



Department Head:	_____
Clerk/Treasurer:	_____
City Administrator:	_____
Mayor:	_____

## COUNCIL REPORT

**Business Item**

**Consent Agenda**

Needs Legal Review:

Yes, completed

Meeting Date:

October 18, 2023

Agenda Item:

Approval of Option to Purchase Agreement - Affordable Housing 4 Oak Lots - Cascade Columbia Housing Corporation

Presented By:

Shawn MacPherson, City Attorney

### Action Required:

Approve the terms of the Option to Purchase Real Property with Columbia Cascade Housing Corporation (CCHC) and authorize the Mayor to sign on behalf of the City.

### Motion for Business Item / Proposed Motion for Consent Agenda:

I move to approve and authorize the Mayor to sign the Option to Purchase Real Property with Columbia Cascade Housing Authority.

### Background of Issue:

The city authorized the acquisition of Lots 22-31 of the 4 Oaks subdivision as approved by the preliminary plat for the purpose of providing low-income housing. The non-profit housing authority who will preserve or develop the property as low-income housing is applying for certain grant funding which requires an executed Option to Purchase. The terms have been negotiated as to the attached.

### Explanation of Issue:

The city is moving forward with the development of the property as low-income housing for the designated lots. Partnership with a housing authority for this purposed was designated as a condition of the Purchase and Sale Agreement and is authorized by state law, RCW 39.33.015.

### Council Options:

City Council has the following options available at this time:

1. Accept the Staff Recommendation.
2. Revise the Staff Recommendation.
3. Other action as desired by council.

### Fiscal Analysis:

There are no financial implications at this time. An agreement is necessary to move forward with the Connecting Housing to Infrastructure (CHIP) grant application.

### Recommendation of Staff/Committee:

Approval of the Option to Purchase as presented.

### Follow Up Action:

CCHC will review the agreement at their October 23 meeting.

**OPTION TO PURCHASE  
REAL PROPERTY**

**THIS OPTION TO PURCHASE REAL PROPERTY** (hereinafter "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between **Columbia Cascade Housing Corporation, an Oregon nonprofit public benefit corporation** (hereinafter "Optionee") and **City of White Salmon, a Washington municipal corporation** (hereinafter "Optionor"). Optionee and Optionor are collectively referred to herein as the "Parties".

**I. RECITALS**

**WHEREAS**, Optionee desires to complete an affordable homeownership project with ten lots (the "Project") located on Main Street in the city of White Salmon consisting of proposed Lots 22-31 as depicted on the Preliminary Plat Map attached hereto and incorporated herein as Exhibit A, consisting of approximately 0.665 of the 4.33 acres being known as Lot 2 of SP 2009-10 recorded under auditor file number 1093016 in Klickitat County, Washington, subject to Final Plat and Site Plan Approval as set forth in Title 17, Residential Planned Unit Development (R-PUD) of the White Salmon Municipal Code (WSMC), and all rights, development approvals, permits and/or reimbursables relating thereto (the "Property"); and

**WHEREAS**, Optionor has entered into that certain Agreement for Purchase and Sale of Real Estate with Main Street White Salmon, LLC, a Washington limited liability company last executed on April 13, 2022 to acquire the Property for the Project; and

**WHEREAS**, in order to apply for public financing sources in 2023, Optionee requires an option to purchase the Property, defined below, in the event it is awarded or receives funding for the Project; and

**WHEREAS**, The Optionee may utilize federal funds with respect to the acquisition, rehabilitation and/or development of the Property, and therefore the Parties disclose and acknowledge as follows:

- a. Optionee has applied or may apply for financing for the acquisition and development of the Project, which may include one or more funding sources that require environmental clearance under the National Environmental Policy Act of 1979 with respect to the Property (the "**NEPA Clearance**");
- b. This Agreement is entered into voluntarily, and the Parties acknowledge and confirm that the Optionee does not have the power to acquire the Property through the exercise of condemnation or eminent domain powers.

