

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”), by and between the City of Algona, a Washington municipal corporation (“**Purchaser**”), and Pacific Premier Properties, LLC, a Washington limited liability company (“**Pacific**”) and Sunwest Bank (“**Sunwest**”) (Pacific and Sunwest are collectively referred to as “**Seller**”).

### RECITALS

1. Seller owns certain real property situate in King County, State of Washington, identified by street address (where applicable), Assessor Parcel Number (“**APN**”), and acreage as follows (collectively, the “**Property**”):

- A. The 4.14-acre unaddressed parcel identified as APN 335640-0080-09;
- B. The 4.71-acre parcel located at 1104 Algona Blvd. N., identified as APN 335640-0155-09;
- C. The 0.65-acre parcel located at 1109 Algona Blvd. N., identified as APN 335640-0305-08, and the 1.78-acre parcel located at 4310 11<sup>th</sup> Ave. N., identified as APN 335640-0330-07; and
- D. The 0.75-acre unaddressed parcel identified as APN 335640-0381-05.

The Property is legally described in **Exhibit A**, attached hereto and incorporated herein by this reference as if set forth in full; and

2. The Property is currently vacant and is does not contain any buildings, structures, or other improvements.

3. Purchaser desires to purchase, and Seller desires to sell, the Property in accordance with the terms and conditions set forth in this Agreement.

### TERMS

To provide for the purchase and sale of the Property as herein described, and in consideration of the covenants and promises set forth herein, the receipt and sufficiency of which are mutually acknowledged, it is hereby agreed by and between Seller and Purchaser (each a “**party**” and collectively, “**parties**”) as follows:

1. **PURCHASE AND SALE.** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Property upon the terms and conditions herein set forth.

2. PURCHASE PRICE AND TERMS OF PAYMENT. The total purchase price (“**Purchase Price**”) for the Property is NINE HUNDRED FIFTEEN THOUSAND DOLLARS AND 00/100 CENTS (\$915,000). The balance of the Purchase Price, less the Earnest Money Deposit, is due and payable at Closing.

3. EARNEST MONEY DEPOSIT. Within five (5) business days following the Effective Date, Purchaser shall deliver to Fidelity National Title Co. (“**Escrow Company**”), for the benefit of Seller, FORTY THOUSAND DOLLARS (\$40,000) earnest money in the form of a cash deposit (“**Earnest Money Deposit**”). The Earnest Money Deposit shall be held by Escrow Company and shall become nonrefundable but applicable to the Purchase Price upon Purchaser’s written notice to waive its contingencies set forth in Section 6 below.

Subject to the foregoing, the Earnest Money Deposit shall be nonrefundable after the expiration of the Review Period set forth in Section 5 including any mutually agreed extensions thereof, except in the event of Seller’s default as provided in Section 12(a), and shall be applied to the Purchase Price at Closing; PROVIDED, IN THE EVENT PURCHASER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY AS SPECIFIED HEREIN, THE EARNEST MONEY DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES, BUT NOT AS A PENALTY, AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER. The parties agree that the liquidated damages represent a reasonable sum considering all of the circumstances existing on the date of this Agreement and further represent a reasonable estimate of the losses that Seller will incur if Purchaser fails to purchase the Property after all conditions precedent to Purchaser’s performance have been satisfied. The Earnest Money Deposit shall be refunded to Purchaser in the event that Purchaser gives Seller and Escrow Company written notice of its decision not to proceed with the purchase of the Property prior to the end of the Review Period, including any extensions thereof.

4. CONVEYANCE; SELLER’S WARRANTIES. Upon Closing, title to the Property shall be conveyed from Seller to Purchaser by Statutory Warranty Deed(s) (“**Deed**”), subject only to the exceptions described in Section 9. Seller warrants that: (i) Seller has marketable title to the Property subject only to the exceptions listed in the title commitment to be provided by Seller to Purchaser; and (ii) no portion of the Property is subject to any third-party claim, either asserted or unasserted, for adverse possession or prescriptive easement.

5. REVIEW PERIOD.

**a. Duration and Purpose of Review Period.** Commencing upon the Effective Date, Purchaser shall have a period (“**Review Period**”) of not more than ninety (90) days to inspect the Property and to review any relevant reports and studies and perform any tests, analysis or evaluation of the Property (“**Inspection Condition**”), during which period Purchaser shall proceed with due diligence and in good faith to satisfy the Closing contingencies set forth herein.

