

RECORDING REQUESTED BY:  
CITY OF LEMOORE  
WHEN RECORDED, RETURN TO:  
CITY OF LEMOORE  
119 FOX STREET  
LEMOORE, CA 92345

---

Space Above for Recorder's Use

**CONTRACT FOR CONVEYANCE AND DEVELOPMENT  
(E Street Commercial Project)**

This Contract for Conveyance and Development (the "Contract") is entered into as of \_\_\_\_\_, 2005 (the "Effective Date"), by and between the CITY OF LEMOORE, a California charter city (the "City"), and COKER ELLSWORTH, INC., a California corporation (the "Developer"), with respect to the following facts:

**Recitals**

A. The City owns a parcel of unimproved real property located on the south side of "E" Street between Follett and Heinlen Streets in the City of Lemoore, designated as APN 020-053-003 and described on Exhibit A, which is attached to and made part of this Contract (the "Site").

B. The City has determined that the Site is no longer needed for public use. The City desires to sell and convey the Site to the Developer, and the Developer desires to purchase and accept conveyance of the Site from the City, for development, operation and maintenance of a two-story building with space for a combination of restaurant, retail and office uses (the "Project"), all on and subject to the terms and conditions in this Contract.

C. The sale, purchase, conveyance and other transactions specified in this Contract are for the common benefit, are in the best interests of the City and its residents, and are authorized under California Government Code Section 37350.

THEREFORE, the City and the Developer agree as follows:

**ARTICLE 1. PURCHASE PRICE**

Section 1.01 The purchase price (the "Purchase Price") for the Site is \$30,000.00, payable by the Developer to the City as follows:

(a) On the date escrow is opened as provided in Article 2, the Developer shall pay \$5,000.00 in escrow as a deposit on the Purchase Price. This amount will be paid to the City at close of escrow.

(b) The Developer shall pay the balance of the Purchase Price (\$25,000.00) by depositing a check into the escrow in time to meet the Escrow Agent's requirements for immediately available funds for close of escrow.

## **ARTICLE 2. ESCROW**

Section 2.01 The parties shall open escrow to complete conveyance of the Site at Chicago Title Company, 449 West D Street, Lemoore, CA (the "Escrow Agent"), within five days after the Effective Date. This Contract will constitute initial joint escrow instructions of the City and the Developer. A duplicate original of the Contract will be delivered to the Escrow Agent on the opening of the escrow. The City and the Developer shall execute any additional escrow instructions, not inconsistent with the terms of this Contract, as may be necessary or appropriate to complete conveyance of the Site.

Section 2.02 Close of escrow, the City's obligation to convey the Site and the Developer's obligation to accept conveyance of the Site are subject to the following conditions:

(a) Unless title insurance is waived by the Developer, issuance of a standard CLTA title insurance policy by a qualified title insurance company, in the amount of \$30,000.00 (or such lesser amount as may be requested by the Developer), evidencing that conveyance of the Site will be subject only to such liens, encumbrances, clouds, conditions or exceptions as may be approved by the Developer. The Developer will be deemed to have approved any and all such liens, encumbrances, clouds, conditions or exceptions that it does not object to in writing within five days after a preliminary title report issued by the title company is delivered to the Developer.

(b) Delivery of possession of the Site to the Developer at close of escrow, free and clear of all uses and occupancies except those the Developer may waive in writing.

(c) Deposit by the City into escrow of a grant deed conveying the City's interest and title in the Site to the Developer.

(d) Deposit by the Developer of the balance of the Purchase Price as specified in paragraph 1.01(b).

(e) Payment of all amounts specified in Section 2.06 by the responsible party.

Section 2.03 If either party fails to satisfy any conditions specified in Section 2.02 to be performed by it within 30 days after the opening of escrow or any additional period as the parties may mutually agree in writing, the other party will have the right, by written notice to the Escrow Agent and the failing party, to cancel the escrow and terminate this Contract. A party's exercise of its right to cancel and terminate under this section will not waive any other rights the party may have against the other party for breach of this Contract. The Escrow Agent is irrevocably instructed, on receipt of notice of cancellation from a party pursuant to this section, to immediately refund to that party all money and instruments the party may have deposited in escrow pursuant to this

Contract.

