

RESOLUTION NO. 19-820-21

**A RESOLUTION OF CITY OF JOHN DAY APPROVING THE TRANSFER OF CERTAIN REAL PROPERTY
LOCATED IN CITY**

WHEREAS, City of John Day (“City”) has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, pursuant to ORS 271.310(1), City may sell, exchange, or convey real property no longer needed for public use and/or whenever the public interest may be furthered; and

WHEREAS, ORS 221.725 prescribes the notice and hearing requirements for a city to sell real property when the city’s city council considers it necessary or convenient to sell real property; and

WHEREAS, ORS 221.725 requires a city to publish notice of the proposed sale in a newspaper of general circulation in the city at least once during the week prior to the public hearing at which the governing body will consider the proposed sale; and

WHEREAS, City commenced a property line adjustment pursuant to which City will transfer a portion of City-owned real property, which portion of property is described on the attached Exhibit A and depicted on the attached Exhibit B (the “Property”), to Robert D. Watt and Bonnie M. Watt (collectively, “Watt”); and

WHEREAS, Watt intends to use the Property in connection with Watt’s business (JD Rents and Power Equipment, Incorporated) on that certain real property owned by Watt adjacent to City’s property; and

WHEREAS, City finds that Watt’s proposed use of the Property will encourage additional economic development in City; and

WHEREAS, in accordance with ORS 221.725, City published notice of a hearing to be held concerning the sale of the Property; and

WHEREAS, on June 25, 2019, the John Day City Council (the “Council”) held a public hearing at the time, date, and place stated in the notice; and

WHEREAS, at the hearing, the Council disclosed the nature of the proposed transfer and the general terms thereof, including, without limitation, any appraisal or other evidence of market value, and provided City residents an opportunity to present oral or written testimony; and

WHEREAS, the Council finds that the Property is no longer needed for public use and the sale of the Property furthers the public interest.

NOW, THEREFORE, the City of John Day resolves as follows:

1. Findings. The above-stated findings contained in this Resolution No 19-820-21 (this “Resolution”) are hereby adopted.

2. Transfer Approved. Pursuant to ORS 221.725, the Council approves the sale of the Property. The city manager is hereby authorized to sell, transfer, and/or convey the Property by any method the city manager determines will further the public interest, including, without limitation, through a property line adjustment and pursuant to purchase and sale agreement. City's sale of the Property is conditioned upon the transferee (Watt) entering into a purchase and sale agreement substantially in the form attached hereto as Exhibit C. Notwithstanding anything contained in this Resolution to the contrary, the purchase and agreement (a) will be in form and content satisfactory to City and contain such terms and conditions the city manager and/or city attorney determine necessary and/or appropriate, including, without limitation, that the Property will be transferred AS IS and WITH ALL FAULTS, and City will transfer and convey the Property subject to all encumbrances of record, and (b) will be subject to the review and approval of the city manager and city attorney. Upon completion, the city manager is authorized to execute and deliver the agreement for and on behalf of City.

3. Miscellaneous. All pronouns contained in this Resolution and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The provisions of this Resolution are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution may be corrected by order of the Council to cure editorial and/or clerical errors. This Resolution will be in full force and effect from and after its approval and adoption.

APPROVED AND ADOPTED by the City Council of City of John Day and signed by the mayor this 25th day of June, 2019.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

Ron Lundbom, Mayor

ATTEST:

Nick Green, City Manager

Exhibit A
Property Description

The Property is more particularly described as follows:

Land in the SE1/4, Section 22, Twp. 13 S., R. 31 E., W.M., City of John Day, Grant County, Oregon, more particularly described as follows:

All those portions of those certain tracts of land described in Deed Record Instrument No.'s 20171037 and 20190871, deed records of Grant County, Oregon lying within the limits of the following described tract of land:

Beginning at the Southwest Corner of Parcel 3 of Land Partition No. 93-1, the plat of which is on file and of record in the office of the County Clerk of Grant County, Oregon;

thence S.00°04'32"E., 51.24 feet;

thence S.72°22'00"W., 150.00 feet;

thence N.31°33'10"E., 114.64 feet;

thence N.89°18'00"W., 82.90 feet to the point of beginning;

Together with and subject to easements, rights of way and reservations as the same may exist or appear of record.

All according to Exhibit B, attached hereto and by this reference made a part hereof.

