

**REAL PROPERTY
PURCHASE AND SALE AGREEMENT**

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT ("Agreement"), dated the _____ day of _____, 2019, is by and between City of Lynden, a municipal corporation ("City"), and the Lynden School District, a municipal corporation ("District"). City and District shall be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

A. The District is the sole owner in fee simple of real property in the City of Lynden legally described at EXHIBIT A, situated in Whatcom County, Washington, which is approximately 3.99 acres ("Property").

B. The Property comprises the block bounded by 6th Street and 8th Street to the east and west, respectively, and Glenning Street and Edson Street to the north and south, respectively, in the City of Lynden (tax parcel number 400320 142393 0000).

C. A community group represents to the City that it has raised at least four hundred thousand dollars (\$400,000.00) in pledges from community members to support the City's purchase of the Property.

D. The City desires to purchase the Property from the District, and the District desires to sell the Property to City, for the price and on the terms and conditions set forth in this Agreement.

E. The foregoing recitals are a material part of this Agreement.

NOW, THEREFORE, in consideration of the promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Purchase and Sale. The District agrees to sell the Property to the City, and the City agrees to purchase the Property from District, for the price and in accordance with the terms and conditions set forth in this Agreement.

2. Purchase Price and Payment.

2.1. Purchase Price. The purchase price for the Property (the "Purchase Price") shall be One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00). Four hundred thousand dollars (\$400,000.00) of this Purchase Price shall be paid at Closing by a person or entity other than the City. The balance of the Purchase Price will be paid by the City.

2.2. Payment of Purchase Price. The Purchase Price shall be paid in full at Closing (defined below).

3. Title and Related Matters.

3.1 Condition of Title. Prior to Closing, the District shall provide to the City marketable, fee simple absolute title to the Property, free and clear of all matters other than: (a) the normal permitted exceptions contained in a standard owner's title insurance policy; (b) encumbrances acceptable to City; and (c) any encumbrances for liens or for borrowed money to be removed by District at Closing.

3.2 Preliminary Commitment. Within fifteen (15) days of receipt of mutual acceptance of this Agreement, the District shall deliver to the City a preliminary commitment to issue a title insurance policy issued by the Title Insurance Company identified in Section 5.1 hereof, showing condition of title to the Property free and clear of all matters other than the general exceptions contained in the Title Company's standard owner's title insurance policy, and any liens for borrowed money or other obligations which District will remove at Closing. Rights excepted or reserved in federal patents or state deeds, reserved oil, gas and/or mineral rights, utility easements and other easements not inconsistent with City's intended use shall constitute "Permitted Exceptions." In the event that the preliminary commitment shows additional exceptions which are unacceptable to the City, the City shall notify the District within ten (10) days following receipt of the preliminary commitment as to additional exceptions that are not acceptable to the City, and if the District is then unable or unwilling to remove or discharge such exceptions at least ten (10) days prior to Closing, then this Agreement shall be null and void. In the event that such notice is not given by City, any additional exceptions disclosed in the preliminary commitment shall be deemed to be acceptable to City, and the Parties shall proceed with Closing in accordance with the terms of this Agreement.

4. Conditions to Closing.

4.1 City's Conditions. The City's obligation to close this transaction and purchase the Property in accordance with Section 5 hereof shall be subject to and contingent upon performance of all the District's obligations prescribed under this Agreement and upon the additional conditions specified below:

a. Contingency Funding. The City's obligation to close this transaction and to purchase the Property shall be contingent upon the depositing of not less than four hundred thousand dollars (\$400,000.00) by a person or entity other than the City, into an escrow account held by the Escrow Agent to be applied to the Purchase Price for the Property, not later than ten (10) business days following the execution of this Agreement.

b. Seller's Disclosure Statement. City's approval of the District's response to standard Seller's Disclosures for vacant land as specified in RCW 64.06.015, which District will provide within five (5) days of mutual acceptance of this Agreement. The City's right to terminate the Agreement under this section, which may be for any reason, in its sole discretion, must be exercised by delivering written notice of its election to the District on or before the 15th day following receipt of the Seller's Disclosures.

