

OPTION AGREEMENT
(Upper Ridgeway Properties)

This Option Agreement is dated as _____ 2013, (the "**Agreement**") by and between Neil Dan Reid, an Individual and the Neil Reid Trust A (Survivor Trust), established under the Reid 1988 Revocable Trust ("**Seller**"), and the Town of Fairfax, a municipal corporation established and existing under the laws of the state of California ("**Buyer**"). Seller and Buyer hereby agree as follows:

RECITALS

A. The addresses and telephone numbers of the parties are:

SELLER:

Neil Dan Reid

_____, CA 9 _____

Tel: (____) ____ - _____

Email: n-reid@sbcglobal.net

Copies of any notice to Seller should also be sent to:

Tel: (____) ____ - _____

Email: _____

BUYER:

Town of Fairfax

Attn: Judy Anderson, Interim Town Manager

Fairfax Town Hall

142 Bolinas Road

Fairfax, CA 94930

(415) 453-1584

Email: janderson@townoffairfax.org

Copies of any notice to Buyer should also be provided to:

Fairfax Open Space Committee

Attn: Jack Judkins, Co-Chair

Tel: (415) 717-3739

Email: jbjudkins@comcast.net

AGENDA ITEM # 9

Ex 3

- B.** Seller owns three parcels, all located on Upper Ridgeway Road in Fairfax, California: Marin County Assessor's Parcel Nos. 001-193-07 and -09, consisting of approximately 0.3769 acres and legally described in Exhibit A attached to this Agreement (the "**Purchase Parcels**"), and Marin County Assessor's Parcel No. 001-193-03, consisting of approximately 0.1763 acres and legally described in Exhibit B attached to this Agreement (the "**Donation Parcel**"). The Purchase Parcels and the Donation Parcel collectively will be referred to in this Agreement as the "**Property**".
- C.** The Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Purchase Parcels in order for the Buyer to preserve the Purchase Parcels as open space and to provide public access to and across the Purchase Parcels to other adjacent, publicly-owned lands.
- D.** In connection with the purchase by the Buyer of the Purchase Parcels, the Seller desires to donate to the Buyer and the Buyer desires to accept title to the Donation Parcel in order for the Buyer to preserve the Donation Parcel as open space and to provide public access to and across the Donation Parcel to other adjacent, publicly-owned lands.

THE PARTIES AGREE AS FOLLOWS:

- 1. Option.* In consideration of the payment by Buyer to Seller of the Option Payment, as defined below, and other good and valuable consideration, the receipt and sufficiency of which Seller acknowledges, Seller hereby grants to Buyer an exclusive and irrevocable option to purchase the Purchase Parcels and, concurrently to accept the donation by Seller of fee title to the Donation Parcel, all parcels in "as is" condition and on the terms stated in this Agreement (the "**Option**").
- 1.1 Option Term.* This Agreement shall be effective as of the date this Agreement is fully signed and delivered by both parties (the "**Effective Date**"). The Option shall commence on the Effective Date and terminate at 5:00 P.M. California time on that date which is twelve (12) months after the Effective Date ("**Option Term**"), unless terminated earlier as provided for in this Agreement.
- 1.2 Exercise.* If Buyer chooses to exercise the Option, Buyer will do so by notifying Seller in writing prior to the expiration of the Option Term. If Buyer does not exercise the Option as provided in this Section 1.1, the Option shall automatically expire and terminate, the Option Payment shall be applied as provided herein, and the parties shall have no further obligation to each other under this Agreement except those expressly stated to survive.
- 1.3 Purchase Price for Purchase Parcels.* If Buyer exercises the Option: Seller shall convey and Buyer will accept title to the Donation Parcel; and Seller shall sell the Purchase Parcels to Buyer and Buyer shall buy the Purchase Parcels from Seller for a purchase price (the "**Purchase Price**"), as follows:
- (a)* If Buyer exercises the Option within 6 month after the Effective Date, the Purchase Price is \$45,000 (forty-five thousand dollars).

(b) If Buyer exercises the Option more than 6 months after the Effective Date, the Purchase Price is \$47,500 (forty-seven thousand five hundred dollars)

1.4 *Option Payment.*

(a) *Payment of initial Option Payment.* Within ten (10) business days after the Effective Date, Buyer shall deposit as initial consideration for the Option the sum of \$2,250 (two thousand two hundred fifty dollars) with Escrow Holder (as defined in Section 3.1 below).

