

**FIRST AMENDMENT AMENDING AND RESTATING  
INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF OLYMPIA, CITY OF LACEY, CITY OF TUMWATER AND  
THURSTON COUNTY  
FOR  
POOLING AND TRANSFER OF FUNDS  
TO  
SUPPORT PERMANENT SUPPORTIVE HOUSING PROJECT  
AT  
FRANZ ANDERSON ROAD**

**THIS FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT** ("Agreement") amends and restates the December 26, 2023 Interlocal Agreement ("Original Agreement") between the City of Olympia, a municipality organized under the laws of the State of Washington ("OLYMPIA"), the City of Lacey, a municipality organized under the laws of the State of Washington ("LACEY"), the City of Tumwater, a municipality organized under the laws of the State of Washington ("TUMWATER"), and Thurston County, a Washington municipal corporation, ("COUNTY"), jointly referred to herein as "the Parties," or singularly as a "Party."

**RECITALS**

**WHEREAS**, the Original Agreement involved the use of Coronavirus State and Local Fiscal Recovery Funds (SLFRF), established by the American Rescue Plan Act of 2021 (ARPA), this Agreement no longer utilizes those SLFRF/ARPA funds, and instead relies on funding provided by Thurston County and City of Tumwater, which removes requirements related to compliance with the SLFRF/ARPA; and

**WHEREAS**, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

**WHEREAS**, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

**WHEREAS**, unsheltered and unmanaged homelessness constitutes a public health emergency that requires the Parties to coordinate their resources and actions to work together to abate detrimental effects that threaten public health and safety; and

**WHEREAS**, the Parties do not have sufficient resources to address the ongoing impacts or needs of unsheltered homelessness without mutual cooperation; and

**WHEREAS**, the Regional Housing Council supports the development of a permanent supportive housing project at the Franz Anderson Road property; and

**WHEREAS**, the development of a permanent supportive housing project at Franz Anderson Road property is aligned with the Permanent Supportive Housing Strategic Framework adopted by the Regional Housing Council in 2021 with the intent of funding 200 new permanent supportive housing units in Thurston County by 2024; and

**WHEREAS**, the Franz Anderson Road project was included in a proposal awarded funding through the State Rights of Way Safety Initiative, an initiative of the Washington State Governor's Office; and

**WHEREAS**, in March 2021, the American Rescue Plan Act of 2021 (ARPA) established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide State, local, and Tribal Governments with the resources needed to respond to the pandemic and its economic effects; and

**WHEREAS**, pursuant to RCW 39.34.030, local governments may enter into agreements for the purpose of financing joint projects; and

**WHEREAS**, the COUNTY has identified \$3,500,000 in local funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property; and

**WHEREAS**, TUMWATER has identified \$275,000 in General Funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property; and

**WHEREAS**, LACEY has identified \$3,000,000 in General Funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property; and

**WHEREAS**, the funds will be pooled and managed by OLYMPIA; and

**WHEREAS**, the pooled funds will be disbursed by OLYMPIA on a cost reimbursement basis to Low Income Housing Institute (LIHI) to construct the permanent supportive housing at the Franz Anderson Road Property; and

**WHEREAS**, LIHI has proposed a development timeline to complete the construction of permanent supportive housing at the Franz Anderson Road Property by December 31, 2026.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Parties agree as follows:

Amended and Restated Interlocal Agreement/City of Olympia, City of Lacey, City of Tumwater, and Thurston County/Franz Anderson Road SE Property Permanent Supportive Housing

## **1. Purpose/Objective/Funding**

The purpose of this Agreement is to accommodate for the transfer of funding available for affordable housing capital projects and originating from LACEY, TUMWATER, and COUNTY to OLYMPIA so that the funding may be pooled; committed by contract to be applied toward the development of a permanent supportive housing project (hereinafter “the Project”) proposed to occur at the Franz Anderson Road property (hereinafter “the Property”), as legally described in Exhibit “A” attached hereto; and managed by OLYMPIA in connection to the Project.

**A.** COUNTY has spent \$825,547 in SLFRF funds towards acquisition of the real property located on Franz Anderson Road and has identified \$3,500,000 in local document recording fee and sales tax funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property for households with incomes below 50 percent of area median income.

**B.** LACEY has identified \$3,000,000 in General Funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property.

**C.** TUMWATER has identified \$275,000 in General Funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property.

**D.** OLYMPIA has spent \$825,547 towards acquisition of the real property located on Franz Anderson Road.

**E.** In the event LIHI is unable to construct the Franz Anderson Road project after financial closing occurs, any party to this Agreement may withdraw. Upon the withdrawal of any party, OLYMPIA shall return to such party all funds transferred by such party to OLYMPIA pursuant to this Agreement.

## **2. Scope of Agreement/Work**

The responsibilities of the Parties are as follows:

**A.** OLYMPIA shall communicate with LACEY, TUMWATER, and COUNTY to indicate when the Project has demonstrated full funding and is ready to start construction.

**B.** LACEY, TUMWATER, and COUNTY shall facilitate the transfer of funds intended for the development of the Project to OLYMPIA, on a reimbursement basis, at the time that LIHI can demonstrate the Project is fully funded at the time of financial closing and construction is ready to commence. OLYMPIA will process draws by LIHI of funds only after execution of an agreement between OLYMPIA and LIHI that requires LIHI to submit an invoice package to OLYMPIA that includes the percentage of the project completed, what funding amount is being requested, what the funds cover regarding work performed, and

approval of the funds requested, and activities conducted as issued by the project architect. Prior to any payment to LIHI, OLYMPIA will visit the project site to confirm with photographic evidence the work performed. The agreement between OLYMPIA and LIHI shall require that invoice packages requesting funds shall be submitted by LIHI to all funders.

**C. OLYMPIA shall perform the following:**

- Coordinate with other State and private funders regarding financing of the Project;
- Approve funding draws submitted by LIHI for the Project;
- Prioritize LACEY, TUMWATER, and COUNTY funds to be drawn prior to other funds;
- Monitor the Project throughout the construction phase to ensure the Project is timely and in compliance with other requirements;
- Ensure that LIHI will perform all covenants in the Real Estate Purchase and Sale Agreement between OLYMPIA and LIHI (see, Exhibit A), including but not limited to LIHI pursuing project-based vouchers from the Housing Authority of Thurston County to meet affordability requirements; that LIHI shall utilize Thurston County's coordinated entry system to place persons into housing units to be constructed upon the Property; that LIHI shall give initial preference to single adults and couples associated with the State of Washington's Rights-of-Way Safety Initiative exiting OLYMPIA's tiny house village and then to single adults and couples associated with the State of Washington's Rights-of-Way Safety Initiative exiting Maple Court until Maple Court has been converted from an enhanced shelter to permanent supportive housing or has been funded for said conversion; that LIHI will use its best efforts to have Sea Mar Community Health Centers provide behavioral health services for tenants in the multi-family housing units to be constructed upon the Property; that LIHI shall provide two case managers who will have offices on-site in the project to be constructed on the Property; and that LIHI will operate with a low-barrier model and will offer consistent and accessible supportive services to eligible tenants but will not require tenants to participate in services as a condition of receiving housing.
- Ensure that LIHI shall execute and record a Restrictive Covenant as required by the Real Estate Purchase and Sale Agreement between OLYMPIA and LIHI, dictating that the Property shall be used for affordable housing in perpetuity;
- Execute any other agreements needed by LIHI to facilitate State, Federal, or private funding necessary to develop the Project;
- Provide periodic Project updates, as requested, to the Regional Housing Council;
- Close out the Project upon completion of development and upon lease up of Project.

