

DONATION AGREEMENT

BETWEEN: St. Helens II, LLC (“Donor”)
an Oregon limited liability company

AND: City of St. Helens (“Donee”)
an Oregon municipal corporation

RECITALS

- A. Donor is the owner of those two (2) certain parcels of real property identified as Assessor Parcel Numbers 10283 (“Parcel 1”) and 10296 (“Parcel 2”) located in St. Helens in Columbia County, Oregon, more fully described on Exhibit A and depicted on Exhibit B, attached hereto and incorporated herein (the “Donated Property”).
- B. Donee is a qualified recipient of deductible charitable contributions under I.R.C. §170(b)(1)(A)(v) and §170(c)(1).
- C. Donor desires to donate the Donated Property to Donee, and Donee desires to accept the Donated Property from Donor, on the terms and conditions set forth in this Donation Agreement (“Agreement”).

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals set forth above, and for other good and valuable consideration described in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as set forth below.

- 1) **Donation.** Donor agrees to donate the Donated Property to Donee, and Donee agrees to accept the Donated Property from Donor, upon and subject to the terms and conditions of this Agreement.
- 2) **Escrow.** On the Parties’ execution of this Agreement (“Effective Date”), Donee shall provide a fully executed copy of this Agreement with Ticor Title Company, 2534 Sykes Rd Suite C, St Helens, OR 97051 (“Escrow Company”), and an escrow shall be established with Escrow Company.
- 3) **Title Report.**
 - a) **Preliminary Commitment.** Within seven (7) days following the Effective Date, Donor shall cause a preliminary title report, issued by Escrow Company, to be delivered to Donee showing the status of title to the Donated Property, together with complete and legible copies of all documents evidencing the exceptions to title shown therein, as well as such other items as may be reasonably requested by Donee (collectively, the “Preliminary Commitment”).
 - b) **Unacceptable Exceptions; Permitted Exceptions.** Within ten (10) days following Donee’s receipt of the Preliminary Commitment, Donee shall give written notice to Donor of any objection to such title or to any liens or encumbrances affecting the Donated Property (the “Unacceptable Exceptions”). Any exceptions to title reflected in

the Preliminary Commitment but not objected to by Donee in writing shall be deemed “Permitted Exceptions.” In the event Donee timely gives Donor written objection to any Unacceptable Exception to title to the Donated Property, Donor shall give Donee written notice within ten (10) days following receipt of Donee’s written objection, stating whether Donor is willing and able to remove Unacceptable Exceptions. If Donor gives notice that Donor is willing and able to remove the Unacceptable Exceptions, Donor shall do so at its cost and as of or prior to Closing. If Donor gives Donee written notice that Donor is either unwilling or unable to remove Unacceptable Exceptions, Donee shall have ten (10) days after receipt thereof to give written notice to Donor as to whether Donee will withdraw its objection to the Unacceptable Exceptions or whether Donee will terminate this Agreement.

- 4) **Access to Property.** At any time prior to Closing, or the earlier termination of this Agreement, Donee and its representatives shall have the right to access the Donated Property, for the purpose of conducting any inspection, investigation, test, or survey, reasonably related to Donee’s acceptance of the Donated Property; provided that all such activities shall be conducted (i) without expense to Donor; and (ii) provided further that any test or other activity which would physically affect or alter the Donated Property or any part thereof in any way shall require the prior written consent of Donor. Donee shall be responsible for any physical damage resulting from Donee’s activities and for restoring the Donated Property to its condition prior to such activities.
- 5) **Due Diligence Period.** Donee shall have sixty (60) days following the Effective Date to inspect and approve the condition of the Donated Property (the “Due Diligence Period”). Except as provided elsewhere to the contrary, Donor does not warrant the accuracy or completeness of the information provided under this Section, and Donee shall rely on its own investigation with respect thereto. Within seven (7) days of the Effective Date, Donor shall deliver to Donee copies of any of the following documents pertaining to the Donated Property which are in the possession of Donor or Donor’s agents (the “Due Diligence Materials”):
 - a) Environmental data, studies, analyses, and reports;
 - b) Any Property survey;
 - c) All topographical, geotechnical, wetlands, soils, and underground reports and investigations;
 - d) Copies of current Property tax statements;
 - e) Copies of all notices given to Donor or notices Donor is aware of by any and all governmental bodies affecting the Donated Property, during the term of Donor’s ownership and during any previous ownership of the Donated Property.
- 6) **Donee’s Conditions Precedent to Closing.** In addition to any other conditions contained in this Agreement, the conditions of this Section must be satisfied by Donee prior to Donee’s obligation to accept Donor’s donation of the Donated Property. These conditions are intended solely for Donee’s benefit and Donee has the sole right and discretion to waive, by written notice, any of these conditions. In the event any condition is not satisfied or waived on or before Closing, Donee will have the right to terminate this Agreement.
 - a) Donee must be satisfied, in its sole discretion, with the results of Donee’s due diligence and inspection of the Donated Property.
 - b) Donee must be satisfied, in its sole discretion, that all Unacceptable Exceptions have been removed from the Preliminary Commitment or accepted, in writing, by Donee.