Section 2.04 The parties acknowledge that the City is a tax exempt government entity and therefore no real property taxes or assessments should be due for that period of time the City has held title to the Site. However, real property taxes and assessments (if any) on the Site, and taxes (if any) on this Contract or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance will be the responsibility of the City. Real property taxes and assessments (if any) on the Site and taxes (if any) on this Contract or any rights hereunder levied or imposed for any period commencing after conveyance will be the responsibility of the Developer.

Section 2.05 The parties acknowledge and represent to each other that no real estate or other brokers or agents have been employed by any of them with respect to conveyance of the Site. Neither the City nor the Developer will be obligated or liable for any real estate commissions, brokerage fees or finders' fees.

Section 2.06 Escrow fees and certain other amounts required in connection with this Contract will be paid as provided in this Section 2.06. Deposit of the fees and amounts in escrow, or delivery of evidence in escrow that such fees or amounts have been paid outside of escrow, is a further condition to close of escrow and the parties' respective obligations under this Contract.

(a) The Developer shall pay:

- (1) Any amounts for title insurance coverage, binders or endorsements in excess of the premium amount for standard CLTA title insurance on the Site attributable to the amount of \$30,000.00;
- (2) One-half the escrow fee;
- (3) One-half the recording fees, if any;
- (4) The Developer's notary fees;
- (6) Any State, County or City documentary stamps or transfer taxes.
- (7) One-half of other fees or amounts required by this Contract, the Escrow Agent or the escrow instructions in order to complete the conveyance of the Site and close the escrow.

(b) The City shall pay:

- (1) Cost of drawing the grant deed;
- (2) The portion of the title insurance premium amount for CLTA standard title insurance on the Site attributable to an amount up to \$30,000.00; and

- (3) Costs necessary to place the title to the Site in the condition approved by the Developer as provided in paragraph 2.02(a);
- (4) One-half the escrow fee.
- (5) One-half the recording fees, if any.
- (6) The City's notary fees.
- (7) One-half of other fees or amounts required by this Contract, the Escrow Agent or the escrow instructions in order to complete the conveyance of the Site and close the escrow.

Section 2.07 Except as provided in paragraph 2.06(b) with respect to the City's obligation for the CLTA standard title insurance premium, (i) the Developer will be solely responsible for obtaining insurance coverage on the Site as of the close of escrow; (ii) no insurance policies will be transferred through escrow; and (iii) no premiums for insurance will be prorated.

Section 2.08 (a) The City will convey and the Developer will take the Site in "AS IS" condition, with all faults. The City makes no representation or warranty whatsoever, express or implied, as to the condition of the Site, as to the presence, existence, use, storage or disposal (past or present) of any hazardous materials on, under or in the vicinity of the Site, as to the value of the Site, as to any rights therein, or as to any title or matters affecting title. The "AS IS" conditions of the Site also include, without limitation, the following:

- (1) Any conditions disclosed in the public records of regulators such as, without limitation, the Kings County Health Department and the Regional Water Quality Control Board;
- (3) Any environmental or other physical conditions on, under or in the vicinity of the Site;
- (4) Buried debris or structures;
- (5) Soil compaction;
- (6) Presence of hazardous materials;
- (7) The condition of the soil or its geology;
- (8) The presence of known or unknown seismic faults; and
- (9) The suitability of the Site for the Developer's purposes or use.

The Developer's approval of Site conditions and the feasibility of the Site for the Developer's intended use are not conditions to close of escrow or the Developer's obligation to purchase the Site.

