

**City of White Salmon, Washington**

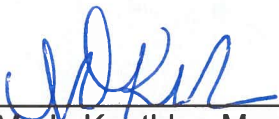
**RESOLUTION NO. 2023-05-565**

**A RESOLUTION of the City of White Salmon authorizing the acquisition of real property from Main Street White Salmon, LLC.**

WHEREAS, at the regular meeting of the City Council held on May 17, 2023, after due deliberations, the Council decided that it would be in the City's best interest to acquire the real property pursuant to the terms of the Agreement for Purchase of Real Estate as set forth in Exhibit "A"; and

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council to ratify acquisition of the real property as described. The Council hereby directs the Mayor and Mayor Pro Temp to take all necessary steps to complete the acquisition, and further hereby authorizes the Mayor and Mayor Pro Temp to execute all documents which may be required on behalf of the City.

ADOPTED at a regular open public meeting this 17th day of May, 2023.



Marla Keethler, Mayor

ATTEST:



Stephanie Porter, Clerk/Treasurer

APPROVED AS TO FORM:

Shawn MacPherson, City Attorney

## AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE ("Agreement") is made and entered into as of \_\_\_\_\_, 2022 (the "Effective Date"), by and between Main Street White Salmon, LLC, a Washington limited liability company ("Seller") and CITY OF WHITE SALMON, a Washington municipal corporation ("Buyer")

In consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Purchase and Sale. Seller agrees to sell the Property defined below to Buyer, and Buyer agrees to purchase the Property from Seller, on an "AS IS" basis, upon the terms and conditions set forth in this Agreement, the real property identified as follows:

The Property shall consist 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").

2. Purchase Price. Buyer agrees to purchase lots 22 through 31, as illustrated on Exhibit (A), at the sale price of Thirty-Eight Thousand and 00/100 dollars (\$38,000.00) per lot for a total cash sum of Three Hundred Eighty Thousand and 00/100 dollars (\$380,000.00). In addition, the Buyer agrees to contribute to Seller at closing the sum of Eighty-four Thousand and 00/100 dollars (\$84,000.00) toward the construction cost of the sewer line for a total cash contribution of Four Hundred Sixty-Four Thousand and 00/100 dollars (\$464,000.00). The Buyer also agrees to provide the Seller at no additional cost twenty-one (21) residential water connections at a value of One Hundred Eleven Thousand Twenty-Seven and 00/100 dollars (\$111,027.00) for a total value sale price of Five Hundred Seventy-Five Thousand Twenty-Seven and 00/100 dollars (\$575,027.00) in cash and connection credits to be paid to Seller. Buyer shall waive all City fees and costs in processing the R-PUD application including Buyer's legal, engineering and planning costs.

3. Payment of Purchase Price.

(a) Earnest Money Deposit. Within five (5) business days after the execution of this Purchase and Sale Agreement by both Buyer and Seller, Buyer will deposit with Escrow Agent the sum of Five Thousand Eight-Hundred and 00/100's Dollars (\$5,800) as an initial earnest money deposit (the "Earnest Money Deposit"). The Earnest Money Deposit will be fully refundable to Buyer in the event Buyer terminates within the Due Diligence Period (defined below) or any extension thereof, but if Buyer has not terminated, it shall become non-refundable

to Buyer (except if Seller defaults) upon expiration of the Due Diligence Period and Buyer shall instruct the Escrow Agent to release the Earnest Money Deposit to Seller within three (3) business days after expiration of the Due Diligence Period. The Earnest Money Deposit shall be fully applicable to the Purchase Price due to Seller at Closing.

(b) The final Purchase Price shall be paid in cash at Close of Escrow on the Property. The cash portion of the Purchase Price payable at the Close of Escrow, less applicable deposits and customary prorations, will be payable by certified check or wire transfer of funds through AmeriTitle Title Insurance Company, White Salmon, Washington (the "Escrow Agent"), at the Closing (as defined below). Seller will be required to deliver and convey the Property by statutory warranty deed free and clear of all existing debt, liens and encumbrances, except for permitted encumbrances as approved by Buyer in its sole and absolute discretion during the Due Diligence Period (as set forth below).

4. Condition of Title/Survey.

(a) Condition of Title. At the Close of Escrow, fee simple title to the Property shall be conveyed to Buyer by Seller by duly executed and acknowledged statutory warranty deed, subject only to the following matters ("Approved Title Conditions"): (a) a lien for real property taxes, not then delinquent and a lien for supplemental real property taxes, if any, assessed pursuant to applicable Governmental Regulations; (b) matters of title respecting the Property approved or deemed approved by Buyer in accordance with Paragraph 6(a)(i); (c) matters affecting the condition of title to the Property created by or with the written consent of Buyer.

(b) Survey. Buyer intends to obtain, at Buyer's expense, a current boundary survey, prepared by a Washington licensed surveyor (the "Survey"). If this Agreement is terminated and Seller desires to obtain a copy of and rights to the Survey, Seller will reimburse Buyer for Buyer's out of pocket cost of the Survey, and Buyer will then deliver the Survey and all of Buyer's rights in the Survey to Seller.

5. Escrow.

(a) Opening of Escrow. Buyer and Seller shall, within three (3) business days after the date of this Agreement, cause the Opening of Escrow by delivering a fully executed copy of this Agreement to Escrow Holder. The Close of Escrow shall occur on the Closing Date. Buyer and Seller shall execute and deliver to Escrow Holder any additional or supplementary instructions as may be necessary or convenient to implement the terms of this Agreement and close the transaction contemplated hereby, provided that they are not inconsistent with the terms of this Agreement.

(b) Construction Escrow. This sale contemplates Seller will have completed the subdivision of the lots described above, and upon Buyer's completion or waiver of Due Diligence items, Buyer will deposit the full Purchase Price in escrow to be held until completion and approval of the R-PUD Final Plat and Site Plan Approval creating the lots described above. Close of Escrow shall occur within twenty (20) days after final R-PUD Plat and Site Plan

approval. In the event Seller fails to obtain such approval within 180 days following execution of this Purchase and Sale Agreement, unless extended, this sale will terminate and Buyer shall be refunded its full Construction Escrow deposit.

6. Conditions to the Close of Escrow.

(a) **Conditions Precedent to Buyer's Obligations.** The Closing will occur within twenty (20) days after the expiration of the Due Diligence Period (the "Closing" also referred to herein as the Closing Date) unless extended as provided for herein. Buyer and Seller shall each have the right to extend the Closing and the Due Diligence Period for two successive thirty (30) day periods in order to confirm Buyer's ability to purchase the Property and obtain the Entitlements. Buyer's obligation to purchase the Property will also be subject to the following: (i) Seller shall have performed all covenants and obligations, all conditions shall be satisfied, and all representations and warranties shall be true and correct as of the Closing; (ii) the status of title shall be as required in the Purchase and Sale Agreement; (iii) Buyer shall have verified, and Seller shall have confirmed, that no material or adverse developments have occurred with respect to the Property since the execution of the Purchase and Sale Agreement; and (iv) Buyer shall have obtained all necessary financing and internal approvals for the purchase of the Property. Each of the foregoing approvals or verifications will be in the Buyer's sole and absolute discretion and may be waived by Buyer in its sole and absolute discretion.

