

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made and entered into effective on \_\_\_\_\_, 2017 (the "Effective Date") between City of John Day, an Oregon municipal corporation ("Seller"), whose address is 450 East Main Street, John Day, OR 97845, and \_\_\_\_\_ ("Buyer"), whose address is \_\_\_\_\_.

### RECITAL:

Seller owns certain real property (and all improvements and fixtures located thereon) located in John Day, Oregon, as more particularly described in the attached Exhibit A (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 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 \_\_\_\_\_ (\$\_\_\_\_\_.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 Prorated Expenses. Subject to the terms and conditions contained in this Agreement, any utilities, rents, taxes, and other similar expenses with respect to the Property will be prorated between Seller and Buyer as of the Closing Date. The proration will be made at the Closing to the extent possible. The proration of any remaining expenses will be made as soon as practicable after the Closing Date.

3. Seller Representations and 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 of 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, or require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

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 or the Transaction. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

4. Buyer's Representations and Warranties. In addition to any other Buyer representation or warranty contained in this Agreement, Buyer jointly and severally represents and warrants to Seller as follows:

4.1 Authority; 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 constitute valid and binding agreements 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 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 any 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. 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 and the presence of any Hazardous Substances on the Property; (b) the Property was used as a fire station; (c) Buyer has reviewed and approves the Preliminary Title Report; (d) Buyer has reviewed the Broker Price Opinion attached as Exhibit B; and (e) Buyer has investigated the feasibility of the Property for Buyer's intended purpose. Except as expressly provided herein, Seller has made no promise or agreement to repair, alter, construct, and/or improve the Property, or any part thereof.

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. EXCEPT AS EXPRESSLY PROVIDED HEREIN, 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 Accuracy of Representations and Warranties. None of Buyer’s representations or warranties contains or will contain any untrue statement of a material fact or omit or will omit or misstate a material fact necessary in order to make the statements contained herein not misleading.

5. Closing.

5.1 Closing. The Closing of the Transaction will take place at John Day City Hall, 450 East Main Street, John Day, Oregon 97845, on or before the Closing Deadline. At the Closing, Buyer will deliver the Purchase Price to Seller by cash, cashier’s check, or wire transfer to an account specified by Seller. At the Closing, Seller will deliver the following items to Buyer: (a) the Deed; (b) possession of the Property; and (c) any other instruments and/or documents that Seller determines necessary or appropriate to consummate the Transaction.

5.2 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, attorney fees, 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.

5.3 Water Meter. Within ninety (90) days after the Closing Date, Seller will install at the Property, at Seller’s cost and expense, a ¾ inch water meter for City of John Day water service.

6. Release, Indemnification, and Waivers.

6.1 Release and Indemnification. Buyer releases and will defend, indemnify, and hold Seller and Seller’s Representatives harmless for, from, and against any and 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. The indemnification covenants

contained in this Section 6.1 will survive the Closing and will not merge with or into the Deed.

6.2 Hazardous Substances – Buyer Indemnification. Buyer releases and will defend, indemnify, and hold Seller and Seller's Representatives harmless for, from, and against any response, removal, and/or remedial costs which may be assessed against Buyer, Seller, and/or Seller's Representatives 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 Buyer's Representatives 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 Seller's Representatives for attorneys employed to defend any such claim whether before or after initiation of a formal lawsuit or administrative proceeding. The indemnification covenants contained in this Section 6.2 will survive the Closing and will not merge with or into the Deed.

7. Miscellaneous.

7.1 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. All Buyer 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 each and every obligation of the parties hereunder.

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. All notices or other communications required or permitted by this Agreement 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 by 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.

7.3 Entire Agreement; Applicable Law; Severability. This Agreement sets forth the entire understanding of the parties with respect to the Transaction. This Agreement supersedes any and 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; Expenses. 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. All representations, warranties, covenants, and obligations made by Buyer 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 duly executed and effective as of the Effective Date.

SELLER:  
City of John Day,  
an Oregon municipal corporation

BUYER:

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

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

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

“Closing” means the closing of the Transaction.

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

“Closing Deadline” means \_\_\_\_\_, 2017 or such other date that the parties may agree upon in writing.

“Deed” means a bargain and sale deed conveying the Property to Buyer subject to all Encumbrances of record and in form and content acceptable to Seller.

“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.

“Preliminary Title Report” means the preliminary title report, attached as Exhibit C, showing the condition of title to the Property.

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

“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 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.

Exhibit A  
Legal Description

(attached)



Exhibit B  
Broker Price Opinion

(attached)

Exhibit C  
Preliminary Title Report

(attached)