

PURCHASE AND SALES AGREEMENT (Sealed Bids)

SSL No. 886

FERNWOOD SEED ORCHARD

This Purchase and Sales Agreement (Agreement) is made and entered into on this _____ day of _____, 2009 (Effective date), by and between the STATE OF CALIFORNIA, acting by and through the Department of General Services (**STATE**), and the (**BUYER**), collectively "**PARTIES**".

RECITAL

- A.** The State of California owns that certain real property located Snow Camp Road near the community of Korbek, in Humboldt County, California, and more particularly described in Exhibit A, which is incorporated herein as if fully set forth, ("Property") which has been authorized to be disposed of pursuant to Chapter 761 of the Statutes of 2008.
- B.** **BUYER** has submitted the offer to purchase the Property, deemed most acceptable to the State, from multiple offers received in response to State's Invitation to Bid.

AGREEMENT

In consideration of the foregoing Recitals which are incorporated herein as if fully set forth and for other good and valuable consideration, the **PARTIES** agree as follows:

1. PROPERTY

1.1 Property. **STATE** agrees to sell and convey to **BUYER**, and **BUYER** agrees to purchase from **STATE**, the Property subject to the terms and conditions set forth in this Agreement.

2. PURCHASE PRICE

2.1 Purchase Price. The total purchase price to be paid by **BUYER** to **STATE** for Property shall be _____ Dollars.

2.2 Deposit **BUYER** has made a bid deposit of ONE THOUSAND AND NO/100 Dollars (\$1,000.00) which is being increase herewith to a total deposit of (five {5%} percent of the purchase price set forth in Section 2.1 above, to be applied to the purchase at the close of escrow.

2.3 Terms of Payment. The total purchase price set forth in Section 2.1 above shall be delivered in cash at the close of escrow.

3. CONDITIONS OF SALE

3.1 Close of Escrow. The date upon which **STATE** executes this Agreement shall constitute the commencement of the sixty (60) day time frame within which **BUYER** shall perform its' due diligence and complete the purchase.

3.2 Buyer's Costs. **BUYER** shall pay all recording fees, documentary transfer taxes, escrow fees, policies of title insurance, and any other costs connected with the closing of this transaction.

3.3 Title and Escrow Title to said Property shall pass immediately upon close of escrow. The issuance of any escrow instructions shall be the sole responsibility of the **STATE** and shall govern the escrow. An escrow account has been opened with First American Title Company (Escrow Holder), 1034 Sixth Street, Eureka, CA 95502 (707) 443-4505. The title company has issued the Preliminary Title Report (the "Prelim") for the Property indicating the exceptions to title. The escrow account established for this transaction is 1201-3191353.

3.4 As-Is Purchase. **BUYER** acknowledges that **BUYER** is purchasing the Property solely in reliance on **BUYER'S** own investigations. Except as provided in paragraph 4.4, **BUYER** specifically acknowledges and agrees that **STATE** will sell and **BUYER** will purchase the Property on an "as-is with all faults" basis, and that **BUYER**, having been given the opportunity to inspect the Property and review information and documentation affecting the Property, including any investigations, studies or documents identified under Section 4.6 below, is not relying on any representations or warranties of any kind whatsoever, express or implied, from **STATE** or its agents as to any matters concerning the Property, including without limitation: (i.) the quality, nature, adequacy, and physical condition of the Property including soils, geology, and any groundwater; (ii.) the existence, quality, nature, adequacy, and physical condition of utilities serving the Property; (iii.) the development potential of the Property and the Property's use, merchantability, fitness, suitability, value, or adequacy of the Property for any particular purpose; (iv.) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property; (v.) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi.) the presence of hazardous materials on, under, or about the Property or the adjoining or neighboring property; (vii.) the condition of title to the Property; and (viii.) the economics of the operation of the Property. **BUYER** agrees to purchase the Property in the condition that it is in at close of escrow, subject, however, to **BUYER'S** right to terminate should the Property be damaged or destroyed by causes other than causes attributable to **BUYER'S** entry on the Property and inspections ordered by **BUYER** prior to close of escrow. **BUYER** shall be responsible at **BUYER'S** sole expense for all demolition and any hazardous materials remediation required to make Property usable for **BUYER'S** intended purpose.

