

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “**Contract**”), dated _____, 2023, is entered into between **City of St. Helens**, a political subdivision of the State of Oregon (“**Seller**”); and **Leahy Investments LLC**, an Oregon limited liability company (“**Buyer**”).

RECITALS

A. Seller owns an approximately +/- 0.22 acre parcel of real property located between Kindre Street and Kelly Street in the City of St. Helens, State of Oregon (Tax Map/Lot # 4104-BB-03000), as more particularly described in **Exhibit A**.

B. For purposes of this Contract, the term “**Property**” shall mean the parcel of land described in Recital A above, together with all improvements located on such parcel, all easements and other rights and privileges appurtenant to such parcel, and any development approvals or permits relating to such parcel.

STATEMENT OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and conditions set forth in this Contract.

1. **Purchase Consideration at Closing**. The consideration paid to Seller by Buyer for the Property shall be 3,600 cubic yards of structural fill material, the quality of which shall be acceptable to Seller in its commercially reasonable discretion (the “**Purchase Consideration**”). The Purchase Consideration has been previously delivered into Seller’s possession, and such Purchase Consideration will be held pending Closing, at which time the Purchase Consideration shall be released to Seller.

2. **Due Diligence**. Buyer acknowledges that Buyer, and its agents and representatives, have had the opportunity to go on the Property for the purpose of conducting soil tests, surveys, phase I environmental site assessments and other investigations, and undertaking such other activities as are appropriate to planning Buyer’s acquisition of the Property. Prior to Closing, the results of all soil tests, surveys, phase I environmental site assessments, and other investigations of the Property undertaken by Buyer 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 Buyer 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.

3. **Closing**. The closing of this transaction (the “**Closing**”) shall occur in the manner and location agreed upon by the parties on _____, 2023, or such earlier date that the parties may agree upon (the “**Closing Date**”).

4. **Closing Documents**.

(a) At the Closing, Seller shall execute, notarize, and deliver to Buyer a bargain and sale deed (the “**Deed**”), conveying fee simple title to the Property free and clear of all liens and encumbrances except the following items (collectively referred to as the “**Permitted Exceptions**”): (1) ad valorem real property taxes for the calendar year of sale (to be prorated as of the Closing Date), if any, (2) municipal, zoning and subdivision laws and ordinances, (3) rights-of-way of

public streets, (4) matters which would be disclosed by an accurate survey of the Property, and (5) all matters of record affecting the Property.

(b) At Closing, Buyer shall execute, notarize, and deliver to Seller an easement in the form attached hereto as Exhibit B, for Seller to record and which shall grant Seller the easement rights with respect to the Property described in such easement agreement.

Seller shall deliver exclusive possession of the Property to Buyer on the Closing Date.

5. **Closing Expenses**. Seller shall be responsible for the cost of preparing the Deed. Buyer will be responsible for any diligence costs it incurred. The parties will each be responsible for all of their other closing costs, including their respective attorneys' fees.

6. **Property Taxes**. Ad valorem taxes on the Property for the year in which the Closing occurs, if any, shall be prorated to the Closing Date on a calendar year basis. If the actual amount of those taxes and assessments is not known on the Closing Date, they shall be prorated on the basis of the amount of taxes and assessments payable for prior year, and shall be adjusted between the parties when the actual amount of taxes and assessments payable in the year of Closing is known to Buyer and Seller. Buyer shall be solely responsible for paying any impact fees or tap fees for water and sewer services resulting from any future development of the Property. The provisions of this Section 6 shall survive Closing.

7. **Representations and Warranties of Seller**. Seller represents and warrants to Buyer as follows:

(a) **Non-Contravention**. The execution and performance of this Contract by Seller, and the Closing contemplated by this Contract, will not conflict with any provision of law applicable to Seller, nor will it result in the breach of any provision of, or constitute a default under, any agreement or instrument to which Seller is a party or by which Seller is bound.

(b) **Authorization and Execution**. This Contract and the documents to be delivered by Seller at the Closing have been or will be duly authorized by all necessary governmental approvals and actions on the part of Seller, and have been or will be duly executed and delivered by Seller.