(b) Each party will bear its own legal expenses in connection with the proposed transaction. Seller will provide Buyer with an ALTA extended coverage title insurance policy issued through the Escrow Agent. Seller will pay the premium attributable to a standard coverage owner's policy and Buyer will pay the difference for the extended coverage and the cost of any survey required for the ALTA extended coverage. Escrow fees will be shared equally between Seller and Buyer. Seller will pay the State of Washington excise tax on the sale and any other transfer taxes or fees. Current real property taxes will be prorated. If the Property is subject to deferred taxes for farm use, forest use, open space land (including any open space taxes assessed by Klickitat County), wildlife overlay or other qualified use classification, Seller will pay any such deferred taxes at Closing. Other Closing expenses will be charged or apportioned according to local custom.

(c) The Close of Escrow and Buyer's obligations with respect to the transaction contemplated by this Agreement are subject to the satisfaction, not later than the Closing Date (unless otherwise provided), of the following conditions:

(i) **Title.** Buyer shall have approved any matters of title as disclosed by the following documents and instruments ("Title Documents"): (A) a preliminary title report or title commitment and updates or supplements thereto issued by the Title Company at Seller's cost and expense with respect to the Property; and (B) legible copies of all documents, whether recorded or unrecorded, referred to in the preliminary title report (or title commitment). Seller shall deliver or request the Title Company to deliver the Title Documents to Buyer within ten (10) calendar days after the Opening of Escrow. Buyer shall have until the expiration of thirty (30) days (the "Title Review Period") to give Seller notice of Buyer's approval of the Title

Documents. Buyer shall advise Seller by written notice what exceptions to title, if any, are disapproved by Buyer ("Disapproved Exceptions") on or before the expiration of the Title Review Period. All monetary encumbrances other than nondelinquent ad valorem property taxes and installments of assessments not yet payable will be deemed disapproved, except, such taxes which are to be paid and/or prorated at Closing pursuant to this Agreement. If Buyer fails to so advise Seller by written notice of its approval or disapproval of the Title Documents by the expiration of the Title Review Period, the Title Documents shall be deemed approved and Buyer shall be obligated to take title to the Property subject to such title exceptions as referred to in the preliminary title report. Seller will have thirty (30) calendar days after receipt of Buyer's written notice to give Buyer written notice that (i) Seller will remove some or all of the Disapproved Exceptions, or (ii) Seller elects not to remove some or all of the Disapproved Exceptions. If Seller fails to give Buyer said notice before the expiration of the thirty (30) day period, Seller will be deemed to have elected not to remove all of the Disapproved Exceptions. Notwithstanding any attempt by Seller to eliminate or modify Disapproved Exceptions, Seller shall have no obligations to address or cure any objection made by Buyer. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than the "Approved Title Conditions." For the purposes of this Agreement, "Approved Title Conditions" shall mean those matters of title approved or deemed approved or waived by Buyer pursuant to this Agreement.

If Seller elects not to remove any nonmonetary Disapproved Exceptions, Buyer will have ten (10) additional calendar days after receipt of Seller's written notice (or Seller's failure to give Buyer written notice) as set forth above to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives written notice that it will cause one or more nonmonetary exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Buyer will have the right to either (i) elect to terminate this Agreement by written notice to Seller, or (ii) proceed with the purchase, with an abatement of the Purchase Price equal to the actual cost of removing from title those exceptions not approved by Buyer, and to take the Property subject to those exceptions. If Buyer elects to terminate this Agreement under this section, the escrow will be terminated, the Deposit plus all accrued interest less that portion of the Deposit released to Seller and deemed non-refundable to the Buyer must be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the preliminary commitment.

(ii) Buyer will begin its due diligence review of the Property upon execution of this Purchase and Sale Agreement by both parties and will have until April 1, 2022 to conclude its due diligence investigations of the Property (the "Due Diligence Period"). During the Due Diligence Period, Buyer (including its consultants, engineers and other designees) will have a reasonable right of entry to the Property in order to conduct all tests Buyer may deem necessary to determine the suitability of the Property; provided, however, such inspections will not unreasonably disturb the use of the Property by Seller and Buyer shall be responsible for

repairing any damage caused by Buyer's inspections. Seller will cooperate fully in providing Buyer with any information reasonably necessary for Buyer's investigation and evaluation of the Property to the extent such information is reasonably available to Seller. The transaction will be contingent upon Buyer's satisfactory review (and receipt from the Seller within ten (10) business days following the execution of this Purchase and Sale Agreement, excepting therefrom item (f) below) of the following during the Due Diligence Period:

(iii) All books, records, and operating statements for the Property that reasonably relate to Buyer's due diligence inspections and review, including, without limitations, matters affecting valuation, environmental and development concerns, for the past three (3) years;

(iv) A current preliminary title commitment proposing to insure Buyer, on terms satisfactory to Buyer, for the Property together with legible copies of all documents referred to in the exceptions to the commitment. Such title commitment shall be ordered from the Escrow Agent;

(v) Any current surveys of the Property in Seller's possession or reasonably available to Seller;

(vi) All current contracts related to the Property, if any, and any proposed contracts being negotiated, if any;

(vii) All engineering reports, soils reports, plans, environmental reports and market studies for the Property in Seller's possession or reasonably available to Seller;

(viii) The results of any inspection studies for the Property that Buyer may have commissioned, including any Phase I environmental study and soils studies;

(ix) All zoning and entitlements and any system development charge credits and other development rights for the Property previously obtained by or granted to Seller; and

(x) Any other matters reasonably deemed necessary or appropriate by Buyer.

(xi) Entitlements. The purchase of the Property is subject to the condition that Buyer obtain all entitlements necessary to proceed with Buyer's contemplated development of the Property. This includes, without limitation, contracting with an affordable housing partner to construct the project for Low-Income Housing, including subjecting the Property to a Low-Income Housing Covenant Agreement substantially in the form attached as Exhibit "C". The sale of the Property is also subject to the condition that Seller obtains all entitlements necessary to proceed with Seller's contemplated development of Seller's adjacent R-PUD, and Final Plat and Site Plan Approval for the Property as contemplated herein, including, without limitation, a 20% density bonus for the designated low-income housing lots,

acceptance by the City of proposed green space, stormwater pond and related infrastructure as public improvements to be maintained by the City as reflected on the Preliminary Plat, and conditions of approval incorporating design standards acceptable to Seller, within Seller's sole discretion. The entitlements described above are referred to as the "Entitlements" in this Purchase and Sale Agreement. The parties will be deemed to have obtained all Entitlements when all submittals have been made, all hearings have been conducted, all final approvals (including City Council approvals) have been given or issued and all applicable periods of appeal have expired. Buyer's ability to obtain the Entitlements is a key inducement to Buyer's willingness and desire to purchase the Property and Buyer's inability to obtain all of the Entitlements for any reason may be cause for Buyer to terminate its interest in this Purchase and Sale Agreement. However, Buyer may, in its sole discretion, waive the condition of obtaining the Entitlements or any aspect thereof. Seller's ability to obtain its Entitlements is also a key inducement to Seller's willingness and desire to sell the Property and Seller's inability to obtain its Entitlements for any reason may be cause for Seller to terminate its interest in this Purchase and Sale Agreement and in any subsequent Purchase and Sale Agreement.