3.6 Title Conditions. **BUYER** has reviewed the Prelim referred to in section 3.3 above.

3.6.1 No Buyer Exceptions. **BUYER** agrees that if a CLTA title policy will be issued by First American Title Company in accordance with the title exceptions identified in the Prelim then there are no conditions or contingencies related to title.

3.7 Further Documents and Assurances. BUYER and STATE shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the escrow in condition for closing as and when required by this Agreement. BUYER and STATE agree to execute and deliver all further documents and instruments reasonably required by the escrow holder or Title Company. STATE shall deliver or cause to be delivered to escrow holder in time for delivery to BUYER at the closing an original ink signed Quitclaim Deed, duly executed and in recordable form, conveying fee title to the Property to BUYER.

4. SELLER'S REPRESENTATIONS, WARRANTIES, AND DISCLOSURES

In addition to any express agreements of STATE contained herein, the following constitute representations and warranties of STATE to BUYER, of this Agreement:

4.1 Reliability of Information. STATE obtained the information contained in this Agreement from sources deemed reliable; however, STATE makes no representations, warranties or guarantees as to the accuracy of the information provided. STATE provides the information solely as an aid to BUYER and BUYER should conduct its own investigations of the Property.

4.2 Authority of State. STATE is a government entity, duly organized and validly existing under the laws of the State of California. STATE has full power and authority to sell, and convey the Property to BUYER and to enter into and perform its obligations pursuant to this Agreement.

4.3 Taxes. The State of California is exempt from property taxes and assessments and none are or will be owing at close of escrow.

4.4 Disclosures. BUYER acknowledges that BUYER is purchasing the Property solely in reliance on BUYER'S own investigations and no representations or warranties of any kind whatsoever, expressed or implied, have been made by STATE, STATE'S agents, or brokers (if any), including in any investigations, studies or documents identified under Section 4.6 below.

4.5 Broker. STATE has not retained the services of any broker in regards to the transactions contemplated under this Agreement.

4.6 Absence of Fraud and Misleading Statements. To the best of STATE'S knowledge, no statement of STATE in this Agreement or in any document, certificate, or schedule furnished or to be furnished to BUYER pursuant hereto or in connection with the transaction contemplated hereby contains any untrue statement of material fact.

5. BUYERS REPRESENTATIONS AND WARRANTIES

In addition to any express agreements of BUYER contained herein, the following constitute representations and warranties of BUYER to STATE, of this Agreement:

5.1 Representations Regarding BUYER'S Authority.

(a) **BUYER** has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated in this Agreement.

(b) The individual(s) executing this Agreement and the instruments referenced herein on behalf of **BUYER** have the legal power, right, and actual authority to bind **BUYER** to the terms and conditions hereof and thereof.

(c) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by **BUYER** in connection with this Agreement are and shall be, duly authorized, executed and delivered by **BUYER** and shall be valid, legally binding obligations of and enforceable against **BUYER** in accordance with their terms.

(d) No further approvals or actions are required for **BUYER** to consummate the transactions contemplated in this Agreement and **BUYER** has the funds necessary to consummate the transaction contemplated in this Agreement.

5.2 BUYER further acknowledges, represents and warrants that as of the close of escrow **BUYER** is aware of all zoning regulations, other governmental requirements, site and physical conditions, including the presence of hazardous materials or other adverse environmental conditions if any, and other matters affecting the use and condition of the Property.

5.3 Broker. **BUYER** has not retained the services of any broker in regards to the transactions contemplated under this Agreement.

5.4 General Representation. No representation, warranty or statement of **BUYER** in this Agreement or in any document, certificate or schedule furnished or to be furnished to **STATE** pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading. **BUYER'S** representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the close of escrow with the same force and effect as if remade by **BUYER** in a separate certificate at that time. The truth and accuracy of **BUYER'S** representations and warranties made herein shall constitute a condition for the benefit of **STATE** to the close of escrow (as elsewhere provided herein) and shall not merge into the close of escrow or the recordation of the quitclaim in the Official Records, and shall survive the close of escrow.

6. DUE DILIGENCE

6.1 Buyer's Investigation of Property Condition. Real property often contains defects and conditions which are not readily apparent and which may affect the value or desirability of the Property. Therefore, it is the affirmative duty of **BUYER** to exercise reasonable care to discover those facts which are unknown to **BUYER** or within the diligent attention and observation of **BUYER**.