c. Property Inspection. For a period of sixty (60) days following mutual acceptance of this Agreement, the City shall have the right, in person or by agent, independent contractor, or employee, to enter upon the Property subject to this Agreement for purposes of conducting any such inspections as the City shall deem to be required, including property line verifications, all at the sole cost and expense of the City, provided however that the City shall, prior to so entering, give the District prior

notice of its intent to enter and the identity of the person or firm who will make such entry. The results or findings of said inspections and verifications shall meet with the City's satisfaction, in the City's sole discretion. The City shall hold District and the Property harmless from any costs, expenses, claims and liens of or by any persons performing such surveys and inspections. Upon the request of the City, the District shall deliver to the City or make available to the City for inspection (i) all leases and rental agreements related to the Property, (ii) an inventory of all personal property included in the Property, (iii) copies of all documents regarding the environmental condition of the Property, (iv) copies of all permits which affect any portion of the Property or its operation, and (v) any and all instruments affecting District's title to the Property or any part thereof. The City's right to terminate the Agreement under this section, which may be for any reason, in its sole discretion, must be exercised by delivering written notice of its election to the District on or before the sixty (60) day period identified above. The City shall return the Property to as near its original condition as practicable. If the City terminates this Agreement pursuant to this Section, this Agreement will terminate, and the District and the City will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for City's obligations to indemnify the District under this Subsection.

d. Environmental Review. The City's right to enter the Property for any of the below purposes and City satisfaction, in its sole discretion, with the outcome of an environmental assessment not later than ten (10) days prior to Closing. Environmental assessments the City may perform in its sole discretion include without limitation:

- i. Phase I ESA: an environmental due diligence screening typically consisting of a site visit and visual inspection, interviews with persons knowledgeable about the property, examination of public records, scrutiny of aerial images and USGS maps, and review of chain of title documents;
- ii. Phase II ESA: a screening which has all the elements of a Phase I ESA, plus testing of soils, building materials, and/or groundwater for contaminants; and
- iii. Phase III ESA: a screening which has all the elements of a Phase II ESA, plus additional testing and investigation to facilitate remediation of contaminants.

Any work product produced by the City or its consultants under this Section will be for the City's use only and will not be provided to third parties or government entities without the express written consent of the District, unless in the City's opinion disclosure is mandated by the Public Records Act (Chapter 42.56 RCW). In the event the City obtains a request for disclosure of such work product, it shall promptly notify the District in writing of same and provide the District with not less than three (3) business days to file a motion seeking a court order preventing disclosure. The City obligations set forth in this paragraph shall not survive Closing. The City will provide the District with copies of any reports or work product produced under this Section in the event the City elects not to proceed forward to Closing under this Agreement.

4.2 District Conditions. District's obligation to close this transaction and sell the Property in accordance with Paragraph 5 hereof shall be subject to and contingent upon performance of

all of City's obligations prescribed under this Agreement and upon the following additional conditions specified below:

a. Park Purposes Restriction. At Closing, the City shall sign and record a restriction requiring the Property to be held for park purposes for a minimum of two (2) years following Closing, substantially in the form of EXHIBIT B hereto.

b. Sales Proceeds Restriction. At Closing, the City and the District shall enter an agreement which provides in the event the City conveys fee title to all or a portion of the Property within two and a half (2.5) years of Closing, the City shall transmit to the District the difference between the Purchase Price herein and the sales price of said future conveyance of the Property, substantially in the form of EXHIBIT C hereto.

5. Escrow and Closing.

5.1 Place and Time of Closing. The purchase and sale of the Property shall be closed (the "Closing") in escrow at the offices of Whatcom Land Title Company ("Escrow Agent"), in Lynden, Washington. The Closing shall take place on or before ninety (90) days following the execution of this Agreement. The date specified herein for Closing (the "Closing Date") shall be the date when all conveyance documents are recorded and the sale proceeds due at Closing are available to the District. The City shall take possession at Closing.