The representations and warranties of Seller set forth in this Section 8 shall survive Closing for a period of six (6) months. If Buyer discovers after Closing that any representation and warranty made by Seller that is of a material nature is not true in any material respect, Buyer shall have the right to pursue any available remedy against Seller, including the recovery of actual damages, but excluding any consequential damages.

8. **Property Purchased "AS IS"**. Except as expressly set forth in this Contract, the Property is being sold and conveyed "as is" and "with all faults" and Seller has not made, does not make, and hereby disclaims any and all express or implied representations and warranties regarding or relating to the condition, suitability for any particular purpose, susceptibility to flooding, value, marketability, zoning of the Property, or with respect to use and occupancy restrictions, compliance with environmental laws and laws and regulations relating to hazardous substances, toxic wastes and underground storage tanks, and all legal requirements affecting or relating to the Property. Purchaser hereby agrees that approval or deemed approval of the Property and proceeding with Closing shall constitute an acknowledgment that Purchaser (i) has concluded whatever studies, tests, and investigations Purchaser desired to conduct relating to the Property including, without limitation, economic reviews and analyses, soils tests, engineering analyses, environmental analyses and analysis of any applicable records of the planning, building, public works or any other governmental or quasi-governmental organization having or asserting jurisdiction over the

Property; (ii) has reviewed and read (or has elected not to do so) and has understood all instruments affecting the Property and/or its value which Purchaser deems relevant, including, without limiting the generality of the foregoing, all documents referred to in the Commitment and all leases, operating statements, demographic studies and market analyses; (iii) and its consultants have made all such independent studies, analyses and investigations, as Purchaser has deemed necessary, including, without limitation, those relating to environmental matters and the leasing, occupancy and income of the Property; (iv) is relying solely on the express representations and warranties contained in this Agreement and on its own investigations as to the Property and its value, and Purchaser accepts the risk that its investigations may fail to reveal certain adverse physical, economic or other conditions (including, without limitation, adverse environmental conditions (including, without limitation, soils and groundwater conditions) and status of compliance with the requirements of the Americans With Disabilities Act of 1990 or the Fair Housing Act of 1968, as amended); and (v) that Seller has given Purchaser every opportunity to consider, inspect and review to its satisfaction the physical, environmental, economic and legal condition of the Property and all files and information in Seller's possession which Purchaser deems material to the purchase of the Property. Buyer acknowledges that, except as expressly set forth in this Contract, no such representations or warranties, express or implied, have been made. The terms and covenants of this Section 9 shall survive the Closing and the delivery of the deed for the Property or any termination of this Contract.

9. **Survival.** None of the terms, covenants, conditions, representations, warranties and agreements of this Contract shall survive the Closing Date, except as otherwise expressly provided to the contrary in this Contract.

10. **Real Estate Commissions.** Buyer and Seller represent and warrant to each other that no brokers' or real estate commissions will be due as a result of the sale of the Property from their respective actions. Seller agrees to indemnify, defend and save harmless Buyer from and against any cost and expense (including reasonable attorneys' fees) incurred by Buyer as a result of the untruth of the foregoing representation by Seller, or any claims by a broker for payment of a commission by Buyer based upon the actions of Seller. Buyer agrees to indemnify, defend and save harmless the Seller from and against any cost and expense (including reasonable attorneys' fees) incurred by Seller as a result of the untruth of the foregoing representation by Buyer, or any claims by a broker for payment of a commission by Seller based upon the actions of Buyer. The terms and covenants of this Section 11 shall survive the Closing.

11. **Assignment.** Buyer shall have the right to assign this Contract, and its rights hereunder, without the necessity of obtaining the prior consent of Seller, only to: (a) any entity that is controlled by Buyer (including but not limited to a joint venture in which Buyer is, directly or indirectly, a manager or managing general partner), that controls Buyer or that is under common control with Buyer. No other assignment of Buyer's rights under this Contract shall be permitted without first obtaining Seller's written consent, which may be granted, withheld or conditioned in Seller's sole discretion.