(b) *Payment of additional Option Payment.* If the Buyer does not exercise the Option within 6 months of the Effective Date, Buyer shall deposit as further consideration for the Option the additional sum of \$2,250 (two thousand two hundred fifty dollars) with Escrow Holder no later than 6 months after the Effective Date. If the Buyer fails to deposit the additional Option Payment required by this subsection, then the Agreement shall be terminated and the Option Payment shall be payable to Seller as specified in subsection (d) of this section 1.4.

(c) *Total Option Payment.* The total sum actually deposited with the Escrow Holder under this Subsection 1.4, including all interest accrued thereon, shall be referred to as the "**Option Payment.**"

(d) *Application of the Option Payment.* The Option Payment shall be placed by Escrow Holder in an interest bearing account satisfactory to Buyer, and all interest accrued shall be payable to Buyer. If Buyer elects not to exercise its Option as provided in this Agreement during the Option Term, then upon expiration of the Option Term, the Option Payment then deposited with Escrow Holder shall be payable to Seller. If the Purchase Parcels are sold and fee title to the Donation Parcel is transferred by Seller to Buyer as provided herein, the Option Payment shall be applied to the Purchase Price. If the Purchase Parcels are not sold and fee title to the Donation Parcel is not transferred by Seller to Buyer, the Option Payment shall be applied as provided in this Agreement.

1.5 *Memorandum of Option.* Concurrently with its execution and delivery of this Agreement, Seller shall execute (with notarized signature) and deliver to Buyer an original Memorandum of Option Agreement in the form of Exhibit C, attached hereto. Buyer may record the Memorandum of Option Agreement in the Official Records of Marin County, California. No later than the date of recordation of the Memorandum of Option, Buyer shall execute and deliver into escrow a Quitclaim Deed, in recordable form, quitclaiming Buyer's interest as optionee in the Property, together with instructions to the Escrow Holder to release the Quitclaim Deed for recordation if Buyer does not exercise the Option during the Option Period for any reason other than Seller's Default (as defined below). Escrow Holder shall, upon the written instruction of Seller, forthwith record the Quitclaim Deed in the Official Records of Marin County to eliminate any cloud on Seller's title to the Property related to the Memorandum of

Option Agreement and this Agreement.

2. Inspections.

- 2.1 *Title.* Buyer has obtained a Preliminary Title Report for the Purchase Parcels from Stewart Title Company of California, Inc. ("**Title Company**"), Order No. 476716, Title Unit No. 7931, undated ("**PTR**"). Within a reasonable time after the Effective Date, the Buyer will request an amended PTR from the Title Company covering the Property.
- 2.2 *Property Information.* Buyer may investigate any matters that may directly or indirectly affect the Property and/or the present or future value, use, control, operation or ownership of the Property.
- (a) *Access.* Commencing on the Effective Date, Seller shall provide Buyer, and its agents full access to enter upon the Property to conduct such inspections, tests, surveys and investigations as they deem appropriate.
- (b) *Property Information.* At Buyer's request, Seller shall provide to Buyer complete and accurate copy of any and all information or agreements in Seller's possession, custody or control concerning the Property which may affect the value, use, control, operation or ownership of the Property, now or in the future ("**Property Information**"), including without limitation, environmental assessments, notices from governmental entities, pleadings in lawsuits affecting the Property and tax statements.
- 2.3 *Buyer's Review Period.*
- (a) Within ninety (90) days of the Effective Date, Buyer shall investigate the condition of the Property, including its physical and title conditions, ("Buyer's Review Period"). During the Buyer's Review Period, Buyer shall notify Seller of exceptions in the amended PTR (see section 2.1, above) that are acceptable to Buyer and those that are objectionable to Buyer. Seller shall promptly notify Buyer, no later than 85 days after the Effective Date, as to the exceptions that are objectionable to Buyer that Seller is willing to remove. The remaining exceptions are referred to in this Agreement as the "**Permitted Exceptions**"
- (b) At the expiration of Buyer's Review Period, Buyer may elect to: (1) terminate this Agreement by providing written notice to Seller that, due to the facts ascertained during Buyer's Review Period, Buyer has determined, in its sole discretion, that Buyer is unable to proceed with this Agreement; or (2) provide written notice to Seller that Buyer is prepared to proceed with this Agreement, with title to the Property subject to the Permitted Exceptions. If the Buyer does not provide Seller with any notice, Buyer will be deemed to have elected to proceed with the Agreement.

(c) If Buyer elects to terminate this Agreement under the terms of Section 2.3(b) above, the Option Payment shall be returned to Buyer, this Agreement shall terminate and the parties shall have no further obligation to each other under this Agreement except those expressly stated to survive.