5.2 Events of Closing. At Closing, the following shall occur:

a. The Escrow Agent shall apply the \$400,000.00 held in escrow from a third person or entity toward the Purchase Price.

b. The City shall deliver to Escrow Agent immediately available funds in the amount of the Purchase Price due, less the \$400,000.00 identified in Section 5.2.a which shall be applied to the Purchase Price, plus any additional Closing costs required pursuant to this Agreement.

c. The District shall execute, acknowledge, and deliver to the City a Statutory Warranty Deed conveying clear and marketable title to the Property to the City, subject only to the exceptions described in Section 3 hereof. The Deed shall be recorded by Escrow Agent.

d. The District shall execute, acknowledge, and deliver to the City a certificate in the form required by applicable regulations under Section 1445 of the Internal Revenue Code of 1986, as amended, affirming that District is not a foreign person (as that term is defined therein) and containing such other information as may be required thereunder.

e. The City will obtain a standard coverage owner's policy of title insurance for the Property issued by Whatcom Land Title Insurance in an amount equal to the Purchase Price, insuring fee title in the City subject only to the standard printed exceptions to such policies, as described in Section 3 hereof, and any liens or encumbrances agreed to or incurred by City.

f. The Parties shall execute and deliver a Real Estate Excise Tax Affidavit.

g. The City shall execute a document restricting it to hold the Property for park purposes for 2 years, as described in Section 4.2(a), which the Escrow Agent shall record.

h. The City and District shall execute an agreement regarding the proceeds of a future sale of the Property for up to 2.5 years, as described in Section 4.2(b).

i. The Parties shall take all other steps necessary to complete the transfer of the Property to City as contemplated by this Agreement.

5.3 Closing Costs. The costs associated with the Closing shall be allocated between the Parties as follows:

a. City shall pay all of the following closing costs, including but without limitation (i) the escrow fee or similar charge of Escrow Agent, (ii) the cost of recording the deed and all other documents, (iii) the standard "grantor's" real estate excise tax (if not exempt), and (iv) the cost of the standard coverage owner's policy of title insurance for the Property issued by Whatcom Land Title Insurance in an amount equal to the Purchase Price.

b. City and the District shall each pay the following items on a pro-rata basis: (i) the current real estate taxes and assessments, (ii) all delinquent special and local improvement district assessment installments, (iii) any and all water and other utility charges including liens and, (iv) any and all prepaid rents and tenant deposits, insurance, homeowners' association dues or assessments, or interest on assumed obligations or other charges against the Property.

c. Except as expressly provided in this Agreement, each Party shall bear all other costs and expenses incurred by such party in connection with this transaction.

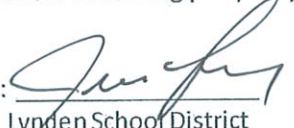
5.4 Possession and Risk of Loss. The District shall continue in possession of the Property until the Closing Date and shall maintain the Property and any personal property included in this transaction in its present condition or better.

6. Default; Remedies.

6.1 Default. The failure of either the City or the District to close this transaction according to its terms shall constitute a default.

6.2 Remedies. If either City or District default, the non-defaulting party may seek specific performance.

City: _____
City of Lynden
By: Scott Korthuis
Its: Mayor

District: 
Lynden School District
By: Jim Frey
Its: Superintendent

6.3 Time of Essence. Time is of the essence of the Parties' obligations under this Agreement.

7. Representations and Warranties.

7.1 District's Representations and Warranties. For the purpose of inducing the City to enter into this Agreement and to consummate the transactions contemplated herein, the District hereby represents and warrants to the City, as of the date hereof, and again as of the Closing Date, as follows:

a. Neither District's ratification of this Agreement nor District's performance of any of its obligations hereunder will violate, or constitute a default under or breach of, any agreement between District and any third party, or of any other obligation by which District are otherwise bound.

