

RESOLUTION NO. 22-889-10

A RESOLUTION OF CITY APPROVING THE SALE OF CERTAIN REAL PROPERTY

WHEREAS, City of John Day (“City”), an Oregon municipal corporation, 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 221.727, City adopted Ordinance No. 21-192-03 (the “Ordinance”) establishing alternative procedures and exemptions for the sale, transfer, and conveyance of certain “classes” of City-owned real property, including Industrial-zoned parcels; and

WHEREAS, City desires to sell certain Industrial-zoned real property consisting of approximately 2.82 acres commonly known as the former DR Johnson Lumber site (the “Property”); and

WHEREAS, 1188 Destinations, LLC (the “Buyer”) desires to purchase the Property for development of a new riverfront brewery and restaurant with a proposed distillery, cider house, tap room, makers space, transient lodging and other destination attractions (collective, the “Improvements”) subject to the proposed terms of Buyer’s Letter of Intent enclosed as Exhibit A; and

WHEREAS, City obtained a market comparison of seven similarly constituted level industrial lots in John Day, which ranged from \$0.32 to \$0.88 dollars per square foot; and

WHEREAS, by adoption of this Resolution No. 22-889-10 (this “Resolution”), the council desires to establish the minimum acceptable terms for the sale of the Property for purposes of creating the Improvements.

NOW, THEREFORE, BE IT RESOLVED that City of John Day resolves as follows:

1. Findings. The above-stated findings contained in this Resolution No. 22-889-10 (this “Resolution”) are hereby adopted.
2. Sale Approved. The Council approves the sale of Property to Buyer. The city manager is hereby authorized to sell, transfer, and/or convey the Property for a purchase price of \$1.00 per square foot (approx. \$122,840 for the 2.82 acres) pursuant to the terms and conditions of a purchase and sale agreement between City and Buyer substantially in the form attached hereto as Exhibit B. Notwithstanding anything contained in this Resolution to the contrary, the purchase and sale 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, which may include, without limitation, that the Property will be transferred AS IS, WITH ALL FAULTS AND DEFECTS, and 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 purchase and sale 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.

ADOPTED by the City Council of City of John Day and signed by the mayor this 10th day of May, 2022.

Ron Lundbom, Mayor

ATTEST:

Nicholas Green, City Manager

Exhibit A.
Letter of Intent

[Enclosed]

February 8, 2022

Attn: Shannon Adair

Re: Letter of Intent – Sale of John Day DR Johnson Lumber Site, Tax Lot 1900, Map No. 13S31E22C

Dear Mrs. Adair:

City of John Day (“Seller”) is the owner of the Property (as defined below). This letter is written to summarize the general terms and conditions under which Seller is interested in selling the Property to 1188 Destinations, LLC, an Oregon limited liability company (“Buyer”) (the “Transaction”). The terms and conditions contained in this letter are based upon the parties’ current intentions and information known to the parties as of the date of this letter. Except for the provisions contained in Part Two of this letter, this letter is nonbinding and does not grant or impose any legal rights and/or obligations on Seller or Buyer.

Part One – Nonbinding Provisions

Based upon information known to the parties as of the date of this letter, Seller proposes that the Sale Agreement (as defined below) be consistent with the nonbinding provisions set forth in this Part One (Sections 1-2; collectively, the “Non-Binding Provisions”):

1. Purchase Price; Payment. Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller, for a purchase price of \$1 per square foot with a total estimated purchase price of \$122,840 (the “Purchase Price”). Within 10 days after executing the Sale Agreement, Buyer will deposit 10 percent of the total purchase price (the “Earnest Money”) with Land Title of Grant County (the “Title Company”), as determined by the square footage of the final plat after completing the necessary property line adjustments. At the closing, Buyer will pay the balance of the Purchase Price to Seller in cash, certified check, or wire transfer to an account specified by Seller. For purposes of this letter, the term “Property” means that certain real property (and all improvements located thereon) commonly known as the DR Johnson Lumber Site, Tax Lot 1900 in Map No. 13S31E22C John Day, Oregon 97845 consisting of approximately 2.82 acres after adjusting for Seller’s right-of-way and certain property line adjustments that shall be completed with Seller’s adjacent properties prior to the Sale.