2.4 *Public Agency and Funding Parties' Review.* The parties acknowledge that if Buyer elects to proceed with this Agreement as provided in Section 2.3 above, the Property's title and physical condition may also be inspected by any public or nonprofit agency providing funding for the purchase of the Property (each a "**Funding Party**"). Any Funding Party may notify Buyer of (i) the exceptions to title and/or issues related to the legal description of the land shown on the PTR to which it objects or (ii) matters related to the Property to which the Funding Party objects ("Funder's Objections") no later than Buyer's exercise of the Option. Upon receipt of Funder's Objections, Buyer shall provide the same to Seller.

(a) *Seller's Cure.* If Seller is unable or unwilling to remove and/or remedy any of Funder's Objections, prior to Buyer's exercise of the Option, to Buyer's satisfaction as determined by Buyer in Buyer's reasonable discretion, Buyer shall either:

- (1) terminate this Agreement, in which case the Option Consideration then deposited with Escrow Holder shall be paid to Seller and the parties shall have no further obligation to each other under this Agreement except those expressly stated to survive; or
- (2) proceed with this Agreement.

2.5. *Change in Condition.* All risk of loss related to the Property shall remain with Seller until Close of Escrow.

(a) *Seller's Notice.* Seller shall immediately notify Buyer of and provide Buyer with all information related to any of the following (each of which shall each be referred to as a "**Change in Condition**"):

- (1) any damage or destruction to the Property or any portion thereof which occurs after the Effective Date;
- (2) any receipt after the Effective Date of notice of any potential eminent domain proceedings affecting the Property or any portion of it;
- (3) any supplement to the PTR issued for any reason whatsoever or any matter that affects title not reflected in the PTR ("PTR Supplement");
- (4) receipt of any documents or information related to the Property's use, value or control that Seller did not have in its custody or possession as of the Effective Date; or
- (5) any other event that occurs after the Effective Date or information received or discovered by Seller after the Effective Date that affects the value or use of the Property.

(b) *Buyer's Election to Terminate.* If a Change in Condition occurs Buyer shall have the right, at its election (even if Buyer has already exercised the Option), within a

reasonable time after notice from Seller, to terminate this Agreement by written notice to Seller, in which case this Agreement shall expire and terminate, the Option Payment shall be returned to Buyer, and the parties shall have no further obligation to each other under this Agreement except those expressly stated to survive.

3. Closing.

3.1 *Escrow Holder.* Within ten (10) calendar days after the Effective Date, Buyer and Seller shall open an escrow with _____, Attn: _____, Senior Escrow Officer, Tel: (415) _____; Fax: (415) _____ (the "Escrow Holder") for the purpose of consummating the purchase and sale and conveyance of title to the Property in accordance with the terms of this Agreement. Buyer and Seller shall jointly request that the Escrow Holder waive any escrow fees, on the basis that the subject transaction is for the public benefit and the transfer of the Property is being done on a bargain sale basis. If Buyer exercises the Option, the closing of the transaction shall be carried out pursuant to this Section 3. Escrow shall close on the date which is thirty (30) days after the date on which Buyer exercises the Option (the "Close of Escrow"). However, the Close of Escrow may be extended by Buyer for up to an additional thirty (30) calendar days if necessary.

3.2 Documents.

(a) *Seller's Documents.* At least five business day prior to the Close of Escrow, Seller shall deposit with Escrow Holder:

- (1) one original duly executed, acknowledged and dated grant deed in a form suitable for recordation, conveying to Buyer marketable, record, fee simple title to the Purchase Parcels (the "**Grant Deed**") in substantially the form of Exhibit D attached hereto (or in such other form as required by any Funding Agency) which Grant Deed shall be recorded in the Official Records of Marin County, California at the Close of Escrow;
- (2) one original duly executed, acknowledged and dated grant deed in a form suitable for recordation, conveying to Buyer marketable, record, fee simple title to the Donation Parcel (the "**Donation Deed**") in substantially the form of Exhibit E attached hereto (or in such other form as required by any Funding Agency) which Grant Deed shall be recorded in the Official Records of Marin County, California at the Close of Escrow;
- (3) one original duly executed and dated separate statement of documentary transfer tax;
- (4) one original duly executed and dated affidavit from Seller which satisfies the requirements of Section 1445 of the Internal Revenue Code, as amended,
- (5) one original duly executed and dated California Form 593-C. Seller acknowledges that if Seller is a non-California resident pursuant to Revenue and Taxation Code Section 18662 and 18668, as amended, and is not otherwise exempted from such sections' withholding requirements, Buyer or Escrow Holder may be required to withhold a portion of the Purchase Price at the Close

of Escrow according to applicable law;

- (6) one original duly executed and dated Owner's Title Affidavit;
- (7) one original duly executed and dated joint escrow instructions by and between Buyer and Seller which shall instruct Escrow Holder in its closing of this transaction pursuant to the terms herein, the provisions of which shall not conflict with the provisions of this Agreement ("Joint Escrow Instructions");
- (8) such other instruments and documents as may be reasonably required by Escrow Holder and/or Title Company to transfer the Property to Buyer (or Buyer's nominee) and issue the Title Policy (as defined below), which may include copies of trust instruments.