b. District is fully authorized to enter into and perform its obligations under this Agreement and under any other agreement or instrument necessary to consummate the transaction contemplated by this Agreement.

c. There is neither pending nor threatened any legal action against the District which could in any way affect City after its acquisition of the Property or which could enjoin or restrict District's right or ability to perform its obligations under this Agreement.

d. There are no attachments, executions, assignments for the benefit of creditors, or proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or, to the best of District's knowledge, threatened against District.

e. District has no notice from any governmental agency of any violation of laws relating to the subject Property.

f. District, after inquiry, is unaware of any contamination of the Property by any toxic or hazardous substance, waste or material, including without limitation petroleum products, asbestos, pesticides or herbicides, and is unaware of any present or previous use of the Property by any Party which has caused a release or threatens to cause a release of any such toxic or hazardous substance, waste or material. District has received no notice from any governmental entity or other third party concerning any such contamination or requiring the removal of any toxic or hazardous substance, waste or material. District understands that these representations are material to City's determination as to the advisability of entering into this Agreement. To further assist City in making this determination, District shall fully and accurately complete and return to City the Environmental Questionnaire attached hereto as EXHIBIT D hereto within five (5) days of mutual acceptance of this Agreement.

g. The Property is or will be at Closing connected to a: ☐ public or community water main; ☐ private well; ☐ public or community sewer; ☐ septic tank and drainfield; ☐ natural gas; ☐ propane; ☐ electrical power; ☐ telephone; ☐ cable TV. All electrical wiring, heating, cooling, plumbing, sewage or septic system, and any appliance or other equipment included in this sale will be in normal working order at the Closing Date.

7.2 City's Representations and Warranties. For the purposes of inducing District to enter into this Agreement and to consummate the transactions contemplated herein, City hereby represents and warrants to District, as of the date hereof, and again as of the Closing Date, as follows:

a. Neither City's ratification of this Agreement nor City's performance of any of its obligations hereunder will violate, or constitute a default under or breach of, any agreement between City and any third party, or of any other obligation by which City is otherwise bound.

b. City is fully authorized to enter into and perform its obligations under this Agreement and under any other agreement or instrument necessary to consummate the transaction contemplated by this Agreement.

c. There are no attachments, executions, assignments for the benefit of creditors, or proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or, to the best of City's knowledge, threatened by or against City.

7.3 Brokerage Commissions. Unless otherwise specified later in this Agreement, each Party represents and warrants to the other that it has neither used nor consulted with any real estate broker or similar person or entity in connection with the transactions contemplated by this Agreement, and that no brokerage commission is owing to any such person or entity.

7.4 Renewal of Representations and Warranties. All representations and warranties contained in this Section 7 shall be deemed made as of the date of this Agreement and renewed as of the Closing Date.

7.5 Other Representations and Warranties. Each Party hereby acknowledges that no representations or warranties have been made with respect to the Property or the transaction contemplated by this Agreement other than those expressly set forth in this Section 7.

8. General Provisions.

8.1 Survival. All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which are not required prior to Closing, shall survive Closing and be fully enforceable thereafter.

8.2 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns.

8.3 Notices. Notices under this Agreement shall be in writing and shall be effective when actually hand delivered or three (3) business days after being deposited in the United States mail, certified, return receipt requested, directed to the other Party at the address set forth beneath that Party's signature(s) on the last page of this Agreement, or to such other address as the Party may indicate by written notice to the other Party.

8.4 Waiver. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

8.5 Amendment. This Agreement may not be modified or amended except by the written agreement of the Parties.

8.6 Attorneys' Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceedings under the U.S. Bankruptcy code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing

Party shall be entitled to recover its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

8.7 Integration. This Agreement and exhibits hereto contain the entire agreement and understanding of the Parties with respect to the purchase and sale of the Property and supersede all prior and contemporaneous agreements between them with respect to such purchase and sale.