**D. Each Party to this Agreement is responsible for paying the full cost of its respective staff members to support this project.**

**E. The Parties shall have the opportunity to jointly participate in any neighborhood outreach or communications to facilitate open communications between the Parties, residents and surrounding businesses, or property owners.**



### **3. Method of Payment**

LACEY, TUMWATER, and COUNTY shall provide their respective portions of funding for the Project to OLYMPIA via wire transfer. The parties agree that OLYMPIA shall provide an opportunity to LACEY, TUMWATER, and COUNTY to review all contracts and subawards prior to execution for a period of thirty (30) days before processing same for payment.

### **4. Indemnification & Insurance**

LACEY, TUMWATER, and COUNTY agree to defend, indemnify and hold OLYMPIA, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including reasonable attorney fees, arising out of or in connection with OLYMPIA's responsibilities under this Agreement, except to the extent such injuries and damages are caused by the negligence of OLYMPIA.

OLYMPIA agrees to defend, indemnify and hold LACEY, TUMWATER, and COUNTY, and their officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including reasonable attorney fees, arising out of or in connection with LACEY's, TUMWATER's, and COUNTY's responsibilities under this Agreement, except to the extent such injuries and damages are caused by the negligence of LACEY, TUMWATER, and COUNTY.

### **5. Duration of Agreement**

This Agreement shall be effective until terminated in the manner described under the termination section of this Agreement, or upon completion of construction and issuance of a final certificate of occupancy by OLYMPIA and payment of all obligations under this Agreement.

### **6. Termination of Agreement**

This Agreement may be terminated upon ninety (90) days' written notice to the other Parties using the method of notice provided for in this Agreement in Section 12 below.

### **7. Entire Agreement**

This Agreement sets forth all terms and conditions agreed upon by the Parties and supersedes any and all prior agreements, oral or otherwise, with respect to the subject matter and property addressed herein.

### **8. Recitals Incorporated**

The recitals set forth above are hereby incorporated into this Agreement as though fully set forth herein.

### **9. Counterparts**

This Agreement may be executed in a number of identical counterparts which, taken together, constitute collectively one Agreement; but in making proof of this Agreement, it is not necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically Amended and Restated Interlocal Agreement/City of Olympia, City of Lacey, City of Tumwater, and Thurston County/Franz Anderson Road SE Property Permanent Supportive Housing

scanned signature, or an electronic or digital signature where permitted by law, shall be deemed to be an original signature for all purposes. All executed counterparts of this Agreement are originals, but all such counterparts, when taken together, constitute one and the same Agreement.

#### **10. Posting or Recording**

Prior to its entry into force, this Agreement shall be posted upon the websites of the Parties or other electronically retrievable public source or filed with the Thurston County Auditor's Office or as required by RCW 39.34.040.

#### **11. Employment Relationship**

Employees of all Parties shall remain at all times under the direction and control of their original agency and the performance of work for any other agency pursuant to this Agreement shall not change that relationship for any purpose. No Parties shall be deemed to have agreed to pay the other agency's employees any wages or benefits afforded to its own employees. Further, each Party's responsibilities to its own employees for workplace injuries shall remain unchanged by this Agreement.

#### **12. Notice/Contract Representative**

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit in the United States Postal Service.

CITY OF OLYMPIA  
Attn: Darian Lightfoot  
Housing Manager  
City of Olympia  
PO Box 1967  
Olympia, WA 98507-1967  
[dlightfo@ci.olympia.wa.us](mailto:dlightfo@ci.olympia.wa.us)  
360.753.8033

THURSTON COUNTY  
Attn: Thomas Webster  
Thurston County  
412 Lilly Road  
Olympia, WA 98506  
[Thomas.webster@co.thurston.wa.us](mailto:Thomas.webster@co.thurston.wa.us)  
360.280.6265

CITY OF LACEY  
Attn: Rick Walk  
City of Lacey  
420 College St. SE  
Lacey, WA 98503  
[rwalk@ci.lacey.wa.us](mailto:rwalk@ci.lacey.wa.us)  
(360) 438-2638

CITY OF TUMWATER  
Attn: Lisa Parks  
555 Israel Road SW  
Tumwater, WA 98501  
[lparks@ci.tumwater.wa.us](mailto:lparks@ci.tumwater.wa.us)  
(360) 754-4120

#### **13. Records**

Each party shall maintain its own public records and shall be solely responsible for responding to records requests received about the subject matter of this Agreement. Any public records request addressed to the Parties as if this interlocal created a separate legal entity, shall be deemed to be a request received by each party individually. Each party shall respond separately, unless agreed

to otherwise in writing and properly documented. The parties agree to cooperate in responding to requests for public records received about the subject matter of this Agreement.

**14. Jurisdiction and Venue**

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The Parties hereby agree that venue for enforcement of this Agreement shall be in the Superior Court of Washington for Thurston County.

**15. Effective Date**

This Agreement shall take effect upon the final signature date affixed hereto.

**16. Modification**

This Agreement may only be changed, amended, or modified, if in writing, and executed by each of the Parties hereto.

**SIGNATURES APPEAR ON NEXT PAGE**

## **CITY OF OLYMPIA**

\_\_\_\_\_  
Steven J. Burney, City Manager

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
**Mark Barber**

City Attorney

## **THURSTON COUNTY**

\_\_\_\_\_  
Leonard X. Hernandez  
County Manager

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Deputy Prosecuting Attorney

## **CITY OF LACEY**

\_\_\_\_\_  
Rick Walk, City Manager

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
City Attorney

## **CITY OF TUMWATER**

\_\_\_\_\_  
Debbie Sullivan, Mayor

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT "A"**  
REAL ESTATE PURCHASE AND SALE AGREEMENT  
BETWEEN CITY OF OLYMPIA AND LIHI

**AMENDMENT NO. 1  
TO  
REAL ESTATE PURCHASE AND SALE AGREEMENT**

This AMENDMENT NO. 1 to the Real Estate Purchase and Sale Agreement is made by and between the CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington (“Seller”), and LOW INCOME HOUSING INSTITUTE (LIHI), a Washington nonprofit corporation (“Buyer”), jointly referred to as “the Parties,” to modify and amend the Real Estate Purchase and Sale Agreement dated June 21, 2023.

**1. Modification.** The Parties wish to amend the Real Estate Purchase and Sale Agreement (“Agreement”) pursuant to Paragraph 5 of the Agreement, as regards the Closing Date.

**2. Closing Date.** The Closing Date in Paragraph 5 of the Agreement between the Parties is hereby modified and amended to provide that Closing will occur on or before February 28, 2025. All other terms and conditions in Paragraph 5 remain unchanged.

**SELLER:**

**LOW INCOME HOUSING INSTITUTE(LIHI)**

A Washington nonprofit corporation

By: Lynne Behar  
Lynne Behar, Chief Financial Officer

Date: 02/28/2024

**BUYER:**

**CITY OF OLYMPIA**, a Washington municipal corporation

By: Steven J Burney  
Steven J. Burney, City Manager

Date: 02/28/2024

Approved as to form:

Mark Barber  
Mark Barber, City Attorney

## REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is between the City of Olympia, a municipality organized under the laws of the State of Washington ("Seller"), and Low Income Housing Institute (LIHI), a Washington nonprofit corporation ("Buyer"), jointly referred to as "the Parties." This Agreement shall not be effective until the "Effective Date" (as defined in Paragraph 18.16 below).