**b. Expiration of the Review Period.** Upon expiration of the Review Period, including any mutually agreed extensions thereof, without written notice having been delivered by Purchaser to Seller and Escrow Company stating that Purchaser’s acquisition of the Property is not feasible in Purchaser’s sole discretion, Purchaser shall be obligated to proceed with the Closing of the purchase of the Property except as otherwise provided herein. If during the Review Period,

including any extensions thereof, Purchaser gives written notice to Seller and Escrow Company that such acquisition is not feasible, Purchaser shall be entitled to a full refund of the Earnest Money Deposit, and all rights and obligations of the parties under this Agreement shall thereupon be terminated except as expressly provided herein.

**c. Information.** No later than seven (7) days after the Effective Date, Seller shall provide Purchaser with copies of the following documents, should they exist and be in Seller's possession or control, that relate directly to the Property:

- (i) Leases;
- (ii) Surveys;
- (iii) Construction documents, including any architectural, mechanical, electrical, plumbing and civil drawings;
- (iv) Soils or other engineering reports;
- (v) Investigations, reports and environmental studies;
- (vi) Contracts, including without limitation service agreements, insurance policies and warranties;
- (vii) Regulatory permits, licenses, and approvals;
- (viii) Financial documents relating to the ownership and operation of the Property, including without limitation property tax bills;
- (ix) Litigation, suits, claims, and causes of action, including without limitation threats regarding the same;
- (x) Encumbrances; and
- (xi) Other documents that Purchaser may reasonably request in writing.

The parties mutually acknowledge that the above-referenced documents are public records upon Purchaser's receipt thereof and may be disclosed to third parties.

**d. Inspection and Right of Entry Agreement.** The parties mutually acknowledge the separate Inspection and Right of Entry Agreement executed by the parties and dated October 3, 2023 ("**Inspection and Right of Entry Agreement**"), under which Purchaser and/or its authorized representatives and agents may access and enter upon the Property for purposes of inspection and to conduct tests, surveys, and studies deemed reasonably necessary by Purchaser. Notwithstanding any other provision of this Agreement, if: (i) the Inspection and Right of Entry Agreement is terminated prior to the expiration of the Review Period, or (ii) if Purchaser's access to the Property under the Inspection and Right of Entry Agreement is precluded or otherwise materially impeded in any manner, then Purchaser may in its sole discretion, and without prejudice to any other remedy, terminate this Agreement and receive a full refund of the Earnest Money Deposit.

## 6. CONTINGENCIES.

**a. Contingencies.** Purchaser's obligation to proceed with the Closing of the purchase of the Property is expressly contingent upon satisfaction of the contingencies identified in this Agreement, including without limitation the following:

- (i) **Feasibility:** This transaction is contingent upon Purchaser's inspection and review of the Property and Purchaser's determination that the Property is satisfactory to Purchaser and meets Purchaser's needs for its intended use, in Purchaser's sole subjective discretion, including without limitation Purchaser's review and approval of evidence satisfactory to Purchaser that the Property complies with all applicable zoning, subdivision, land use redevelopment, energy, environmental, building and other governmental requirements applicable to Purchaser's intended use, maintenance and occupancy of the Property.
- (ii) **Inspection:** This transaction is contingent upon Purchaser's inspection of the Property pursuant to the Inspection and Right of Entry Agreement, showing that the condition of the Property is satisfactory to Purchaser, in Purchaser's sole subjective discretion. Purchaser's inspection may include, but shall not be limited to, geotechnical analysis including borings for soil samples, archeological testing, Level I and/or Level II environmental assessments, critical areas, hazardous waste, and pest inspection.
- (iii) **Condition of Title:** This transaction is contingent upon the condition of title to the Property being acceptable to Purchaser, in Purchaser's sole subjective discretion, pursuant to Section 9.
- (iv) **Seller's Representations:** This transaction is contingent upon all of Seller's representations and warranties being true as of the date of Closing.

**b. Contingency Failure.** In the event of the failure of a contingency, Purchaser shall promptly give written notice to Seller and Closing Agent of such contingency failure, in which event this transaction shall terminate, this Agreement shall be null, void and unenforceable, and the Earnest Money Deposit shall be promptly refunded to Purchaser.

**c. Satisfaction or Waiver.** Purchaser may waive any of the above contingencies at any time by written notice to Seller and Closing Agent. Except for the Seller's Representations contingency set forth at subsection 6(a)(iv), a contingency shall be deemed satisfied or waived if Purchaser does not give written notice of the failure of the contingency on or before the last day of the Review Period, including any mutually agreed extensions thereof.