8.8 Construction and Interpretation. The headings or titles of the sections of this Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Agreement. The use in this Agreement of the words "including," "such as," and words of similar import following any general statement, term, or matter shall not be construed to limit such statement, term, or matter in any manner, whether or not language of non-limitation (such as "without limitation" or "but not limited to") is used in connection therewith, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the scope of the general statement, term, or matter. All provisions of this Agreement have been negotiated at arms length and this Agreement shall not be construed for or against any part by reason of the authorship or alleged authorship of any provision hereof.

8.9 Recitals. Irrespective of any rules of construction or other precedent to the contrary, the contents of the Recitals contained in the paragraphs identified with capital letters on the first page of this Agreement shall constitute warranties and / or covenants of the Parties.

8.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

8.11 Indemnity. Each Party (as "Indemnitor") agrees to indemnify and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liabilities, and expenses (including reasonable attorneys' fees) incurred by the Indemnitee and arising out of any inaccuracy in or breach of any representation or warranty of the Indemnitor contained in this Agreement.

8.12 Facsimile and Electronic Transmission. Facsimile or electronic transmission of any signed original document, including any notice to be provided hereunder, and retransmission of any signed facsimile or electronic transmission, shall be deemed the equivalent of transmission of an original, provided that the facsimile or electronic transmission is acknowledged as having been received by its recipient, either by retransmission or by separate writing.

8.13 Counterparts. This Agreement may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of this Agreement. If the counterparts are not signed on the same day, the effective date of this Agreement shall be the latter date of the two dates.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

LYNDEN SCHOOL DISTRICT



By: James Frey

Its: Superintendent

Address: 1203 Bradley Road, Lynden, WA 98264

Telephone Number: (360) 354-4443

FAX Number: (360) 354-7662

Federal Tax I.D. No.: 91-1175139

CITY OF LYNDEN

By: Scott Korthuis

Its: Mayor

Address: 300 Fourth Street, Lynden, WA 98264

Telephone Number: (360) 354-1170

FAX Number: N/A

Federal Tax I.D. No.: 91-6001257

EXHIBIT A
Legal Description of the Property

Lots 1 through 10 of Block 32 and Lots 1 through 10 of Block 33 of the Supplemental and Corrected Plat of Lynden, according to the plat thereof, recorded in Volume 3 of Plats, Page 48, Auditor's File Number 12894, records of Whatcom County, Washington, together with the alleys and the portion of Seventh Street vacated by Ordinance No. 208 of the Town of Lynden, Washington.

Situate in Whatcom County, Washington.

Subject to and together with all easements of record.

EXHIBIT B

RETURN TO:

ROBERT A. CARMICHAEL
CARMICHAEL CLARK, PS
P.O. BOX 5226
BELLINGHAM, WASHINGTON 98227
PHONE: 360-647-1500

DOCUMENT TITLE:

DECLARATION COVENANT TO HOLD PROPERTY FOR PARK PURPOSES

RELATED DOCUMENTS:

N/A

GRANTOR:

City of Lynden, a Washington Municipal Corporation

GRANTEE:

City of Lynden, a Washington Municipal Corporation

ABBREVIATED LEGAL DESCRIPTION:

Town of Lynden, Lots 1-10 Block 32 and Lots 1-10 Block 33
Full legal description at Exhibit A, page(s) _____.

ASSESSOR'S TAX PARCEL NUMBER:

400320 142393 0000

DECLARATION OF COVENANT TO HOLD PROPERTY FOR PARK PURPOSES

This DECLARATION OF COVENANT TO HOLD FOR PARK PURPOSES ("Covenant") is made by the CITY OF LYNDEN, a Washington municipal corporation ("City") on the _____ day of _____, 2019.