### RECITALS

Seller is the owner of certain real property ("Property") located in the **City of Olympia, Thurston County, Washington**, consisting of TPN Nos. 58900000300, 58900000301, 58900000400, 58900000500, and 58900000600 and located near Franz Anderson Road in Olympia, Thurston County, Washington, and more particularly described on **Exhibit "A"** (legal description) and shown on **Exhibit "B"** (sketch) attached hereto and by this reference incorporated herein.

Pursuant to the Washington State Constitution, Article VIII, § 7, Seller is permitted to make provision for the necessary support of the poor and infirm. The Seller intends, and the Parties agree, that the Property shall be used to construct permanent supportive housing and facilities in a multi-family rental project as the term "permanent supportive housing" is defined in RCW 36.70A.030(19), which is defined as subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors, and no other purpose except as expressly agreed by the Parties herein.

The Parties specifically agree that the Property shall in perpetuity be used to provide affordable housing as defined in RCW 36.70A.030(2) and permanent supportive housing as defined in RCW 36.70A.030(19). Buyer proposes, and Seller agrees, that the project to be constructed upon the Property will consist of approximately seventy (70) studio and one-bedroom housing units, with one additional one-bedroom unit for an on-site manager (the "Project"). Unit sizes will range from approximately 470 to 630 square feet. An estimated thirty (30) housing units will be accessible to disabled persons. Approximately thirty-five (35) housing units will be studio units designated for households with Area Median Income (AMI) of thirty percent (30%) or less by household size. The remaining thirty-five (35) units will be one-bedroom housing units designated for households with Area Median Income (AMI) at or below thirty percent (30%) by household size. At no time will tenants occupying these housing units pay an amount for rent and utilities that exceeds thirty percent (30%) of their income. Buyer agrees it will pursue project-based vouchers from the Housing Authority of Thurston County to meet affordability requirements.

It is further agreed by the Parties that Buyer shall utilize Thurston County's coordinated entry system to place persons into housing units to be constructed upon the Property. Preference will be given by Buyer to single adults and couples exiting Seller's tiny house village associated

with the State of Washington's Rights-of-Way Safety Initiative. Further, it is proposed by Buyer, and agreed by Seller, that best efforts will be made to have Sea Mar Community Health Centers provide behavioral health services for tenants in the multi-family housing units to be constructed upon the Property. Further, Buyer shall provide two case managers who will have offices on-site in the Project. Buyer proposes, and Seller agrees, that the Project will operate with a low-barrier model and will offer consistent and accessible supportive services to eligible tenants but will not require tenants to participate in services as a condition of receiving housing.

Buyer anticipates utilizing regional funds, including American Rescue Plan Act funds in an amount of approximately \$6.7 million in the development of the Project. Buyer shall use all reasonable due diligence to enter into an agreement to commit these regional funds no later than November 2024, and to fully draw these funds no later than December 2026 in connection with the housing project. The goal of the Parties is to have housing units upon the Property in service no later than April 2026.

The Parties agree and covenant that the use of the Property shall be subject to a restrictive covenant limiting the Property's use in perpetuity for affordable housing as defined in RCW 36.70A.030(2) and (19), as now or hereafter amended by law.

Buyer has determined that the Property is suitable for providing affordable housing and housing-related services and programs for persons experiencing homelessness, housing insecurity, or inability to secure affordable housing in Thurston County, Washington. Seller and Buyer agree that the Property is appropriate and suitable for redevelopment to provide new construction of affordable housing and facilities providing housing-related facilities and programs. Further, as additional consideration to Seller, Buyer agrees to comply with Olympia City Council Resolution No. M-2289, a copy of which is attached hereto and incorporated herein as "**Exhibit F**" to this Agreement, requiring new construction of housing units upon the Property to meet requirements for electrification, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints as set forth in Section 2 of Resolution No. M-2289.

The signatories to this Agreement acknowledge they are authorized to execute associated documents, to correct legal descriptions, if necessary, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Agreement.

The Parties now enter into this Agreement to memorialize the terms and conditions under which Seller will sell the Property to Buyer and Buyer will purchase the Property from Seller.

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

**1. Property.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the following:



1.1 **Land.** The real property constituting the Property legally described on **Exhibit "A"** to this Agreement and generally shown on a sketch attached as **Exhibit "B"** to this Agreement "as is."

1.2 **Appurtenances.** All rights, privileges, and easements appurtenant to the Property owned by Seller, including without limitation any and all leases, subleases, easements, rights-of-way and other appurtenances, including any buildings, structures or fixtures, if any, used in connection with the beneficial use and enjoyment of the Property (the "Appurtenances").

The Property and Appurtenances described in Paragraph 1 above are collectively referred to in this Agreement as the "Property."

2. **Escrow.** Within thirty (30) business days after the Effective Date of this Agreement as defined in Paragraph 18.16, the Parties shall confirm that an escrow account is opened for the transaction contemplated by this Agreement with Thurston County Title Company (in such capacity, "Escrow Company"). Jen Dempsey or another designee of Escrow Company will serve as escrow agent for Closing of this Agreement ("Escrow Agent"). The Parties shall deliver a fully executed copy of this Agreement to Escrow Agent.

3. **Purchase Price.** The purchase price to be paid by Buyer to Seller for the Property (the "Purchase Price") is **One Dollar and NO/100 Cents** (\$1.00) U.S., together with other additional nonmonetary consideration consisting of a Restrictive Covenant to be recorded upon the Property, limiting the Property's use in perpetuity for affordable housing as defined in RCW 36.70A.030(2) and (19), as now or hereafter amended by law, and providing for electrification of all new construction upon the Property, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints as set forth in Section 2 of Olympia City Council Resolution No. M-2289, a copy of which is attached hereto and incorporated herein as **"Exhibit F"** to this Agreement.

4. **Payment of Purchase Price.** On the Closing Date, Buyer shall deposit with Escrow Agent the amount of the Purchase Price, less any amounts to be credited against the Purchase Price, pursuant to this Agreement.

5. **Closing Date.** The Closing (the "Closing") of the purchase and sale of the Property under this Agreement shall be held at the offices of the Escrow Company, and shall occur on or before February 29, 2024, unless otherwise agreed in writing by the Parties. Closing shall occur when the Deed to Buyer and the Restrictive Covenant (as hereinafter defined) are executed and recorded, and the Purchase Price is delivered to the Escrow Company for delivery to Seller.

6. **Title and Survey Matters.**

6.1 **Title Binder and Survey.** Buyer shall order a preliminary commitment for an ALTA owner's extended coverage title insurance policy provided by Thurston County Title Insurance Company ("Title Company") describing the Property, showing all matters of record pertaining to the Property and listing Buyer as the prospective named insured. Following the mutual execution of this Agreement, Buyer shall obtain from Title Company a written

supplemental report to such preliminary commitment in a form acceptable to Buyer, updating the preliminary commitment to the execution date of the Agreement. Such preliminary commitment, supplemental reports and true, correct, and legible copies of all documents referred to in such preliminary commitment and supplemental reports as conditions or exceptions to title to the Property are collectively referred to herein as the "Title Binder." Buyer may order a survey of the Property (the "Survey").