## 7. HAZARDOUS MATERIAL.

**a. Definition of Hazardous Material.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined

as a “hazardous waste,” “hazardous substance” or similar term under the Federal Water Pollution Control Act (33 U.S.C. §1317), (ii) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (iii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (iv) petroleum, (v) asbestos or (vi) which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law.

**b. Presence of Hazardous Material.** Except as expressly set forth herein, Seller represents and warrants to the best of Seller’s actual knowledge, that as of the Effective Date of this Agreement Seller is not aware of the presence on or beneath the Property of any detectable and/or unlawful levels or quantities of Hazardous Materials. For purposes of this section, “Seller’s actual knowledge” means the actual knowledge, as of the Effective Date of this Agreement, of Seller and any corporate officer or employee of Seller.

**c. Right to Inspect.** Prior to the expiration of the Review Period, Purchaser shall have the right, at its cost and expense, to conduct such physical inspections of the Property as necessary in order to determine the presence or absence of Hazardous Material on or under the Property in accordance with subsection 5(d).

8. **INDEMNITY.** The parties agree to defend, hold harmless, and indemnify each other, their respective officers, officials and employees, from and against any claims, demands, penalties, fees, liens, damages, losses, expenses, including reasonable attorneys' fees and costs incurred by the indemnitee for liability resulting from any breach of the warranties and representations in this Agreement. The representations and warranties contained in this Agreement, and this indemnity, shall survive Closing.

9. **TITLE.** Seller, at Seller’s expense and upon delivery, shall provide Purchaser with an Alta 2006 Standard Owner’s Policy and report from Fidelity National Title Co. (“**Title Company**”). Seller shall provide such policy to Purchaser within seven (7) days of the Effective Date of this Agreement. Purchaser shall inform Seller of any objections it has to the listed exceptions to insurable title identified in the title report within forty-five (45) days of Purchaser’s receipt of the report, and Seller shall thereupon have the option of curing any stated objection. If Seller declines to cure any exception objected to by Purchaser, this Agreement shall terminate, and Purchaser, as its sole and exclusive remedy, shall be refunded the Earnest Money Deposit, unless Purchaser agrees in its sole discretion within 15 days to withdraw its objection to the exception. All exceptions not objected to, or for which Purchaser waives its objection, shall be referred to as “**Permitted Exceptions.**” Seller’s conveyance of title by the Deed pursuant to subsection 10(e) shall be subject to the Permitted Exceptions. The cost of obtaining any extended coverage title insurance desired by Purchaser, including without limitation the cost of any survey update or new survey required to obtain such extended title insurance coverage, shall be paid by Purchaser; provided, that Seller shall provide the title company’s standard affidavit/indemnity in connection with any such extended coverage title insurance.

## 10. ESCROW AND CLOSING.

**a. Closing Agent; Date of Closing.** The sale shall be closed at the \_\_\_\_\_, Washington offices of Fidelity National Title Co. (“**Closing Agent**”), on a date mutually agreeable to the parties but not later than thirty (30) days from expiration of the Review Period, including any mutually agreed extensions thereof. Purchaser and Seller shall deposit with the Closing Agent, all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. Seller agrees to maintain the Property in its present condition, normal wear and tear excepted, until Purchaser is entitled to possession. In the event that this sale cannot be closed by the date provided herein due to the unavailability of either party, the Closing Agent, or financing institution to sign any necessary document, or to deposit any necessary money, because of any interruption of available transport; strikes, fire, flood or extreme weather; governmental regulations; pandemic; incapacitating illness; acts of God; or other similar occurrences; the Closing date may be extended beyond cessation of such condition with written agreement of the parties.

**b. Expenses of Escrow.** Title insurance premiums and all other costs or expenses of escrow shall be paid as follows:

- (i) the cost of securing the above-referenced title insurance policy for Purchaser shall be paid by Seller;
- (ii) the additional cost of securing any extended coverage title policy, including the cost of any survey associated therewith, shall be paid by Purchaser;
- (ii) the cost of discharging any liens or encumbrances to clear title, shall be paid for by Seller;
- (iii) the costs of recording the Deed shall, including stamps, shall be paid by Purchaser;
- (iv) all applicable real estate excise taxes and other transfer taxes and charges shall be paid by Seller; and
- (iv) all other expenses of escrow shall be shared equally by the parties.