(b) *Buyer's Documents.* At least two business days prior to the Close of Escrow, Buyer shall deposit with Escrow Holder:

- (1) one (1) original duly executed and dated counterpart of the Joint Escrow Instructions;
- (2) such other instruments and documents as may be reasonably required by Escrow Holder and/or Title Company to transfer the Property to Buyer.

3.3 *Funds.* At least one (1) business day prior to the Close of Escrow, Buyer shall deposit with the Escrow Holder the Purchase Price (plus or minus additional sums as may be credited/debited to Buyer hereunder). Buyer will only deposit these funds once Escrow Holder has notified Buyer that Seller has delivered all of the documents described in Section 3.2(a) above and is prepared to proceed to close the transaction in accordance with the terms of the Joint Escrow Instructions. These funds shall be transferred to Seller by Escrow Holder only after all of Seller's obligations in this Section 3 have been met, the Grant Deed and the Gift Deed has been recorded, and the Escrow Holder is otherwise in a position to comply with all aspects of the Joint Escrow Instructions.

(a) *Taxes.* The Buyer shall be responsible for the costs of all current unpaid real property taxes based on the most recent property tax bills available, for the Property through the Close of Escrow, except to the extent that Buyer has provided payment for such taxes to Seller pursuant to section 6.1, below.

(b) *Closing Costs.*

- (1) Seller shall pay the following closing costs: (i) one-half the escrow fee, if any; (ii) all documentary tax, sales tax, or real property transfer tax; (iii) any additional taxes, penalties and interest, including compensatory or roll back taxes on the Property due and payable as a result of the conveyance to Buyer and (iv) one-half of all fees other than those specified in this Section 4.3.
- (2) Buyer shall pay the following closing costs: (i) one-half the escrow fee, if any; (ii) recording fees for the Grant Deed and the Gift Deed; (iii) the premium for the Title Policy; and (iv) one-half of all fees other than those specified in this Section 3.3.
- (3) Each party shall pay its own attorneys' fees and other expenses incurred by it in connection with this Agreement and Close of Escrow.

3.4 *Delivery of Possession.* Seller shall deliver possession of the Property to Buyer at Close of Escrow, free and clear of anyone in possession or occupancy. Aside from reasonable wear and tear, the Property shall be in the same order and condition as on the Effective Date, except as otherwise specifically provided for in this Agreement.

3.5 *Title Insurance.* At the Close of Escrow, Buyer may elect to cause Title Company to provide Buyer with an CLTA standard coverage owner's policy of title insurance with regional exceptions in the full amount of the Purchase Price insuring that title to the Property is vested in Buyer upon Close of Escrow without any liens and subject only to the Permitted Exceptions ("**Title Policy**"). Buyer shall pay the premium on the Title Policy.

3.6 *Conditions to Close.*

(a) *Buyer's Conditions.* Escrow shall not close unless and until the following conditions precedent and contingencies have been satisfied or waived in writing by Buyer. If any condition precedent set forth in this Section 3.6(a) is not satisfied or waived by Buyer, in addition to any other rights and remedies of Buyer set forth herein, Buyer may terminate this Agreement by written notice to Seller and the parties shall have no further obligation to each other under this Agreement except those expressly stated to survive.

- (1) All instruments described in Section 3.2(a) have been delivered to the Escrow Holder;
- (2) On the Close of Escrow, Seller shall not be in material default in the performance of any covenant or agreement to be performed by Seller under this Agreement;
- (3) On the Close of Escrow, all representations and warranties made by Seller herein shall be materially true and correct as if made on and as of the Close of Escrow;
- (4) On the Close of Escrow, Title Company shall be in a position to issue the Title Policy;
- (5) Before Buyer exercises the Option, the Board of Directors of Buyer shall have authorized and approved, in the sole and absolute discretion of such Board of Directors, the exercise of the Option and consummation of the transaction contemplated by this Agreement;
- (6) On or before the Close of Escrow, Funding Parties shall have deposited with Escrow Holder funds for Buyer's use in amount sufficient for Buyer to acquire the Property pursuant to the terms herein; and
- (7) On the Close of Escrow, the Property shall be in the materially same order and condition as on the Effective Date.