Prepared by:
Benchmark Land Surveying, Inc.
217 N. Canyon Blvd.
John Day, Oregon 97845
(541) 575-1251

June 5, 2019



Exhibit B
Property Depiction

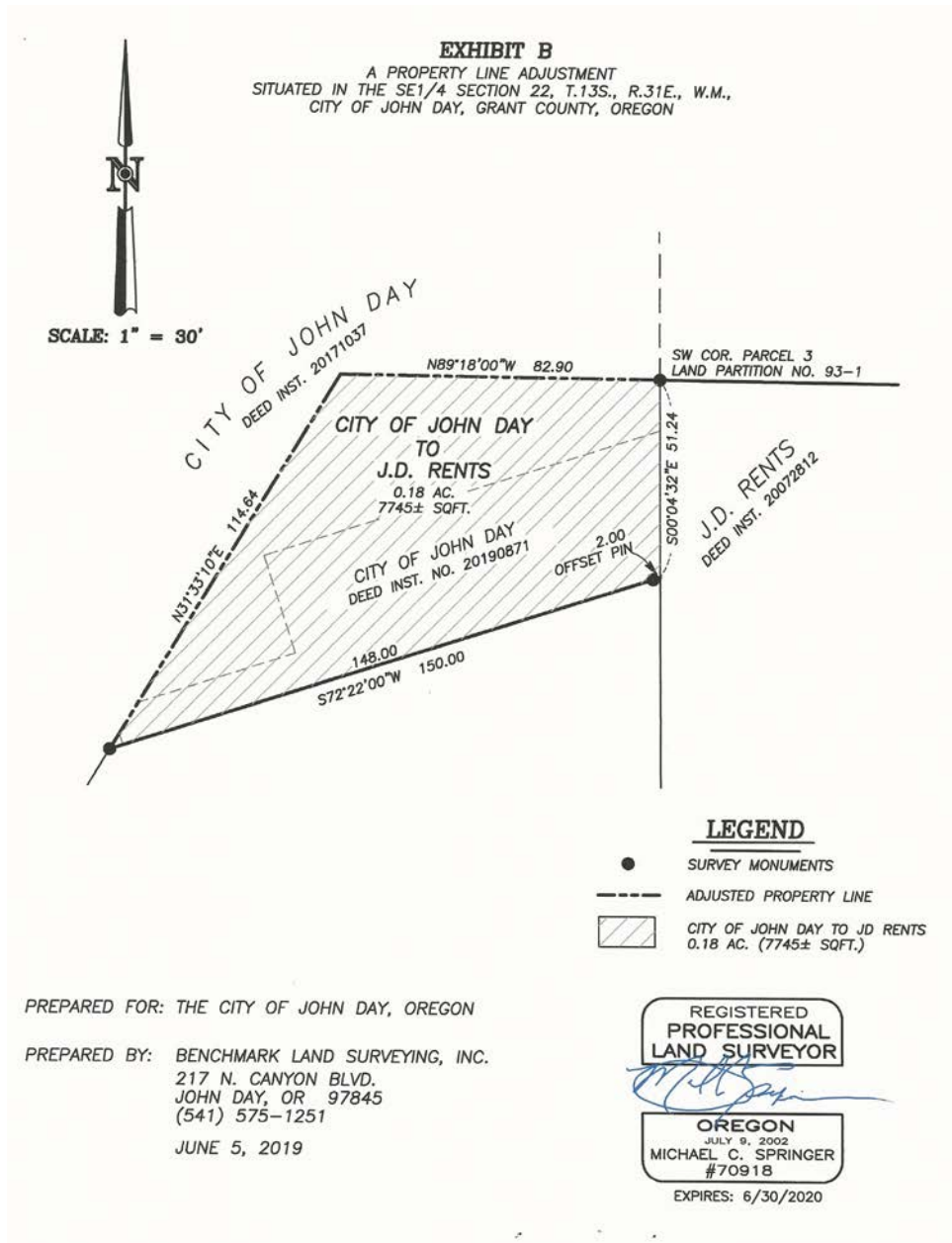


Exhibit C
Purchase and Sale Agreement

[attached]

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made and entered into effective on _____, 2019 (the "Effective Date") between City of John Day ("Seller"), an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845, and Robert B. Watt and Bonnie M. Watt (individually and collectively, "Buyer"), whose address is _____, John Day, Oregon 97845.

