expenses, including but not limited to court costs and reasonable attorneys' fees (all of the foregoing, collectively "**Claims**") arising from Grantee's or any of Grantee Parties' negligence or willful misconduct in installing the Improvements, or use of the Easement Area, except to the extent arising from the negligence or willful misconduct of the Grantor Indemnitees. The provisions of this Section shall survive the termination or expiration of this Agreement for a period of twelve (12) months.

Grantor shall indemnify, defend and hold Grantee and its present and future officials, officers, employees, consultants, contractors, agents, affiliates and lenders (all of the foregoing, collectively, the "**Grantee Indemnitees**") for, from and against all Claims, arising from any condition on the Easement Area, or any of Grantor's representatives' or agents' actions or omissions on the Easement Area, except to the extent arising from the negligence or willful misconduct of the Grantee Indemnitees. The provisions of this Section shall survive the termination or expiration of this Agreement for a period of twelve (12) months.

6. Insurance. Prior to entering the Easement Area, Grantee and all Grantee Parties entering the Easement Area shall obtain and maintain throughout the period of performance of work in the Easement Area, a commercial general liability insurance policy insuring against liability for personal injury, bodily injury, death, contractual liability and damage to property. The Grantor Indemnitees shall be named as additional insureds under such policies. The policies shall be written on an occurrence basis, and shall include a severability of interest or separation of insurance clause. The limits of each commercial general liability insurance policy shall be not less than \$1,000,000 per occurrence, \$2,000,000 Products/Completed Operations Aggregate and \$2,000,000 annual aggregate. The policies shall each be primary and non-contributing with any other liability coverage available to additional insureds.

7. Binding on Successors. Throughout the term of this Agreement, the Parties intend this Agreement and the rights and obligations set forth herein to run with the land

and to be binding upon, the successors in interest of the Elkhoury Property. Each of the terms, covenants and conditions of this Agreement shall extend to and be binding upon and shall inure to the benefit of the Parties and each of their respective successors and assigns. Therefore, each reference in this Agreement to a specifically named Party shall mean such Party and its successors and assigns. Any transfer of the Elkhoury Property prior to the termination of this Agreement shall automatically transfer the obligations under this Agreement regardless of whether this Agreement is described in the instrument of transfer.

8. Reservation of Rights. The easement rights hereby granted are subject to any and all covenants, conditions, easements, liens, claims, encumbrances and other matters of record set forth in the Official Records of Marin County relating to the Easement Area and to all matters that would be disclosed by an inspection or an accurate ALTA survey of the Easement Area. Grantor reserves the right to use the Easement Area for any purpose not inconsistent with the rights granted herein. The Easement Area shall be kept free and clear for ingress and egress at all times. Any vehicle parked within the Easement Area may be towed at the vehicle owner's expense.

9. Miscellaneous Provisions.

9.1 Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be valid under applicable law. However, if any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

9.2 Attorneys' Fees; Governing Law and Venue. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the reasonable costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Marin County, California or in the Federal District Court for the Northern District of California.

9.3 Time is of the Essence; Interpretation. Time is of the essence for each and every provision of this Agreement.

9.4 Headings; Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the

negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

9.5 Entire Agreement. This Agreement, including the Exhibits attached hereto and incorporated herein by this reference, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

9.6 Notices. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service. In addition, notice may be provided by electronic transmission (email), in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service. Any notice given by email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

If to Grantor:                   Jad and Stacie Elkhoury  
  P.O. Box 1653  
  Ross, CA 94957

If to Grantee:                   Town of Ross  
  P.O. Box 320  
  Town of Ross, CA 94957  
  Attention: Richard Simonitch

9.7 Mortgagee Protection. Nothing herein shall be interpreted to render invalid any deed of trust or mortgage on the Elkhoury Property. No beneficiary under any such deed of trust, purchaser at a foreclosure sale of such deed of trust or grantee of a deed in lieu of foreclosure shall be obligated to cure any default of the previous owner of the Elkhoury Property, as applicable, unless such obligation is expressly assumed in writing, provided that the purchaser or grantee upon receiving title to the Elkhoury Property, as applicable, shall take title subject to this Agreement, and shall assume the obligations of the owner of the Elkhoury Property, as applicable, accruing from and after the date the purchaser or grantee receives title.

9.8 Parties Not Co-Venturers; No Third Party Beneficiaries. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or

principal and agent with one another. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective permitted successors and assigns, any rights or remedies hereunder.

9.9 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

9.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party.

***THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE ATTACHED***

IN WITNESS WHEREOF, Town and Elkhoury have executed this Temporary Access and Construction Easement Agreement effective as of the date first written above.

**GRANTOR:**

**ELKHOURY TRUST**, a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GRANTEE:**

**TOWN OF ROSS**, a municipal corporation of the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk

Approved as to Form:

\_\_\_\_\_  
\_\_\_\_\_, Town Attorney

**ACKNOWLEDGMENT**

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

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 Signature)

**ACKNOWLEDGMENT**

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

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 Signature)



**EXHIBIT A**

**DEPICTION OF ELKHOURY PROPERTY**

**EXHIBIT B**  
**EASEMENT AREA**