(b) *Seller's Conditions.* Escrow shall not close unless and until the following conditions precedent and contingencies have been satisfied or waived in writing by Seller. If any condition precedent set forth in this Section 3.6(b) is not satisfied or waived by Seller, in addition to any rights and remedies of Seller set forth herein, Seller may terminate this Agreement by written notice to Buyer, and the parties shall have no further

obligation to each other under this Agreement except those expressly stated to survive.

- (1) All instruments described in Section 3.2(b) have been delivered to the Escrow Holder;
- (2) All funds described in Section 3.3 have been delivered to the Escrow Holder;
- (3) On the Close of Escrow, Buyer shall not be in material default in the performance of any covenant or agreement to be performed by Buyer under this Agreement; and
- (4) On the Close of Escrow, all representations and warranties made by Buyer herein shall be materially true and correct as if made on and as of the Close of Escrow.

4. *Seller's Covenants.*

4.1 *Condition.* From the Effective Date to the Close of Escrow, Seller shall not:

- (a) remove or permit the removal of any vegetation, trees, soil or minerals from the Property or disturb or permit the disturbance of the existing contours and/or other natural features of the Property;
- (b) undertake any improvements to or physical development of or construct any structures of any type on the Property, except with the prior written consent of the Buyer, which shall not be unreasonably withheld if the improvement, development or constructions is reasonably necessary to address conditions that are hazardous, dangerous or threaten life, health or property or to comply with applicable laws or regulations or order of a regulatory agency;
- (c) cause or permit any dumping or depositing of any materials on the Property, including, without limitation, garbage, Hazardous Substances (as defined below), construction debris or solid or liquid wastes of any kind;
- (d) use, produce, process, manufacture, generate, treat, handle, store or dispose of any Hazardous Substances in, on or under the Property, or permit any person using or occupying the Property or any part thereof to do any of the foregoing; or
- (e) take any action or permit any action that could reduce the value of the Property. Seller shall continue to operate and maintain in accordance with appropriate, responsible property management practices. Seller shall comply, and shall cause all persons using the Property or any part thereof to comply, with all Environmental Laws (as defined below) applicable to the Property.

4.2 *Removal of Personal Property.* Prior to Close of Escrow, Seller shall remove from the Property at Seller's expense all personal property and/or trash or any other unsightly or offensive materials, including but not limited to, any above ground and underground tanks, barrels, equipment, on the Property, unless otherwise agreed to in writing by Buyer.

4.3 *No Encumbrance.* From the Effective Date until the Close of Escrow, Seller shall not:

- (a) make any leases, contracts, options or agreements affecting the Property;
- (b) cause, permit or suffer to exist any right, restriction or easement to be created, placed upon or claimed upon with respect to the Property;
- (c) cause or permit any secured property tax to be come delinquent;
- (d) cause or permit any mortgage, deed of trust or other lien to be foreclosed upon due to Seller's actions or omissions, including failure to make a required payment or failure to obtain any required consent; or
- (e) sell, convey, assign, transfer, encumber or otherwise dispose of the Property, or any part thereof or interest therein.

4.4 *No Action.* Seller shall not commence any legal action or proceeding with respect to the Property without first obtaining the prior written consent of Buyer, which consent shall not be unreasonably withheld.

5. *Seller's Representations and Warranties.* Seller hereby covenants that the following representations and warranties of Seller are true as of the Effective Date and shall be true and correct as of the Close of Escrow and shall survive the Close of Escrow. Seller represents and warrants the following:

5.1 *Power and Authority.* Seller has full power and authority to enter into this Agreement and the person signing this Agreement for Seller, if Seller is not an individual, has full power and authority to sign for Seller and to bind it to this Agreement and to sell, transfer and convey all right, title and interest in and to the Property in accordance with this Agreement.

5.2 *Validity of Agreement.* This Agreement is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

5.3 *Insolvency.* Seller is not insolvent and has no intention of filing for protection under the bankruptcy laws of the United States.

5.4 *Litigation.* There is no suit, action, arbitration, legal, administrative or other proceeding pending against the Property, or pending against Seller which could affect Seller's title to the Property, authority to convey the Property, affect the value of the Property, or subject an owner of the Property to liability.