RECITALS:

A. Seller owns certain real property (together with all fixtures and improvements located thereon) commonly known as the Old Pine Property and consisting of approximately _____ acres (collectively, "Seller's Property"). Buyer is the owner of certain adjoining real property (together with all fixtures and improvements located thereon) commonly known as 727 W Main Street, John Day, Oregon 97845 and consisting of approximately ___ acres.

B. Through a property line adjustment, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, a portion of Seller's Property consisting of approximately 7,745 square feet along the greenhouse access road on the eastern boundary of Seller's Property, as more particularly described on the attached Exhibit A, together with all fixtures and improvements located thereon (collectively, the "Property").

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement have the meanings assigned to them in the attached Appendix A.

2. Sale of Property.

2.1 Sale; Purchase Price. Subject to the terms and conditions contained in this Agreement, Seller will sell the Property to Buyer and Buyer will purchase the Property from Seller. The purchase price for the Property is \$7,745.00 (the "Purchase Price"). Buyer will pay Seller the Purchase Price at the Closing by cash, cashier's check, or wire transfer to an account specified by Seller.

2.2 Property Line Adjustment. The sale of the Property is subject to and contingent on the successful completion of the the property line adjustment under City of John Day PL-19-___, which property line adjustment will "create" the Property (the "PLA"). Notwithstanding anything contained in this Agreement to the contrary, Buyer will pay all costs and expenses of the PLA, including, without limitation, all survey costs, application fees, filing fees, community development fees, legal fees and expenses, and recording costs (collectively, the "PLA Costs"). Notwithstanding anything contained in this Agreement to the contrary, Buyer will pay all real property and other taxes concerning or related to the Property and this Transaction; Seller is a tax-exempt municipal corporation and will not pay any real property and/or other taxes concerning or related to the Property and/or this Transaction.

3. Seller Representations; Warranties. **Except for the express representations and warranties contained in this Agreement, Seller expressly excludes all representations and warranties with respect to the Property and this Transaction, express and implied, including, without limitation, the warranty of merchantability, the warranty of fitness for a particular purpose, and any warranties that may have arisen from course of dealing or usage of trade.** Subject to the immediately preceding sentence (and as otherwise provided under this Agreement), Seller represents and warrants to Buyer as follows:

3.1 Authority; Binding Obligation; No Conflicts. Seller has full power and authority to sign and deliver this Agreement and to perform all Seller's obligations under this Agreement. The execution, delivery, and performance of this Agreement constitutes a valid and binding agreement of Seller. Seller's execution, delivery, and performance of this Agreement will not result in a breach or violation of, nor constitute a default under, any agreement, law, judgment, or order.

3.2 Brokers; Non-foreign Person. Seller has not incurred any liability or obligation, whether contingent or otherwise, for a brokerage commission, a finder's fee, or any other similar payment in connection with this Agreement and/or the Transaction. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

4. Buyer's Representations; Warranties; Covenants. In addition to any other Buyer representation, warranty, and/or covenant contained in this Agreement, Buyer represents, warrants, and covenants to Seller as follows:

4.1 Authority; Binding Obligation; No Conflicts. Buyer has full power and authority to sign and deliver this Agreement and to perform all Buyer's obligations under this Agreement. The execution, delivery, and performance of this Agreement constitutes a valid and binding agreement of Buyer. Buyer's execution, delivery, and performance of this Agreement will not result in a breach or violation of, nor constitute a default under, any agreement, law, judgment, or order, or require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4.2 Sophistication and Evaluation. Buyer has knowledge and experience in real estate and land use matters necessary to make Buyer capable of evaluating the merits and risks of this Transaction, entering into this Agreement, and purchasing and owning the Property. Buyer has had the opportunity to ask questions and receive answers concerning the Property, this Agreement, this Transaction, and all other information deemed necessary or appropriate by Buyer concerning Buyer's purchase of the Property and this Transaction. Buyer has entered into this Agreement on the basis of its own examination, personal knowledge, and opinion of the value of the Property.