RECITALS

WHEREAS, this Covenant is made pursuant to the Purchase and Sale Agreement ("PSA") the City entered into with the Lynden School District, a Washington municipal corporation ("District"), on the _____ day of _____, 2019 for the sale of the real property legally described at EXHIBIT A hereto ("the Property") from the District to the City; and

WHEREAS, the obligation set forth in the PSA to encumber the Property with this Covenant survives Closing; and

WHEREAS, this Covenant will be signed at the closing of the transaction described in the PSA; and

WHEREAS, while the Property was owned by the District, it was used as an open space for outdoor recreation by the general public; and

WHEREAS, four hundred thousand dollars (\$400,000.00) of the purchase price of the Property was supplied by a citizen group for the purpose of securing the Property for use as a City park; and

WHEREAS, it is the desire of the City, the District, and the aforementioned citizens group that the Property continue to be available for outdoor recreation for the public on the terms described herein; and

WHEREAS, these recitals are a material part of this Covenant.

COVENANT

NOW THEREFORE, the City hereby declares and covenants as follows:

1. The City shall hold the Property for park purposes for a period of two (2) years from the date of recording of this Covenant.
2. The City will meet its obligation to hold the Property for park purposes so long as it takes no action which is inconsistent with long-term use of the Property as a City park, including an unimproved City park, with the primary goal of providing an open space area for public use.
 - a. The following actions do not constitute a violation of the requirement to hold the Property for park purposes:
 - i. Reasonable time-of-use restrictions or temporary closures to perform maintenance or construction;
 - ii. Renting the Property for limited periods of time to individuals or groups for activities such as fairs, private parties, sporting events or other uses consistent

with park purposes; and

- iii. Municipal uses of or on the Property that do not have a significant impact on the long-term availability of the Property for park use.
 - b. This Covenant does not obligate the City to improve the Property beyond its current state as mostly vacant land or to leave in place or maintain the basketball courts and baseball diamond. All improvements and maintenance shall be at the City's sole option and discretion.
3. At the end of its two-year term, this Covenant shall automatically expire. Following its expiration, the City may record a subsequent document extinguishing this Covenant; however, the Covenant shall have expired with or without such recording.
 4. This Covenant and all rights and obligations described herein shall be deemed to touch and concern the land, and shall run with the land. This Covenant is binding on all parties having or acquiring any right, title, or interest in the land described herein or any part thereof.
 5. This Covenant may be enforced by any remedy available in law or equity, including specific performance. The prevailing party in any such proceeding shall be entitled to recover all costs and fees in connection therewith, including attorneys' fees.
 6. Should any provision of this Covenant be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.
 7. This Covenant shall be construed according to the laws of the State of Washington. Venue for any legal action brought under this Covenant shall be Whatcom County Superior Court.

IN WITNESS WHEREOF, the City has executed this Covenant on the day and year indicated above.

CITY OF LYNDEN

BY: SCOTT KORTHUIS
ITS: MAYOR

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Scott Korthuis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden, a Municipal Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2019.

Typed/ Printed Name: _____
NOTARY PUBLIC in and for the State of Washington
Residing at: _____
My appointment expires: _____

EXHIBIT A

Lots 1 through 10 of Block 32 and Lots 1 through 10 of Block 33 of the Supplemental and Corrected Plat of Lynden, according to the plat thereof, recorded in Volume 3 of Plats, Page 48, Auditor's File Number 12894, records of Whatcom County, Washington, together with the alleys and the portion of Seventh Street vacated by Ordinance No. 208 of the Town of Lynden, Washington.

Situate in Whatcom County, Washington.

EXHIBIT C

AGREEMENT TO REMIT INCREASE IN VALUE IN EVENT OF SUBSEQUENT SALE

THIS AGREEMENT TO REMIT INCREASE IN VALUE IN EVENT OF SUBSEQUENT SALE ("Agreement") dated the _____ day of _____, 2019, is by and between City of Lynden, a municipal corporation ("City"), and the Lynden School District, a municipal corporation ("District"). City and District shall be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, this Agreement is made pursuant to the Purchase and Sale Agreement ("PSA") the City entered into with the District, on the _____ day of _____, 2019 for the sale of the real property legally described at EXHIBIT A hereto ("the Property") from the District to the City; and

WHEREAS, the obligation set forth in the PSA to remit any increase in value derived from a subsequent Property sale by the City, within two and one-half (2.5) years of Closing, survives Closing; and

