

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made and entered into as of _____, 2022 by and between Venture Properties, Inc., an Oregon corporation (the "Seller"), and the City of Forest, Oregon, an Oregon municipal corporation (the "Purchaser").

RECITALS

- I. Seller is the contract purchaser of certain unimproved real property of an approximately 34.52 acres. The parcel is more particularly described as Township 1 North Range 4 West Section 36 Tax Lot 3400, Forest Grove, Washington County, Oregon as shown on the attached Exhibit "A" (the "Primary Property") and also commonly known as Parkview Terrace.
- II. Seller is in the process of obtaining Land Use Approval to develop the Primary Property into a residential subdivision which will include a portion of land ("Tract C") which is intended to be used by the City of Forest Grove as a future reservoir site.
- III. Purchaser desires to purchase approximately 1.01 gross acres of the Property from Seller identified on Exhibit "B" as Tract C ("Reservoir Site") and referred to herein as the "Property."

AGREEMENT

The terms of this Agreement are as follows:

1. **Purchase and Sale.** Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase the Property (1.01 acres) upon the terms and conditions set forth in this Agreement.
2. **Purchase Price.** The purchase price for the Property shall be Two Hundred and Sixty-One Thousand Four Hundred Eighty-Seven and 95/100 Dollars (\$261,487.95) per acre plus the prorate share of the costs of entitling, engineering, and constructing of the subdivision and all the costs directly attributable to developing Tract C ("Pro rata Costs") as shown on Exhibit "C" which shall be finalized and provided to Purchaser at least five (5) days prior to Closing. The purchase price will be determined based on the total acreage for the Property established by the recorded plat of Parkview Terrace and final costs.
3. **Payment of Purchase Price.** The Purchase Price, including the Pro rata Costs, shall be payable in cash at Closing.
4. **Contingency Period.** Purchaser shall have fifteen (15) days from the date of mutual acceptance and execution of the Agreement to determine if the Property is suitable for the Purchaser's use. If the Purchaser determines at its sole discretion the Property is not suitable for its intended development, then the Agreement shall be null and void and both parties shall release each other from any further obligations under the terms of the Agreement.
5. **Escrow and Deposit.**
 - A. Escrow. Upon execution of this Agreement, Seller shall deliver a fully executed copy of this Agreement to First American Title Insurance Company, Lake Oswego Branch, Attention: Joyce Jameson ("Escrow Agent").

B. Deposit. A promissory note in an amount of Two Hundred and Sixty-One Thousand Four Hundred Eighty-Seven and 95/100 Dollars (\$261,487.95) will be placed in escrow upon the execution of a Purchase and Sale Agreement. The note will be redeemed at the end of the Contingency Period if the Purchaser elects to move forward with the project. Project released to Seller at Closing.

6. **Approvals.** Seller shall use its experience, resources and best efforts, including the services of its professional consultants, to obtain the land use approvals and all other approvals required by the City of Forest Grove, Washington County, and any other governing jurisdictions to proceed with development of a residential subdivision (“Approvals”). Said Approvals shall be satisfactory to Seller, at Seller’s sole discretion.

7. **Closing.** Seller and Purchaser shall close the transaction for the Property (the “Closing Date”) on or before the date that is seven (7) days after the occurrence of all the following events: (i) Seller has Closed on the Primary Property, (ii) Seller obtains all Approvals; and (iii) Seller has recorded the plat.

8. **Deliveries to Purchaser at Closing.** The Seller shall deliver possession of the Property to the Purchaser at Closing. Seller shall remove any personal property located on the Property at Seller’s sole expense, prior to Closing.

9. **Conditions to Closing.**

A. Conditions Precedent to Purchaser’s Obligations. Within five (5) days of the mutual acceptance of this Agreement by the Seller, Seller shall cause the Escrow Agent to issue to the Purchaser its preliminary title report (the “Preliminary Commitment”), along with copies of all documents that give rise to exceptions listed in the preliminary title report. Within ten (10) days of receiving the Preliminary Commitment, the Purchaser shall give the Seller written notice setting forth the exceptions that are not acceptable to the Purchaser (the “Unacceptable Exceptions”). All other exceptions shall be deemed acceptable to the Purchaser (the “Permitted Exceptions”). The Seller shall have five (5) days after receiving the Purchaser’s notice within which to give the Purchaser its written notice of whether Seller agrees to eliminate the Unacceptable Exceptions. If the Seller agrees to eliminate the Unacceptable Exceptions, the Seller shall be obligated to do so at its cost prior to closing. If Seller does not agree to eliminate the Unacceptable Exceptions, Purchaser may either terminate Agreement and all earnest money shall be returned to Purchaser or Purchase may close on the Property subject to the Unacceptable Exceptions.