- c) Donee must obtain written authorization by the City Council of the City of St. Helens to accept the Donated Property.

7) Closing. The conveyance of the Donated Property shall be closed in escrow at the offices of the Escrow Company within ten (10) days of the expiration of the Due Diligence Period, or earlier by mutual agreement (the “Closing Date”).

8) Events of Closing.

- a) On or before Closing, Donor shall deliver to Escrow Company the following:
 - i) A Statutory Warranty Deed duly executed and acknowledged in recordable form by Donor, conveying to Donee fee simple title to the Donated Property, subject only to the Permitted Exceptions.
 - ii) Satisfactory evidence of Donor’s authority to execute any and all of the documents necessary to consummate this donation.
 - iii) An executed Certificate of Non-Foreign Status, pursuant to Section 1445(b)(2) of the United States Internal Revenue Code.
 - iv) If requested, a Donation Letter signed by Donor acknowledging Donor’s right to and waiver of just compensation for the Donated Property.
 - v) Any other documents and funds required of Donor to close the transaction in accordance with this Agreement.
- b) On or before Closing, Donee shall deliver to Escrow Company the following:
 - i) An executed and acknowledged acceptance of the Statutory Warranty Deed conveying fee simple title to the Donated Property to Donee.
- c) At Closing, Escrow Company shall be prepared to issue a standard ALTA owner’s title insurance policy in the assessed value of the Donated Property, insuring fee simple title vested in Donee, subject only to the Permitted Exceptions as established under Section 3 of this Agreement (the “Title Policy”).

9) Closing Costs. Donee agrees to be responsible for the payment of (a) any escrow fee of the Escrow Company and (b) any and all recording costs, excise and transfer taxes. Donee shall pay the premium for the Title Policy and the costs associated with endorsements, if any, to the Title Policy. Except as expressly provided in this Agreement, the respective Parties shall bear their own costs and expenses incurred by such party in connection with this transaction.

10) Prorations and Adjustments. Items of expense with respect to the Donated Property shall be prorated or otherwise adjusted by the parties as follows:

- a) Real property taxes, personal property taxes, if any, and assessments for the tax year during which the Closing occurs shall be prorated as of the Closing Date.
- b) All other items of expense with respect to the Donated Property, if any, affecting the Donated Property shall be prorated as of the Closing Date, to the extent the information necessary for such proration is then available. To the extent, if any, that any such information is not then available, including current year tax statements, the parties shall make appropriate compensating payments as soon after the Closing as the necessary information becomes available.

11) Possession. Donee shall be entitled to possession of the Donated Property as of the Closing Date.

12) Default; Remedies.

- a) In the event Closing and the consummation of the donation contemplated herein does not occur by reason of any default by Donor, Donee will be entitled to seek damages to the extent permitted by law and will be entitled to recover from Donor all of Donee's expenses incurred in connection with the donation. Donee shall not be entitled to specific performance.
- b) In the event Closing and the consummation of the donation contemplated herein does not occur by reason of any default by Donee, Donor will be entitled to seek damages to the extent permitted by law. Donor shall not be entitled to specific performance.