**6.2 Title Review.** Within sixty (60) business days after Buyer's receipt of the updated Title Binder and Survey, Buyer shall review the Title Binder and any surveys of the Property, and shall notify Seller what exceptions to title, if any, affect the marketability or insurability of the title to the Property or which adversely affect the use of the Property (the "Title Review Period"). If no title matters appear in the updated Title Binder since the initial preliminary commitments, then the Parties shall proceed to Closing as set forth in this Agreement. If any title matters appear and Buyer objects to any of the same during the Title Review Period, then Seller shall have thirty (30) business days after receiving Buyer's objections to notify Buyer if Seller will remove any of the exceptions objected to prior to the Closing Date or if Seller elects not to remove such objected to exceptions. If Seller shall fail to remove any such exceptions objected to by Buyer from title prior to the Closing Date, and Buyer is unwilling to take title subject thereto, Buyer may elect to either terminate this Agreement, or take title despite the existence of such exception. If Buyer elects to terminate, neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement which shall then become null and void and of no further force or effect.

**6.3 Title Policy.** At Closing, Seller and Buyer shall cause Title Company to issue a standard ALTA owner's policy ("Title Policy") to Buyer, at Buyer's cost. The Title Policy shall (a) be satisfactory to Buyer, (b) be issued in the amount of the total Purchase Price and (c) insure fee simple, indefeasible title to the Property in Buyer. The Title Policy shall contain endorsements as Buyer may require. Buyer's obligation to close this transaction shall be contingent on Buyer's approval, in its sole and absolute discretion of the Title Policy required under this Paragraph 6.

## **7. Conditions and/or Contingencies to Buyer's Obligations.**

**7.1 Documents and Reports.** Within sixty (60) business days after the execution and delivery of this Agreement (the "Document Delivery Date"), Seller shall deliver to Buyer copies of the documents and reports listed on attached **Exhibit "C"** to this Agreement and in Seller's possession. Seller shall certify to Buyer, as of the Document Delivery Date, as to any documents listed on **Exhibit "C"** not in Seller's possession.

**7.2 Inspection of the Property.** Buyer shall have the right and permission from the date Seller signs this Agreement through the Closing Date (or earlier termination of this Agreement) to enter upon the Property or any part thereof at all reasonable times and from time to time for the purpose, at Buyer's cost and expense, of making all tests and/or studies of the Property that Buyer may wish to undertake, including, without limitation, soils tests (including borings), toxic and hazardous waste studies, surveys, structural studies and review of zoning, fire, safety and other compliance matters; provided, however, Buyer shall indemnify and hold

harmless Seller from and against any mechanic's or other liens or claims that may be filed or asserted against the Property or Seller as a direct result of any actions taken by Buyer in connection with the Property, including but not limited to permitting Seller to review a written description of Buyer's proposed testing and work to ensure same is properly done and will not exacerbate any existing condition of contamination on the property. Buyer shall also provide Seller with a copy of all soil or environmental test results for the property upon Seller's request. Buyer shall reasonably restore the Property to its condition immediately prior to any invasive testing. The effect of the representations and warranties made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

**7.3 Appraisal of the Property.** Buyer shall have the right to obtain an appraisal. Buyer's appraiser may enter onto the property upon reasonable notice to Seller as is necessary to appraise the Property.

**7.4 Approval of Property/Feasibility Contingency.** Buyer's obligation to purchase the Property shall be subject to and contingent upon Buyer's approval, in its sole and absolute discretion, prior to the expiration of the Contingency Period, of all aspects of the Property, including, without limitation, the physical condition of the Property and documents delivered by Seller pursuant to Paragraph 7.1 above, or otherwise obtained by Buyer regarding the Property. Buyer's approval and obligation to purchase the Property under this paragraph shall be for the period set forth in Paragraph 7.5. Upon waiver by Buyer or expiration of the feasibility contingency, the Parties shall move on to Closing.

**7.5 Feasibility Contingency Period.** As used herein, the term "Contingency or Feasibility Period" shall mean the period from the Effective Date of this Agreement as defined in Paragraph 18.16 until the period ending on October 1, 2023.

**7.6 Buyer's Right to Terminate.** If in Buyer's sole and absolute discretion, Buyer is not satisfied with the condition of the Property, Buyer may terminate this Agreement by sending written notice to Seller and Escrow Agent (such notice referred to as a "Termination Notice") prior to the expiration of the Contingency/Feasibility Period. If Buyer gives its Termination Notice to Seller, this Agreement shall terminate and neither Buyer nor Seller shall have any further liability to the other under this Agreement.

**7.7 Additional Closing Conditions.** Buyer's obligation to purchase the Property shall also be subject to the following conditions that must be satisfied as of Closing.

(i) Prior to Closing, all Contracts or Leases (whether written or oral) with respect to the Property, if any, shall be terminated in writing by Seller. Seller shall provide Buyer, prior to Closing, with written termination agreements with respect to all Contracts or Leases, which are not assumed by Buyer;

(ii) All representations and warranties of Seller contained herein, to the best of Seller's knowledge, shall be true, accurate and complete at the time of the Closing as if made again at such time;

(iii) Seller shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

(iv) At Closing, title to the Property shall be in the condition required by Paragraph 6 of this Agreement and Escrow Agent shall deliver the Title Policy to Buyer; and

If the conditions set forth in this Paragraph 7 are not satisfied as of Closing and Buyer does not waive the same, Buyer may terminate this Agreement, and thereafter neither Buyer nor Seller shall have any further liability to the other under this Agreement.

**8. Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties, to the best of Seller's knowledge, which representations and warranties shall be deemed made by Seller to Buyer also as of the Closing Date:

**8.1 Title.** Seller is the sole owner of the Property, except for reservations of record. At Closing, Seller shall convey the entire fee simple estate and right, title and interest in and to the Property by statutory warranty deed to Buyer with a restrictive covenant limiting use of the Property to affordable housing as provided in the Recitals hereto, free and clear of unapproved encumbrances of record.

**8.2 Compliance with Law; Compliance with Property Restrictions.** The Property complies in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property related to zoning, building, subdivision, and engineering.

**8.3 Bankruptcy, etc.** No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.

**8.4 Taxes and Assessments.** Other than amounts disclosed by the Title Binder, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property.

**8.5 Foreign Person.** Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

**8.6 Mechanics' Liens.** No labor, material or services have been furnished in, on or about the Property or any part thereof as a result of which any mechanics', laborer's or materialmen's liens or claims might arise.

**8.7 Underground Storage Tanks.** Seller has knowledge of one underground storage tank, and a decommissioned well. Other than as previously stated, Seller has no knowledge of other (a) subterranean storage or underground storage tanks that exist on the Property, and (b) any previously existing underground storage tanks that have been removed or filled in compliance with applicable law. If there had been an underground storage tank on the site, to the best of Seller's knowledge, the tank was decommissioned in compliance with applicable law.

**8.8 Leases and Other Agreements.** Seller represents that there are no leases, occupancy agreements, service agreements, licenses, easements, or option agreements with regard to the Property, except those of record or disclosed pursuant to Paragraph 7.1.

**8.9 Assumption of Liabilities.** Buyer, by virtue of the purchase of the Property, will not be required to satisfy any obligation of Seller arising prior to the Closing Date.

**8.10 Defaults.** Seller is not in default and there has occurred no uncured event, which, with notice, the passage of time or both would be a default, under any contract, agreement, lease, encumbrance, or instrument pertaining to the Property.

**8.11 Utilities.** The Property may or may not be served by water, storm and sanitary or septic sewer, electricity, and telephone supplied directly to the Property by facilities of public utilities. All such utilities are located within the boundaries of the Property or within lands dedicated to public use or within recorded easements for the same.