**c. Pro-Rations.** All real property taxes and utility charges against the Property shall be pro-rated as of the date of Closing. Said prorations, if any, shall be effected on the basis of the latest available utility and/or tax bills and other applicable statements and based upon a 365-day calendar year. If current year utility and/or tax statements are not available at the close of escrow, the prorations will be made as above provided and shall be adjusted between Purchaser and Seller outside of escrow as soon as the utility and/or tax bills or other information is available.

**d. Closing Defined.** “**Closing**” for the purpose of this Agreement is defined as the date that all documents are executed and the sale proceeds and other payments required hereunder are available for disbursement to Seller. When notified, Purchaser and Seller will deposit, without delay, in escrow with Closing Agent, all instruments and monies required to complete the

transaction in accordance with this Agreement and/or otherwise required by the Closing Agent or by law.

**e. Statutory Warranty Deed.** At closing, Seller will convey marketable title to the Property to Purchaser by statutory warranty deed(s) (“**Deed**”), subject only to the Permitted Exceptions, with all other exceptions to be removed or satisfied at or prior to Closing.

**f. Purchaser Deliveries.** At or before Closing, Purchaser shall deposit into Escrow the following items:

- (i) funds transmitted by wire transfer in the amount of the Purchase Price (less the amount of the Earnest Money Deposit), together with Purchaser’s share of closing costs and prorations, as provided in this Agreement;
- (ii) a real estate excise tax affidavit executed by Purchaser; and
- (iii) such additional deliveries as may be reasonably requested by Seller.

**g. Seller’s Deliveries.** At or before Closing, Seller shall cause to be delivered into Escrow the following documents:(i) The Deed to the Property, subject only to the Permitted Exceptions, properly executed and acknowledged on behalf of Seller;

- (ii) a certificate executed by Seller to the effect that Seller is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended;
- (v) a real estate excise tax affidavit executed by Seller; and
- (vi) such additional deliveries as may be reasonably requested by Purchaser.

**h. Proof of Authority.** Purchaser and Seller each shall deliver such proof of authority and authorization to enter into this Agreement and consummate the transaction contemplated by this Agreement and such proof of power and authority of the individual(s) executing and delivering any instruments, documents or certificates to act for and bind such party, as reasonably may be required by Closing Agent.

**i. Other Documents.** Purchaser and Seller shall deliver such other documents or instruments as are reasonably required to consummate their transaction in accordance with this Agreement, including without limitation closing statements.

**j. Possession.** Seller shall deliver possession of the Property to Purchaser at Closing.

**k. Disbursement and Other Actions.** At the Closing, Closing Agent promptly shall undertake all of the following in the manner indicated.

(1) Funds. Closing Agent shall disburse all funds deposited by Purchaser as follows:

- (i) Disburse the Purchase Price to Seller, net the total amount chargeable to Seller, if any, as the result of prorations and credits pursuant to subsection 10(c).
- (iii) Disburse the remaining balance of the funds, if any, to Purchaser promptly following the Closing.

(2) Recording. The Escrow Company shall cause the Deed and any other documents that the parties may mutually direct to be recorded in the Official Records of King County, Washington and obtain conformed copies thereof for distribution to Purchaser and Seller.

(3) Title Policy. Escrow Company shall issue an extended title policy to Purchaser if so requested by Purchaser.

(4) Disbursement of Documents to the Parties. Escrow Company shall disburse to each party any counterpart documents per the instructions of the parties.

11. POSSESSION. Purchaser shall be entitled to possession of the Property at Closing.

12. DEFAULT.

**a. By Seller.** In the event of any default by Seller, Purchaser shall be entitled to immediately cancel this Agreement (in which case the Earnest Money Deposit not yet forfeited under the terms of this Agreement prior to Seller's default shall be refunded to Purchaser); provided, however, Purchaser may, at its option, waive any default by Seller and proceed with the purchase of the Property. Without limitation of the foregoing, Purchaser shall in its sole discretion be entitled to specifically enforce this Agreement.

**b. By Purchaser.** In the event of any default by Purchaser, prior to the close of the escrow, Seller may waive the default, or at Seller's option, terminate the escrow and Purchaser's right to purchase the Property and retain the forfeited Earnest Money Deposit.

13. ATTORNEYS' FEES. Each party shall be exclusively responsible for paying its own attorneys' fees incurred in the negotiation, drafting and execution of this Agreement. In the event any action or proceeding to compel compliance with, or for a breach of, the terms and provisions of this Agreement, the substantially prevailing party shall be entitled to recover from the losing party all costs and expenses of such action or proceeding, including, but not limited to the reasonable attorneys' fees of the substantially prevailing party.