13) Donor's Representations and Warranties. Donor represents and warrants to Donee that:

- a) Donor has full power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby. The individual executing this Agreement on behalf of Donor has the full power, right and actual authority to bind Donor to the terms and conditions hereof. Upon request by Escrow Company, Donor shall furnish Donee with evidence of the foregoing authority.
- b) Donor has received no uncured notice from any governmental agency having jurisdiction in the matter of any violation of any statute, law, ordinance, deed restriction or rules or regulations with respect to the existence, construction, maintenance, or operation of the Donated Property.
- c) Donor has no knowledge of any condemnation, zoning, annexation, or other land use proceeding, either instituted or threatened, which could adversely affect the value or use of the Donated Property, nor has Donor any actual knowledge of any special assessment proceedings with respect to the Donated Property.
- d) Donor is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986.
- e) To Donor's actual knowledge, there are no hazardous substances (as defined in ORS 465.200) in, upon, or buried on or beneath the Donated Property and no hazardous substances have been emitted or released from the Donated Property in violation of any environmental laws of the federal or state government. Donor has not brought onto, stored on, buried, used on, emitted, or released from, or allowed to be brought onto, stored on, buried, used on, emitted, or released from, or produced or disposed of, from or on the Donated Property, any hazardous substances in violation of any environmental laws of the federal or state government.
- f) There are no actions, claims or proceedings pending or threatened by any other party against Donor in connection with the Donated Property or against the Donated Property, and Donor is not in default under any contracts, leases, encumbrances, or instrument pertaining to the Donated Property.
- g) As of the Closing, there will be no contracts, licenses, commitments, or undertakings, respecting the maintenance of the Donated Property or equipment on the Donated Property or performance of services on the Donated Property or the use of the Donated Property or any part of its except for those which Donee agrees in writing to assume.
- h) The foregoing representations and warranties shall be true and correct at Closing, and to the extent that full performance of such representations and warranties is not required prior to or at Closing, they shall survive the Closing.

14) Donee's Representations and Warranties. Donee represents and warrants to Donor that:

- a) Subject to the conditions stated in this Agreement, Donee has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the donation contemplated.
- b) All requisite action has been taken by Donee in connection with entering into this Agreement and the instruments referred to herein and to consummate the donation contemplated.
- c) The person executing this Agreement and the instruments referred to herein on behalf of Donee has the legal power, right, and actual authority to bind Donee to the terms and conditions of this Agreement.

15) Indemnities.

- a) **Indemnity by Donor.** Donor agrees to indemnify and hold harmless Donee from and against any and all losses, damages, claims, costs and expenses and any other liability whatsoever, including, without limitation, reasonable accountants' and attorneys' fees, charges and costs, incurred by Donee by reason of (i) Donor's breach of any provision or term of this Agreement which survive the Closing; and (ii) any act, event, condition or omission of Donor, or Donor's employees, principals, contractors, or agents relating to the Donated Property, that existed or occurred prior to the Closing Date. Donor's duty to indemnify shall terminate and be of no force and effect upon the expiration of the applicable statute of limitations for the act(s) or other occurrence which give rise to the claim for indemnity.
- b) **Indemnity by Donee.** Donee agrees to indemnify and hold harmless Donor from and against any and all claims, losses, liabilities, and expenses (including reasonable attorney fees) arising out of the Donated Property after the Closing Date.

16) Charitable Contribution. Donor is solely responsible for establishing, for federal tax purposes, the amount of any charitable contribution associated with Donor's donation of the Donated Property to Donee. Donor has been informed of and understands that Donor is entitled to just compensation as consideration for granting the Donated Property, and to a copy of an appraisal of the Donated Property provided and paid for by Donee. Donor hereby expressly acknowledges that Donor has elected to release Donee from its obligation to provide Donor with an appraisal of the Donated Property. Donor will rely solely on the advice of Donor's own tax professionals regarding (a) the availability of a tax deduction in connection with the proposed donation, and (b) the requirements for appraisals and other documentation to substantiate the value of the contribution. Notwithstanding the foregoing, Donee agrees to sign Internal Revenue Service Form 8283 relating to donations of interest in land once Donor has completed and filled out the form in its entirety. Neither Donee nor its officers, employees, or agents shall be liable in the event that the intended charitable gift or any portion thereof is determined by the Internal Revenue Service, or any other appropriate authority, not to be deductible.

17) Time is of the Essence. Donor and Donee hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision contained in this Agreement. Unless otherwise specified herein, in computing any period of time described in this Agreement, whenever a date for an action required to be performed falls on a Saturday, Sunday, or a state or federal holiday, then such date shall be extended to the following business day.