WHEREAS, under the PSA, the purchase price of the Property is one million four hundred fifty thousand dollars (\$1,450,000.00) ("Current Purchase Price"); and

WHEREAS, this Agreement will be signed at the closing of the transaction described in the PSA; and

WHEREAS, these recitals are a material part of this Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Remittance of Increase in Value.** If during the term of this Agreement, the City sells (defined in Section 3 below) the Property to a third party, and the "Sale Price" (as defined below) is higher than one million four hundred fifty thousand dollars (\$1,450,000.00), the City shall remit the Increase in Value (defined in Section 4 below) to the District within thirty (30) days following the closing of that transaction. In the event the City sells a portion of the Property and the Sale Price for that portion is higher on a pro rata (square footage) basis than one million four hundred fifty thousand dollars (\$1,450,000.00) for the entire Property, the City shall remit the Increase in Value (defined in Section 4 below) to the District within thirty (30) days following the closing of that transaction. The remittance obligations of the City set forth in this section and elsewhere in this Agreement shall not apply to any transfer of all or part of the Property that takes place more than two and a half (2.5) years following execution of this Agreement.
2. **Duration.** This Agreement shall be effective for a period of two and a half (2.5) years following its execution. Thereafter, it shall automatically become null and void.
3. **"Sell"/"Sale" Defined.** For the purpose of this Agreement, the City shall be deemed to have sold all or a portion of the Property if it transfers fee simple absolute title by deed to a third party for fair market value. For purposes of this Agreement, a real estate contract in which transfer of fee simple absolute title shall take place at the end of its term shall be deemed to have been sold on

the date of its execution. No other transaction will obligate the City to remit an Increase in Value to the District.

4. "Increase in Value" Defined.

- a. The Increase in Value shall be the difference between the Sale Price for the Property or a portion thereof ("New Sale Price") and the Current Purchase Price for the Property or a portion thereof. The Increase in Value for the sale of the entire Property shall be the difference between the New Sale Price and the Current Purchase Price for the Property. The Increase in Value for the sale of a portion of the Property shall be the difference between New Sale Price for that portion of the Property sold and the Current Purchase Price of that same portion of the Property, calculated on a uniform square foot basis, in accordance with subsection b below. Closing costs including without limitation escrow fees, title insurance, real estate excise tax (if any), commissions and recording costs shall not be added or subtracted to or from the Current Purchase Price or New Sale Price for purposes of determining Increase in Value.
- b. If the City sells a portion of the Property, the following formula shall be applied to determine Increase in Value for that portion sold:

$$[\text{New Sale Price}] - \frac{[\text{acres sold}]}{3.99 \text{ acres}} \times \$1,450,000.00 = \text{Increase in Value to be remitted to District}$$

Where "[New Sale Price]" is the purchase price of the portion of the Property the City is selling and "[acres sold]" is the number of acres the Property the City is selling.

For example, if the City subsequently sells one (1) acre of the Property to a third party for a New Sale Price of five hundred thousand dollars (\$500,000.00), the formula would be applied as follows:

$$\$500,000.00 - \frac{1 \text{ acre}}{3.99 \text{ acres}} \times \$1,450,000.00 = \$136,591.50$$

In this example, the City would remit \$136,591.50 to the District.

- c. If the City sells the Property and the Increase in Value would be zero or negative, the City shall not be required to remit any funds to the District, nor shall the District be required to remit funds to the City.
5. "Sales Price" Defined. The Sales Price shall be defined as the monetary consideration received for the Property together with any non-monetary value received for the Property in the form of a trade of property, goods or services.
 6. Nonwaiver of Breach. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right enforce such provision. Waiver of any breach of any provision of this Agreement does not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
 7. Amendment or Termination. This Agreement may be amended or terminated prior its expiration

per Section 2 above only by mutual written agreement of the Parties.