Buyer's Initials _____

4.3 Buyer Due Diligence. Buyer acknowledges and agrees that it is advisable to have a complete inspection of the Property by a qualified professional(s) relating to such matters as structural conditions, soil conditions/compaction, stability, environmental issues, survey, zoning, and suitability of the Property for Buyer's intended purpose. Buyer has obtained all the information Buyer desires in connection with the Property and Transaction. In connection with Buyer's decision to enter into this Agreement, Buyer has not relied on any representations or warranties made by Seller other than those specified in this Agreement. Without otherwise limiting the generality of the foregoing, Buyer

acknowledges and agrees to the following: (a) Buyer has had an adequate opportunity to make such legal, factual, and other inquiries and investigations as Buyer deems necessary, desirable, and/or appropriate with respect to the Property, including, without limitation, the Property's physical condition, any structure on the Property (including, without limitation, the storage building located on the Property), and the presence of any Hazardous Substances on the Property; and (b) Buyer has investigated the feasibility of the Property for Buyer's intended purpose. Seller has made no promise or agreement to repair, alter, construct, and/or improve the Property, or any part thereof (including any structure on the Property). Buyer acknowledges and agrees that Seller will transfer and convey the Property to Buyer subject to all Encumbrances of record (and the deed(s) necessary to effectuate the property line adjustment, transfer, and conveyance will be in form and substance acceptable to Seller).

Buyer's Initials _____

4.4 BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS BUYING THE PROPERTY "AS IS" AND "WITH ALL FAULTS" AS OF CLOSING, WITHOUT ANY SELLER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, AND/OR STATUTORY, OF ANY KIND WHATSOEVER. SELLER HAS NO OBLIGATION TO REPAIR, IMPROVE, AND/OR CORRECT ANY PROPERTY CIRCUMSTANCES, CONDITIONS, AND/OR DEFECTS. BUYER ACKNOWLEDGES AND AGREES THAT SELLER DISCLAIMS (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, AND (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. BUYER ASSUMES RESPONSIBILITY AND RISKS OF ALL PROPERTY DEFECTS AND CONDITIONS. BUYER IS MAKING BUYER'S OWN DETERMINATION REGARDING THE PROPERTY'S VALUE AND/OR USE. BUYER AND SELLER ACKNOWLEDGE THAT THIS DISCLAIMER HAS BEEN SPECIFICALLY NEGOTIATED.

Buyer's Initials _____

4.5 No Brokers or Finders; Accuracy. Buyer has not incurred any liability or obligation, whether contingent or otherwise, for a brokerage commission, a finder's fee, or any other similar payment in connection with this Agreement and/or the Transaction. None of Buyer's representations or warranties contains any untrue statement of a material fact or omits or misstates a material fact necessary to make the statements contained herein not misleading.

5. Closing.

5.1 Closing Conditions. Notwithstanding anything contained in this Agreement to the contrary, Seller's obligation to sell the Property to Buyer and close the Transaction is conditioned on approval of the PLA and Buyer's performance of Buyer's obligations under this Agreement.

5.2 Closing. The Closing will take place at John Day City Hall, 450 East Main Street, John Day, Oregon 97845, contemporaneously with the parties' mutual execution of this Agreement. At the Closing, Buyer will deliver the following to Seller: (a) the Purchase Price by cash, cashier's check, or wire transfer to an account specified by Seller; and (b) all other instruments and/or documents that Seller determines necessary or appropriate to consummate the Transaction. At the Closing, Seller will deliver the following items to Buyer: (y) the appropriate property line adjustment deeds signed by Seller concerning the Property (in form and substance acceptable to Seller); and (z) possession of the Property.

5.3 Costs and Expenses. Buyer will pay all costs, charges, and expenses associated with this Transaction and Seller's transfer and conveyance of the Property to Buyer, including, without

limitation, PLA Costs, attorney fees and costs, closing costs, and recording fees. To the extent such costs, charges, and expenses are not paid at Closing, Buyer will pay the costs, charges, and expenses immediately upon Seller's demand.

6. Release; Indemnification.

6.1 Release; Indemnification. Buyer releases and will defend, indemnify, and hold Seller and each Seller Representative harmless for, from, and against all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) Buyer's occupancy, possession, repair, maintenance, ownership, and/or use of the Property, including, without limitation, use of the Property by any contractor, representative, tenant, and/or invitee of Buyer and/or any other person; (b) the exercise of any remedy available to Seller under this Agreement; (c) any inaccuracy of any Buyer representation, warranty, and/or covenant made in this Agreement; and/or (d) Buyer's breach and/or failure to perform any Buyer representation, warranty, covenant, and/or obligation contained in this Agreement.