5.5 *Tenants. Occupants and Use.* There is no tenant, occupant, or any person or entity other than Seller in possession of or using any part of the Property or entitled to possession or use of any part of the Property.

- 5.6 *Encumbrances and Liens and Encroachments.* Except as stated in the PTR and disclosed in this Agreement, there are no encumbrances or liens against the Property and no encroachments on or over the Property.
- 5.7 *Other Sales Contracts.* Seller has not entered into any other options, rights of first refusal, or contracts for the sale or transfer of the Property that are in force or effect.
- 5.8 *Violation of Law.* No notices of violation of any ordinance, law, rule or regulation relating to the Property have been issued to, served upon, received by or entered against Seller.
- 5.9 *Taxes.* Except for the amounts disclosed by the tax bills delivered to Buyer by Seller and the real property taxes to be assessed due to the change of ownership of the Property, no other real property taxes, assessments, or other governmental charges or exactions ("**Taxes**") have been or will be assessed against the Property for the current tax year.
- 5.10 *Hazardous Substances.* There is no known and has been no known: condition at, on, under or related to the Property presently or potentially posing a significant hazard to human health or the environment and no Hazardous Substance, pollutant or contaminant has been into, upon or over the Property or within the immediate vicinity of the Property. As used in this Agreement, the term "**Hazardous Substance(s)**" means any substance which is (1) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under or regulated by any Environmental Law(s). The term "**Environmental Law(s)**" means each and every federal, state, and local law, , regulation, rule, order or similar requirement of each and every federal, state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety and the environment.
- 5.11 *Property Information.* All the Property Information provided by Seller to Buyer is true, correct and complete and is all of the documentation and information that Seller has in its possession, custody or control concerning any matters which may directly or indirectly affect the Property and/or the value, use, control, operation or ownership of the Property either now or in the future.
- 5.12 *Development Rights.* Seller has not sold, conveyed, transferred or assigned any rights to develop the Property.

6. *Buyer's Covenants*

6.1 *Buyer's Reimbursement of Property Taxes.*

- (a) If Buyer does not exercise the Option on or before March 10, 2013, Seller may provide Buyer with a copy of each of the three Marin County Secured Tax Statements for the Property and a notice requesting payment by Buyer of the

Second Installment of secured taxes on the Property for the period July 1, 2012 to June 30, 2013 (the “**2012-13 Second Installment of Property Taxes**”). Within ten business days of receipt of the notice and statement, Buyer shall provide payment to Seller in the amount of the 2012-13 Second Installment of Property Taxes.

- (b) If Buyer does not exercise the Option on or before November 10, 2013, Seller may provide Buyer with a copy of each of the three Marin County Secured Tax Statements for the Property and a notice requesting payment by Buyer of the First Installment of secured taxes on the Property for the period July 1, 2013 to June 30, 2014 (the “**2013-14 First Installment of Property Taxes**”). Within ten business days of receipt of the notice and statement, Buyer shall provide payment to Seller in the amount of the 2013-14 First Installment of Property Taxes.
- (c) Notwithstanding this section 6.1, Seller shall remain responsible for paying to the Marin County Tax Assessor all secured property tax payments for the Property as and when due and prior to delinquency, as specified in section 4.3, above.

6.2 Buyer Cooperation with Seller – Bargain Sale

- (a) Based on an appraisal done in October 2010, the parties believe that the sale of the Purchase Parcels may be a “bargain sale”, with the Purchase Price below the fair market value of the Purchase Parcels. Further, the parties also believe that the donation of the Donation Parcel at minimal consideration, as detailed in this Agreement, is likewise a “bargain sale”.
- (b) Seller acknowledges that Seller should seek the advice of a tax professional as to whether the transaction under this Agreement is a “bargain sale” and that the Seller cannot rely on Buyer’s belief. Nonetheless, Buyer agrees to cooperate with Seller, if and as requested by Seller, to the extent Buyer reasonably can, in connection with any attempt by the Seller to seek a charitable tax deduction or other favorable treatment under the tax law, based on the belief that the transaction under this Agreement is a “bargain sale”.

7. *Buyer's Representations and Warranties.* Buyer hereby covenants that the following representations and warranties of Buyer are true as of the Effective Date and shall be true and correct as of the Close of Escrow and shall survive the Close of Escrow. Buyer represents and warrants the following:

7.1 *Power and Authority of Buyer.* Buyer is a municipal corporation duly organized and existing under the laws of the State of California and has the requisite power and authority to enter into and carry out the terms of this Agreement.