2. Purchase and Sale Agreement. Within 90 days after Buyer’s execution of this letter, the parties will execute a definitive written purchase and sale agreement concerning the Transaction (the “Sale Agreement”). The Sale Agreement will be consistent with the terms of this letter and will contain representations, warranties, covenants, indemnification provisions, limitation of liability provisions, and other terms and conditions typically contained in purchase and sale agreements for similar properties in Grant County, Oregon. Without otherwise limiting the generality of the immediately preceding sentence, the Sale Agreement will contain the following terms and conditions:

(a) Seller will sell the Property and Buyer will purchase the Property (a) “AS IS” and “with all FAULTS AND DEFECTS” as of the closing date, without any Seller representations or warranties, express, implied, and/or statutory, of any kind whatsoever, and (b) subject to all encumbrances of record that have been approved by Buyer in Buyer’s reasonable discretion; provided that all trust deed liens against the Property that are not accepted by Buyer must be removed of record at or before the closing at Seller’s expense. Within 10 days following the effective date of the Sale Agreement, Seller shall provide to Buyer for its review, all information and documentation regarding the Property which is in Seller’s possession.

(b) Buyer will pay all real property and other taxes concerning or related to the Property and/or 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 Transaction.

(c) Upon execution of the Sale Agreement, Seller will order a preliminary title report from the Title Company and Buyer will have 10 days after receipt of the report to notify Seller in writing of any special exceptions listed in therein that are not acceptable to Buyer. Buyer will be deemed to have accepted all special exceptions to which Buyer does not timely object. Seller will have 10 days after receipt of Seller's disapproval notice to notify Buyer in writing of the disapproved exceptions that Seller agrees to remove of record at or before the closing. Seller's failure to deliver the written notice within said 10-day period will be deemed to be Seller's election not to remove any of the disapproved exceptions. If Seller elects not to remove any disapproved exception(s), Buyer may terminate the Sale Agreement by written notice to Seller within five days after Seller's notification of its election. In that event, the Earnest Money will be promptly refunded to Buyer and neither party will have any further obligation under the Agreement. Seller acknowledges and agrees that all trust deed liens against the Property that are not accepted by Buyer must be removed of record at or before the closing at Seller's expense.

(d) The closing of the Transaction will occur at the offices of the Title Company located at 145 NE Dayton Street, John Day, Oregon 97845 on a mutually agreed upon date within 60 days after the effective date of the Sale Agreement. The closing shall be effected through a customary escrow closing.

(e) Buyer and Seller will each pay one-half of the escrow and closing fees. Buyer will pay the recording fee(s) and all fees relating to Buyer's purchase money financing, if any. At closing, the parties will enter into and sign such other agreements, documents, and instruments necessary or appropriate to consummate the Transaction.

(f) As soon as possible after the Closing Date, the Title Company will furnish Buyer with a standard American Land Title Association form of owner's policy of title insurance in the amount of the Purchase Price for the Property, subject only to the Title Company's standard preprinted exceptions and the special exceptions accepted or deemed accepted by Buyer in accordance with the Sale Agreement. Seller will pay the premium for said policy.

(g) Seller's attorney will prepare the initial draft of the Sale Agreement consistent with the terms and conditions of this letter. Each party will be responsible for its own costs and expenses incurred in connection with this letter and the Sale Agreement.

Part Two – Binding Provisions

The binding provisions set forth in this Part Two (Sections 3-5; collectively, the "Binding Provisions") are legally binding and enforceable against Seller and Buyer.

3. Exclusivity. Seller shall not offer the Property for sale to anyone other than Buyer or enter into or continue any discussions with any third-party to acquire the Property until such time as this letter of intent has terminated in accordance with Section 4 below.

4. Term; Termination. This letter will terminate upon the earliest to occur of the following: (a) upon the parties' mutual execution of the Sale Agreement; or (b) at 5:00 p.m. on the 90th day after the effective date of this letter. Upon termination of this letter, the parties will have no further rights or obligations hereunder.

5. Miscellaneous.

5.1 Provisions; Third-Party Beneficiaries; Costs and Expenses. The Nonbinding Provisions are not legally binding or enforceable against Seller or Buyer. No binding obligation will exist with respect to the

subject matter of the Nonbinding Provisions unless and until the parties sign the Sale Agreement, and then only to the extent such obligations are set forth in the Sale Agreement. The Binding Provisions will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. The parties do not intend to confer any right or remedy on any third party. Notwithstanding anything contained in this letter to the contrary, Buyer will pay all fees, costs, and expenses incurred in connection with Buyer's construction on, use of, and occupancy of the Property.