**8.12 Public Improvements.** Seller has no knowledge of any federal, state, county, municipal or other governmental plans to change the road system in the vicinity of the Property.

**8.13 Subdivision.** The conveyance of the Property will not constitute a violation of any subdivision ordinance. The improvements on the Property comply in all material respects with all applicable subdivision ordinances and statutes.

**8.14 Due Authority.** Seller and Buyer have all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and Buyer and constitute their legal, valid and binding obligation enforceable against Seller and Buyer in accordance with its terms.

**8.15 No Omissions.** The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be and contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained therein not misleading.

**9. Covenants of Seller.** Seller covenants and agrees as follows:

9.1 **Perform Obligations.** From the date of this Agreement to the Closing Date, Seller will perform any monetary and non-monetary obligations they have regarding the Property.

9.2 **No Liens.** From the date of this Agreement to the Closing Date, Seller will not allow any lien to attach to the Property, nor will Seller grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Property or any part thereof without Buyer's written consent first having been obtained.

9.3 **Provide Further Information.** From the date of this Agreement to the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

**10. Covenants of Buyer.** Buyer covenants and agrees as follows:

10.1 **Perform Obligations.** Buyer shall perform all obligations from the date of this Agreement, including all provisions herein that shall survive the Closing, including those relating to its obligations to provide affordable low-income housing units upon the Property.

10.2 **Application for Impact Fee Reduction.** Buyer may apply for impact fee reductions as permitted by OMC Section 15.04.060.C. for any form of low-income housing occupied by households whose income meets the definition of low-income housing in OMC 15.04.020.Y when adjusted for size is at or below eighty percent (80%) of the area median income as annually adjusted by the U.S. Department of Housing and Urban Development (HUD) from paying school impact fees, provided a covenant is approved by the Olympia School District No. 111 to assure continued use for low income housing and that the covenant is recorded against the title to the Property. As provided in OMC 15.04.060.F, upon application a partial exemption of not more than eighty percent (80%) of park, transportation and school impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, may be granted to a low-income housing development.

10.3 **Application for Land Use Approval.** Buyer covenants and agrees it shall promptly submit the Project to Seller for land use approval following written removal of the contingency/feasibility period set forth in Paragraphs 7.4 and 7.5 herein; however, Buyer further agrees to schedule with Seller's planning staff a preapplication conference prior to submittal of Buyer's land use application for the Property.

10.4 **Seller's Option to Repurchase.** Buyer agrees that Seller shall have an option to repurchase the Property at the same price as the Property is sold to Buyer in this Agreement in the event Buyer fails to commence construction of the housing units contemplated in this Agreement within twenty-four (24) months of the Closing date. Seller agrees that Buyer will have an option to extend its period of construction for an additional year based upon an economic or financial circumstance beyond Buyer's control upon a showing of its best efforts to

move forward with the construction of affordable housing units contemplated in this Agreement. In the event the City (Seller) exercises its option to repurchase the Property, the City (Seller) shall pay any real estate excise tax due on repurchase. In no event shall any period of delay caused by the City permit approval process be counted against Buyer. Such approval process shall toll the deadlines in this paragraph.

## **11. Closing.**

**11.1 Time and Place.** Provided that all the contingencies set forth in this Agreement have been previously fulfilled, the Closing shall take place at the place and time determined as set forth in Paragraph 5 of this Agreement.

**11.2 Documents to be Delivered by Seller.** For and in consideration of, and as a condition precedent to the payment to Seller of the Purchase Price, Seller shall obtain and deliver to Buyer at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) **Title Documents.** Such other documents, including, without limitation, lien waivers, indemnity bonds, indemnification agreements, and certificates of good standing as shall be required by Buyer, or by the Title Company as a condition to its insuring Buyer's good and marketable fee simple title to the Property.

(ii) **Authority.** Such evidence as the Title Company shall require as to authority of Seller to convey the Property to Buyer.

(iii) **Surveys and Drawings.** All surveys, site plans, and plans and specifications relating to the Property as are in the possession or control of Seller, if any.

(iv) **Assignment.** Seller and Buyer agree any assignment of Buyer's rights under this Agreement shall be subject to Seller's approval, which shall not be unreasonably withheld, conditioned or denied except as provided in this Agreement. Seller acknowledges and agrees that Buyer shall either assign this Agreement or transfer the Property after Closing to an entity that is affiliated with Buyer. Such transfer or assignment shall not require the consent of Seller.

(v) **Warranty Deed.** A statutory warranty deed ("Deed") conveying to Buyer a good, marketable and indefeasible title in fee simple absolute to the Property in the form set forth in **Exhibit "D"** attached hereto.

(vi) **Restrictive Covenant.** A covenant restricting use of the Property in perpetuity for the specific purposes as defined in RCW 36.70A.030(2) and (19), and as otherwise agreed by the Parties, in the form set forth in **"Exhibit E"** attached hereto.

**11.3 Payment of Costs.** At Closing, Buyer shall pay all charges for title insurance for a standard ALTA owner's title policy insuring Buyer's title, the escrow fee, all

recording fees, technology fees, and real property excise taxes, if any, and any other costs of Closing.

11.4 **Taxes.** Seller is exempt from payment of real property excise taxes for the Property pursuant to WAC 458-61A-205(2).

11.5 **Monetary Liens.** Seller shall pay or cause to be satisfied at or prior to Closing all monetary liens on or with respect to all or any portion of the Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, rents and/or easements, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements, except where Seller is exempt by statute or administrative rule or regulation.

11.6 **Possession.** Possession of the Property shall be delivered to Buyer at Closing. The Property, including without limitation the improvements, if any, shall be delivered to Buyer in good order.

11.7 **Proration.** All amounts required to be prorated hereunder as of Closing, shall be calculated as if Buyer were in possession of the Property as of the date of Closing.

## **12. Environmental.**

12.1 Notwithstanding anything to the contrary in this Agreement or otherwise, the Parties agree that Seller shall have no obligation to defend, indemnify, or hold Buyer harmless with respect to any loss, liability, claim, demand, damage, or expense of any kind, including attorneys' fees, costs, and expenses (collectively, "Loss") arising (a) out of the release or threatened release of Hazardous Substances on, under, above, or about the Property after Closing, or (b) out of the past release or threatened release of any Hazardous Substance on, under, above, or about the Property caused or contributed to by Buyer, or any employee, agent, tenant, or contractor of Buyer.

12.2 **Definitions.** The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," or "solid wastes" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; (d) chlorinated solvents; and (e) asbestos. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions, or hazardous substances.

13. **Indemnification.** Seller shall pay, protect, pay the defense costs of, indemnify and hold Buyer and their successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Seller set forth in this Agreement, (b) the failure of Seller to perform any obligation required by this Agreement to be performed by Seller, (c) the ownership, maintenance, and/or operation of the Property by Seller prior to the Closing not in conformance with this Agreement, or (d) any injuries to persons or property from any cause



occasioned in whole or in part by any acts or omissions of the Seller, its representatives, employees, contractors or suppliers that occurred before Closing; provided, however, that nothing in this Paragraph 12 applies to Losses arising out of the presence of Hazardous Substances on, under, above, or about the Property, including Hazardous Substances that migrate or migrated to or from the Property except as specifically provided in Paragraph 11 above.