(xii) Inspections and Studies. On or before the expiration of the Due Diligence Period, Buyer shall have approved the results of any and all inspections, investigations, tests and studies (including, without limitation, investigations with regard to zoning, building codes and other Governmental Regulations, economic feasibility studies, market studies, environmental risk assessment studies and testing, appraisals, soils, seismic and geological reports) with respect to the Property, and approvals (including without limitation development agreements, site plan reviews, short plats, boundary line adjustments, planning approvals, grading permits, preliminary analysis and determination of utility services available to the Property, SWAPCA approval, obtaining and acceptable mitigated determination of non-significance, concurrency approvals) subject to the limitations of Section 24(r), as Buyer may elect to make or obtain as Buyer deems necessary or desirable, in its sole discretion. The cost of any such inspections, tests, studies and approvals shall be borne by Buyer. Notwithstanding the above, it is understood and expressly agreed to by the parties that no development agreements shall be executed, short plats approved, boundary line adjustments agreed to, or permits issued prior to the Close of Escrow.

(xiii) Representations, Warranties and Covenants of Seller. Seller shall have duly performed each and every agreement to be performed by Seller hereunder, and Seller's representations, warranties and covenants set forth in this Agreement shall be true and correct in all material aspects as of the Close of Escrow.

(xiv) No Material Changes. At the Close of Escrow, there shall have been no material adverse changes in the physical condition of the Property.

(xv) Seller's Deliveries. Seller shall have delivered the items described in Paragraphs 6(a) and 7(a). Buyer shall have approved the items described in Paragraph 6(a) as of the date required for such approval(s) as herein set forth.

(xvi) Title Insurance. As of the Close of Escrow, the Title Company

shall have issued or shall have committed to issue the Owner's Title Policy (as defined in Paragraph 9 below) to Buyer.

The conditions set forth in this Paragraph 6(c) are solely for the benefit of Buyer and may be waived only by Buyer. Buyer shall at all times have the right at its sole discretion to waive any condition. Such waiver or waivers shall be in writing to Seller. The waiver by Buyer of any condition shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. All approvals given by Buyer under this Paragraph 6(c) shall be in writing and the failure of Buyer to disapprove any matter requiring its approval under this Paragraph 6(c) by the time therefor shall be deemed approval thereof by Buyer and a waiver of that condition precedent to Buyer's obligation to close the transaction. During the time period preceding the expiration of the Due Diligence Period, Buyer will be conducting a review with respect to the Property so as to satisfy itself with respect to the condition of and other matters relating to the Property. During this time period, Buyer will have the absolute right to terminate this Agreement should the information and documents provided by Seller to Buyer or Buyer's evaluation and inspection of the Property result in Buyer's determination, in Buyer's sole and absolute discretion, that the Property is not suitable for Buyer's intended objectives. Buyer agrees to provide to Seller a written summary progress report of its efforts under this Agreement every sixty (30) days during the Due Diligence Period. Should Buyer elect to terminate this Agreement during the Due Diligence Period, Buyer agrees to assign or transfer to Seller all studies and reports from third party consultants or portions of such reports as Seller so desires, as to the existing physical condition of the Property or Property (e.g., soils studies, environmental reports, structural assessments, etc.). Neither the Seller nor the Buyer shall act or fail to act for the purpose of permitting or causing any condition to fail (except to the extent the Buyer, in its own discretion, exercises its right to disapprove any such items or matters). If Buyer elects to terminate this Agreement during the time period preceding the expiration of the Due Diligence Period, the escrow will be terminated, the Deposit must immediately be returned to Buyer less that portion of the Deposit previously released to Seller and deemed non-refundable to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one half (1/2) of the cost of terminating the escrow.

(d) **Conditions Precedent to Seller's Obligations.** The Close of Escrow and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the satisfaction not later than the Closing Date (unless otherwise provided) of the following conditions:

(i) **Buyer's Deliveries.** Buyer's delivery to Escrow Holder on or before the Closing Date, for disbursement as provided herein, the Purchase Price and the documents and materials described in Paragraph 6(c); and

(ii) **Representations, Warranties and Covenants of Buyer.** Buyer shall have duly performed each and every agreement to be performed by Buyer hereunder, and Buyer's representations, warranties and covenants set forth in this Agreement shall be true and



correct in all material aspects as of the Close of Escrow.

(iii) **Covenants and Obligations.** (A) Buyer shall have performed all covenants and obligations, all conditions shall be satisfied, and all representations and warranties shall be true and correct as of the Closing; (B) Seller shall have obtained all necessary Entitlements necessary to proceed with Seller's contemplated development of Seller's adjacent R-PUD, and Final Plat and Site Plan Approval for the Property as contemplated herein; (C) Buyer shall have provided adequate assurance that the affordable housing partner overseeing its project will accept the proposed residential covenants and restrictions set forth in Exhibit "D", (D) Buyer agrees to provide planning support through the R-PUD process; and (E) Buyer agrees to address any tree issues in keeping with White Salmon Municipal code and as covered in the R-PUD tool under WSMC 17.75.040.B.5.

The conditions set forth in this Paragraph 6(d) are solely for the benefit of Seller and may be waived only by Seller. Seller shall at all times have the right to waive any condition. Such waiver or waivers shall be in writing to Buyer. The waiver by Seller of any condition shall not relieve Buyer of any liability or obligation with respect to any representation, warranty, covenant or agreement of Buyer. All approvals given by Seller under this Paragraph 6(d) shall be in writing and the failure of Seller to disapprove any matter requiring its approval under this Paragraph 6(d) by the time therefor shall be deemed approval thereof by Seller. Neither the Seller nor the Buyer shall act or fail to act for the purpose of permitting or causing any condition to fail (except to the extent the Seller, in its own discretion, exercises its right to disapprove any such items or matters).

(e) **Failure of Conditions to Close of Escrow.** In the event any of the conditions set forth in Paragraph 6(a), Paragraph 6(c) or Paragraph 6(d) are not timely satisfied or waived, for a reason other than the default of Buyer or Seller under this Agreement:

(i) This Agreement, the Escrow and the rights and obligations of Buyer and Seller shall terminate, except as otherwise provided herein; and

(ii) Escrow Holder is hereby instructed to promptly return to Seller and Buyer any funds (including the Deposit and interest thereon unless Buyer is in default hereunder, and except to the extent the Deposit has been previously released to Seller as provided herein) and documents deposited by them, respectively, into Escrow which are held by Escrow Holder on the date of said termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Paragraph 6(c)).

(f) **Cancellation Fees and Expenses.** In the event this Escrow terminates because of the non-satisfaction of any condition for a reason other than the default of Buyer or Seller under this Agreement, the cancellation charges required to be paid by and to Escrow Holder and the Title Company shall be borne one-half (1/2) by Seller and one-half (1/2) by Buyer, and all other charges shall be borne by the party incurring the same. In the event this Escrow terminates because of the default of Buyer or Seller, the defaulting party shall pay all

such cancellation charges.

**7. Deliveries to Escrow Holder.**

(a) **By Seller.** Seller hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following instruments and documents:

(i) **Deeds.** A Statutory Warranty Deed ("Deed"), duly executed and acknowledged in recordable form by Seller, conveying the Property to Buyer subject to the Approved Title Conditions.

(ii) **Non Foreign Certification.** A certification duly executed by Seller ("FIRPTA Certificate"), setting forth Seller's address and federal tax identification number and certifying that Seller is a "United States Person" and that Seller is not a "foreign person" in accordance with and/or for the purpose of the provisions of Sections 7701 and 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

(iii) **Proof of Authority.** Such proof of Seller's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller as may be reasonably required by the Title Company.