18) Binding Effect; Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

19) Notices. Notices required or permitted under this Agreement must be in writing to the address set forth below and will be deemed delivered upon (i) personal service; (ii) three days after deposit in the United States Mail, postage prepaid, certified mail with return receipt requested; (iii) one day after deposit with nationally recognized overnight service courier, or (iv) same day of e-mail. The addresses set forth below may be changed by written notice, given in the same manner as required herein.

If to Donor:

St. Helens II, LLC

Attn: _____

Email: _____

If to Donee:

City of St. Helens

Attn: Jacob Graichen

265 Strand Street

St. Helens, OR 97051

Email: jgraichen@ci.st-helens.or.us

With a copy to:

Jordan Ramis PC

Attn: Edward Trompke

1211 SW 5th Avenue, 27th Floor

Portland, Oregon 97204

Phone: 503-598-5532

Email: ed.trompke@jordanramis.com

If to Escrow Company:

Ticor Title Northwest

2534 Sykes Road, Suite C

St. Helens, OR 97051

Email:

20) 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.

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

22) Attorney Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is

instituted, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, mediation, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

- 23) Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 24) Brokers.** Neither Donor nor Donee are represented by any broker, finder, agent or other person and owe no commissions arising from this donation. If the foregoing representation or warranty is untrue, the defaulting party shall indemnify and hold harmless the other party from and against all claims, liabilities, damages and expenses, including attorney fees and court costs, arising as a result thereof.
- 25) Integration.** This Agreement contains the entire agreement and understanding of the Parties with respect to the donation of the Donated Property and supersedes all prior and contemporaneous agreements between them with respect to such donation.
- 26) Governing Law.** This Agreement is made and executed under and shall be governed by and construed in accordance with the laws of the State of Oregon.
- 27) Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 28) Effective Date.** The Effective Date of this Agreement shall be the later of the two dates shown beneath the Parties' signatures below.
- 29) Statutory Disclaimer.** 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 Effective Date above written.

DONOR:
ST. HELENS II, LLC

DONEE:
CITY OF ST. HELENS

By: _____
Its: _____
Dated: _____

By: John Walsh
Its: City Administrator
Dated: _____

ACCEPTANCE BY TITLE COMPANY

The undersigned hereby acknowledges receipt of a copy of this Agreement executed by Donee and Donor, and agrees to act as Escrow Company in accordance with its terms.

TICOR TITLE NORTHWEST TITLE COMPANY

By: _____
Name: _____
Title: _____
Dated: _____, 2021

EXHIBIT A

(Legal Description of Donated Property)

Parcel 1

APN 10283

All that portion of Lots 4, 5, 6, 7, 8, 15 and 16, Block 142, CITY OF ST HELENS, Columbia County, Oregon, lying Westerly of the Westerly boundary of the Columbia River Highway, as established by deed to the State Highway Commission, recorded January 21, 1955 in Deed Book 124 at Page 574, records of Columbia County, Oregon;

TOGETHER WITH that portion of tract of land conveyed to St. Helens Partners by deed recorded June 26, 2002 under Columbia County Clerk's instrument number 02-08614 lying Easterly of said tract of land and lying Westerly of the Columbia River Highway right of way;

EXCEPTING THEREFROM any portion lying within 18th Street right of way.

Parcel 2

APN 10296

A tract of land situate in the Northwest quarter of Section 4, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

BEGINNING at a point that is South 89° 05' West 32.36 feet from the Northwest corner of H.M. Knighton Donation Land Claim in Section 4, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, said point being on the South right of way line of St. Helens-Pittsburg County Road;

Thence South 07° 51' East a distance of 170.25 feet to a point in the center line of a lake;

Thence South 19° 13' East a distance of 112.40 feet to the Northerly line of the Joseph B. Steward tract as described in Book 183, Page 535 of Columbia County Deed Records;

Thence North 71° 53 ½' East a distance 156.9 feet, more or less, to the West property line of 18th Street;

Thence, along said 18th Street property line, North 17° 05 ½' West 134.24 feet to a point that is North 73° 00' East 101.4 feet from the Northwest corner of said H.M. Knighton Donation Land Claim, said point also being the Northeast corner of Government Lot 1, Section 4, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon;

Thence South 73° 00' West 101.4 feet to the POINT OF BEGINNING;

EXCEPTING THEREFROM any portion lying within parcel conveyed to Rex D Murray and Susan Dee Murray by deed recorded November 30, 1995 under Columbia County Clerk's instrument No. 95-10243.

EXHIBIT B

(Depiction of Donated Property)