(b) As of the Effective Date, the Developer has a license and right for it, its contractors and agents to enter onto the Site before close of escrow for the purpose of conducting due diligence investigations. The Developer will be solely responsible, at its expense, to investigate and determine that the condition of the Site is suitable, and to perform such due diligence investigations and testing as, in its discretion, it believes appropriate for the Developer's purposes. The Developer will complete due diligence investigations of the Site within 30 days after the Effective Date. The Developer's investigations may include, but are not limited to, reviewing all zoning regulations, other governmental requirements, studies or investigations of soil, seismic and other surface and subsurface conditions including, without limitation, the presence of hazardous materials, and feasibility studies, including without limitation architectural, engineering, environmental, soil testing, development and economic feasibility studies. On request by the City, the Developer will give the City a copy of all reports and test results on the Site.

(c) The City has no knowledge or reasonable cause to believe that there has been any release of hazardous materials or that hazardous materials have come to be located, on or beneath the Site. The Developer acknowledges that the City has made all disclosures and provided all notices to the Developer required by Section 25359.7 of the California Health & Safety Code, and the Developer expressly waives any rights or remedies under Section 25359.7.

(d) In consideration of the City's conveyance of the Site to the Developer and performance of the City's other predisposition and post-disposition obligations in this Contract, the Developer releases the City from all claims which the Developer may have against the City resulting from or connected with the environmental condition of the Site. This release includes, without limitation, any claims the Developer may have against the City under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) or under any other statute, code, ordinance, regulation or order concerning hazardous or toxic substances, wastes or materials, whether Federal, State or local. As to such claims, the Developer expressly waives the benefits of Civil Code Section 1542, which reads as follows:

“A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which if known by him must have materially affected settlement with the debtor.”

### **ARTICLE 3. PROJECT DEVELOPMENT AND USE CONDITIONS**

Section 3.01 The Developer acknowledges that the City would not agree to convey the Site to the Developer unless the Developer agrees to construct, operate and maintain on the Site a two-story commercial building with space to be leased, occupied and used for a combination of restaurant, retail and office uses (the “Project”). The Project is further described in Exhibit B, which is attached to and incorporated in this Contract. In consideration of the City's conveyance of the

Site to the Developer and performance of the City's obligations in this Contract, the Developer shall comply with the conditions and its obligations in this Article 3.

Section 3.02 (a) Immediately on close of escrow, the Developer shall commence and diligently pursue all steps to obtain, at its expense, approval of all development entitlements, approvals and permits from the City and other governmental agencies required for construction, development, operation and use of all Project improvements, including but not limited to site plan review, building permits and associated environmental reviews.

(b) The Developer acknowledges that action by the City and other governmental agencies on the development entitlements, approvals and permits required for the Project may be legislative, quasi-judicial or otherwise discretionary in nature. The City cannot commit in advance to approve any such matter. Neither the City nor any other governmental agency will be liable, in law or equity, to the Developer or any of its employees or contractors for any failure of the City or any other governmental agency to make required findings for or to grant approval on any matter subject to discretionary approval.

Section 3.03 (a) The schedule setting out times for commencement, construction and completion of the Project ("Project Schedule") is set out in Exhibit C, attached to and incorporated in this Contract. The Developer will begin construction of the Project by the date provided in the Project Schedule and will diligently complete the Project according to the Project Schedule, subject to extension as provided in paragraph (b).

(b) The City may extend the Project Schedule in writing for a period reasonably necessary to overcome any delay, to the extent the delay is due to a cause that is beyond the Developer's control and could not, with reasonable diligence, have been foreseen and avoided by the Developer. Such causes include, for example, acts of God; unusually severe weather or flood; war, riot or act of the public enemy; labor dispute; unavoidable inability to secure labor, materials, supplies, tools or transportation; or acts or omissions of any governmental authority having jurisdiction (other than acts of the City permitted by or contemplated by this Agreement). The Developer's lack of funds or the Developer's inability to obtain financing for construction of the Project shall not be construed as unforeseen or unavoidable. As a condition precedent to any extension, the Developer shall give the City notice of any delay-causing event within 10 days after its onset, stating the cause of the delay and the extension the Developer reasonably expects is needed and asking the City to approve an extension. If the City approves an extension, it shall be noted in writing as modifying this Contract and the Performance Schedule. Obtaining an extension shall be the Developer's sole means of avoiding potential breach of the construction covenants herein when a delaying event occurs.