12. **Default.** If Seller defaults in its obligations under this Contract for any reason except for a default by Buyer, Buyer may, as Buyer's exclusive remedies against Seller for Seller's default, to terminate this Contract by delivery of written notice to Seller, in which event Buyer shall be entitled to be reimbursed by Seller for the reasonable and documented out-of-pocket expenses incurred by Buyer in connection with this transaction, not to exceed Five Thousand and No/100 Dollars (\$5,000), which shall be construed as full liquidated damages, and neither party shall have any further rights or obligations regarding this Contract other than the Surviving Obligations.

The foregoing limitations of remedies and liquidated damages provisions shall not apply to the indemnities given by the parties under this Agreement, which such indemnities will survive the termination of this Agreement.

13. **Time of the Essence.** The parties agree that time shall be of the essence in the performance of all of the terms and conditions of this Contract. If the time period by which any right, option or election provided under this Contract must be exercised, or by which any act must be performed, or by which Closing must be held, expires on a Saturday, Sunday or a holiday, then such time period shall be automatically extended to and through the next day which is not a Saturday, Sunday or a holiday.

14. **Captions.** Paragraph headings or captions appearing in this Contract are for convenience only, are not a part of this Contract, and are not to be considered in interpreting this Contract.

15. **Entire Agreement.** The parties acknowledge that this Contract contains the entire agreement between the parties with respect to the Property, and supersedes any prior oral or written understandings. No modification of this Contract and no waiver of any of its terms or conditions shall be effective unless made in writing and duly executed by both parties.

16. **Successors and Assigns.** This Contract shall be binding on the parties and their respective successors and permitted assigns.

17. **Notices.** Any notice, consent or other communication permitted or required by this Contract shall be in writing, and shall be given to each party, at the address set forth below, in the following manner: (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (e) email (sent with delivery confirmation). Each such notice shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of any email delivered after 5 pm Pacific Time, as of the next business day after receipt or refusal to accept delivery. Unless and until changed as provided below, the addresses for notices given pursuant to this Contract shall be as follows:

to Buyer: Leahy Investments LLC
121 SW Morrison #600
Portland, Oregon 97204
Attention: Kenneth Leahy

to Seller: City of St. Helens
c/o City Administrator
265 Strand Street,
St. Helens, OR 97051

18. **Controlling Law.** This Contract has been made and entered into under the laws of the State of Oregon, and those laws shall control the interpretation of this Contract.

19. **Counterparts.** This Contract may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties, but all of which shall be construed together as a single instrument. This Contract may be signed by either party via facsimile, provided, however, that an original counterpart of such signature page is promptly forwarded to the other party.

20. **Oregon Statutory Warning (ORS 93.040(2)).** 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.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

SELLER:

City of St. Helens, a political subdivision of the State of Oregon

By: _____
Name: _____
Title: _____

Date executed: _____, 2023

Reviewed as to Form:

By:
City Attorney

BUYER:

Leahy Investments, LLC, an Oregon limited liability company

By: _____
Name: _____
Title: _____

Date executed: _____, 2023

EXHIBIT A

Legal Description

Parcel I

Beginning at the most westerly corner of Lot 6, Block 7 of Georgetown, now within the corporate limits of the City of St. Helens, Columbia County, Oregon, as per plat on file and of record thereof; thence North $63^{\circ} 51'$ West 40.0 feet to the true point of beginning of the following described property: thence North $63^{\circ} 51'$ West a distance of 80.0 feet; thence North $26^{\circ} 09'$ East a distance of 94.62 feet; thence South $49^{\circ} 59'$ East a distance of 82.4 feet; thence South $26^{\circ} 09'$ West a distance of 74.87 feet to the true point of beginning.

Parcel II

Beginning at the most westerly corner of Lot 6, Block 7 of Georgetown, now within the corporate limits of the City of St. Helens, Columbia County, Oregon, as per plat on file and of record thereof; thence North $63^{\circ} 51'$ West a distance of 40.0 feet; thence North $26^{\circ} 09'$ East a distance of 74.87 feet; thence South $49^{\circ} 59'$ East a distance of 41.2 feet to the westerly line of said Georgetown; thence South $26^{\circ} 09'$ West a distance of 65.0 feet to the point of beginning.