5.2 Severability; Assignment; Binding Effect. Each provision contained in this letter will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Buyer will not assign this letter to any person without Seller's prior written consent. Subject to the immediately preceding sentence, this letter will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This letter may be amended only by a written agreement signed by each party.

5.3 Attorney Fees; Governing Law. With respect to any dispute relating to this letter, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this letter, 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. This letter 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 letter. Any action or proceeding arising out of this letter 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.

5.4 Attachments; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this letter are part of this letter; provided, however, if any exhibits, schedules, instruments, documents, and/or other attachments conflict with the terms of this letter, the terms of this letter will control. All notices or other communications required or permitted by this letter must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email (with electronic confirmation of delivery), or a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

5.5 Waiver; Entire Agreement. No provision of this letter may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by Seller and Buyer. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this letter will be deemed a waiver of other provisions or conditions hereof. This letter contains the entire agreement and understanding between the parties with respect to the subject matter of this letter and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. The parties may execute this letter 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 letter will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original letter.

With the exception of the Binding Provisions (Part Two), this letter does not constitute a binding agreement between the parties. This letter is an expression of the mutual intent and desires of the parties as to certain

aspects of the Transaction. However, the parties agree that there are material terms as to which agreement has not been reached and this letter is not to be construed as a definitive contract. This letter is subject to the parties' execution of the Sale Agreement. It is expressly understood and agreed that (a) no liability or binding obligation is intended to be created between or among any of the parties to this letter, except with respect to the Binding Provisions, and (b) other than with respect to the Binding Provisions, any legal rights and obligations between or among any of the parties to this letter will come into existence only upon the parties' execution and delivery of the Sale Agreement, and then only in accordance with the terms and conditions of the Sale Agreement.

If the above general terms and conditions are acceptable to you, kindly sign both copies of this letter. Retain one copy for your files and return the second signed copy to me. I look forward to a successful relationship with you and await your early response. This letter will be deemed null and void if not signed by you (below) and received by me on or before 5:00 p.m. on May 10, 2022.

Sincerely,

Nicholas Green, City Manager

cc: Jeremy M. Green, Bryant, Lovlien & Jarvis, P.C.

Acknowledgement and Acceptance

The undersigned (a) has read and understands the terms of this letter, and (b) agrees that the general sale transaction terms and conditions contained in this letter are acceptable.

