

**EARNEST MONEY ESCROW AGREEMENT**

This Escrow Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between \_\_\_\_\_ (“Depositor”) and FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation (“Escrow Agent”).

**RECITALS**

Depositor intends to enter into a certain Purchase and Sale Agreement (“Purchase Agreement”) with the County of San Mateo (“Seller”) concerning Assessor’s Parcel Numbers 046-240-180 and 052-103-170 commonly known as One and Two Circle Star Way, San Carlos California and 1717 Industrial Way, Redwood City, California (the “Property”).

Seller will auction the Property at a public auction to be held at the Chambers of the Board of Supervisors, Hall of Justice, 400 County Center, Redwood City, California on or around May 20, 2014 (“Public Auction”) and Depositor intends to participate in the Public Auction.

In anticipation of Depositor being the successful bidder for the purchase of the Property at the Public Auction, Depositor has requested Escrow Agent to receive funds to be held in escrow and applied in accordance with the terms and conditions of this Escrow Agreement.

NOW THEREFORE, in consideration of the above recitals, the mutual promises set forth herein and other good and valuable consideration, the parties agree as follows:

1. **ESCROW AGENT.** First American Title Insurance Company, a California corporation hereby agrees to act as Escrow Agent in accordance with the terms and conditions hereof.
2. **INITIAL DEPOSIT/ADDITIONAL DEPOSITS.** Escrow Agent shall receive a deposit in the amount of TEN MILLION DOLLARS (\$10,000,000.00) on or before 5:00 p.m. May 13<sup>th</sup>, 2014 (“Escrow Fund”), to ensure that the deposit is available for the Public Auction process by May 14<sup>th</sup>, 2014.
3. **DEPOSIT OF FUNDS.** Payment of the Escrow Fund shall be made by wire transfer to Escrow Agent pursuant to separate wire instructions provided to Depositor by Escrow Agent. Escrow Agent may initially deposit the Escrow Fund in its custodial or escrow accounts which may result in the funds being commingled with escrow funds of others for a time; however, as soon as the Escrow Fund has been credited as collected funds to Escrow Agent’s account then if is instructed and directed by the Depositor, Escrow Agent shall deposit the Escrow Fund into an interest bearing money market account with First American Trust, FSB or any reputable trust company, bank, savings bank, savings association, or other financial services entity approved by Depositor and Escrow Agent (“Deposit Bank”). The Escrow Fund held by Escrow Agent shall be subject to the provisions of applicable California statutes governing unclaimed property. Depositor will execute the appropriate Internal Revenue Service documentation for the giving of taxpayer identification information relating to this interest bearing account and any other interest bearing account instructions or forms required by the Deposit Bank to open said interest bearing account. Depositor hereby certifies that it is aware the Federal Deposit Insurance Corporation coverage applies to a maximum amount of \$250,000.00 per depositor and agrees to hold Escrow Agent harmless for any loss thereunder. All interest will accrue to and be reported to the Internal Revenue Service for the account of the Depositor, as set forth below:

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

\_\_\_\_\_  
\_\_\_\_\_  
Tax I.D.

Phone: \_\_\_\_\_

Escrow Agent shall not be responsible for any penalties, or loss of principal or interest, or any delays in the withdrawal of the funds which may be imposed by the Deposit Bank as a result of the making or redeeming of the investment pursuant to Depositor's instructions.

4. NOTICE OF RECEIPT OF ESCROW FUND. Within one business day of receipt of the Escrow Fund from Depositor, Escrow Agent is duly authorized and directed by Depositor to immediately notify the Seller and/or its agents of receipt of the Escrow Fund from Depositor via email, facsimile or other form of written communication. Said notice is to be provided to the following parties:

To Seller: County of San Mateo  
Attn: Freda Manuel  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94603  
Phone: (650) 363 -4047  
Fax: \*\*\*  
Email: fmanuel@smcgov.org

with a copy to: County Counsel  
Attn: John Nibbelin  
400 County Center, 6<sup>th</sup> Floor  
Redwood City, CA 94063  
Phone: (650)363-4757  
Fax: \*\*\*  
Email: jnibbelin@smcgov.org

5. DISBURSEMENT OF ESCROW FUND AND TERMINATION. Escrow Agent shall disburse all of the Escrow Fund in accordance with and in reliance upon written instructions from Depositor as follows:

- (a) If the Depositor is the successful bidder at the Public Auction and upon written notification from Depositor and Seller to Escrow Agent of the same, the Escrow Fund shall be immediately, and without further instruction, governed by the Purchase Agreement and shall be subject to the terms and provisions contained therein, pursuant to which, the Escrow Fund shall be immediately transferred into the sale escrow file number NCS-657821-SF. Thereafter, this Escrow Agreement shall be terminated and shall no longer be in further force or effect.
- (b) If the Depositor is not the successful bidder at the Public Auction and upon written notification from Depositor and Seller to Escrow Agent of the same, the Escrow Fund shall be immediately, and without further instruction, returned to Depositor pursuant to separate wire instructions provided by Depositor to Escrow Agent. This Escrow Agreement is terminated and shall no longer be in further force or effect

- (c) If by May 30<sup>th</sup>, 2014, Escrow Agent receives no notice from Depositor for the disbursement of the Escrow Fund as provided for in Paragraphs 5(a) and 5(b) above, then the Escrow Fund shall be immediately, and without further instruction, returned to Depositor pursuant to separate wire instructions provided by Depositor to Escrow Agent. This Escrow Agreement is terminated and shall no longer be in further force or effect
- (d) At any time prior to the date of the Public Auction but no later than one business day preceding the date of the public Auction, and if so directed by Depositor in writing, Depositor shall have the unilateral right to instruct Escrow Agent to return the Escrow Fund to Depositor pursuant to separate wire instructions provided by Depositor to Escrow Agent. Should Depositor elect to exercise its rights under this Paragraph 5 (d), Escrow Agent is duly authorized and directed by Depositor to immediately notify the Seller and/or its agents of same, as provided for in Paragraph 4 above. This Escrow Agreement is terminated and shall no longer be in further force or effect.