6.2 Buyer's Acceptance of Property Condition. BUYER'S acceptance of the condition of the Property is a condition to performance under this Agreement. Accordingly, BUYER shall have the right to conduct inspections, investigations, tests, surveys, and other studies at BUYER'S expense upon execution of a Right of Entry (ROE) from STATE in the form attached as Exhibit C. BUYER agrees to provide to STATE, at no cost, upon request of STATE, complete copies of all inspection reports obtained by BUYER concerning the Property. BUYER is strongly advised to exercise these rights and select professionals with appropriate qualifications to conduct inspections of the entire Property. If BUYER does not exercise these rights, BUYER is acting against the advice of STATE. BUYER shall provide to STATE in writing the identity of the contractor(s) or entity(s) conducting the inspections and the nature and scope of the inspections for inclusion in the ROE. **STATE PROHIBITS ENTRY ONTO THE PROPERTY WITHOUT AN EXECUTED ROE.** Subject to the terms of the ROE, the BUYER, its representatives, authorized agents, or contractors may enter on the Property to make such inspections of the Property provided that BUYER keeps the Property free of liens and repairs all damage to the Property resulting from such inspection(s).

6.3 Buyer's Inspection Period. The Due Diligence Period shall continue for a period of no more than forty-five calendar (45), commencing on the Effective Date of this Agreement. BUYER may waive all or a portion of the Due Diligence period by informing STATE of such waiver in writing.

6.4 Buyer's Removal or Waiver of Contingencies. BUYER shall, within forty-five calendar (45) days of the Effective Date of this agreement, identify to STATE in writing any conditions related to the Property that BUYER desires STATE to resolve before close of escrow. STATE will notify BUYER in writing within seven business days after notice from BUYER what conditions related to the Property identified by BUYER the STATE is willing and able to resolve. If STATE is unwilling or unable to resolve some or all of the conditions identified by BUYER then BUYER must either remove or waive any and all of BUYER'S contingencies based on such conditions, if any, in writing and submit such written notification to STATE, or elect to terminate this Agreement. If BUYER has elected to terminate this Agreement then BUYER shall deliver to STATE a written termination notice no later than five days after STATE has notified BUYER of STATE unwillingness and/or inability to resolve BUYER's identified conditions.

If BUYER does not provide STATE written notice of conditions related to the Property as provided for above then BUYER shall have been deemed to have waived any contingency related to the condition of the Property. If BUYER does not provide to STATE a written notice of the removal or waiver of its contingencies then BUYER shall have been deemed to have elected to terminate this Agreement and STATE shall deliver to BUYER a written termination notice no later than the Closing Date.

Upon termination BUYER and STATE shall be released from any obligation to proceed with the terms of this Agreement and neither party shall have a right to enforce this Agreement or pursue any claims related to this Agreement. Upon such termination BUYER and STATE shall be released from any obligation to proceed with the terms of this Agreement and neither party shall have a right to enforce this Agreement or pursue any claims related to this Agreement.

6.5 Scope of Buyer's Investigations. BUYER agrees and warrants, or by the failure to do so shall have waived any rights to do so hereunder, that at close of escrow BUYER shall have investigated the condition and suitability of all aspects of the Property and all matters affecting the value or desirability of the Property, including but not limited to the following:

6.5.1 Condition of systems and components. Foundation, plumbing, siding, electrical, heating, mechanical, roof, air conditioning, built-in appliances, security, and any other structural or nonstructural systems and components, and the energy efficiency of the Property.

6.5.2 Size and age of improvements. Room count, room dimensions, square footage in improvement, lot size, and age of the improvements.

6.5.3 Lines and boundaries. Property lines and boundaries.

6.5.4 Waste disposal. Type, size, adequacy, and condition of sewer and/or septic systems and components.

6.3.5 Governmental requirements and limitations. Availability of required governmental permits, inspections, certificates, or other determinations affecting the Property, including historical significance. Any limitations, restrictions, zoning, building size requirements, or other requirements effecting the current or future use or development of the Property.

6.5.6 Rent and occupancy controls. Any restrictions that may limit the amount of rent that can legally be charged and the maximum number of persons who can lawfully occupy the Property.