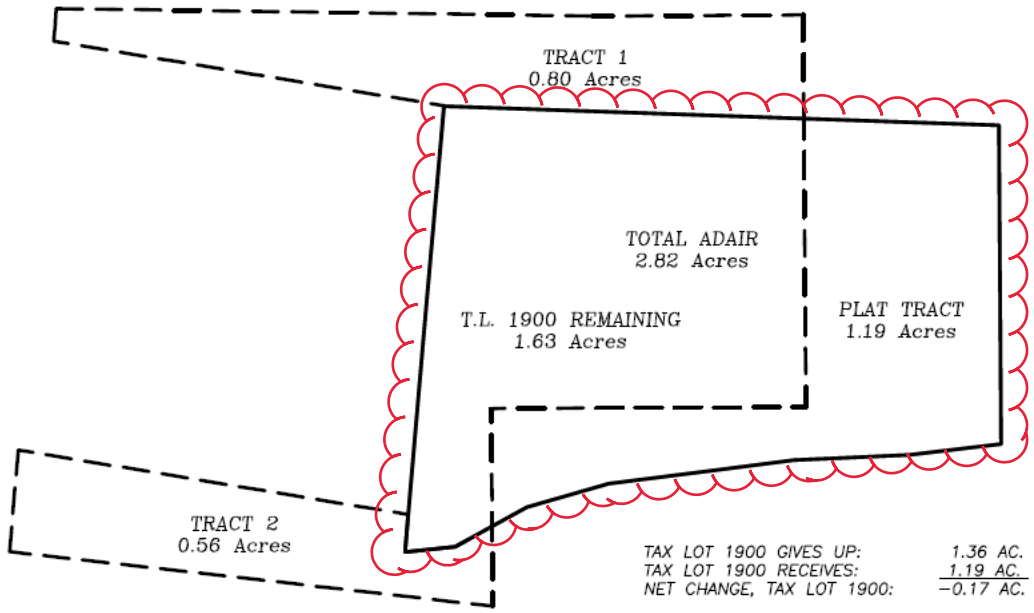
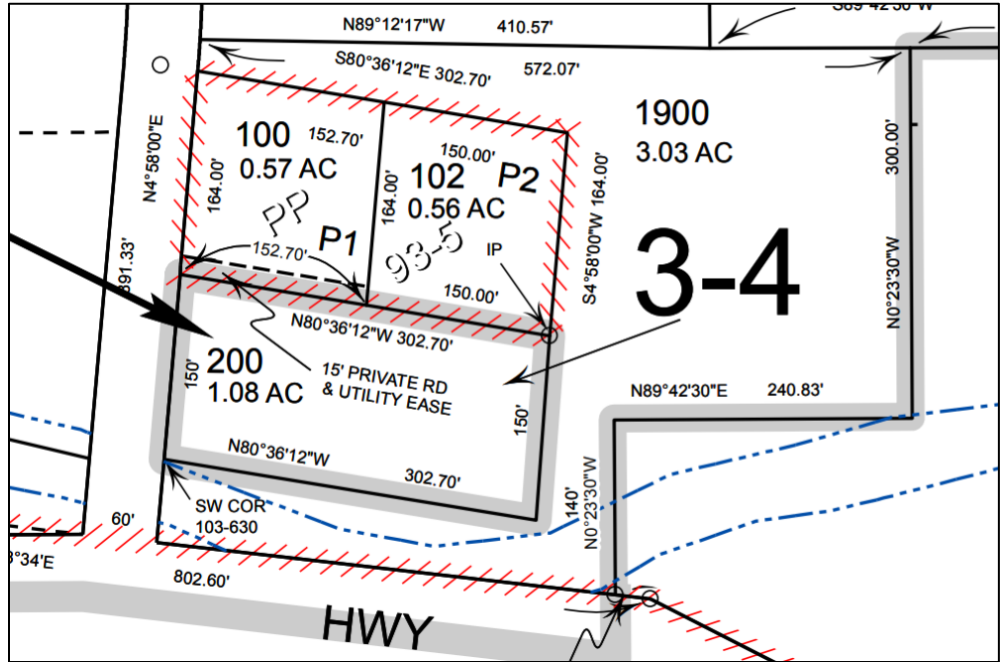
1188 Destinations, LLC,
an Oregon limited liability company

By: _____
Its: _____

Exhibit A

Property – Description and Depiction

[tax map below; followed by draft depiction, which will be updated and attached prior to execution]



TAX LOT 1900 GIVES UP: 1.36 AC.
 TAX LOT 1900 RECEIVES: 1.19 AC.
 NET CHANGE, TAX LOT 1900: -0.17 AC.

TAX LOT 1900 BEGINNING AREA: 3.03 AC.
 TAX LOT 1900 ENDING AREA: 2.82 AC.
 NET CHANGE, TAX LOT 1900: -0.21 AC.

MINOR DIFFERENCES IN AREAS ARE BETWEEN MY CALCULATIONS AND THE TAX MAP (0.04 AC.)

Exhibit B.
Purchase and Sale Agreement

[Enclosed]

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is dated _____, 2022, but made effective for all purposes as of 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 1188 Destinations, LLC ("Buyer"), whose address is 131 E. Main Street, John Day, OR 97845.

RECITALS:

A. Seller owns certain real property commonly known as the former DR Johnson Lumber Site, John Day, Oregon, as more particularly described on the attached Exhibit A, together with all fixtures and improvements located thereon, if any (collectively, the "Property").

B. Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller, subject to the terms and conditions contained in this Agreement.

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 assigned to them in the attached Appendix A.

2. Sale of Property.

2.1 Sale of Property; Earnest Money. Subject to the terms and conditions contained in this Agreement, Buyer will purchase the Property from Seller and Seller will sell the Property to Buyer. The purchase price for the Property is \$122,840 (the "Purchase Price"). Within ten (10) days after the Effective Date, Buyer will pay the Earnest Money to Seller. The Earnest Money will be applied to the Purchase Price at Closing. Except as otherwise provided under Section 8.2.1, the Earnest Money is non-refundable and unconditionally released to Seller immediately after payment. This Agreement will immediately terminate without further act of the parties if Buyer fails to timely pay all or any part of the Earnest Money in accordance with this Agreement.