Section 3.04 In addition to and without limitation on Section 4.01, the Developer shall construct, use, operate and maintain the Project on the Site, including any structures or improvements installed by the Developer, in conformity with the conditions of any development entitlement or permit approved by the City for the Project, the City's Zoning Code, and all other applicable Federal, State and local laws, codes, ordinances, regulations, standards, land use plans

and development permits.

Section 3.05 (a) All costs in connection with the development, construction and installation of the Project improvements will be the responsibility of the Developer. Such costs include construction of all on-site and off-site improvements required for the Project under any development entitlement or permit approved by the City for the Project, the City's Zoning Code, and all other applicable Federal, State and local laws, codes, ordinances, regulations, standards, land use plans and development permits.

(b) Without limitation on paragraph (a), to satisfy the parking requirements for the Project, the Developer shall pay to the City in-lieu amounts sufficient to comply with such requirements under subsection 9-12-3(G) of the City's Zoning Ordinance.

Section 3.06 The provisions of this Article 3 constitute covenants which will, without regard to technical classification or designation, be binding on the Developer, its officers, directors, employees and any successor in interest to the Site, the Project or any part of either, for the benefit and in favor of the City and its successors and assigns. This Contract will be recorded against the title to the Site and, when so recorded, the covenants in this Article 3 will constitute covenants running with the land and will be enforceable as such. Such covenants shall remain in effect until such time as the City Manager of the City determines that they are no longer needed and records a document releasing the Site and the Project from the covenants.

#### **ARTICLE 4. GENERAL**

Section 4.01 In performing its obligations under this Contract, the Developer shall comply with all applicable laws, regulations and rules of all federal, state and local governmental agencies having jurisdiction including, without limitation, applicable federal and state labor standards and environmental laws and regulations. The Developer, not the City, is responsible for determining applicability of and compliance with all federal, state and local laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the Lemoore City Charter and the Lemoore Municipal Code. The City makes no representations regarding the applicability of any such laws to this Contract, the construction, development, operation, use or maintenance of the Project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. The City shall not be liable or responsible, in law or equity, to any person for the Developer's failure to comply with any such laws, regardless of whether the City knew or should have known of the need for Developer to comply, or whether the City failed to notify Developer of the need to comply.

In addition to and without limitation on its indemnity obligations under any other provision of this Contract, the Developer shall defend, indemnify and hold harmless the City and its officers, employees, agents, representatives and volunteers from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys'

fees, costs and legal expenses) arising out of or in any way connected with the Developer's compliance or failure to comply with the above covenant to comply with all laws.

Section 4.02 This section is intended to prevent land speculation and will be liberally interpreted to accomplish that end. The objective of the parties is to achieve use of the Site only for development, operation and maintenance of the Project as provided in this Contract.

(a) Except as provided in paragraph 4.02(b), until 60 percent of the space in the Project is leased or otherwise occupied and in use, the Developer shall not do the following without first obtaining the City's consent:

- (1) Sell, transfer, convey or assign the Site or the Project, or any part of either;
- (2) Sell, transfer, convey or assign any rights and obligations under this Contract.

In addition to any other conditions required by the City, the City's consent will be conditioned on the proposed transferee's written agreement to be bound by the provisions and covenants of this Contract surviving at that time.