B. Condition Precedent to Seller’s Obligations. The close of escrow and the Seller’s obligations with respect to the conveyances contemplated by this Agreement are subject to the Purchaser’s delivery of all sums necessary to the Escrow Agent as required by this Agreement.

10. **Deliveries to Escrow Agent**

A. By Seller. On or before the Closing Date, the Seller shall deliver the following in escrow to the Escrow Agent:

- 1) Deed. Special Warranty Deed conveying the Property to the Purchaser subject only to the Permitted Exceptions.
- 2) Non-foreign Certification. Seller represents and warrants that it is not a “foreign person” as defined in IRC 1445, and will give and affidavit to Purchaser to this effect in the form required by that statute and related regulations.

- 3) Proof of Authority. Such proof of Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of Seller, as may be reasonably required by Escrow Agent.
- B. By Purchaser. On or before the Closing Date, Purchaser shall deliver the following in escrow to the Escrow Agent:
 - 1) Purchase Price. The purchase price in accordance with Section 3.
 - 2) Prorations. The amount due Seller, if any, after the prorations are computed in accordance with this Agreement.
11. **Deliveries to Purchaser at Closing**. Seller shall deliver possession of the Property to the Purchaser at closing. Seller shall remove any personal property located on the Property at Seller's sole expense prior to Closing.
12. **Adjustments**.
 - A. Seller shall pay the cost and expense of the Title Policy. Purchaser shall pay all excise taxes, if any, payable in connection with this transaction. Other than as set forth above, Purchaser and Seller shall pay, respectively, the Escrow Agent's customary charges for document drafting, recording and miscellaneous charges.
 - B. Seller and Purchaser shall each pay the fees and costs of their respective attorneys and consultants in connection with the transaction, whether or not it closes.
 - C. Seller and Purchaser shall each pay their share of prorations, to be prorated as of the Closing Date based on a 365-day year, including, without limitation, the real property taxes attributable to the Property, sewer rents, and other like charges, and general and special assessments against the Property.
 - D. Purchaser shall pay its pro rata portion deferred real property taxes.
13. **Disbursements and Other Actions by Escrow Agent**. At the time of closing, in addition to making the adjustments in Section 12, the Escrow Agent shall do the following:
 - A. Funds. Disburse all funds deposited with the Escrow Agent by the Purchaser in payment of the purchase price as shown in the approved closing statement.
 - B. Recording. Cause the deed and any other documents that the parties may mutually direct to be recorded in the official records and obtain conformed copies for distribution to the Purchaser and the Seller.
 - C. Title Policy. Issue the title policy to the Purchaser.
14. **Successor Interest**. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns.
15. **Seller's Representations and Warranties**. In addition to any express agreements of the Seller, the following constitute representations and warranties of the Seller to the Purchaser:
 - A. Representations Regarding Seller's Authority.

- 1) Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated.
- 2) All requisite action (corporate, trust, partnership, or otherwise) has been taken by the Seller in connection with entering into this Agreement, the instruments referred to, and the consummations of the transactions contemplated. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.
- 3) The persons executing this Agreement and the instruments referred to on behalf of the Seller and the partners, officers, or trustees of the Seller, if any, have the legal power, right, and actual authority to bind the Seller to the terms and conditions of this Agreement.
- 4) This Agreement and all documents required to be executed by the Seller are and shall be valid, legally binding obligations of and enforceable against the Seller in accordance with their terms.
- 5) Neither the execution and delivery of this Agreement and related document, nor the incurring of the obligations set forth, nor the consummation of the transaction contemplated, nor compliance with the terms of this Agreement and the related documents conflict with or results in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Seller is a party or affecting the Property.