2.2 Payment of Purchase Price; Proration; Escrow Fees.

2.2.1 At the Closing, Buyer will pay the Purchase Price as follows: (a) the Earnest Money will be applied to the Purchase Price; and (b) Buyer will pay the balance of the Purchase Price (\$110,556) by cash, cashier's check, or wire transfer to an account specified by Seller. Subject to the terms and conditions contained in this Agreement, all utilities, rents, and all other similar items and expenses with respect to the Property will be prorated between Seller and Buyer as of the Closing Date.

2.2.2 Seller is a tax-exempt municipal corporation. Notwithstanding anything contained in this Agreement to the contrary, Seller will not pay any real property taxes and/or personal property taxes related to or concerning the Property and/or this Transaction (Buyer will pay all real property taxes and/or personal property taxes related to or concerning the Property and/or this Transaction). Seller and Buyer will each pay one-half (50%) of all escrow fees charged by Title Company. Seller will pay the costs of the Title Insurance.

2.3 AS-IS Transaction. At the Closing, Seller will sell and convey the Property to Buyer subject to all Encumbrances that may affect or concern the Property. **BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS**

BUYING THE PROPERTY "AS IS" AND "WITH ALL FAULTS AND DEFECTS" AS OF THE CLOSING DATE, WITHOUT ANY SELLER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, EXCEPT AS OTHERWISE PROVIDED IN SECTION 3 BELOW, 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 AND AGREE THAT THIS DISCLAIMER HAS BEEN SPECIFICALLY NEGOTIATED AND IS A MATERIAL INDUCEMENT TO SELLER'S AGREEMENT TO SELL THE PROPERTY TO BUYER.

Buyer Initials _____

3. Seller Representations; Warranties. **Except for the express representations and warranties contained in this Section 3, Seller expressly excludes all representations and warranties with respect to the Property and/or 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 all other Buyer representations, warranties, and/or covenants contained in this Agreement, Buyer (jointly and severally) 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 all other Transaction Documents) and to perform all Buyer's obligations under this Agreement (and all other Transaction Documents). The execution, delivery, and performance of this Agreement (and all other Transaction Documents) constitutes a valid and binding agreement of Buyer, enforceable in accordance with its terms. Buyer's execution, delivery, and performance of this Agreement (and all other Transaction Documents) will not result in a breach and/or violation of, nor constitute a default under, any agreement, law, judgment, and/or order, and/or require the consent, authorization, and/or approval of any person, including, without limitation, any governmental body.

4.2 Buyer Due Diligence.

4.2.1 Buyer has knowledge and experience in real estate and land use matters necessary to make Buyer capable of evaluating the merits and risks of the 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, Transaction, this Agreement, and all other information deemed necessary or appropriate by Buyer concerning Buyer's acquisition of the Property and Transaction. Buyer has entered into this Agreement based on its own examination, personal knowledge, and opinion of the Property's value. Buyer has not relied on any representations or warranties made by Seller other than those provided under Section 3 of this Agreement.

Buyer has sufficient assets to ensure Buyer's timely performance of its obligations under this Agreement, including, without limitation, payment of the Purchase Price.

4.2.2 Prior to the Closing, Buyer completed (or knowingly waived Buyer's opportunity to complete) an inspection and evaluation of the Property concerning, among other things, structural conditions, soil conditions/compaction, stability, environmental issues (e.g., contamination), zoning, encroachments, condition of title, Encumbrances, and/or suitability of the Property for Buyer's intended purpose. Based on this inspection and evaluation (or waiver of such inspection and evaluation), Buyer is knowingly, voluntarily, and without reservation accepting the Property in its **"AS-IS" AND "WITH ALL FAULTS AND DEFECTS CONDITION" AS OF THE CLOSING DATE**. 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).