(b) Notwithstanding paragraph 4.02 (a), the following transfers are permitted without obtaining the City's prior consent:

- (1) The conveyance or dedication of any part of the Site, or the grant of temporary or permanent easements or permits, to the City or any other governmental agency for purposes of utility easements, street rights-of-way and other public infrastructure purposes in connection with the Project or to otherwise facilitate operation of the Project or the construction or installation of Project structures or improvements;
- (2) A mortgage, trust deed or other security interest in the Site, the Project or any part of either for purposes of obtaining financing necessary for operation of the Project or for the construction or installation of Project structures or improvements;

Section 4.03 (a) If either party defaults under this Contract, the other party will be released from any obligation to perform the Contract and may proceed against the defaulting party on any cause of action or for any remedy given such party in law or equity. Without limiting the generality of the foregoing or any rights or remedies which may be available to the City, in the event of default by the Developer prior to conveyance of the Site, the City will be entitled to apply the Purchase Price deposit described in paragraph 1.01 (a) to any damages, costs or losses incurred by the City as a result of such default.

(b) Either of the following will be a default under this Contract:

- (1) Any fact, representation or statement made by or on behalf of the defaulting party in this Contract or in any document referred to herein proves at any time to have been incorrect in any material respect when made; or
- (2) The defaulting party fails to comply with or satisfactorily perform any of its obligations, duties, covenants or requirements under this Contract (including any amendment) and fails to cure or remedy the failure within 30 days after written notice thereof. Failure or delay in giving notice of default will not be a waiver of the default, nor will it change the time of default.

(c) All remedies are cumulative. Pursuit of any one remedy by the non-defaulting party will not be an election of remedies or a waiver of any other remedy, and will not preclude the non-defaulting party from exercising any other remedy at the same time or different times for the same default or any other default.

Section 4.04 Without limiting the generality of Section 4.03, and in addition to any other rights or remedies that may be available to the City, the City retains and shall have the power to terminate all right, title and interest that the City granted under the grant deed to the Developer and the Developer's heirs, successors and assigns, in the manner the law provides for exercising the power of termination, to reenter and take possession of the Site, together with all improvements thereon, and to take all steps necessary to revest in the City the interest and title conveyed to the Developer, free and clear of all liens, claims and encumbrances except any interests of record of the Developer's lender(s) if, after conveyance of the Site, the Developer, in violation of this Contract:

(a) Fails to start construction of the Project, or abandons or substantially suspends construction, use or operation of the Project, on the Site for longer than 30 days after the City gives the Developer notice of the failure, abandonment or suspension; or

(c) Assigns or transfers, or attempts to assign or transfer, or permits involuntary transfer, of this Contract or any rights herein, or the Site, the Project or other improvements to be constructed on the Site, without the City's prior written consent in violation of Section 4.02.

The Developer shall cooperate with the City in such reentry, possession, termination and revesting and, to that end, appoints the City Manager as the Developer's attorney-in-fact to execute and file for record any and all instruments and documents on the Developer's behalf necessary to accomplish such termination, reentry, possession and revesting.

The grant deed and any subsequent deed for an approved transfer or conveyance of the Site shall include appropriate reference to, and provisions which will give effect to, the City's power to terminate and right to reenter, repossess and revest as described in this Section 4.04.

The Developer acknowledges that the City's rights and remedies in this Section 4.04 are to be interpreted in light of the fact that the City will convey the Site to the Developer for development,

construction, use and operation of the Project in accordance with this Contract, not for speculation in land or for any other purpose, and that the City has entered into this Contract in reliance thereon.

Section 4.05 All risk of loss or damage to the Site and all buildings, structures and improvements and fixtures thereon after possession of the Site is transferred to the Developer shall be borne by the Developer. In that connection, at all times during construction, use, operation and maintenance of the Project, the Developer shall, at its own expense, maintain in full force and effect, insurance of the Site and all buildings, structures, improvements and fixtures thereon at not less than full replacement value against fire, theft, damage or destruction. The insurance requirements in this Section 4.05 will not limit any insurance required by any lender in connection with the Site or the Project.