**NOW, THEREFORE**, in consideration of: (i) the Option Payment, defined below, the receipt of which is acknowledged, and (ii) the mutual covenants and conditions contained herein, which the Parties recognize as good, valuable, and sufficient consideration, the Parties agree as follows:

**II. TERMS AND CONDITIONS**

1. **Recitals.** The Recitals set forth in Article I, above, are specifically incorporated herein and are an integral component of this Agreement.

2. **Option.** In furtherance of the development of the Property for the Project, the Optionor hereby grants to Optionee the option to acquire the Property for One Dollar (\$1) (the “Option”). Said Option shall be subject to the terms and conditions of this Agreement.

3. **Closing Costs.** In consideration of the nominal purchase price for the Property under the Option, the Optionee shall pay any closing costs, title insurance, and similar charges and fees associated with or arising from the sale of the Property from Optionor to Optionee.

4. **Option Payment.** In consideration of this Option, Optionee shall pay One Hundred and No/100 Dollars (\$100.00) as a fee (“Option Fee”) upon full execution of this Option.

5. **No Other Rights Granted.** This Option is granted exclusively to Optionee by Optionor so that Optionee may apply for public financing sources in 2023 and beyond.

6. **Term of Option.** The term of this Agreement shall commence upon mutual execution by the Parties and shall continue until December 31, 2025, at which time it shall be terminated without further action of the Parties, unless the Parties agree to a written extension (the “Term”). In the event public funding options sought by the Optionee have not been awarded or decided prior to the expiration of this Option, then the Optionee may request an extension, and thereafter, the Parties shall confer regarding a potential extension of this Option, provided that neither Party shall be obligated to agree to an extension.

7. **Exercise of Option.** If Optionee elects to exercise its Option, it shall notify Optionor in writing at the address designated below. If the Option is exercised by the Optionee, then the Parties shall enter into a Purchase and Sale Agreement (the “PSA”) with standard commercial terms acceptable to both Parties, and the closing shall occur within ninety (90) days (or some other mutually agreed upon date by both Parties) from the date Optionee exercises the Option.

At closing the Optionor shall transfer title to the Property to Optionee pursuant to a statutory warranty deed subject to all currently existing encumbrances of record, including, but not limited to, all legal highways, applicable zoning ordinances, rights reserved in federal patents or state deeds, easements of record, and real estate taxes and assessments prorated in accordance with local custom.

As a condition of the grant of the Option and the exercise of the Option by Optionee, Optionee hereby agrees that any development of the Property shall be subject to the Restrictive Covenants set forth as Exhibit B hereto, to be in compliance with state law including RCW 39.33.015 and such terms of any low income housing covenant agreement to be finalized.

8. **Notices.** All notices, demands, requests, consents, and approvals which may, or are required to be given by any Party to any other Party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Optionor at: City of White Salmon  
PO Box 2139  
White Salmon, WA 98672

Optionee at: Columbia Cascade Housing Corporation  
500 East 2nd Street  
The Dalles, OR 97058

Attention: Executive Director

or to such other address as either Party hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission shall be the same as delivery of an original document. At the request of either Party, the Parties will confirm electronically transmitted signatures by signing an original document. If the last day of a period falls on a day on which the recording office of the county in which the Property is located is closed, the expiration of the period shall be extended to the first day thereafter in which such recording office is open.

9. **Assignment.** Optionee may assign this Agreement to an entity controlled by Optionee without Optionor's prior consent, provided that any Assignee shall execute an agreement that it is subject to the terms of this Option and consents to the Optionor's enforcement of said terms against such assignee.

10. **Counterparts.** This Agreement may be executed in any number of original counterparts, with the same effect as if both Parties had signed the same document, and will become effective when one or more counterparts have been signed by the Parties. All counterparts will be construed together and evidence only one agreement.

11. **Legal Relationship.** The Parties to this Agreement execute the same solely as an optionor and an optionee. No partnership, joint venture, or joint undertaking shall be construed.

12. **Corporate Authority.** The person signing below on behalf of Optionee hereby represents and warrants that Optionee is a valid, existing nonprofit corporation, that Optionee has approved this Agreement and the actions contemplated herein, and that the person signing below has full authority to act on behalf of the nonprofit corporation.