6.5.7 Water and utilities; well systems and components. Availability, adequacy, and condition of public or private systems.

6.5.8 Environmental hazards. The presence of asbestos, formaldehyde, radon, methane, other gases, lead based paint, other lead contamination, fuel or chemical storage tanks, waste disposal sites, electromagnetic fields, and other substances, materials, products, or conditions.

6.5.9 Geologic conditions. Geologic/seismic conditions, soil stability/suitability, and drainage.

6.5.10 Neighborhood, area, subdivision requirements. Neighborhood or area conditions including schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development which may affect noise, view or traffic; airport noise; and noise or odor from any source, wild or domestic.

6.5.11 Matters of record. Covenants, conditions, and restrictions; deed restrictions; easements; and other title encumbrances of record.

6.5.12 Other matters. Any and all other matters such as availability of suitable public infrastructure, assessment, other special service districts, and soil or other conditions on the Property, not herein listed, which are or may be pertinent to **BUYER'S** purpose for acquiring the Property.

7. INDEMNIFICATION.

BUYER shall defend, indemnify, and hold the **STATE** harmless from and against any and all claims, liabilities, obligations, losses, damages, costs, and expenses, including, but not limited to, attorney's fees, court costs, and litigation expenses that **STATE** may incur or sustain by reason of or in connection with any misrepresentation made by the **BUYER** pursuant to this Agreement or by **BUYER's** or **BUYER'S** representatives, authorized agents, or contractors exercise of rights under section 6.5 of this Agreement.

8. MINERAL RESERVATIONS

The **STATE** shall except and reserve all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits without rights of surface entry in a plane from the surface to a depth of 500 feet below the surface.

9. PRIOR AGREEMENTS.

This Agreement, in effect as of the Date of Agreement, supersedes any and all prior agreements between **STATE** and **BUYER** regarding the Property.

10. NOTICES.

Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed or sent by wire or other telegraphic communication in the manner provided in this Agreement, to the following persons:

TO STATE: **DEPARTMENT OF GENERAL SERVICES**
ASSET MANAGEMENT BRANCH
707 3RD STREET, 6TH FLOOR
WEST SACRAMENTO, CA 95605
ATTN: E. W. CHRISTMAN, Senior Real Estate Officer

TO BUYER:

11. CALCULATION OF TIME.

Under this Agreement, when the day upon which performance would otherwise be required or permitted is a Saturday, Sunday or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or holiday. The term "holiday" shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.

12. TIME OF ESSENCE.

Time is of the essence of this Agreement and each and every provision hereof.

13. ENTIRE AGREEMENT.

This Agreement shall constitute the entire understanding and agreement of the **PARTIES** hereto regarding the purchase and sale of the Property and all prior agreements, understandings, representations or negotiations are hereby superseded, terminated and canceled in their entirety, and are of no further force or effect.

14. AMENDMENTS.

This Agreement may not be modified or amended except in writing the **PARTIES**.

15. APPLICABLE LAW.

The **PARTIES** hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The **PARTIES** hereto expressly agree that this Agreement shall in all respects be governed by the laws of the State of California.

16. SEVERABILITY.

Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the **PARTIES** have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

17. SEPARATE COUNTERPARTS.

This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

18. EXHIBITS.

The following Exhibits are attached to this Agreement and incorporated by reference herein.

- Exhibit A. Property Description
- Exhibit B: Form of Deed
- Exhibit C: Right of Entry Permit

19. SURVIVAL.

All terms and conditions in this Agreement, which represent continuing obligations and duties of the **PARTIES**, that have not been satisfied prior to close of escrow shall survive close of escrow and transfer of title to **BUYER** and shall continue to be binding on the respective obligated party in accordance with their terms. All representations and warranties and statements made by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the close of escrow, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the close of escrow, or, to the extent the context requires, beyond any termination of this Agreement.

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

BUYER

By: _____

By: _____

STATE

STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES
REAL ESTATE SERVICES DIVISION

BY: _____

JOE MUGARTEGUI, Branch Chief
ASSET MANAGEMENT BRANCH
707 Third Street, 5th Floor
West Sacramento, CA 95605
(916) 376-1814

Date: _____