4.3 No Brokers or Finders; Accuracy. Buyer has not incurred any liability or obligation, whether contingent or otherwise, for a brokerage commission, 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. Seller 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 the satisfaction by Buyer or waiver by Seller of each of the following conditions, all of which are intended solely for the benefit of Seller: (a) each of Buyer's representations and warranties contained in this Agreement must be true and accurate as of the Effective Date and Closing Date; (b) Buyer must have performed and complied with Buyer's covenants contained in this Agreement to the extent arising or applicable before the Closing; (c) no action, arbitration, audit, hearing, investigation, litigation, suit, and/or other proceeding may be pending or threatened against Buyer and/or the Property as of the Effective Date and/or Closing Date; (d) Buyer must have caused the following items to be executed (as applicable) and/or delivered to Seller: (i) the items set forth in Section 7.2; and (ii) the Transaction Documents; and (e) Seller must have obtained all consents, authorizations, approvals, agreements, and instruments Seller may require to sell the Property to Buyer and consummate the Transaction.

6. Buyer Covenants Before Closing. In addition to any other Buyer covenants contained in this Agreement, Buyer covenants to Seller as follows before the Closing:

6.1 Notification. Until the Closing or earlier termination of this Agreement, Buyer will promptly notify Seller if Buyer obtains knowledge of (a) any breach by Buyer of any representation or warranty provided by Buyer under this Agreement, (b) the occurrence after the Effective Date of any fact or condition that would cause Buyer to breach any representation or warranty under this Agreement if the representation or warranty were made by Buyer as of the date of the occurrence, and/or (c) any breach by Buyer of any covenant contained in this Agreement.

6.2 Filings; Notices; Consents. Buyer will make all filings and give all notices that Buyer is required to make and give to close the Transaction. Buyer will cooperate with Seller with respect to all filings and notices that Seller is required to make and give to close the Transaction. Buyer will use commercially reasonable efforts to obtain all consents, authorizations, and approvals that Buyer is required to obtain to close the Transaction. Buyer will cooperate with Seller with respect to all consents, authorizations, and approvals that Seller is required to obtain to close the Transaction. Buyer will use Buyer's best efforts to cause the conditions in Section 7 to be satisfied.

7. Closing.

7.1 Closing. The Closing will take place at the offices of the Title Company on the Closing Date or any other place or time that the parties may agree in writing; provided, however, in no event will the Closing occur after the Drop-Dead Date. If Closing does not occur on or before the Drop-Dead Date, this Agreement will be

deemed terminated and, subject to the terms and conditions contained in this Agreement, neither party thereafter will have any further rights, remedies, and/or obligations with respect to the Property, each other, and/or this Transaction; provided, however, if the Closing did not occur because of a default by Buyer, Seller will have all rights and remedies available under this Agreement and applicable law.

7.2 Buyer – Closing Obligations. At the Closing, Buyer will deliver (or caused to be delivered) to Seller the following: (a) the Purchase Price by cash, cashier's check, or wire transfer to an account specified by Seller; and (b) such other consents, deeds, bills of sale, certificates of title, assignments, and other documents that Seller determines necessary or appropriate to consummate the Transaction, in form and substance satisfactory to Seller.

7.3 Seller – Closing Obligations. At the Closing, Seller will deliver the following to Buyer: (a) the Deed signed by Seller; (b) possession of the Property; and (c) a commitment from Title Company to issue the Title Insurance to Buyer.

7.4 Costs and Expenses. Buyer will pay all costs, charges, and expenses associated with the Transaction and Seller's transfer and conveyance of the Property to Buyer, including, without limitation, attorney fees and costs, escrow 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.

8. Termination; Default; Indemnification.

8.1 Termination. In addition to all other termination events identified in this Agreement, this Agreement will terminate upon the earliest to occur of the following: (a) upon notice from either Buyer or Seller if Closing has not occurred on or before the Drop-Dead Date; (b) upon notice from Buyer to Seller if any condition to Buyer's obligation to close the Transaction has not been satisfied by Seller or waived by Buyer; or (c) upon notice from Seller to Buyer if any condition to Seller's obligation to close the Transaction has not been satisfied by Buyer or waived by Seller. Upon termination pursuant to this Section 8.1, this Agreement will be deemed terminated, the Earnest Money will be retained by Seller, and thereafter neither party will have any further rights, remedies, and/or obligations with respect to the Property, each other, and/or this Transaction; provided, however, if the Closing did not occur because of a default by Seller or Buyer, the non-defaulting party will have all rights and remedies available under this Agreement.