6.2 Hazardous Substances. Buyer releases and will defend, indemnify, and hold Seller and each Seller Representative harmless for, from, and against any response, removal, and/or remedial costs which may be assessed against Buyer, Seller, and/or each Seller Representative by any federal or state governmental authorities and/or any other person, whether known or unknown, resulting from or arising out of, whether directly or indirectly, the following: (a) the presence of any Hazardous Substances on the Property; (b) any Hazardous Substance spilled, discharged, and/or otherwise released on or into the Property; and/or (c) Buyer and/or each Buyer Representative's activities on the Property involving the use, storage, handling, transportation, treatment, disposal, and/or release of any Hazardous Substances. The foregoing indemnity will include, without limitation, all costs and expenses incurred by Seller and/or any Seller Representative for attorneys employed to defend any such claim whether before or after initiation of a formal lawsuit or administrative proceeding.

7. Miscellaneous.

7.1 Termination; Survival; Time of Essence; Joint and Several. The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. If the Closing occurs, Buyer's representations, warranties, covenants, and indemnity obligations arising under or made in this Agreement will survive the closing of the Transaction and will not merge with or into any deed(s) granted as part of this Transaction. Time is of the essence with respect to Buyer's obligations under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, all representations, warranties, and covenants made by Buyer under this Agreement are made by Robert B. Watt and Bonnie M. Watt on a joint and several basis.

7.2 Binding Effect; Notices. Subject to Section 7.7, this Agreement will be binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns. Any notice required under this Agreement must be in writing. Any notice will be deemed given when personally delivered or delivered by email or facsimile transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, certified, return receipt requested, by the applicable party to the address of the other party first shown above (or any other address that a party may designate by

notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed given on the next following business day.

7.3 Entire Agreement; Governing Law; Severability. This Agreement sets forth the entire understanding of the parties with respect to the Transaction. This Agreement supersedes all prior negotiations, discussions, agreements, and understandings between the parties with respect to the Transaction. This Agreement may not be modified or amended except by written agreement executed by the parties to this Agreement. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

7.4 Execution; Counterparts; Time. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document. If the date for performance of an obligation or delivery of any notice hereunder falls on a day other than a business day, the date for such performance or delivery of such notice will be postponed until the next ensuing business day. For purposes of this Agreement, a "business day" means a normal working day (i.e., Monday through Friday of each calendar week, exclusive of Federal and state holidays and one day following each of Thanksgiving, Christmas, and New Year's).

7.5 Person; Interpretation; Attorney Fees. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

7.6 Statutory Warning. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS

INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

7.7 Further Assurances; Assignment; Waiver. The parties will sign other documents and take all other actions reasonably necessary to further effect and evidence this Agreement. Neither party may assign or delegate any of the party's rights or obligations under this Agreement to any person without the prior written consent of the other party, which the other party may not unreasonably withhold, delay, or condition. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision in this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and effective as of the Effective Date.

SELLER:
City of John Day,
an Oregon municipal corporation

BUYER:
Robert B. Watt and Bonnie M. Watt

By: _____
Its: _____

Robert B. Watt

Bonnie M. Watt

Appendix A
Definitions

“Agreement” has the meaning assigned to such term in the preamble.

“Buyer” has the meaning assigned to such term in the preamble.

“Buyer Representative(s)” means each present and future director, officer, shareholder, employee, agent, contractor, and/or authorized representative of Buyer.

“Closing” means the closing of the Transaction.

“Effective Date” has the meaning assigned to such term in the preamble.

“Encumbrance(s)” means any lien, mortgage, pledge, security interest, easement, license, reservation, restriction, adverse claim, and/or other encumbrance.

“Environmental Law(s)” means any federal, state, or local statute, regulation, or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.

“Hazardous Substance(s)” means any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any Environmental Law, and will include petroleum oil and its fractions.

“PLA” has the meaning assigned to such term under Section 2.2.

“PLA Costs” has the meaning assigned to such term under Section 2.2.

“Property” has the meaning set forth in Recital B.

“Purchase Price” has the meaning assigned to such term under Section 2.1.

“Seller” has the meaning assigned to such term in the preamble.

“Seller’s Property” has the meaning assigned to such term in Recital A.

“Seller Representative(s)” means each present and future officer, employee, agent, contractor, and/or authorized representative of Seller.

“Transaction” means the purchase and sale of the Property as provided under this Agreement, including, without limitation, the property line adjustment described in Section 2.2.

Exhibit A
Legal Description