**14. Condemnation.** In the event of any commenced, to be commenced or consummated proceedings in eminent domain or condemnation (collectively “Condemnation”) respecting the Property or any portion thereof, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement, neither Buyer nor Seller shall have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, there shall be no reduction in the Purchase Price, and Seller shall, prior to the Closing Date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, Seller’s entire right, title and interest in and to any condemnation award or settlement made or to be made in connection with such Condemnation proceeding. Buyer shall have the right at all times to participate in all negotiations and dealings with the condemning authority and approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such Condemnation respecting the Property.

**15. Casualty.** If any fire, windstorm or casualty occurs and materially affects all or any portion of the Property on or after the date of this Agreement and prior to the Closing, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement, neither Buyer nor Seller has any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect. The Purchase Price shall not be reduced by the amount of loss or damage occasioned by such casualty not covered by insurance, and Seller shall, prior to the Closing Date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to all insurance claims and proceeds to which Seller may be entitled in connection with such casualty. Buyer shall have the right at all times to participate in all negotiations and other dealings with the insurance carrier providing such coverage and to approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such casualty respecting the Property.

**16. Notices.** Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, “Notices”) shall be in writing and shall be validly given or made to another party if delivered either personally or by FedEx, UPS, USPS or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by FedEx or other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given seven days (7) days after the deposit thereof in the

United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Seller: Steven J. Burney, City Manager  
City of Olympia  
601 4<sup>th</sup> Ave E  
PO Box 1967  
Olympia, WA 98507-1967  
Email: [jburney@ci.olympia.wa.us](mailto:jburney@ci.olympia.wa.us)

With a copy to: Mark Barber, City Attorney  
City of Olympia  
601 4<sup>th</sup> Ave E  
PO Box 1967  
Olympia, WA 98507-1967  
Email: [mbarber@ci.olympia.wa.us](mailto:mbarber@ci.olympia.wa.us)

To Buyer: Low Income Housing Institute (LIHI)  
Attn: Lynne Behar, Chief Financial Officer  
1253 S Jackson Street, Suite A  
Seattle, WA 98144  
Email: [lynneb@lihi.org](mailto:lynneb@lihi.org)

Any party hereto may change its address for receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party hereto.

**17. Event of Default.** In the event of a default under this Agreement by Seller (including a breach of any representation, warranty or covenant set forth herein), Buyer shall be entitled, in addition to all other remedies, to seek monetary damages and specific performance of Seller's obligations hereunder.

**18. Miscellaneous.**

**18.1 Applicable Law.** This Agreement shall in all respects, be governed by the laws of the State of Washington.

**18.2 Further Assurances.** Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder to carry out the intent of the Parties hereto.

**18.3 Modification or Amendment, Waivers.** No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in

this Agreement. 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.

**18.4 Successors and Assigns.** All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns. Any assignment shall be subject to Seller's approval, which shall not be unreasonably withheld, conditioned or denied except by the terms of this Agreement. Buyer must notify and, if required, request approval by Seller of any such assignment prior to the Closing. Any such assignee shall for all purposes be regarded as Buyer under this Agreement.

**18.5 Entire Agreement and No Third Party Beneficiaries.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

**18.6 Jurisdiction, Venue, and Attorneys' Fees.** Jurisdiction and venue shall be in the Superior Court of Thurston County for the State of Washington. Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

**18.7 Construction.** Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Seller are required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

**18.8 Partial Invalidity.** 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, or 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 such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**18.9 Survival.** The recitals, covenants, agreements, obligations to indemnify, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof and are fully enforceable by either Party.

**18.10 Finders' or Brokers' Fees.** Seller represents and warrants that it has not engaged the services of any broker or finder to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement. Seller agrees to indemnify, defend and hold harmless Buyer against any loss, liability, damage, cost, claim or

expense, including interest, penalties and reasonable attorneys' fees that Buyer shall incur or suffer by reason of a breach by Seller of the representation and warranty set forth above.

18.11 **Time.** Time is of the essence of every provision of this Agreement.

18.12 **Risk of Loss.** All of Seller's personal property, of any kind or description whatsoever that is on the Property after Closing, shall be at Seller's sole risk of loss.

18.13 **Force Majeure.** Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

18.14 **Recitals.** The Recitals set forth above are incorporated by this reference into this Agreement and are made a part hereof and shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof and are fully enforceable by either Party.

18.15 **Counterparts.** This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one Agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned or digital signature, where permitted by law, shall be deemed to be an original signature for all purposes. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same Agreement.

18.16 **Effective Date.** The term "date of this Agreement" or "date hereof" or "Effective Date," as used in this Agreement, shall mean the later of the following dates: (1) the date of Buyer's signature on this Agreement; or (2) the date of Seller's signature on this Agreement.

**\*\*\*SIGNATURES APPEAR ON NEXT PAGE\*\*\***

**BUYER:**

**LOW INCOME HOUSING INSTITUTE  
(LIHI)**, a Washington nonprofit corporation

Lynne Behar  
Lynne Behar, Chief Financial Officer

Date: 06/07/2023

**SELLER:**

**CITY OF OLYMPIA**, a Washington  
municipal corporation

Steven J. Burney  
Steven J. Burney, City Manager

Date: 06/21/2023

APPROVED AS TO FORM:

Mark Barber  
Mark Barber, City Attorney

Date: 06/06/2023

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lots 3, 4, 5, and 6 of Leach's Johnson Hill Tracts as recorded April 3, 1923, under Auditor's File No. 126186, in Volume 10 of Plats, Page 2, records of Thurston County, Washington.

TOGETHER WITH an easement for ingress and egress, over the North 12-feet of the South 77-feet of the East 200-feet of said Lot 3.

EXCEPTING therefrom those portions of said Lot 6 conveyed to the State of Washington for highway purposes by deeds recorded December 21, 1956 under Auditor's File No. 579323 and February 20, 1985 under Auditor's File No. 8502200047.

All situated in the Southeast Quarter of Section 18, Township 18 North, Range 1 West, W.M., Thurston County, Washington.

Subject to reservations, restrictions, and easements of record.

# EXHIBIT "B"

## GENERAL VICINITY SKETCH

Vol. 10 Pg. 2  
AF # 126186

Vol. 10, Pg. 2

### LEACH'S JOHNSON HILL TRACTS THURSTON COUNTY WASHINGTON

#### DEDICATION AND DESCRIPTION

This is to certify that Gertrude E. Leach, owner in her own right and as her separate estate of the following described premises:- Commencing at the  $\frac{1}{4}$  corner between Sections 17 and 18 T.16N, R.1W, W.M., thence N.89°-09'-32" W. 207.612 feet, thence S.0°-06'-10" E. 772.900 feet to the true place of beginning, thence S.0°-06'-10" E. 1119.70 feet, thence S.84°-05'-09" W. 995.70 feet, thence N.0°-38'-28" E. 122.801 feet, thence S.89°-42'-16" E. 974.59 feet to the place of beginning, containing 26.48 acres and that I have caused the same to be surveyed and platted to be hereafter known as "Leach's Johnson Hill Tracts". All streets and roads are hereby dedicated as highways for uses and benefits of the public forever.

In witness hereof I have hereunto set my hand and seal this 21 day of March A.D. 1923

*Gertrude E. Leach*

#### ACKNOWLEDGMENT

State of Washington } ss  
County of Thurston }

This is to certify on this 21 day of March A.D. 1923, personally appeared before me, a Notary Public in and for the State of Washington, Gertrude E. Leach, well and truly known to me to be the person described in and who executed the foregoing instrument, and acknowledged the same as her voluntary act and deed for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

*Notary Public in and for the State of Washington, residing at Olympia.*

#### Certificate of Surveyor

This is to certify that I have surveyed and staked the above plat, and the same is correct.