The Escrow Agent shall have no responsibility to make an investigation or determination of any facts underlying such written instructions noted above or as to whether any conditions upon which the Escrow Fund is to be released, have been fulfilled or not fulfilled, or to whom funds are released. At any time prior to the Public Auction, Depositor shall have complete

6. **DEFAULT AND/OR DISPUTES.** In the event of a dispute, the Escrow Agent is authorized, in its sole discretion and without further instruction, to deposit the Escrow Fund with a court of competent jurisdiction for a determination as to the proper disposition of said funds. In the event that the funds are deposited in court, the Escrow Agent shall be entitled to file a claim in the proceeding for its costs and counsel fees, if any.

7. **ESCROW AGENT FEES AND OTHER EXPENSES.** Escrow Agent shall not be required to advance its own funds for any purpose provided that any such advance, made at its option, shall be promptly reimbursed by the Depositor, and such optional advance shall not be an admission of liability on the part of Escrow Agent.

8. **PERFORMANCE OF DUTIES.** In performing any of its duties under this Escrow Agreement, or upon the claimed failure to perform its duties hereunder, Escrow Agent shall not be liable to anyone for any damages, losses or expenses which may occur as a result of Escrow Agent so acting, or failing to act; provided, however, Escrow Agent shall be liable for damages arising out of its willful default or gross negligence under this Escrow Agreement. Accordingly, Escrow Agent shall not incur any such liability with respect to (i) any good faith act or omission upon advice of counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent hereunder, or (ii) any good faith act or omission in reliance upon any document, including any written notice or instructions provided for in this Escrow Agreement, not only as to its due execution and to the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by the proper person or persons and to conform with the provisions of this Escrow Agreement.

9. **LIMITATIONS OF LIABILITY.** Escrow Agent shall not be liable for any loss or damage resulting from the following:

- (a) The effect of the transaction underlying this Escrow Agreement including without limitation, any defect in the title to the real estate, any failure or delay in the surrender of possession of the property, the rights or obligations of any party in possession of the

property, the financial status or insolvency of any other party, and/or any misrepresentation of fact made by any other party;

- (b) The default, error, act or failure to act by any other party to the escrow;
- (c) Any defects or conditions of title to any property that is the subject of this escrow provided, however, that this limitation of liability shall not affect the liability of Escrow Agent under any title insurance policy which it has issued or may issue. NOTE: No title insurance liability is created by this Escrow Agreement; and
- (d) Escrow Agent's compliance with any legal process including but not limited to, subpoena, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.

10. **HOLD HARMLESS.** Depositor shall indemnify the Escrow Agent and hold the Escrow Agent harmless from all damage, costs, claims and expenses arising from performance of its duties as Escrow Agent including reasonable attorneys' fees, except for those damages, costs, claims and expenses resulting from the gross negligence or willful default of the Escrow Agent.

11. **RELEASE OF PAYMENT.** Payment of the Escrow Fund so held in escrow by the Escrow Agent, in accordance with the terms, conditions and provisions of this Escrow Agreement and if applicable, pursuant to Paragraph 5(a) above, the Purchase Agreement, shall fully and completely discharge and exonerate the Escrow Agent from any and all future liability or obligations of any nature or character at law or equity to the parties hereto or under this Escrow Agreement.

12. **NOTICES FOR DEPOSITOR AND ESCROW AGENT:**

To Depositor:

\_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

with a copy to:

\_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

If to Escrow Agent: First American Title Insurance Company  
*National Commercial Services*  
Attn: Sanjay Chohan  
100 Spear Street, Suite 1600  
San Francisco, California 94105  
Phone: 415.837-2261

Fax: 714.824.5662  
Email: [schohan@firstam.com](mailto:schohan@firstam.com)

13. **SUCCESSORS AND ASSIGNS.** This Escrow Agreement shall be binding upon and inure to the benefit of the parties respective successors and assigns.

14. **GOVERNING LAW.** This Escrow Agreement shall be governed by and construed in accordance with the Laws of the State of California.

15. **COUNTERPART SIGNATURES.** This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

16. **TIME.** Time shall be of the essence of this Escrow Agreement and each and every term and condition hereof.

17. **DISCLOSURE.** Depositor acknowledges that Escrow Agent may receive other benefits from the Deposit Bank where the funds are deposited. Based upon the deposit of the Escrow Fund in demand deposit accounts and other relationships with the Deposit Bank, Escrow Agent is eligible to participate in a program whereby the Escrow Agreement may (a) receive favorable loan terms and earn income from the investment of loan proceeds and (b) receive other benefits offered by the Financial Institution.

[Signatures are on the next page.]

IN WITNESS WHEREOF, the undersigned have caused this Escrow Agreement to be duly executed and sealed as of the date first stated above.

DEPOSITOR:

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

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY,  
A CALIFORNIA CORPORATION

By: \_\_\_\_\_  
Name: Sanjay Chohan  
Title: Senior Commercial Escrow Officer