(iv) **Other Documents.** Any other documents or instruments reasonably required to consummate the transaction in accordance with this Agreement.

(b) **By Buyer.** Buyer hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following instruments and documents:

(i) **Purchase Price.** The Purchase Price and Buyer's share of closing costs and prorations.

(ii) **Proof of Authority.** Such proof of Buyer's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals(s) executing and/or delivering any instruments, documents or certificates on behalf of Buyer to act for and bind Buyer as may be reasonably required by the Title Company.

(iii) **Other Documents.** Any other documents or instruments reasonably required to consummate the transaction in accordance with this Agreement.

(c) **Form of Documents.** The documents specified in Paragraph 7(a)(i) - (iv) shall be prepared by Seller and delivered to Buyer for review and approval not later than ten (10)

days prior to the Closing Date. The exact form and content of such documents shall be subject to good faith negotiation by Buyer and Seller, provided that such documents shall contain provisions consistent with this Agreement. The failure of Seller and Buyer to agree upon the form of such documents not later than the Closing Date shall constitute the failure of a condition of closing, and the provisions of Paragraph 6(a) shall govern.

8. Delivery of Possession to Buyer Upon Close of Escrow. Seller shall deliver possession of the Property to Buyer upon the Close of Escrow.

9. Title Insurance. At the Close of Escrow, Seller shall cause the Title Company to issue to Buyer, an owner's policy of title insurance ("Owner's Title Policy") with any title endorsements reasonably requested by Buyer, showing fee title to the Property vested in Buyer subject only to the Approved Title Conditions. The Owner's Title Policy shall be issued with liability in an amount equal to the Purchase Price.

10. Costs and Expenses. Seller shall pay (a) all premiums for the ALTA Standard coverage portion of Owner's Title Policy, (b) one half (1/2) of all Escrow fees and costs, (c) all excise/transfer taxes, and (d) Seller's share of prorations. Buyer shall pay for (i) all incremental premiums to obtain the ALTA Extended coverage portion of the Owner's Title Policy and any endorsements requested by Buyer (and/or required by Buyer's lender), (ii) all costs relating to a new or updated survey should Buyer undertake one, (iii) all costs and expenses charged by Buyer's lender or otherwise incurred in connection with Buyer acquiring the Property, (iv) any document recording charges, (v) one half (1/2) of all Escrow fees and costs, and (vii) Buyer's share of prorations. Buyer and Seller shall each pay all legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in the County in which the Property is situated.

11. Prorations. The following prorations shall be made between Seller and Buyer at the Close of Escrow. Prorations shall be made as of 11:59 p.m. on the day preceding the Closing Date, based on the actual number of days in the month in which the Closing occurs and a three hundred sixty five (365) day year.

(a) Taxes. Real property taxes, special taxes, assessments, and other costs and expenses attributable to the Property shall be prorated as of the Close of Escrow.

(b) Method of Prorations. All prorations shall be made in accordance with customary practice in the County in which the Property is situated, except as expressly provided herein. Buyer and Seller agree to cause their accountants or other representatives to prepare a schedule of tentative prorations prior to the Closing Date. Such prorations, if and to the extent known and agreed upon as of the Close of Escrow, shall be paid by Buyer to Seller (if the prorations result in a net credit to the Seller) or by Seller to Buyer (if the prorations result in a net credit to the buyer) by increasing or reducing the cash to be paid by Buyer at the Close of Escrow. A copy of the schedule of prorations as agreed upon by the Buyer and Seller shall be delivered to the Escrow Holder at least three (3) business days before the Closing Date. Any

such prorations to be determined or not agreed upon as of the Close of Escrow shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash as soon as practicable following the Close of Escrow.

12. Disbursements and Other Actions by Escrow Holder. At the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner hereinbelow indicated:

(a) Funds. Disburse all funds deposited with Escrow Holder by Buyer (including the Deposit and all accrued interest thereon) as follows:

(i) Deduct all items chargeable to the account of Seller pursuant to Paragraph 10.

(ii) If, as the result of the prorations and credits pursuant to Paragraph 11, amounts are to be charged to the account of Seller, deduct the total amount of such charges.

(iii) Disburse the costs and expenses payable to Buyer and Seller pursuant to Paragraph 10 to the parties entitled thereto.

(iv) Disburse the Purchase Price to Seller.

(v) Disburse the remaining balance of the funds, if any, to Buyer.

(b) Recording. Cause the Deeds and any other documents which the parties hereto may mutually direct to be recorded in the Official Records and obtain conformed copies thereof for distribution to Buyer and Seller.

(c) Title Policy. Direct the Title Company to issue the Owner's Title Policy to Buyer .

(d) Disbursement of Documents to Buyer. Disburse to Buyer one copy of the executed but unrecorded Deeds, the FIRPTA Certificate, and any other documents (or copies thereof) deposited into Escrow by Seller pursuant hereto. The original Deeds shall be delivered to Buyer after recordation.

(e) Disbursement of Documents to Seller. Disburse to Seller one copy of any other documents (or copies thereof) deposited into Escrow by Buyer pursuant hereto.

13. Seller's Representations, Warranties and Covenants.

(a) The following constitute representations, warranties and covenants of Seller to Buyer to the best of Seller's knowledge:

(i) Seller consists of a Washington limited liability company, and the

signor has the legal power, right and authority to enter into this Agreement and all documents required hereby to be executed by Seller and to consummate the transactions contemplated hereby. All requisite action (corporate, partnership or otherwise) has been taken by Seller in connection with the entering into this Agreement, the documents required hereby to be executed by Seller, and the consummation of the transactions contemplated hereby, and the documents executed by Seller that are to be delivered to Buyer at Close of Escrow will be in compliance with all provisions of all agreements and judicial orders to which Seller is a party or to which Seller or all or any portion of the Property is subject.

(ii) The individuals executing this Agreement and the documents required hereby to be executed by Seller on behalf of Seller (and the partners of Seller) have the legal power, right, and actual authority to bind Seller to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

(iii) To the best of Seller's actual knowledge, there are no pending, threatened or contemplated actions, suits, arbitrations, claims or proceedings, at law or in equity, public administrative or regulatory, planning, or building code actions or proceedings, that might materially or detrimentally affect the Property, or the use or operation of the Property as it is now being used, or the ability of Seller to perform its obligations under this Agreement, or the value of the Property, nor has Seller received any written notice of and Seller has no actual knowledge of any material violations or investigations of violations of any applicable laws or ordinances affecting the Property that have not been corrected or resolved to the satisfaction of the agency or complaining party.

(iv) Seller is the legal fee simple titleholder of the Property and has good and marketable title to the Property, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, or other matters, except as disclosed by the Title Documents or otherwise disclosed in writing to Buyer.

(v) Seller has not entered into any contracts for the sale, exchange or other disposition of the Property or any portion thereof, nor do there exist any rights of first refusal, options or other rights of any other party to purchase all or any portion of the Property. Notwithstanding the prior sentence, Seller may enter into other purchase and sale agreements with third parties which shall constitute back up offers to this Agreement, and which are contingent upon and can only close if this Agreement has been terminated as set forth in this Agreement.