Exhibit B
Easement Form

[See attached]

AFTER RECORDING RETURN TO:

City of St. Helens
265 Strand Street
St. Helens, OR 97051

GRANTOR:

Leahy Investments LLC
121 SW Morrison #600
Portland, Oregon 97204
Attention: Kenneth Leahy

GRANTEE:

City of St. Helens
265 Strand Street
St. Helens, OR 97051

▲ This Space for Recorder's Use Only ▲

PUBLIC SEWER EASEMENT

In consideration of \$0, **Leahy Investments LLC**, an Oregon limited liability company, hereinafter referred to as the **Grantor**, conveys to the **City of St. Helens**, a municipal corporation, **Grantee**, a perpetual non-exclusive sewer easement to use an area which is located as follows across the property of Grantor, to wit:

A portion of the property described as:

Parcel I

Beginning at the most westerly corner of Lot 6, Block 7 of Georgetown, now within the corporate limits of the City of St. Helens, Columbia County, Oregon, as per plat on file and of record thereof; thence North 63° 51' West 40.0 feet to the true point of beginning of the following described property: thence North 63° 51' West a distance of 80.0 feet; thence North 26° 09' East a distance of 94.62 feet; thence South 49° 59' East a distance of 82.4 feet; thence South 26° 09' West a distance of 74.87 feet to the true point of beginning.

Parcel II

Beginning at the most westerly corner of Lot 6, Block 7 of Georgetown, now within the corporate limits of the City of St. Helens, Columbia County, Oregon, as per plat on file and of record thereof; thence North 63° 51' West a distance of 40.0 feet; thence North 26° 09' East a distance of 74.87 feet; thence South 49° 59' East a distance of 41.2 feet to the westerly line of said Georgetown; thence South 26° 09' West a distance of 65.0 feet to the point of beginning.

Said property located in the Northwest One-Quarter of the Northwest One-Quarter of Section 4, Township 4 North, Range 1 West, Willamette Meridian, City of St. Helens, Columbia County, Oregon and more particularly described as follows:

A ten-foot-wide area parallel and adjacent to the Northeast property line, extending entirely between the Northwest and Southeast property lines.

SEE ATTACHED:

EXHIBIT A, MAP OF EASEMENT LEGAL DESCRIPTION

DEED REFERENCE NO:

Deed Book/Page 124/259 and 124/334

The terms of this easement are as follows:

1. Grantee, its agents, independent contractor, and invitees shall use the easement for installation, maintenance, and repair of a sewer line and related infrastructure therein.
2. Grantee agrees to indemnify and defend Grantor from any loss, claim, or liability to grantor arising in any manner out of the Grantee's use of easement.
3. Grantee has the right of reasonable access to construct, reconstruct, maintain, and repair the sewer line and related infrastructure.
4. Grantee, upon construction of the sewer line and related infrastructure, or upon reconstruction, maintenance, and repair shall return the surface of the property to the condition it was prior to the work.
5. Grantor reserves the right to use the easement to construct driveways, paving, landscaping, and fill, provided the Grantor shall not construct or maintain any building or structure which would interfere with the rights herein granted.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed this

_____ day of _____, 20____.

CORPORATION NAME

Leahy Investments, LLC, an Oregon limited liability company

By _____ (Printed Name) _____ (Signature)

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing Instrument as acknowledged before me this _____ day of _____,
20____,

By: _____, as _____ of
(Individual) (individual's position with corporation)

Leahy Investments, LLC, a corporation on behalf of the corporation.

Notary Public of _____

My Commission Expires: _____

EXHIBIT A

GRAYSTONE ESTATES
LOT 60

GRAYSTONE ESTATES
LOT 79

10' WIDE EASEMENT

DEED
BOOK 124
PAGE 259

DEED
BOOK 124
PAGE 334

GRAYSTONE ESTATES
LOT 80