14. **ASSIGNMENT.** This Agreement may not be assigned without the prior written consent of both parties.

15. **CASUALTY LAW.** Seller agrees to maintain the Property in good condition and to maintain liability insurance on the Property prior to Closing. The parties agree that Purchaser shall not be responsible to acquire any insurance for the Property before Closing.

16. **WRITTEN NOTICE.** Except as otherwise provided herein, any and all notices provided under this Agreement must be in writing and shall be deemed given when delivered in person, or when deposited with Federal Express or other similar overnight service, return receipt requested, or when deposited in the United States mails, postage prepaid for certified mail, return receipt requested, or upon actual receipt of a facsimile or other similar transmission (provided that a copy of the facsimile is delivered or deposited within twenty-four hours in the manner specified above), properly addressed to Sellers and to Purchaser as follows:

**TO PURCHASER:**

Jessica Griess, City Administrator  
City of Algona  
200 Washington Blvd.  
Algona, WA 98001

With a copy to:

Ogden Murphy Wallace PPLC  
Attn: J. Zachary Lell, Esq. and Paul Barba, Esq.  
901 Fifth Avenue, Suite 3500  
Seattle, WA 98164-2008

**TO SELLER:**

Michael Haden, Special Assets Manager  
Sunwest Bank  
2050 Main Street, Suite 300  
Irvine, CA. 92614

With a copy to:

Bruce Goldstein, Senior Vice President  
NAI Puget Sound Properties  
10900 NE 8<sup>th</sup> Street, Suite 1500  
Bellevue, WA 98004

Either party may designate a different address for receiving notices hereunder by giving at least ten (10) days written notice thereof to the other party.

17. **TIME IS OF ESSENCE AND COMPUTATION OF TIME.** Time is of the essence of this Agreement. Unless otherwise stated in this Agreement, any period of time in this Agreement

shall begin the day after the event starting the period and shall expire at 5:00 p.m. Pacific time of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday or legal holiday as defined in RCW 1.16.050, in which case the specified period of five days or less shall not include Saturday, Sunday or legal holidays.

18. **COMPLETE AGREEMENT.** Excepting the Inspection and Right of Entry Agreement, this Agreement supersedes any and all agreements, written or oral between the parties hereto regarding the Property, which are prior in time to this Agreement. Neither Purchaser nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specified herein.

19. **COMMISSION.** Seller is represented with respect to this transaction by NAI Puget Sound Properties (“**Seller’s Broker**”) and shall be solely responsible for paying commission owed to Seller’s Broker, in the amount of five percent (5%) of the Purchase Price, in accordance with Seller’s separate agreement with Seller’s Broker. Such commission shall be paid out of escrow at Closing. The parties represent and warrant that no other brokers are owed a commission with respect to the transaction set forth herein. For the avoidance of doubt, and without limitation of the foregoing, it is expressly understood and acknowledged that Purchaser shall not be obligated to pay any commission whatsoever.

20. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed according to the laws of the State of Washington. Venue for any suit arising out of or related to this Agreement shall be the Superior Court of King County, Washington.

21. **NON-MERGER.** The terms and provisions of this Agreement shall not merge in the Deed or other conveyance instrument transferring the Property to Purchaser at Closing but shall survive the Closing of this transaction.

22. **COUNTERPARTS AND FACSIMILE TRANSMISSION.** This Agreement may be executed in counterparts, all of which together shall be deemed to be one original, even if the parties have not executed the same original. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing or original document.

23. **EFFECTIVE DATE.** This Agreement shall become effective as of the date first listed above when signed by all parties.

24. **REGULATORY AUTHORITY PRESERVED.** Seller expressly acknowledges that Purchaser is a municipal corporation organized under the laws of the state of Washington and has executed this Agreement in its proprietary capacity as purchaser of the Property. Nothing in this Agreement shall be construed as waiving, abridging or otherwise limiting the City of Algona’s regulatory authority, police power and/or legislative discretion, which are hereby expressly reserved in full. Without prejudice to the foregoing, nothing in this Agreement shall be construed as entitling any party to any permit, license or other regulatory approval, or as waiving or excusing compliance with any applicable regulatory process.



Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name legibly printed or stamped)

My appointment expires \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Dana Parker, Acting City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
J. Zachary Lell, City Attorney

**SELLER:**

Pacific Properties, LLC  
Sunwest Bank

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

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_, as authorized representative of Sunwest Bank, is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name legibly printed or stamped)

My appointment expires \_\_\_\_\_

**Exhibit A**

**Legal Description of Property**