B. Warranties and Representations Pertaining to Real Estate and Legal Matters.

- 1) Except as disclosed to the Purchaser in writing, to Seller's actual knowledge there is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or its operation.
- 2) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of the Seller's knowledge, threatened against the Seller, nor are any such proceeding contemplated by the Seller.
- 3) To Seller's actual knowledge, the Property materially conforms to and complies with all applicable city, county, state, and federal law, statutes, ordinances, and regulations and is materially in compliance with applicable state and federal environmental standards and requirements affecting it. To Seller's actual knowledge there are no notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property and there are no proceedings, governmental administrative actions, or judicial proceedings pending or contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment relating to the Property.
- 4) At closing, the Seller shall be the legal and beneficial fee simple title holder of the Property and have good, marketable, and insurable title to the Property, and to the best of its knowledge, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments, or other matters, except as disclosed by preliminary title report.
- 5) AS/IS. EXCEPT FOR THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER SET FORTH IN THIS AGREEMENTT, BUYER SHALL PURCHASE THE PROPERTY IN ITS "AS-IS" CONDITION AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, BY SELLER. Buyer acknowledges and agrees that, other than the covenants, representations and warranties expressly stated in this

Agreement and in any document executed by Seller pursuant to this Agreement, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to the Property.

16. Purchaser's Representations and Warranties. In addition to any express agreements of the Purchaser, the following constitute representations and warranties of the Purchaser to the Seller:

- A. The Purchaser has the legal power, right, and authority to enter into this Agreement and the instruments referred to and to consummate the transactions contemplated.
- B. All requisite action (corporate, trust, partnership, or otherwise) has been taken by the Purchaser in connection with entering into this Agreement and the instruments referred to and the consummation of the transactions contemplated. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.
- C. The persons executing this Agreement and the instruments referred to on behalf of the Purchaser have legal power, right, and actual authority to bind the Purchaser to the terms and Conditions of this Agreement.
- D. This Agreement and all documents required by it to be executed by the Purchaser are and shall be valid, legally binding obligations of, and enforceable against the Purchaser in accordance with their terms.
- E. Neither the execution and delivery of this Agreement and related documents, nor the incurring of the obligations set forth, nor the consummation of the transactions contemplated, nor compliance with the terms of this agreement and the related documents conflicts with or results in the material breach of any terms, conditions, or provisions of or constitute a default under any bond, note, or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Purchaser is a party.

17. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service); sent by email (with delivery confirmation); or sent by postage registered or certified mail, prepaid, return receipt requested, and shall be deemed received three (3) days after deposit in the United States mail.

To Seller: Attn: Kelly Ritz
 Venture Properties, Inc.
 4230 Galewood, #100
 Lake Oswego, OR 97035
 kelly@ventureprop.com

To Purchaser: Attn: Jesse Vanderzanden
 City Manager
 PO Box 326
 Forest Grove, OR 97116
 jvanderzanden@forestgrove-or.gov

Notice of change of address shall be given by written notice in the manner detailed in this section.

18. **Required Actions of Purchaser and Seller.** The Purchaser and the Seller agree to execute all instruments and documents as may be necessary and to take all actions pursuant to the provisions of this Agreement to conclude the purchase and sale, to support the subdivision applications, and to use their best efforts to accomplish the close of escrow in accordance with the terms of this Agreement. Purchaser agrees to timely consent to and sign all necessary land use applications and associated documents. Purchaser agrees to attend public meetings and hearings in support of Purchaser's attempt to obtain Approvals if requested by Purchaser with reasonable notice.
19. **Entry and Inspection.** Until the Closing Date, Purchaser and its agents, employees, contractors, and consultants shall be allowed full access to the Property for the purpose of conducting surveys, tests, and inspections on the Property, and other investigations as Purchaser deems prudent during both the feasibility and/or platting process; provided, however, that Purchaser shall not undertake a phase II environmental site assessment or any other invasive testing without prior notice to Seller. Such entry and inspection shall be subject to the following terms and conditions:
- A. Purchaser shall give Seller 48-hours' written advance notice of such entry and shall conduct such entry and any inspections in connection therewith so as to reasonably minimize interference with Seller's business on the Property.
 - B. The results of all soil tests, surveys, phase I environmental site assessments, and other investigations of the Property undertaken by Purchaser shall not be disclosed to any third party or governmental entity without the prior written consent of Seller, unless such disclosure is required by law or is required in connection with obtaining any necessary permits or approvals; provided, however, that Purchaser shall be permitted to disclose such results to its design professionals, consultants, attorneys, and potential lenders and investors, provided that such parties have been advised of the foregoing confidentiality obligation.
 - C. Purchaser shall indemnify, defend and hold Seller harmless from and against any claims, damages or liability (including reasonable attorneys' fees), and be responsible for any damage, repair and restoration of the Property affected by Purchaser's entry, access provided to others, inspections or invasive testing, or any other matter related to Purchaser's due diligence conducted on site. In the event Purchaser, by written notice to Seller, cancels this Agreement, Purchaser's right to access the Property shall terminate.
 - D. If this Agreement is terminated by either party, Purchaser shall deliver to Seller true copies of any reports, recommendations, surveys, title commitments, plans or similar matters that Purchaser receives from environmental consultants, civil and other engineers, surveyors, appraisers, geologists and other third-party experts with whom Purchaser has contracted within five (5) days after the termination date.
20. **Legal and Equitable Enforcement of This Agreement.**
- (a) **Default by the Purchaser.** In the event the close of escrow and the transaction contemplated in this Agreement do not occur due to any default by the Purchaser, the Seller shall have the right to pursue any remedy available to it at law or equity, including the specific performance of this Agreement.
 - (b) **Default by the Seller.** In the event the close of escrow and consummation of the transaction contemplated do not occur due to any default by Seller, Purchaser and Seller agree that it would be impracticable and extremely difficult to estimate the damages which Purchaser may suffer. Accordingly, Purchaser and Seller hereby agree that a reasonable estimate of the total net detriment that Purchaser would suffer if Seller defaults and fails to complete the purchase of all or a portion of