7.2 *Validity of Agreement.* This Agreement is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

8. *Seller Default.* If Seller defaults in the performance of any of Seller's obligations, promises,

or agreements under this Agreement or if Seller breaches any of its representations or warranties hereunder ("Seller's Default"), the Option Consideration shall be immediately returned to Buyer, and Buyer may elect to terminate this Option Agreement. If a Seller's Default exists as of the Close of Escrow, Buyer may elect to either defer the Close of Escrow until the Seller's Default has been remedied or proceed to the Close of Escrow.

9. Miscellaneous Terms.

- 9.1 *Notices.* All notices required or permitted under this Agreement will be in writing and delivered to the Parties by email, followed by personally delivery or delivery by first class mail, postage prepaid, at the addresses stated in Recital A, above. A notice will be considered given after it is emailed and either deposited in the mail, first class postage prepaid, addressed to the party to be notified, or delivered by hand to the party to be notified.
- 9.2 *No Broker's Commission.* In early negotiation of the transaction contemplated by this Agreement the Seller used a real estate broker. However, the Seller has notified the Buyer that the real estate broker has waived any commission or fee to which the broker might otherwise be entitled. If any person asserts a claim for a broker's commission or finder's fee against one of the parties, the party on account of whose actions the claim is asserted shall indemnify and hold the other party harmless from and against the claim. The indemnification obligation shall survive the Close of Escrow or earlier termination of this Agreement.
- 9.3 *Binding on Successors.* This Agreement shall be binding not only on the parties but also on their respective successors and assigns.
- 9.4 *Additional Documents.* Seller and Buyer agree to sign and deliver such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.
- 9.5 *Entire Agreement.* This Agreement is the entire agreement between the parties about the Property and supersedes all prior and contemporaneous agreements representations, and understandings.
- 9.6 *Interpretation.* This Agreement will be interpreted without regard to any presumption or other rule of interpretation based on who drafted the Agreement. Both parties have been advised and have had the opportunity to confer with counsel regarding this Agreement.
- 9.7 *Amendment.* No amendment of this Agreement will be binding unless in writing and signed by the parties.
- 9.8 *Assignment of Buyer's Interest.* Buyer may assign its interest in this Agreement to another public entity or nonprofit organization, subject to the prior written consent of Seller, which shall not be unreasonably withheld, provided that one of the purposes of

the public entity or nonprofit organization is to preserve land as open space.

9.9 *Governing Law.* This Agreement will be governed by and interpreted in accordance with the laws of the State of California.

9.10 *Counterparts.* This Agreement may be signed in counterparts, each of which will be considered an original and which together will constitute one and the same agreement.

IN WITNESS of the foregoing provisions the parties have signed this Option Agreement below:

SELLER:

NEIL DAN REID, AN INDIVIDUAL, AND THE NEIL REID TRUST A (SURVIVOR TRUST), ESTABLISHED UNDER THE REID 1988 REVOCABLE TRUST

By: Neil Dan Reid, Individually, and as
Trustee of the Neil Reid Trust A (Survivor
Trust), established under the Reid 1988
Revocable Trust

BUYER:

TOWN OF FAIRFAX

By: _____
Judy Anderson
Acting Town Manager

Attest:

CLERK, TOWN OF FAIRFAX

BY: _____
Insert Name

EXHIBIT A
LEGAL DESCRIPTION OF PURCHASE PARCELS

Parcel One:

Lot 44, as shown upon that certain Map entitled "Map of P.H. Jordan Company Subdivision of Ridgeway Park (now known as Ramona Terrace)", filed for record March 30, 197 in Volume 2 of Maps, at Page 80, Marin County Records.

Parcel Two:

A portion of Lots 42 and 43, as shown upon that certain Map entitled "Map of P.H. Jordan Company Subdivision of Ridgeway Park (now known as Ramona Terrace)", filed for record March 30, 197 in Volume 2 of Maps, at Page 80, Marin County Records.

Being more particularly described as follows:

Beginning at the most Northerly corner of Lot 43, as said Lot is laid down and delineated upon the certain Map entitled, "Licensed Surveyor's Record Resurvey of a portion of P.H. Jordan Company, Subdivision of Ridgeway Park, Marin Co. Calif.", original Map filed May 30, 1907 in Volume 2 of Maps at Page 80, Resurvey September 1923, by C.H. Towle, filed in Book 1 of Licensed Surveys at Page 42, Marin County Records; and running thence along the Northeasterly lines of Lot 43 and 42 Southeasterly 80 feet to the most Easterly corner of Lot 42; thence Southwesterly along the Southeasterly line of Lot 42, 101.5 feet; thence Northwesterly 80 feet more or less to a point on the Northwesterly line of Lot 43 distant on said line 81.8 feet Southwesterly from the point of beginning and running thence along said line Northeasterly 81.8 feet to the point of beginning.