(vi) There are no leases and, to Seller's knowledge, subleases, occupancies or tenancies in effect pertaining to the Property, and to Seller's actual knowledge, there are no written or oral agreements, promises, understandings or other commitments between Seller and any tenant or other person affecting the Property or with respect to the occupancy or use of the Property.

(vii) Seller will not, without the prior written consent of Buyer, convey all or any portion of the Property, and Seller will not, without the prior written consent of Buyer, subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters.

(viii) To the best of Seller's knowledge, Seller has not received written notice of any special assessment or condemnation proceedings affecting the Property.

(ix) Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

(b) **Restatement.** Seller's representations and warranties made in this Paragraph 13, elsewhere in this Agreement, and in any Exhibit or in any document or instrument delivered pursuant hereto and prepared by or at the direction of Seller, shall be continuing and shall be true and correct in all material respects as of the Close of Escrow with the same force and effect as if remade by Seller at that time subject to the limitation set forth herein. The truth and accuracy of Seller's representations and warranties made herein in all such material respects, and the performance of all covenants of Seller contained in this Agreement, shall also constitute conditions for the benefit of Buyer to the closing of the transaction but shall not survive the Close of Escrow.

(c) **"AS IS."** Except for the representations and warranties expressly provided in Paragraph 13(a) above and/or elsewhere in this Agreement, Buyer agrees that if it approves the items reserved for its approval hereunder and completes the purchase of the Property (i) that it is purchasing the Property on an **"AS IS, WHERE IS, WITH ALL FAULTS"** basis and based on its own investigation of the Property; (ii) that neither Seller nor Seller's employees, agents, brokers, representatives, managers, property managers, asset managers, officers, principals, attorneys or contractors (collectively, **"Seller's Representatives"**) have made any warranty, representation or guarantee, expressed, implied or statutory, written or oral, including, without limitation, any implied warranty of merchantability or fitness for any use or purpose or of reasonable workmanship, concerning the Property and/or the Property or any of the products located thereon or therein except as more fully provided in Paragraph 13(a); (iii) that neither Seller nor Seller's Representatives have made any warranty, representation, or guarantee, expressed, implied or statutory, written or oral, pertaining to the Property's compliance with any laws, ordinances, rules or regulations, federal, state or local except as more fully provided in Paragraph 13(a); (iv) that neither Seller nor Seller's Representatives have made any warranty, representation or guarantee, expressed, implied or statutory, written or oral, as to any government limitation or restriction, or absence thereof, pertaining to the Property, or as to the presence or absence of any latent defect, subsurface soil condition, environmental condition, hazardous substance, toxic waste or any other matter pertaining to the physical condition (title, mapping, construction, or otherwise) of the Property except as provided in Paragraph 13(a); and (v) Buyer covenants not to sue Seller, its members, brokers, agents and attorneys with regard to any and all rights, claims, obligations, damages, actions and causes of action Buyer may have now or hereafter under any existing or future federal, state or local environmental laws, including without limitation those laws referenced in the Glossary of Terms related to Hazardous

Materials. Buyer is or as of the Close of Escrow will be familiar with the Property and the Property and its suitability for Buyer's intended use. Except for the representations and warranties expressly provided in Paragraph 13(a) above and/or elsewhere in this Agreement, and those documents and instruments delivered pursuant hereto and prepared by or at the direction of Seller, all of Seller's and Seller's Representatives' statements, whenever made, are made only as an accommodation to Buyer and are not intended to be relied or acted upon in any manner by Buyer. Buyer acknowledges that Seller does not warrant or guarantee and will not be responsible for the reliability, usefulness, completeness, accuracy or suitability of any information, report, document or records, developed, submitted or prepared by any third party for Seller or Buyer in connection with the physical condition, value, potential value, use, suitability or operation of the Real Property. Buyer hereby expressly accepts the risk that any such information, report, document or record may not be reliable, useful, complete or accurate or otherwise suitable for Buyer's purposes. If prior to Close of Escrow, Seller obtains actual knowledge of a material change in any material fact warranted or represented herein, Seller shall notify Buyer; and Buyer shall have the right to cancel the escrow and terminate this Agreement, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the cost of terminating the escrow.

14. Buyer's Representations and Warranties.

(a) The following constitute representations and warranties of Buyer to Seller:

(i) Buyer is a Washington municipal corporation duly organized and validly existing under the laws of the State of Washington, and has the legal power, right and authority to enter into this Agreement and all documents required hereby to be executed by Buyer, and to consummate the transactions contemplated hereby. All requisite action (corporate, partnership or otherwise) has been taken by Buyer in connection with the entering into this Agreement, the documents required hereby to be executed by Buyer, and the consummation of the transactions contemplated hereby, and the documents executed by Buyer that are to be delivered to Seller at close of escrow will be in compliance with all provisions of all agreements and judicial orders to which Buyer is a party.

(ii) The individuals executing this Agreement and the documents required hereby to be executed by Buyer on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms.

(b) Restatement. Buyer's representations and warranties made in this Paragraph 14 shall be continuing and shall be true and correct as of the Close of Escrow with the same force and effect as if remade by Buyer at that time. The truth and accuracy of Buyer's representations and warranties made herein shall also constitute a condition for the benefit of Seller to the closing of the transaction but shall not survive the Close of Escrow.

15. **Casualty Loss.** Following the occurrence of any event prior to the Closing Date, causing damage to or destruction of the Property or any portion of the Property, Seller shall promptly notify Buyer of such occurrence. Under any such circumstances the provisions of this Section 15 will apply. (a) If the amount of any casualty loss is not more than Fifty Thousand Dollars (\$50,000), the obligation of each party under this Agreement will continue, notwithstanding any such casualty, the rights to all insurance proceeds collectively by reason of such loss and not collected prior to closing will at closing be assigned to Buyer, and the Purchase Price will be paid without reduction by reason of such loss. Buyer and Seller will under such circumstances cooperate in settlement of such claims and any proceeds collected prior to closing will, consistent with the circumstances, be applied to any reconstruction or be offset against the portion of the Purchase Price paid at closing. (b) If the amount of any casualty loss is more than Fifty Thousand Dollars (\$50,000), Buyer and Seller will each have the right to terminate this Agreement in the manner specified by this Section 15. Such election may be exercised only by the party so electing to terminate giving written notice of termination to the other party within ten (10) days after receipt of actual notice of such casualty loss. Such notice of casualty will be effective to commence the running of this termination period only if such notice specifically provides that it is being given pursuant to this Section 15. Upon effective exercise of such termination election by either party, this Agreement will terminate as set forth in Section 6(c), and the Deposit will be returned to Buyer. If, in the event of any such casualty, neither party affirmatively exercises the right to terminate provided for by this Section 15, such right will lapse, and the provisions of Section 15(a) above will apply.

