

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made and entered into effective on December 11, 2019 (the "Effective Date") between Debra Lee Morrison and John Charles Brazil (individually and collectively, "Seller"), as tenants in common, whose address is _____, and City of John Day ("Buyer"), an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845.

RECITAL:

Seller owns certain real property (and all fixtures and improvements located thereon) commonly known as 330 West Main Street, John Day, Oregon 97845 and legally described on the attached Exhibit A (collectively, the "Property"). 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.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants 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 contained in this Agreement have the meanings given such terms in the attached Appendix A.

2. Sale of Property.

2.1 Purchase; Payment. Subject to the terms and conditions contained in this Agreement, at the Closing Buyer will purchase the Property from Seller and Seller will sell the Property to Buyer. The purchase price for the Property is \$60,000.00 (the "Purchase Price"). At the Closing, Buyer will pay the Purchase Price by cash, cashier's check, or wire transfer to an account specified by Seller

2.2 Proration; Escrow Fees. Subject to the terms and conditions contained in this Agreement, all utilities, rents, taxes, and other similar expenses with respect to the Property will not be prorated between Seller and Buyer as of the Closing. Seller will pay all utilities, rents, taxes, and other similar expenses on or before the Closing, including, without limitation, all real property taxes concerning the Property (including, without limitation, unpaid taxes, interest, penalties, and fees for 2019-2020). Without otherwise limiting the generality of the immediately preceding sentence, Seller will ensure that all real property taxes on the Property are paid through the Closing Date, and will obtain a certificate from the Grant County Assessor attesting to the payment of such taxes, which certificate will be recorded with the Warranty Deed conveying the Property to Buyer, as provided in ORS 311.411.

3. Seller Representations; Warranties; Covenants.

In addition to any other Seller representation, warranty, and/or covenant contained in this Agreement, Seller represents, warrants, and covenants to Buyer as follows:

3.1 Authority and Binding Obligation. 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, and any agreement contemplated herein, constitute a valid and binding agreement of Seller, enforceable in accordance with its terms. Seller's execution, delivery, and performance of this Agreement, and any agreement contemplated herein, will not result in a breach or violation of, nor constitute a default under, any

agreement, law, judgment, or order, nor require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

3.2 Title to Property; Compliance with Laws. Exhibit A contains the Property's correct legal description and tax account number. Seller has good title to the Property and will transfer and convey the Property to Buyer free and clear of all Encumbrances except for the Permitted Encumbrances. Seller and the Property are in compliance with all Laws. No event has occurred or circumstances exist that may result in Seller and/or the Property's failure to comply with any Law. Seller and/or the Property are not subject to any judgment and/or order and there are no actions, judgments, suits, audits, hearings, proceedings, orders, investigations, and/or claims pending or threatened against Seller and/or the Property, including, without limitation, any pending or threatened condemnation proceeding, whether at law or in equity, or before or by any governmental department, commission, board, bureau, agency, or instrumentality. There are no leases, agreements, and/or contracts (written or verbal) concerning or related to the Property in effect.

3.3 Filings; Notices; Notification. Seller will make all filings and give all notices that Seller is required to make and give to close the Transaction. Seller will cooperate with Buyer with respect to all consents, authorizations, approvals, filings, and notices that Buyer is required to make and give to close the Transaction. Seller will use Seller's best efforts to effectuate the Transaction and will do all acts and things as may be required to carry out Seller's obligations under this Agreement. Seller will obtain all consents, authorizations, and approvals that Seller is required to obtain to effectuate the Transaction. Seller will exercise Seller's best efforts to (a) satisfy Title Company's requirements for issuing the Title Insurance, (b) eliminate as an exception to the Title Insurance any exception that is not a Permitted Encumbrance, and (c) cure any matter that Buyer reasonably believes could adversely affect Buyer's ownership or use of the Property.

3.4 Sophistication and Evaluation. Seller has knowledge and experience in financial and real estate matters necessary to make Seller capable of evaluating the merits and risks of entering into this Agreement and consummating the Transaction. Seller has entered into this Agreement on the basis of its own examination, personal knowledge, and opinion as to the suitability of this Agreement and Transaction. In connection with Seller's decision to enter into this Agreement, Seller has not relied on any representations or warranties made by Buyer other than those provided in this Agreement, if any. Seller has had the opportunity to ask questions and receive answers concerning this Transaction, and has obtained all information Seller deems necessary or appropriate to evaluate this Transaction.