*W. C. Dillingham*  
Surveyor

#### Certificate of Treasurer

This is to certify that all of the taxes on the land herein platted have been fully paid and discharged up to and including the year 1922.

*County Treasurer*

#### Certificate of County Engineer

Approved this 30 day of March A.D. 1923.

*County Engineer*

#### Certificate of County Commissioners

Approved by the Board of County Commissioners this 22 day of April A.D. 1923.

Attest: *Chairman*  
County Auditor & Clerk of Board

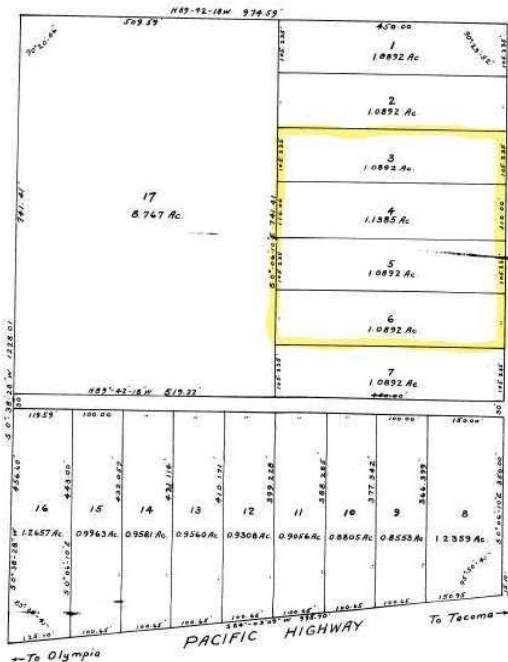
No. Filed for record - 1923 at 10 o'clock

at the request of Gertrude E. Leach, and recorded in Vol. Page of Plat Records of Thurston County Washington.

*County Auditor*

by *Deputy*

Scale 1 inch = 100 feet



Note: All stakes facing Pacific Highway offset 4 feet North.

**EXHIBIT “C”**  
**DOCUMENTS AND REPORTS**

1. Copies of all leases or other occupancy agreements relating to the Property, if any, with originals to be delivered at Closing.
2. Copies of all licenses, permits and approvals, if any, issued by governmental authorities for the use and occupancy of the Property or any facility located thereon.
3. Any other information about the Property reasonably requested by Buyer if in the possession or control of Seller.
4. Any service contracts or other similar agreements related to the Property.
5. Reports of environmental conditions related to the Property, if any.
6. Surveys, if any.
7. Soils reports, if any.



**EXHIBIT “D”**  
**FORM OF STATUTORY WARRANTY DEED**

Low Income Housing Institute (LIHI)  
Attn: Lynne Behar, Chief Financial Officer  
1253 S Jackson Street, Suite A  
Seattle, WA 98144

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<b>Document Title:</b>	<b>Statutory Warranty Deed</b>
<b>Grantor:</b>	<b>City of Olympia, a Washington municipal corporation</b>
<b>Grantee:</b>	<b>Low Income Housing Institute (LIHI), a Washington nonprofit corporation</b>
<b>Abbreviated Legal Description:</b>	<b>Lots 3, 4, 5, and Ptn. of Lot 6, Leach’s Johnson Hill Tracts SE 18-18-1W</b>
<b>Assessor’s Tax Parcel Numbers:</b>	<b>58900000300, 58900000301, 58900000400, 58900000500, and 58900000600</b>

The Grantor, **CITY OF OLYMPIA**, a Washington municipal corporation, for and in consideration of the sum of ONE and NO/100---(\$1.00) Dollar, and other good and valuable considerations, in hand paid, hereby conveys and warrants to the Grantee, **LOW INCOME HOUSING INSTITUTE (LIHI)**, a Washington nonprofit corporation, the following described real property and all rights thereto, situated in the City of Olympia, County of Thurston, in the State of Washington, including all after acquired title:

Lots 3, 4, 5, and 6 of Leach’s Johnson Hill Tracts as recorded April 3, 1923, under Auditor’s File No. 126186, in Volume 10 of Plats, Page 2, records of Thurston County, Washington.

TOGETHER WITH an easement for ingress and egress, over the North 12-feet of the South 77-feet of the East 200-feet of said Lot 3.

EXCEPTING therefrom those portions of said Lot 6 conveyed to the State of Washington for highway purposes by deeds recorded December 21, 1956 under Auditor’s File No. 579323 and February 20, 1985 under Auditor’s File No. 8502200047.

All situated in the Southeast Quarter of Section 18, Township 18 North, Range 1 West, W.M., Thurston County, Washington.

Subject to easements, restrictions, and reservations of record.



**EXHIBIT “E”  
FORM OF RESTRICTIVE COVENANT**

**After Recording Return to:**

City of Olympia  
Attn: Legal Department  
P.O. Box 1967  
Olympia, WA 98507-1967

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<b>Document Title:</b>	<b>Restrictive Covenant</b>
<b>Grantor:</b>	<b>Low Income Housing Institute (LIHI), a Washington nonprofit corporation</b>
<b>Grantee:</b>	<b>City of Olympia, a Washington municipal corporation</b>
<b>Abbreviated Legal Description:</b>	<b>Lots 3, 4, 5, and Ptn. of Lot 6, Leach’s Johnson Hill Tracts SE 18-18-1W</b>
<b>Assessor’s Tax Parcel Numbers:</b>	<b>58900000300, 58900000301, 58900000400, 58900000500, and 58900000600</b>

**RESTRICTIVE COVENANT**

As additional consideration to the City of Olympia, a Washington municipal corporation (“Grantee”), for the purchase of its real property by Low Income Housing Institute (LIHI), a Washington nonprofit corporation (“Grantor”), Grantor and Grantee agree that the real property legally described as:

Lots 3, 4, 5, and 6 of Leach’s Johnson Hill Tracts as recorded April 3, 1923, under Auditor’s File No. 126186, in Volume 10 of Plats, Page 2, records of Thurston County, Washington.

TOGETHER WITH an easement for ingress and egress, over the North 12-feet of the South 77-feet of the East 200-feet of said Lot 3.

EXCEPTING therefrom those portions of said Lot 6 conveyed to the State of Washington for highway purposes by deeds recorded December 21, 1956 under Auditor’s File No. 579323 and February 20, 1985 under Auditor’s File No. 8502200047.

All situated in the Southeast Quarter of Section 18, Township 18 North, Range 1 West, W.M., Thurston County, Washington.

Subject to easements, restrictions, and reservations of record.

shall be held, transferred, sold, conveyed, leased, used, assigned, and occupied in perpetuity subject to the following covenants and restrictions:

1. The above legally described real property shall be used in perpetuity to provide affordable housing as defined in RCW 36.70A.030(2) and (19), as now or hereafter lawfully amended, and providing housing-related facilities and programs; and
2. The residential units to be constructed upon the real property shall have approximately seventy (70) studio and one-bedroom units, and one additional one-bedroom unit for an on-site housing manager; and
3. An estimated thirty (30) residential units shall be accessible to disabled persons; and
4. The real property shall be used to construct permanent supportive housing and facilities in a multi-family rental project as the term “permanent supportive housing” is defined in RCW 36.70A.030(19), as now or hereafter lawfully amended, which means subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors, and no other purpose except as expressly agreed by the Parties herein; and
5. The residential units to be constructed upon the property shall be for households with Area Median Income (AMI) of thirty percent (30%) or less. At no time will tenants occupying these housing units pay an amount for rent and utilities that exceeds thirty percent (30%) of their income; provided, however, if a tenant is not receiving a project-based Section 8 voucher, such tenant may be charged the applicable restricted rent for such unit at 30% AMI; and
6. Grantor agrees it will seek project-based vouchers from the Housing Authority of Thurston County to meet affordability requirements; and
7. Grantor shall select persons for residential placement upon the real property by use of Thurston County’s Coordinated Entry system to prioritize persons who are homeless or facing housing insecurity in Thurston County, Washington; and
8. Grantor shall provide for electrification of all new construction upon the Property, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints as set forth in Section 2 of Olympia City Council Resolution No. M-2289.