16. **Condemnation, Eminent Domain or Taking.** If, prior to the Close of Escrow, any material portion of the Property is taken or if the access thereto is reduced or restricted, by eminent domain or otherwise (or is the subject of a pending, threatened or contemplated taking which has not been consummated), Seller shall immediately notify Buyer of such fact. In such event, Buyer shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to Seller given not later than twenty (20) days after receipt of Seller's notice. If this Agreement is so terminated, the provisions of Paragraph 6(c) shall govern. If Buyer does not exercise this option to terminate this Agreement, or if there has not been a material taking by eminent domain or otherwise to give rise to such option, neither party shall have the right to terminate this Agreement, but the Seller shall assign and turn over, and the Buyer shall be entitled to receive and keep, all awards for the taking by eminent domain which accrue to Seller and the parties shall proceed to the Close of Escrow pursuant to the terms hereof, without modification of the terms of this Agreement and without any reduction in the Purchase Price. Unless or until this Agreement is terminated, Seller shall take no action with respect to any eminent domain proceeding without the prior written consent of Buyer. For purposes of this paragraph, the terms a "material portion" of the Property and a "material taking" means that the value of the portion of the Property so taken exceeds Fifty Thousand and No/100 Dollars (\$50,000.00).

17. **Indemnification.**

(a) **Indemnification of Buyer.** Seller hereby agrees to indemnify Buyer and its principals and agents against, and to hold Buyer and its principals and agents harmless from,



all claims, demands, actions, causes of action, lawsuits, losses, damages, costs, expenses and other liabilities, including, without limitation, reasonable legal fees and disbursements, incurred by Buyer relating to the Property (other than environmental conditions, including without limitation the presence, discharge, release, removal or remediation of Hazardous Materials) which (i) arise or result from acts, occurrences or matters that took place prior to the Close of Escrow, (ii) arise or result from a breach by Seller of its agreements, covenants, representations or warranties hereunder, and/or (iii) acts, occurrences or matters the existence or occurrence of which constitute a violation of one or more representations, warranties or covenants of Seller hereunder, and do not relate to obligations or liabilities expressly assumed by Buyer hereunder.

(b) **Defense of Claims Against Buyer.** With respect to any claim for which Buyer is entitled to indemnification under Paragraph 17(a), Seller will be entitled to assume the defense of any litigation, arbitration or other proceeding, provided that Buyer may at its election and expense, retain separate counsel to participate in such defense, and provided further that in the event of any difference of opinion with respect to the strategy or other aspect of the defense of such action, Buyer's counsel will, after consultation with Seller's counsel, make the final determination. At Seller's request, Buyer will cooperate with Seller in the preparation of the defense to any such claim, provided that Seller reimburses Buyer for all reasonable expenses incurred in connection with such request.

(c) **Indemnification of Seller.** Buyer hereby agrees to indemnify Seller, its principals and agents against, and to hold Seller and its principals and agents harmless from, all claims, demands, actions, causes of action, lawsuits, losses, damages, costs, expenses and other liabilities, including, without limitation, reasonable legal fees and disbursements, incurred by Seller relating to the Property (other than environmental conditions, including without limitation the presence, discharge, release, removal or remediation of Hazardous Materials) which (i) arise or result from acts, occurrences or matters that take place on or after the Close of Escrow, or (ii) arise or result from a breach by Buyer of its agreements, covenants, representations or warranties hereunder, or (iii) arise on or after the Close of Escrow with regard to any obligations or liabilities assumed by Buyer hereunder.

(d) **Defense of Claims Against Seller.** With respect to any claim for which Seller is entitled to indemnification under Paragraph 17(c), Buyer will be entitled to assume the defense of any litigation, arbitration or other proceeding, provided that Seller may at its election and expense, retain separate counsel to participate in such defense, and provided further that in the event of any difference of opinion with respect to the strategy or any other aspect of the defense of such action, Seller's counsel will, after consultation with Buyer's counsel, make the final determination. At Buyer's request, Seller will cooperate with Buyer in the preparation of the defense to any such claim, provided that Buyer reimburses Seller for all reasonable expenses incurred in connection with such request.

18. **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered either personally, by overnight delivery service, or by U.S. certified or registered mail, postage prepaid, and addressed to the parties at the respective addresses indicated below. Notices sent by overnight delivery service shall be deemed received

on the business day following the date of deposit with the delivery service. Mailed notices shall be deemed received upon the earlier of the date shown on the return receipt, or the second business day after the date of mailing.

**TO SELLER:**

Main Street White Salmon, LLC, a  
Washington limited liability company  
Attn: Nancy White, Member  
40 Rocky Road  
Trout Lake, WA , 98650-9713

**WITH A COPY TO:**

PEACHEY DAVIES & MYERS, PC  
Attn: Lisa Knight Davies, Esq.  
PO Box 417  
Hood River, OR 97031

**TO BUYER:**

City of White Salmon  
PO Box 2139  
White Salmon WA 98672

**WITH A COPY TO:**

Kenneth B. Woodrich, PC  
Attorney at Law  
3205 F Street  
Vancouver, WA 98663  
(503) 288-2480

**TO ESCROW HOLDER:**

Amerititle Inc.  
165 NE Estes  
White Salmon WA 98672  
(509) 493-1965

Notice of change of address shall be given by written notice in the manner detailed in this Paragraph 18.

19. **Broker.** Purchaser and Seller acknowledge and represent to each other that Mike Rockwell has been acting as a broker or advisor respecting the sale of the Property. Seller will indemnify, defend, and hold Purchaser harmless from any claims by any broker, advisor or any other third parties for brokerage or advisory fees or commissions of any kind arising out of actions or alleged actions or commitments made by Seller that form the basis of any such claims.

20. **Required Actions of Buyer and Seller.** Buyer and Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions hereof in order to consummate the purchase and sale herein contemplated and shall use their good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

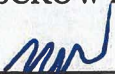
21. **Entry.** Buyer and Buyer's agents and representatives shall have the right, at reasonable times and upon reasonable notice to Seller (both prior to and after the Contingency Date) to enter upon the Property, at Buyer's own cost, for any purpose in connection with its proposed purchase, development or operation of the Property, including, without limitation, the right to make such inspections, investigations and tests as Buyer may elect to make or obtain. From and after the execution of this Agreement, Buyer shall be entitled to communicate directly with the Tenant and the Authorities in connection with Buyer's proposed purchase, development


or operation of the Property. Buyer hereby indemnifies Seller from any and all liabilities and losses (including mechanics' and professional liens) arising out of any such entry by Buyer or its agents, or representatives which indemnification shall survive termination of this Agreement.

22. Legal and Equitable Enforcement of this Agreement.

(a) **Default by Seller.** In the event the Close of Escrow and the consummation of the transactions herein contemplated do not occur by reason of any default or breach by Seller, which default or breach is not cured within ten (10) business days after written notice is given by Buyer to Seller, then Buyer, as Buyer's sole remedy, shall be entitled to either: (i) a return of its Deposit and any other sums paid to Seller under this Agreement (whether or not previously released to Seller), or (ii) seek specific performance of this Agreement.

(b) **Default by Buyer.** IN THE EVENT THE CLOSE OF ESCROW AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OR BREACH BY BUYER, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE, IN THE EVENT OF ANY DEFAULT OR BREACH BY BUYER WHICH DELAYS THE CLOSE OF ESCROW OR INTERFERES WITH THE CONSUMMATION OF THE TRANSACTION, WHICH DEFAULT OR BREACH IS NOT CURED WITHIN TEN (10) BUSINESS DAYS AFTER WRITTEN NOTICE IS GIVEN BY SELLER TO BUYER, THIS AGREEMENT SHALL TERMINATE AND BUYER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE, AS SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), AN AMOUNT EQUAL TO THE ENTIRE DEPOSIT (WHICH INCLUDES ANY ACCRUED INTEREST THEREON) TOGETHER WITH ANY OTHER SUMS PAID OR RELEASED TO SELLER UNDER THIS AGREEMENT. SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER, ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES BEING HEREIN EXPRESSLY WAIVED BY SELLER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER. UPON DEFAULT BY BUYER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER AND ESCROW HOLDER.