8.2 Default.

8.2.1 Subject to the terms and conditions contained in this Agreement, Seller will be deemed in default under this Agreement if Seller breaches and/or otherwise fails to perform any Seller representations, warranties, covenants, and/or obligations contained in this Agreement. Upon occurrence of Seller's default, Buyer may elect to terminate this Agreement and have the Earnest Money returned to Buyer as Buyer's sole and exclusive remedy; Buyer will not be entitled to any other rights or remedies due to Seller's default other than as specified under this Section 8.2.1.

8.2.2 Subject to the terms and conditions contained in this Agreement, Buyer will be in default under this Agreement if Buyer breaches and/or otherwise fails to perform any Buyer representations, warranties, covenants, and/or obligations contained in this Agreement, time of payment and performance being of the essence. Upon occurrence of Buyer's default, Seller will have all rights and remedies available under this Agreement (and all other Transaction Documents), at law, and/or in equity, including, without limitation, the right to terminate this Agreement and/or the right of specific performance. All available remedies are cumulative and may be exercised singularly or concurrently. Notwithstanding anything contained in this Agreement to the contrary, Seller's termination of this Agreement will not preclude Seller from pursuing a claim for indemnification under Section 8.3.

8.2.3 Prior to declaring a party in default under this Agreement, the non-defaulting party will provide the alleged defaulting party prior written notice of the alleged default (the "Default Notice"), which Default Notice will specify with reasonable particularity the default the non-defaulting party believes exists. Commencing on the alleged defaulting party's receipt of the Default Notice, the alleged defaulting party will have ten (10) days within which to cure or remedy the alleged default(s) (the "Cure Period"). Notwithstanding anything contained in this Agreement to the contrary, no Default Notice will be required to be provided by Seller to Buyer if Buyer fails to timely pay the Earnest Money and/or the Purchase Price.

8.3 Release and 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, development, repair, maintenance, ownership, and/or use of the Property, including, without limitation, development, possession, and/or use of the Property by any Buyer Representative; (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. Buyer's indemnification covenants contained in this Section 8.3 will not merge with or into the Deed but will survive the Closing.

9. Miscellaneous.

9.1 Termination; Survival; Time of Essence. 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 the Deed. Time is of the essence with respect to Buyer's obligations under this Agreement.

9.2 Binding Effect; Notices. Subject to Section 9.7, 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.

9.3 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.

9.4 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).

9.5 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.

9.6 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.**

9.7 Further Assurances; Assignment; Waiver; Joint and Several. 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. Buyer’s representations, warranties, and covenants made under this Agreement are made by each person constituting Buyer on a joint and several basis.

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

[Signature Page Follows]

SELLER:

City of John Day,
an Oregon municipal corporation

BUYER:

1188 Destinations, LLC
an Oregon limited liability corporation

By: Nicholas Green, City Manager

By: Shannon Adair, Registered Agent

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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 June 16, 2022.

“Cure Period” has the meaning assigned to such term in Section 8.2.3.

“Deed” means a certain bargain and sale deed conveying the Property to Buyer, which deed will convey the Property to Buyer subject to all Encumbrances of record and will otherwise be in form and content satisfactory to Seller (and will be prepared by Seller).

“Default Notice” has the meaning assigned to such term in Section 8.2.3.

“Drop-Dead Date” means August 30, 2022.

“Earnest Money” means \$12,284.

“Effective Date” means the date on which this Agreement is fully executed by the parties.

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

“Industrial Park” means the Grant County Airport Industrial Park.

“Property” has the meaning assigned to such term under Recital A.

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

“Representative(s)” means each past, present, and future director, officer, shareholder, manager, member, assignee, employee, contractor, agent, and/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., 145 NE Dayton Street, John Day, Oregon 97845.

“Title Insurance” means a standard form ALTA Owner’s Policy of title insurance issued to Buyer that (a) covers the Property in the amount of the Purchase Price, and (b) insures title vested in Buyer subject to Title Company’s standard preprinted exceptions and all Encumbrances of record as of the Closing Date.

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

“Transaction Document(s)” means this Agreement, the Deed, and all other documents or instruments necessary to consummate the Transaction.

Exhibit A
Legal Description

The Property is legally described as follows:

[to be inserted]

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