3.5 Environmental. Prior to the Effective Date, Seller delivered to Buyer true, complete, and accurate copies of all existing surveys, environmental, engineering, and/or wetland reports and assessments, utility and architectural plans, and all other tests, studies, plans, and/or documents concerning the Property. Seller has no liabilities or obligations of any kind arising out of any Environmental Law. As of the Effective Date, Seller and the Property comply with all Environmental Laws. No action, arbitration, audit, hearing, investigation, litigation, suit, and/or other proceeding relating to any Environmental Law is pending or threatened against Seller and/or the Property. Seller has not received any notices with respect to any violation of any Environmental Law. There has been no production and/or storage of Hazardous Substances on or at the Property, and there has been no discharge and/or release of Hazardous Substances on, in, and/or under the Property.

3.6 No Brokers or Finders; Foreign Person; Accuracy. 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 or the Transaction. Seller is not a "foreign person" for purposes of Internal Revenue Code Section 1445. None of Seller'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.

4. Buyer Representations and Warranties.

Except for Buyer's express representations and warranties contained in this Agreement, Buyer expressly excludes all representations and warranties with respect to the Transaction, express and implied. Subject to the immediately preceding sentence, Buyer represents and warrants to Seller as follows:

4.1 Authority and Binding Obligation. Buyer has full power and authority to sign and deliver this Agreement and to perform all of Buyer's obligations under this Agreement. The execution, delivery, and performance of this Agreement, and any agreement contemplated herein, constitutes a valid and binding agreement of Buyer, enforceable in accordance with its terms. Buyer's execution, delivery, and performance of this Agreement, and any agreement contemplated herein, 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 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 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. The Closing will take place at the offices of Title Company contemporaneously with the parties' mutual execution of this Agreement. At the Closing, Buyer will deliver the Purchase Price to Seller. At the Closing, Seller will deliver the following to Buyer: (a) the Warranty Deed; (b) exclusive possession of the Property; (c) a commitment from Title Company to issue the Title Insurance to Buyer; and (d) all documents and instruments that Buyer may reasonably request to close the Transaction, in form and substance reasonably satisfactory to Buyer.

5.2 Title Insurance; Warranty Deed. Within fifteen (15) days after the Closing Date, Title Company will furnish Buyer with the Title Insurance at Buyer's cost and expense. At the Closing, Seller will execute and deliver the Warranty Deed to Buyer.

6. Default; Indemnification.

6.1 Seller Default. Subject to the terms and conditions contained in this Agreement, Seller will be deemed in default under this Agreement if Seller breaches or otherwise fails to perform any Seller representations, warranties, covenants, or obligations contained in this Agreement, time of payment and performance being of the essence. Upon the occurrence of Seller's default, Buyer will have all rights and remedies available under this Agreement, at law or in equity, including, without limitation, specific performance. All available remedies are cumulative and may be exercised singularly or concurrently. Seller acknowledges and agrees that the remedies available at law for any Seller default under this Agreement will, by their nature, be inadequate. Accordingly, Buyer may obtain injunctive relief or other equitable relief to restrain a default or threatened default of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

6.2 Seller Indemnification. Seller releases and will defend, indemnify, and hold Buyer and Buyer's Representatives harmless for, from, and against all Damages, whether known or unknown, resulting from or arising out of, whether directly or indirectly, Seller's breach or failure to perform any Seller representation, warranty, covenant, or obligation contained in this Agreement. Buyer's right to indemnification under this Section 6.2 is in addition to, and not in lieu of, any other rights to which Buyer may be entitled under this Agreement, at law or in equity. Buyer's right to indemnification and other remedies under this Agreement will not be affected by any investigation that Buyer has completed or conducted or by any knowledge that Buyer has acquired. The

indemnification covenants contained in this Section 6.2 will not merge into the Warranty Deed but will survive the Closing.

6.3 Hazardous Waste. Seller releases and will defend, indemnify, and hold Buyer and Buyer's Representatives harmless for, from, and against any response, removal, or remedial costs and expenses which may be assessed against Buyer or Buyer's Representatives by federal or state governmental authorities as a result of Seller or Seller's Representatives activities on the Property involving the use, storage, handling, transportation, treatment, disposal, or release of any Hazardous Substances. This will include, without limitation, all attorney fees and remedial costs and expenses. The indemnification covenants contained in this Section 6.3 will not merge into the Warranty Deed but will survive the Closing.

7. Miscellaneous.

7.1 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.

7.2 Expenses; Notices. Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with the Transaction, including, without limitation, the preparation, negotiation, signing, and performance of this Agreement and the other agreements and documents relating to the Transaction. 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 Time of Essence; No Assignment; Binding Effect. Time is of the essence with respect to all dates and time periods in 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. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. Notwithstanding anything contained in this Agreement to the contrary, this Agreement will not be construed to create third party beneficiary rights or remedies in any party whatsoever.