the Property is the Earnest Money released to Seller. Said amount shall be the full, agreed, and said liquidated damages for the breach of this Agreement by Seller, all other claims to damages or other

remedies being herein waived by Purchaser. Upon default by Seller, this Agreement shall terminate and neither party shall have any further rights or obligations hereunder.

Seller's initials _____ Purchaser's initials _____

21. Miscellaneous

- A. Partial Invalidity. If any term or provision of this be invalid or unenforceable, the remainder of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- B. Waivers. No waiver of any breach of any covenant or provision shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.
- C. Arbitration/Attorney Fees. Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, scope, or validity of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc. or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected, and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. In the event suit or action is brought, or an arbitration proceeding is initiated, to enforce or interpret any of the provisions of this agreement, or that arise out of or relate to this agreement, the prevailing party shall be entitled to reasonable attorney's fees in connection therewith. The determination of who is the prevailing party and the amount of reasonable attorney's fees to be paid to the prevailing party shall be decided by the arbitrator.
- D. Entire Agreement. This Agreement is the final expression of, contains the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior understandings. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing. The parties do not intend to confer any benefit on any person, firm, or corporation other than the parties hereto.
- E. Time of Essence. The Seller and the Purchaser acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision. This Agreement will become null and void unless fully executed by Seller and Purchaser on or before February 15, 2022.
- F. Cure Period. In the event of failure of Purchaser's or Seller's performance of any condition, Purchaser and Seller shall have five (5) business days from receiving written notice of said failure to cure the failure prior to the application of Section 20 herein.
- G. 1031 Exchange. Should Seller desire to enter in to a 1031 exchange, Purchaser shall cooperate with Seller in facilitating a 1031 exchange at no cost to Purchaser.
- H. Assignment. This Agreement may not be assigned without the consent of Seller which shall not be unreasonably withheld.

I. **Condemnation.** Seller shall immediately notify Purchaser if a condemnation proceeding concerning the Property is initiated during the term of the Agreement. If such condemnation is material to the development of the Property, the Purchaser shall have the right to terminate this Agreement and Purchaser shall have all Earnest Money returned to Purchaser. The term "Material" shall be defined as the condemnation of more than two (2) acres of the Property which adversely effects the proposed development of the Property by Purchaser. If a condemnation of the Property occurs, Purchaser shall be entitled to repayment of its costs associated with obtaining Approvals, if such costs are recoverable expenses under the condemnation proceeding.

22. **Confidentiality.** Seller and Purchaser agree to keep the terms of this Agreement confidential and not make any public announcements or disclosures with respect to the subject matter hereof without the prior written consent of the other party, provided, however, that Seller and Purchaser may disclose the terms hereof to their respective attorneys, accountants, the lender and other professionals engaged in connection with assessing and consummating the transactions contemplated hereby.

23. **Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the state of Oregon.

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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written above.

SELLER:

Venture Properties, Inc.

Date

Kelly Ritz, President

PURCHASER:

City of Forest Grove, Oregon

By:

Date

Jesse Vanderzanden, City Manager