13. **Applicable Law/Venue.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought to interpret or enforce any provision of this Agreement shall lie exclusively in Klickitat County, Washington. The Parties hereto waive any right to trial in the federal courts and waive any right to a jury trial.

14. **Construction.** Both Parties participated in the drafting of this Agreement. No provision shall be construed against either Party on the grounds that such Party drafted the same.

15. **Litigation.** If this Agreement becomes the subject of litigation between the Parties, the substantially prevailing Party shall be entitled to an award of all of its attorneys' fees and costs.

16. **Waiver.** No waiver of any rights of either Party under this Agreement shall be effective unless specifically evidenced in a written agreement executed by the waiving Party. Any forbearance shall not be considered a waiver of such Party's rights to pursue any remedy hereunder for any other existing subsequent defaults of the same or a different nature or for breach of any other terms, covenants, or conditions thereof.

17. **Successors.** The rights and obligations of the Parties under this Agreement shall inure to the benefit of and be binding upon their respective successors in interest and/or assigns.

18. **Entire Agreement.** The entire agreement between the Parties hereto is contained in

this Agreement and in the exhibits attached hereto. This Agreement supersedes all of the Parties' previous understandings and agreements, written and oral, with respect to this transaction. Neither Optionor nor Optionee shall be liable to the other for any representations made by any person concerning the Property or regarding the terms of this Agreement except to the extent that the same are expressed herein. This Agreement may be amended only by written instrument executed by Optionor and Optionee subsequent to the date hereof.

19. **NEPA Clearance.** If requested by Optionee, the Optionor agrees to work with Optionee in good faith to obtain the NEPA Clearance. In the event Optionee receives notice from the applicable jurisdiction that Optionee will not receive a NEPA Clearance (a “**Rejection Notice**”), this Agreement will automatically terminate and be of no further force and effect and the Parties will have no further liability or responsibility to each other. Optionee will notify Optionor within ten (10) business days of its receipt of a Rejection Notice or NEPA Clearance.

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, the Parties have signed and sealed this Option Agreement the day and year first above written.

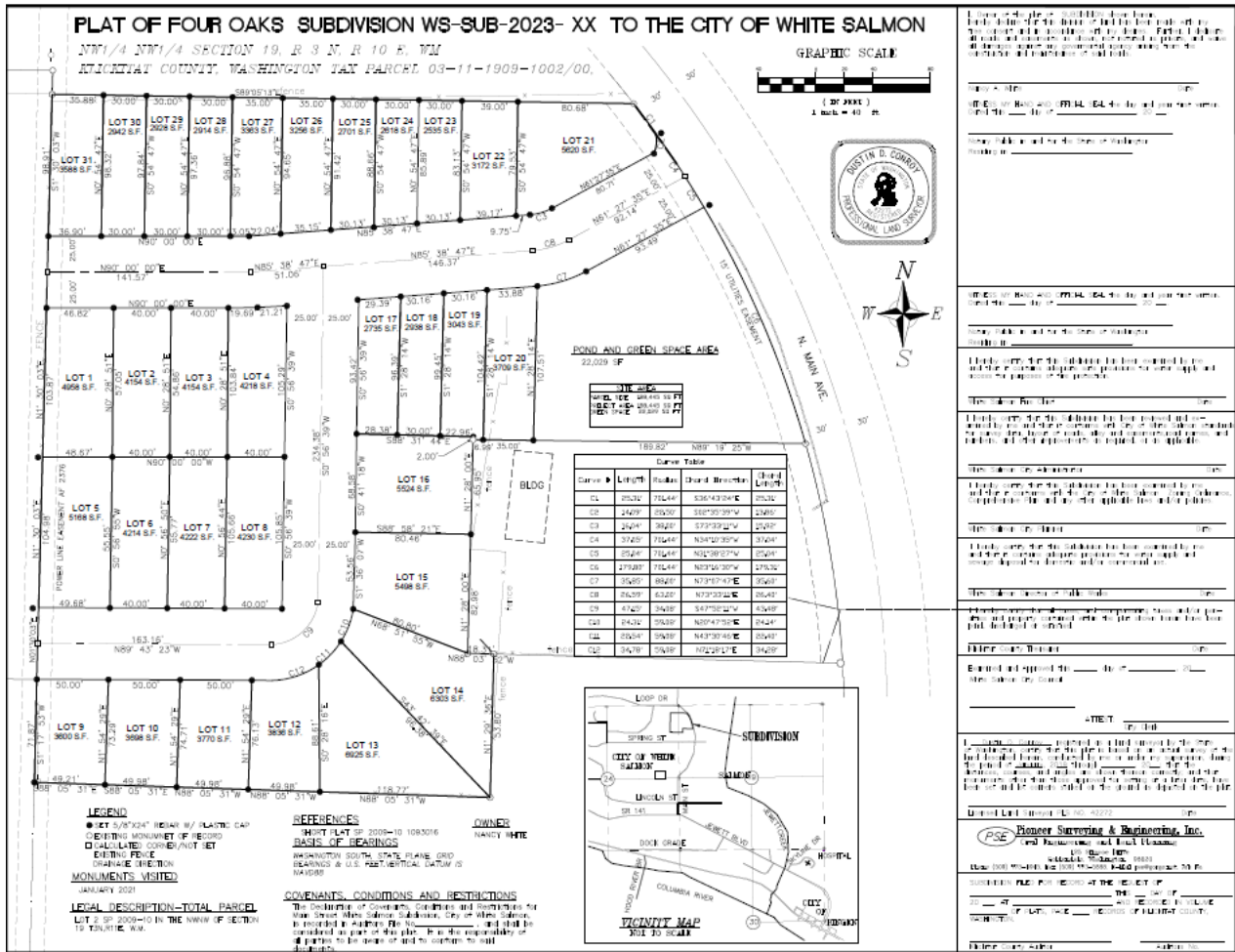
**OPTIONOR:**  
**City of White Salmon**