Section 4.06 (a) The Developer shall indemnify, defend and hold harmless the City and its boards, commissions, councils, officers, officials, employees and agents (collectively, for all purposes of this Contract, the "Indemnitees") from any and all loss, liability, costs and damages (whether in contract, statute, tort or strict liability, including without limitation death at any time, personal injury or property damage), and from any and all suits and claims in law or equity (including attorneys' fees, court costs and legal expenses), arising directly or indirectly out of or in any way connected with (i) any act, error or omission of the Developer or any of its officers, directors, employees, contractors, lessees, invitees, agents or representatives in connection with this Contract, the Project or the Site; (ii) any use of the Site, the Project or any portion of either by the Developer or any of its officers, directors, employees, contractors, invitees, agents or representatives, including without limitation any lessee of any portion of the Site or the Project; or (iii) the design, construction, operation or maintenance of the Project or any other portion thereof, or any related improvements.

(b) Paragraph 4.06 (a) shall not apply to, and the Developer shall not be responsible for, any loss, liability, costs, damages, suits or claims caused solely by the active negligence or willful misconduct of the City or any of its officials, officers or employees acting within the scope of their authority.

Section 4.07 (a) The full financial responsibility for curing, removing and eliminating any hazardous materials present, brought onto, used, generated, stored, disposed of or discharged on the Site at any time, by any person, in violation of federal, State or local law shall rest with and be the obligation of the Developer. The Developer hereby releases each of the Indemnitees from any such responsibility or obligation. In addition to and without limitation on Section 4.06, the Developer shall indemnify, hold harmless and defend each of the Indemnitees from any and all loss, liabilities, costs, fines, penalties and damages that may be charged or claimed against any of the Indemnitees and from any and all suits and claims in law or equity (including attorneys' fees, court costs and legal expenses), arising from or in any way connected with the presence, use, generation, storage, disposal or discharge of hazardous materials on the Site or any portion of the Site, at any time, by any person (other than one or more of the Indemnitees), in violation of federal, State or local law.

(b) For all purposes of this Contract, including this Section 4.07 and Section 2.08, "hazardous materials" shall include but not be limited to substances defined as "hazardous

substances,” “hazardous materials,” or “toxic substances” in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC Sections 9601-9675); the Hazardous Materials Transportation Act, as amended (49 USC Sections 5101 *et seq.*); the Resource Conservation and Recovery Act of 1976, as amended (42 USC Sections 6901-6992k); and any substance defined as “hazardous waste” in California Health & Safety Code Section 25117 or as “hazardous substance” in California Health & Safety Code Section 25316; and in the regulations adopted and publications issued under any of these laws.

Section 4.08 Subject to Section 4.02, this Contract will be in full force and effect and will inure to the benefit of and be binding on the parties and their respective officers, directors, administrators, successors, transferees and assigns, including any lessee of the Developer, from the Effective Date, unless and until terminated pursuant to this Contract or by operation of law.

Section 4.09 All notices or other communications required or permitted by this Contract or by law to be served on or given to either party or the Escrow Agent must be in writing and will be deemed duly served and given when personally delivered to the party or, instead of personal service, 72 hours after deposit in the United States mail, first-class postage prepaid, addressed as follows:

If to the Developer:

Coker Ellsworth, Inc.  
Attn: Coker Ellsworth  
129 Bridge Street, Suite B  
P. O. Box 1238  
Arroyo Grande, CA 93420

If to the City:

City Manager  
City of Lemoore  
119 Fox Street  
Lemoore, California 93245.

Either party may change its address for the purposes of this section by giving the other party notice of the change and the new address.

Section 4.10 Any objections provided for in this Contract will have no effect unless they are in writing, served on the other party as provided in Section 4.09 and delivered to the Escrow Agent, personally or by United States mail, first-class postage prepaid.

Section 4.11 If either party waives the other party’s default or failure to perform under this Contract, the waiver will not constitute a continuing waiver or a waiver of any subsequent default or failure under the same or a different provision. No provision of this Contract may be waived except in a writing signed by the waiving party.