  
\_\_\_\_\_  
SELLER'S  
INITIALS

  
\_\_\_\_\_  
BUYER'S  
INITIALS

23. Miscellaneous.

(a) **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) **Waivers.** No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

(c) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. Buyer shall not assign or transfer any rights under this Agreement to a third party (except to a housing authority or trust) without the express written consent of Sellers which consent may not be unreasonably withheld.

(d) **Attorneys' Fees.** In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, or for a declaration of the rights of the parties under this Agreement, for injunctive relief, or any other action arising out of this Agreement, or the transaction contemplated hereby, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorneys' fees, and any other professional fees resulting therefrom.

(e) **Entire Agreement.** This Agreement (including all Exhibits and the Glossary of Terms attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties thereto.

(f) **Time of Essence.** Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and the failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of this Agreement by the party so failing to perform.

(g) **Construction.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the

masculine shall include the feminine and the neuter, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. In the event the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action shall be taken on the next succeeding Business Day.

(h) **No Third Party Beneficiary.** This contract is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary.

(i) **Disclaimer, Duty to Disclose.** As to any reports or other materials provided to Buyer and prepared by third parties (but expressly excluding rent rolls and other financial data provided to Buyer by Seller), Seller is not warranting (and will not be liable or responsible for) the accuracy, fitness or usability of such reports or materials or any recommendations or conclusions stated therein. Representations and warranties of Seller in this Agreement that are made "to the knowledge of Seller" (or using words of similar effect) are made to the best of Seller's actual knowledge, without independent investigation or examination. If Seller obtains actual knowledge prior to the Close of Escrow of a fact which would make any of the representations and warranties of Seller in this Agreement false or inaccurate in any material respect, Seller will notify Buyer of such fact. Seller will not be liable to Buyer for the inaccuracy of any such representations and warranties after the Closing Date unless Seller had actual knowledge of the same on the Closing Date that such representation or warranty by Seller was false or Seller failed to disclose to Buyer the fact known to Seller which made the representation or warranty false.

(j) **Negation of Agency, Partnership.** No provision of this Agreement or subsequent conduct of the parties shall be construed as making either party an agent, principal, partner or joint venturer with the other party, or as making either party responsible for the payment or reimbursement of any costs incurred by the other party in pursuing this transaction if this Agreement is terminated for any reason (other than as otherwise expressly set forth in this Agreement concerning responsibility for costs).

(k) **This Agreement shall not bind Seller or Buyer as an offer or an agreement unless signed by the party sought to be bound.** The transmittal of an unexecuted draft of this document for purposes of review shall not be considered an offer to enter into an agreement.

(l) **No Representation on Tax Consequences.** Buyer and Seller have not made and are not making any representations to the other concerning any of the tax effects of the transactions provided for in this Agreement. Buyer and Seller shall not be liable for or in any way responsible to the other because of any tax effect resulting from the transactions provided for in this Agreement.

(m) **Governing Law.** The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of Washington. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of Washington.

(n) **Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one (1) and the same instrument.

(o) **Confidential Information; Publicity by Buyer.** The parties recognize and acknowledge Buyer is a Washington public agency governed by the Washington Open Public Records Act, RCW Ch. 42.56 and Buyer must comply strictly with that law. To the extent permitted, Buyer shall respect and observe the confidential nature of financial, environmental and other reports and information supplied by Seller or obtained by Buyer concerning the Property and (if this transaction does not close) return or deliver such written reports (including any copies thereof) to Seller. To the extent permitted, Buyer will not disclose publicly (except as required by law) any confidential information of Seller, and the parties will reasonably cooperate prior to termination of this Agreement or Close of Escrow concerning press releases by Buyer or other public disclosure by Buyer of the pendency of this transaction.

(p) **Cooperation.** While this Agreement is in effect, Seller shall cooperate with Buyer in its efforts to secure any and all governmental decisions, approvals, and/or permits which Buyer deems necessary or appropriate for Buyer's intended Property on terms and conditions satisfactory to Buyer in its sole and absolute discretion. Such decisions and approvals may include, but are not limited to, those related to favorable development agreements, planned unit developments, zoning interpretations or use permits, binding or nonbinding site plans, short plats, boundary line adjustments, roads, streets, utilities, open spaces, dedications, easements, restrictions, and covenants. Seller's cooperation shall include, promptly at Buyer's request from time to time, or as the case may be, the signing and delivering to Buyer authorizations as may be required by jurisdictions to file all applications for such decisions and approvals. In no event shall Seller become or be required to become liable for payment of any costs or expenses in connection with the foregoing. Seller shall have no obligation to agree to or bind the Property to any development agreement, subdivision, plat or planned unit development, binding site plan, boundary line adjustment, dedication, easement, covenant, restriction, permit or any other decision, approval or item which in fact affects, binds or encumbers the Property prior to Close of Escrow nor may any grading, construction or similar activity (other than testing and sampling and surveying during the Contingency Period ) occur on or prior to the Closing Date, and all such actions shall be expressly conditioned upon Buyer's acquisition of the Property and the Close of Escrow and affected post-closing. Buyer shall have no authority to apply for a change to the comprehensive plan or zoning designation of the Property without the prior written approval of seller in each instance.

[Signatures appear on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates indicated below.

SELLER:

Main Street White Salmon, LLC, a Washington limited liability company

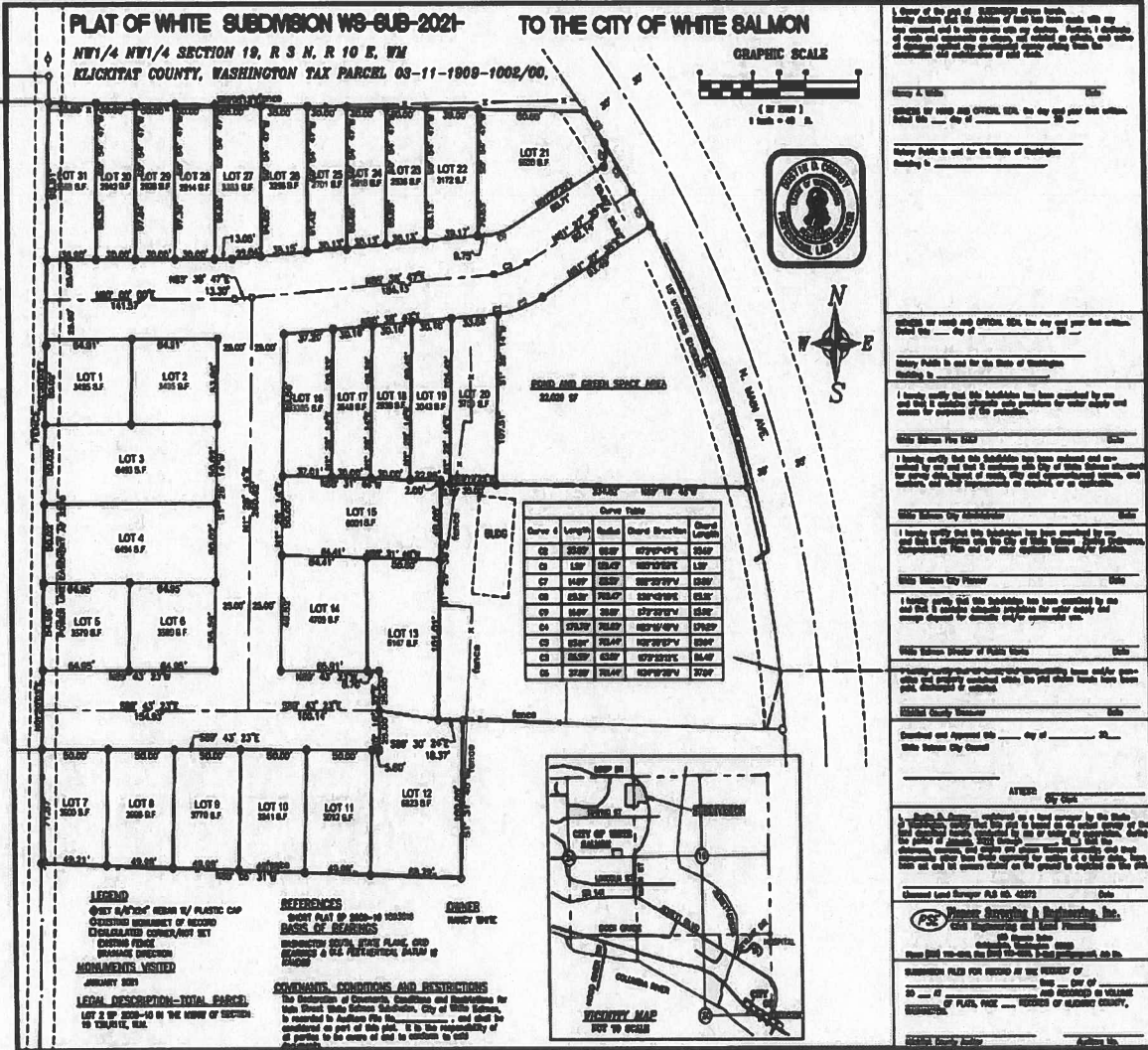
By: Nancy White  
Title: Manager  
Date: 4-13-2022

BUYER:

**CITY OF WHITE SALMON, a  
Washington Municipal Corporation**

By: MKL  
Title: Marla Keethler, its Mayor  
Date: April 6, 2022

**EXHIBIT A**  
(Property Map)





## **EXHIBIT "B"**

[Schedule]

### **Signed LOI**

No later than March 10

### **Purchase & Sale Agreement for Council Review/Approval**

Special meeting scheduled between March 10-March 23

### **Due Diligence Period**

Begins no later than March 10; concludes April 1

### **R-PUD Application Review**

Preliminary schedule:

1. R-PUD revisions adopted April 6 or 20
2. Hold Neighborhood Meeting end of April/early May and submit application
3. Take R-PUD application before Planning Commission May 11 or 25, Council June 1 or 15 for approval.

### **Heritage Tree Review (if applicable)**

This is covered in the R-PUD tool under 17.75.040.B.5. Shouldn't present any problems that can't be resolved.

### **Initial Deadline for Closing**

April 20

### **Optional 1<sup>st</sup> Extended Deadline for Closing**

May 20

### **Optional 2<sup>nd</sup> Extended Deadline for Closing**

June 20 (technically ends Sun 6/19 but extending to closest business day)

## EXHIBIT "C"

### [Draft Low Income Housing Covenant Agreement]

Grantor/Borrower: [Name of housing authority/trust]  
Beneficiary: City of White Salmon  
Legal Description: (Attachment I. Legal descriptions for each parcel)  
Address: [address] and no situs address  
Assessor's Tax ID #: [tax id]

This Affordable Housing Covenant Agreement ("Covenant") is made between [Name of housing authority/trust] ("Grantor"), a Washington [form of organization], with its mailing address at [address] and City of White Salmon ("Beneficiary"), in consideration for the donation of the above referenced parcels for Affordable Housing. The donation is intended to create and maintain affordable housing on the donated parcels for the term of this Covenant.

This Covenant will be filed and recorded in the official public land records of Klickitat County, Washington, and shall constitute a restriction upon the use of the property described herein, subject to, and in accordance with, the terms of this Covenant for a required housing affordability period of thirty (30) years.

The covenants contained herein are to be taken and construed as covenants running with the land and shall pass to, and be binding upon, the Grantor, and its transferees, purchasers, assignees, lien holders, heirs, grantees, lessees, or any other successors in interest of or to the Property, beginning April 1, 2022, and continuing from that date for thirty (30) years until April 30, 2052. Each and every contract, deed or other instrument covering or conveying the Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed, or other instruments.

NOW, THEREFORE, it is hereby covenanted that, beginning on April 1, 2022, until April 30, 2052, is as follows:

The Grantor will preserve or develop this property as long-term affordable housing to individuals with incomes at or below eighty percent (80%) or less of the area median income in Klickitat County, Washington, adjusted for family size, as estimated from time to time by the United States Department of Housing and Urban Development (HUD). If HUD ceases to provide such estimates of median income, then median income shall mean such comparable figures for Klickitat County, Washington, published or reported by a federal, state, or local agency as the County shall select. Income shall be determined prior to occupancy. Rents charged to tenants shall not exceed High HOME Rents for the unit size.

In keeping with this affordability responsibility, Grantor shall create and keep all records and make any reports relating to compliance with this Covenant Agreement that City of White Salmon may reasonably require, such as annual home-sale monitoring reports, including homeowner income, family size, unit size, and household type.

In addition, Grantor agrees that City of White Salmon, may at any reasonable time and upon reasonable notice go onsite to review the Grantor's files and/or inspect matters consistent with this Covenant, in accordance with applicable law.

The Grantor will provide safe and sanitary housing and will comply with all State and local land use, environmental, habitat, erosion control, property, housing codes, licensing requirements and other requirements regarding the condition of the structure and the operation of the project in the jurisdiction in which the housing is located.

DEFAULT: If a violation of this Covenant occurs, City of White Salmon may, after 30 days' notice to the Grantor at the address indicated in this document, institute and prosecute any proceeding at law or equity to abate, prevent, or enjoin any such violation or to compel specific performance by the Grantor of its obligations hereunder or, in the case of a willful disregard or violation of the terms of this Covenant, such other and further remedies the Court shall impose, including, without limitation, the City's right to seek reversion of the property back to the City or compensation for damages equal to the value of the donation given to Grantor; provided that, the Grantor shall not be required by any provision herein to evict a residential tenant. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time. In that event, the prevailing party shall be entitled to its attorney fees and costs at trial and on appeal.

IN WITNESS HEREOF [Name of housing authority/trust], a Washington [form of organization] has executed this Covenant on the \_\_\_\_ day of \_\_\_\_\_, 2022.

GRANTOR: [Name of housing authority/trust], a Washington [form of organization]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Print Name: \_\_\_\_\_

STATE OF Washington )

) SS.

COUNTY OF \_\_\_\_\_)

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of [Name of housing authority/trust], a Washington limited partnership, to be the free and voluntary act and deed of such limited partnership on behalf of such limited partnership for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_  
Notary Public in and for the State of Washington  
residing in the county of \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

## EXHIBIT "D"

### 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.