**OPTIONEE:**  
**Columbia Cascade Housing Corporation**

\_\_\_\_\_  
**Marla Keethler, Mayor**

\_\_\_\_\_  
**Joel Madsen, Executive Director**

# EXHIBIT A- PLAT MAP



I, the undersigned, being a duly licensed Professional Land Surveyor in the State of Washington, do hereby certify that I am the author of the foregoing plat and that it is a true and correct representation of the same as the same were surveyed and measured by me or under my direct supervision and in accordance with the provisions of the laws of the State of Washington.

**DATE OF RECORDING** \_\_\_\_\_  
**OFFICE OF RECORDS** \_\_\_\_\_  
**COUNTY** \_\_\_\_\_

**PROFESSIONAL LAND SURVEYOR**

**STATE OF WASHINGTON**

**PLAT OF FOUR OAKS SUBDIVISION WS-SUB-2023- XX TO THE CITY OF WHITE SALMON**

**TRACY WHITE**

**OWNER**

**DATE OF RECORDING** \_\_\_\_\_  
**OFFICE OF RECORDS** \_\_\_\_\_  
**COUNTY** \_\_\_\_\_

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**STATE OF WASHINGTON**

## EXHIBIT B- RESTRICTIVE COVENANTS

### Restrictive Covenants-Use and Dwelling Standards

#### 1. Land Use and Building Type

- a. No lot shall be used except for primary long-term residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than single or two-family dwellings (duplexes and townhomes) not to exceed height limitations hereinafter specified, accessory structures permitted outright or by conditional use within base zoning or otherwise approved as part of the R-PUD process, and private garages for no more than two cars.
- b. The provisions of this section shall not be deemed to prohibit the right of any home builder to construct residence on any lot, to store construction materials and equipment on said lots in the normal course of construction and to use a single family residence as a sales office for purposes of sales in this subdivision.

#### 2. Height Restrictions

All dwellings and structures constructed on any lot shall be no more than two- story construction and conform to the height limitation of the applicable zoning requirements.

#### 3. Dwelling Size

All multi-level dwellings shall have minimum total square footage that aligns with existing city code at time of construction.