Section 4.12 If any litigation is commenced between the parties concerning the Site, the Project, this Contract or the rights and duties of the parties in relation to the Site, the Project or this Contract, the prevailing party in the litigation shall be entitled, in addition to such other relief as may be granted, to recover from the other party its reasonable attorneys' fees and costs incurred in the litigation. The amount of the attorneys' fees and costs will be determined by the court in the litigation or in a separate action brought for that purpose.

Section 4.13 Each party will cooperate with the other party, sign and deliver additional instruments and take any further steps reasonably required to carry out the intent and purposes of this Contract.

Section 4.14 This Contract shall be interpreted and enforced, and the rights and duties of the parties under this Agreement (both procedural and substantive) shall be determined, according to California law.

Section 4.15 If any part of the Contract is held to be invalid, void or unenforceable in any legal, equitable or arbitration proceeding, the remainder of the Contract will continue in effect, unless not giving effect to the invalid or unenforceable part would prevent carrying out the public benefits and purposes of the Project and this Contract.

Section 4.16 This Contract will bind and benefit the successors in interest, personal representatives, transferees and assigns of each party, subject to the limitations on transfer and assignment contained in this Contract. Any reference in this Contract to a party is deemed to apply to

any successor, representative, transferee or assign of the party who has acquired an interest in compliance with the terms of this Contract or under law.

Section 4.17 Nothing in this Contract, the grant deed or any other document executed in connection with this Contract will be construed as creating a partnership, joint venture, agency, employment relationship or similar relationship between the City and the Developer. This Contract does not establish a principal and agent relationship between the parties.

Section 4.18 The Project is an independent undertaking of the Developer. After the City conveys title and possession of the Site to the Developer, the Developer will have exclusive control over and responsibility for the Site, subject to the terms of this Contract and all applicable laws, ordinances, codes, regulations, standards and policies.

Section 4.19 This Contract may be amended or modified only by the written mutual consent of the parties and approval by the Lemoore City Council.

Section 4.20 This Contract and the grant deed constitute the entire agreement between the Developer and the City concerning conveyance and use of the Site and their rights and duties in

connection with the conveyance and development. Any agreements, understandings or representations between the Developer and the City regarding those matters are null and void unless expressly set forth in this Contract or in the grant deed.

\* \* \* \* \*

The City and the Developer each represent that this Contract has been executed by their respective duly authorized representatives as of the Effective Date.

**CITY**

**THE DEVELOPER**

CITY OF LEMOORE

COKER ELLSWORTH, INC.  
A California Corporation

By \_\_\_\_\_  
Jeff Britz, City Manager

By \_\_\_\_\_  
Coker Ellsworth  
President

ATTEST:

By \_\_\_\_\_  
Nanci C. O. Lima, City Clerk

**EXHIBIT A**  
**SITE DESCRIPTION**

Lots 26 and 27 in Block 48 of the City of Lemoore, County of Kings, State of California, according to the Official Map thereof on file in the Office of the County Recorder of the said County of Kings, State of California.

APN No. 020-053-003

**EXHIBIT B**  
**PROJECT DESCRIPTION**

The project shall consist of a two-story building with a combination of restaurant or retail on the first floor facing "E" Street with offices or retail behind and a second floor consisting of offices or housing.

The project shall include all on-site and off-site improvements required by the City's Zoning Ordinance, other applicable laws, codes and regulations, and all development entitlements, approvals and permits issued by the City and other agencies.

The completed project shall be assessed by the County of Kings at not less than \$300,000 and generate a minimum of \$200,000 in gross sales per year. (If restaurant is constructed, no minimum sales are required.)

The project must adhere to Downtown Architectural Guidelines including the zero lot line requirement.

**EXHIBIT C**  
**PROJECT SCHEDULE**

Escrow shall open no later than five days after execution and approval of this Contract. Escrow shall close 30 days after open of escrow. The project shall be complete no later than 18 months after opening of escrow.