8. Severability. Should any provision of this Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.
9. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the Superior Court for Whatcom County, State of Washington.
10. Expenses and Attorneys' Fees. The prevailing Party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of their reasonable attorney's fees, costs and expenses.
11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by either Party prior to or following entry of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.
12. Recording. Either Party at their option may record this Agreement in the records of Whatcom County. In the event this Agreement becomes null and void pursuant to Section 2 and at any time thereafter, at request of the City, the District shall sign and record an extinguishment of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

LYNDEN SCHOOL DISTRICT

By:  James Frey

Its: Superintendent

Address: 1203 Bradley Road, Lynden, WA 98264

Telephone Number: (360) 354-4443

FAX Number: (360) 354-7662

Federal Tax I.D. No.: 91-1175139

CITY OF LYNDEN

By: Scott Korthuis

Its: Mayor

Address: 300 Fourth Street, Lynden, WA 98264

Telephone Number: (360) 354-1170

FAX Number: N/A

Federal Tax I.D. No.: 91-6001257

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that James Frey is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Superintendent of the Lynden School District, a Municipal Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 29th day of May, 2019.



Shari Beth Shagren
Typed/ Printed Name: SHARI BETH SHAGREN
NOTARY PUBLIC in and for the State of Washington
Residing at: Custer, WA
My appointment expires: 4-18-2022

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Scott Korthuis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden, a Municipal Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2019.

Typed/ Printed Name: _____
NOTARY PUBLIC in and for the State of Washington
Residing at: _____
My appointment expires: _____

EXHIBIT A

Lots 1 through 10 of Block 32 and Lots 1 through 10 of Block 33 of the Supplemental and Corrected Plat of Lynden, according to the plat thereof, recorded in Volume 3 of Plats, Page 48, Auditor's File Number 12894, records of Whatcom County, Washington, together with the alleys and the portion of Seventh Street vacated by Ordinance No. 208 of the Town of Lynden, Washington.

Situate in Whatcom County, Washington.

EXHIBIT D

Environmental Questionnaire

The answers to the following questions have been provided by the current administration for the District based on their actual knowledge.

1. Has the property ever been used as a disposal site for any waste products?

Answer: To the best of my knowledge the site has not been a disposal site for any waste products.

2. Has the property ever been landfilled? Were hazardous wastes used as a fill?

Answer: To the best of my knowledge, the site has not been landfilled or any hazardous wastes used as fill.

3. What were all the past industrial uses of the property?

Answer: To the best of my knowledge the property has been used as a school site and not had any industrial uses.

4. Are there any visible signs of potential problems, such as ground discoloration or standpipes to underground tanks?

Answer: There are no visible signs of potential problems such as ground discoloration or standpipes connected to underground tanks.

5. What wastes have the current and past owners and their tenants generated? How were they disposed of, whether on site or off site?

Answer: This site has historically been a Lynden School District site for a school. The normal wastes that are associated with a school would be expected and all wastes generated by the school would have been disposed of in the proper manner.

6. Was the Seller required to register any underground tanks with the designated state agency by May 8, 1986, as required by the Resource Conservation and Recovery Act? Did the Seller register all such tanks?

Answer: To the best of my knowledge the Lynden School District was not required to register any underground tanks as required by the Resource Conservation Recovery Act.

7. Are there any environmental enforcement proceedings now affecting the property, including consent decrees, administrative actions, or citizens/suits?

Answer: There are no enforcement proceedings affecting this property.

8. Is the property listed on any state or federal priority list for hazardous waste cleanup?

Answer: This property is not listed on any state or federal priority list for hazardous waste cleanup.

9. What environmental permits does the Seller now hold?

Answer: To the best of my knowledge the Lynden School District does not hold any environmental permits for this property

10. Have any environmental audits been performed?

Answer: To the best of my knowledge no environmental audits have been performed.

11. Are there materials incorporated in any buildings insulation that could be a hazard to workers? such as asbestos, PCBs, or foam

Answer: There are no buildings located on this site.

12. Do all drains connect to the sanitary sewer system?

Answer: there are no buildings on this site and therefore no

SELLER:

By: 

Date: 5.29.19