Parcel Three:

An easement for public utilities 5 feet in width lying Northerly of and adjacent to the Southeasterly line of Lot 42 from the lot above described to Ridgeway Avenue.

APN's 001-193-07 & 09

EXHIBIT B
LEGAL DESCRIPTION OF DONATION PARCELS

EXHIBIT C
Form of Memorandum of Option Agreement

**RECORDING REQUESTED
AND WHEN RECORDED MAIL TO:**

Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Attention: Town Manager

Transfer Tax Not Applicable: R&T Code 11922
Exempt from Recording Fees: Gov. Code 27383

APN No. 001-022-04

(Space Above Line for Recorder's Use Only)

MEMORANDUM OF OPTION AGREEMENT

This Memorandum of Option Agreement is dated as of , 201_ by **Neil Dan Reid, an individual, and the Neil Reid Trust A (Survivor Trust), established under the Reid 1988 Revocable Trust ("Seller")** and is a memorandum of that certain Option Agreement dated as of , 201_ ("**Option Agreement**") between Seller and **THE TOWN OF FAIRFAX**, a California municipal corporation ("**Buyer**"), all the terms and conditions of which are hereby made a part hereof with the same force and effect as though fully set forth herein. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Option Agreement.

Pursuant to the Option Agreement, Seller has granted to Buyer an exclusive option to purchase that certain real property located in Marin County, California, and more particularly described in Exhibit A attached hereto, all subject to the terms therein. Said option will expire at 5:00P.M. California time on the date which is twelve months after the Effective Date, provided, however, at the election of Buyer, the Effective Date may be extended an additional six months.

Nothing herein shall be deemed to amend the terms of the Option Agreement.

Seller: NEIL DAN REID, AN INDIVIDUAL, AND THE NEIL REID TRUST A (SURVIVOR TRUST), ESTABLISHED UNDER THE REID 1988 REVOCABLE TRUST

By: Neil Dan Reid, Individually, and as
Trustee of the Neil Reid Trust A (Survivor
Trust), established under the Reid 1988
Revocable Trust

[*add notary page*]

[add "Exhibit A to Memorandum of Option Agreement" – Legal Description]

**EXHIBIT D
Form of Grant Deed**

**RECORDING REQUESTED
AND WHEN RECORDED MAIL TO:**

Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Attention: Town Manager

Transfer Tax Not Applicable: R&T Code 11922
Exempt from Recording Fees: Gov. Code 27383

APN No. 001-193-07 and -09

(Space Above Line for Recorder's Use Only)

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Neil Dan Reid, an individual, and the Neil Reid Trust A (Survivor Trust), established under the Reid 1988 Revocable Trust** (collectively, the "GRANTOR") hereby grants to the **Town of Fairfax**, a municipal corporation existing under California law, the real property in the Town of Fairfax, County of Marin, State of California, legally described on Exhibit 1 hereto.

IN WITNESS WHEREOF, the undersigned has executed this document as of the day and year indicated.

Dated: _____, 2012

GRANTOR:

Neil Dan Reid, Individually, and as Trustee of the Neil Reid Trust A (Survivor Trust), established under the Reid 1988 Revocable Trust

**[*add notary page*]
[add Exhibit 1 – Legal Description]
[add Town Certificate of Acceptance]**

EXHIBIT E
Form of Donation Deed

**RECORDING REQUESTED
AND WHEN RECORDED MAIL TO:**

Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Attention: Town Manager

Transfer Tax Not Applicable: R&T Code 11922
Exempt from Recording Fees: Gov. Code 27383

APN No. 0001-193-03

(Space Above Line for Recorder's Use Only)

GIFT DEED

Neil Dan Reid, an individual, and the Neil Reid Trust A (Survivor Trust), established under the Reid 1988 Revocable Trust (collectively, the "GRANTOR") hereby grants to the **Town of Fairfax**, a municipal corporation existing under California law, the real property in the Town of Fairfax, County of Marin, State of California, legally described on Exhibit 1 hereto.

IN WITNESS WHEREOF, the undersigned has executed this document as of the day and year indicated.

Dated: _____, 2012

GRANTOR:

Neil Dan Reid, Individually, and as Trustee of the Neil Reid Trust A (Survivor Trust), established under the Reid 1988 Revocable Trust

**[*add notary page*]
[add Exhibit 1 – Legal Description]
[add Town Certificate of Acceptance]**