7.4 Amendment; Waiver; Severability; Attorney Fees. This Agreement may be amended only by a written document signed by the party against whom enforcement is sought. 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 of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. 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. If any arbitration,

action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

7.5 Further Assurances; Termination; Survival; Joint and Several. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. 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, Seller's representations, warranties, covenants, and other obligations contained in this Agreement and the Warranty Deed will survive the Closing and will not merge with or into the Warranty Deed. Notwithstanding anything contained in this Agreement to the contrary, all representations, warranties, covenants, and obligations made by Seller under this Agreement are made by each person constituting Seller (Debra Lee Morrison and John Charles Brazil) on a joint and several basis.

7.6 Attachments; Governing Law. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action, suit, or proceeding arising out of the subject matter 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. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page.

7.7 Entire Agreement; Interpretation. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. 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. If a 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). 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.

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

SELLER:
Debra Lee Morrison and John Charles Brazil,
as tenants in common

BUYER:
City of John Day,
an Oregon municipal corporation

Debra Lee Morison

Nicholas Green, City Manager

John Charles Brazil

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.

“Closing” means the closing of the Transaction.

“Closing Date” means the date on which the Closing takes place.

“Damages” means all claims, actions, proceedings, damages, liabilities, obligations, costs, attorney fees, and expenses of every kind or nature, including, without limitation, environmental remediation costs and expenses, whether known or unknown.

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

“Encumbrance(s)” means any lien, mortgage, pledge, security interest, reservation, restriction, adverse claim, 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 or designed to minimize, prevent, punish, or remedy the consequences of actions that damage or threaten the environment or public health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq., ORS 468B.195-197 (including any regulations promulgated thereunder), the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.

“Hazardous Substance(s)” means any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined, controlled, or listed by any Environmental Law, including, without limitation, petroleum oil and its fractions.

“Law(s)” means all federal, state, and local laws, statutes, ordinances, codes, regulations, orders, rules, covenants, conditions, easements, declarations, leases, liens, and restrictions directly or indirectly affecting or concerning the ownership, use, condition, maintenance, leasing, or operation of all or any part of the Property, including, without limitation, all Environmental Laws.

“Permitted Encumbrance(s)” means the following: (a) that certain easement, including the terms and provisions thereof, for slopes granted to the State of Oregon, by and through its Department of Transportation, recorded on January 22, 2001 as Instrument No.: 210180; and (b) any lien, mortgage, pledge, security interest, or other encumbrance arising by operation of law for taxes, assessments, or government charges not yet due.

“Property” has the meaning assigned to such term in the recital.

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

“Representative(s)” means each past, present, and future officer, director, shareholder, employee, member, manager, assignee, contractor, agent, or authorized representative of the identified party.

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

“Title Company” means Land Title Company of Grant County, Inc., whose address is 145 NE Dayton Street, John Day, Oregon 97845-1092.

“Title Insurance” means a standard coverage ALTA Owner’s Policy of title insurance that (a) covers the Property in the amount of the Purchase Price, and (b) does not contain any exceptions appearing in the Title Report that is not a Permitted Encumbrance.

“Title Report” means that certain Preliminary Title Report dated October 31, 2019 concerning the Property issued by Title Company, Order No.: 26737, as may be amended, attached hereto as Exhibit B.

“Transaction” means the purchase and sale of the Property, all as provided in this Agreement.

“Warranty Deed” means a statutory warranty deed conveying the Property to Buyer free and clear of all Encumbrances except the Permitted Encumbrances, which Warranty Deed will be in form and substance satisfactory to Buyer.

Exhibit A
Legal Description

Land in the City of John Day, Grant County, Oregon, as follows: In Township 13 South, Range 31 East of the Willamette Meridian:

Section 26: A tract of land in the N1/2NW1/4 described as follows:

Commencing at the intersection of the Westerly boundary line of SW Canton Street and the Southerly boundary line of Main Street in said City of John Day; said point being 494.3 feet South and 1270.0 feet West of the North quarter corner of Section 26; thence N78°02'W, along the Southerly boundary line of said Main Street, 88.5 feet; thence S5°37'W, 169.5 feet; thence S82°18'E, 88.0 feet to the Westerly boundary line of said SW Canton Street; thence N5°37'E, along said Westerly boundary line, 163.0 feet to the point of beginning.

EXCEPT that portion conveyed to the State of Oregon, by and through its Department of Transportation by deed recorded January 22, 2001, Instrument No. 210180.

(Tax Acct. 3-1 13-31-26BB TL1900; Ref. 1219)

Exhibit B
Title Report

[see attached]