It is the express intent of the Grantor and Grantee that the provisions of the Restrictive Covenants stated herein shall be deemed to run with the land in perpetuity unless otherwise stated, and shall pass to and be binding upon Grantor’s successors in title, including any subsequent purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the real property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser,

grantee, owner, assignee, trustee, trustor, or lessee of any portion of the real property and any other person or entity having any right, title or interest therein.

It is further agreed by Grantor and Grantee, that Grantee shall have the right to enforce the aforesaid Restrictive Covenants running with the land by either a request for equitable relief and specific performance or an action at law for damages, or by both such equitable relief and monetary damages, in the Superior Court of Thurston County for the State of Washington, as permitted by law. The prevailing party shall be entitled to recover its attorneys' fees and costs of litigation to enforce the covenants set forth herein.

**GRANTOR: LOW INCOME HOUSING INSTITUTE (LIHI),**  
a Washington nonprofit corporation

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Lynne Behar, Chief Financial Officer

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

I certify that I know or have satisfactory evidence that **Lynne Behar**, Chief Financial Officer of the Low Income Housing Institute (LIHI), a Washington nonprofit corporation, appeared before me, and that said person acknowledged that she signed this instrument, and on oath stated that she is authorized to execute this instrument, and acknowledged it as her free and voluntary act for the uses and purposes mentioned in the instrument.

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Signature  
Print Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**GRANTEE : CITY OF OLYMPIA,**  
a Washington municipal corporation

Dated: \_\_\_\_\_

**Mark Barber, City Attorney**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

On the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Steven J. Burney**, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature \_\_\_\_\_  
 Print Name \_\_\_\_\_  
 NOTARY PUBLIC in and for the State of \_\_\_\_\_  
 Residing at \_\_\_\_\_  
 My appointment expires: \_\_\_\_\_

## EXHIBIT "F"

### RESOLUTION NO. M-2289

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, TO RESPOND TO THE CLIMATE EMERGENCY, DECLARING THE INTENT OF THE CITY TO ELECTRIFY CITY-OWNED FACILITIES AND OLYMPIA'S BUILT ENVIRONMENT**

**WHEREAS**, climate change is an existential crisis posing one of the most serious threats to the existence of humanity and all species on the planet; a threat that intersects and compounds all other crises facing humanity and our earth; and

**WHEREAS**, the 11th United Nations Intergovernmental Panel on Climate Change ("IPCC") report from October 2018 states that we must cut greenhouse gas emissions in half by 2030 to limit devastating global warming and avoid a climate catastrophe; and

**WHEREAS**, in 2018, the City of Olympia adopted Resolution No. M-1976 adopting common targets to reduce communitywide greenhouse gas emissions 45 percent below 2015 levels by 2030, and then 85 percent below 2015 levels by 2050. In 2019 these goals were placed in the Comprehensive Plan via amendment; and

**WHEREAS**, in 2019, in collaboration with Olympia High School students, Olympia approved a Resolution Expressing a Commitment to Protect the Youth of this Community from the Risks of Climate Destruction (M-2045), which among other things committed the City to achieve net zero emissions by 2040; and

**WHEREAS**, in February 2021, the City passed a Resolution Declaring a Climate Emergency (M-2194). A declaration that challenges our regional partners and community members to "to help further the Thurston County Climate Mitigation Plan through partnership with local jurisdictions and other entities" and to "adopt a lens of climate change and climate equity" in planning, zoning, permitting, budgeting, expenditures, ordinances, and all other city efforts, policies, and practices to further climate action efforts and our accepted regional climate mitigation plan; and

**WHEREAS**, in February 2021, the City accepted the Thurston Climate Mitigation Plan (TCMP), committing the City to working with Thurston County, the cities of Lacey and Tumwater and the Thurston Regional Planning Council to substantially reduce regional greenhouse gas emissions; and

**WHEREAS**, a Greenhouse Gas Inventory Report for Calendar Years 2015 – 2019 found that Thurston County greenhouse gas emissions have increased 15% since 2015, and the built environment was responsible for 63% of all emissions in 2019; and

**WHEREAS**, in Washington State, homes and buildings are the single fastest growing source of carbon pollution, up 50 percent since 1990, and now account for 27 percent of Washington's carbon emissions; and

**WHEREAS**, natural gas consumption represents the second largest source of greenhouse gas emissions from the built environment in Thurston County and the Thurston Climate Mitigation Plan identifies reducing natural gas use as a key strategy to achieve the most substantial reductions in local greenhouse gas emissions; and

**WHEREAS**, methane leaks during the production, processing, transmission, and distribution of natural gas can be substantial, releasing a potent greenhouse gas with 84 times the warming potential of carbon dioxide; and

**WHEREAS**, the United States and other leading economies recently agreed to the Global Methane Pledge to reduce Methane emissions 30 percent by 2030; and

**WHEREAS**, in 2019, Washington State passed the Clean Energy Transformation Act (CETA), which sets milestones for electric utilities to transition toward a 100% clean electricity. Under CETA, utilities must eliminate coal-fired electricity from their mix by 2025, become greenhouse-gas neutral by 2030 (using offsets, if necessary), and provide 100 percent renewable energy by 2045; and

**WHEREAS**, Olympia must take additional measures to decarbonize, transitioning from fossil fuel powered space-heating, water-heating, and cooking equipment to all-electric buildings powered by affordable, renewable electricity; and

**WHEREAS**, electrification will improve indoor air quality and overall health, by eliminating natural gas combustion inside homes that produces harmful indoor air pollution; and

**WHEREAS**, there are well-documented risks to respiratory health from gas stove pollution, and infants and children are particularly vulnerable to respiratory illnesses associated with gas stove pollution; and

**WHEREAS**, lower-income households are more likely to suffer from health impacts from outdoor and indoor air pollution, which are exacerbated when exposed to pollution from gas stoves; and

**WHEREAS**, electrification is widely recognized as a powerful strategy to address both climate change and poor air quality in the frontline communities most vulnerable to climate impacts; and

**WHEREAS**, every new building relying on fossil fuels for heating, cooling, and cooking will have a negative impact on the climate for decades to come and require additional investments to be retrofitted to electric systems as the climate emergency worsens; and

**WHEREAS**, in June of 2021, the Olympia City Council supported a referral to require the electrification of all new City-owned buildings and major renovations of existing City buildings; and

**WHEREAS**, in June of 2021, the Olympia City Council supported a referral directing staff to develop a scope, schedule, and budget to conduct a regional cost assessment of requiring non-fossil fuel sourced heating and power in new commercial and residential development in the City; and

**WHEREAS**, the City has the opportunity to lead by example to make decisive, transformative, and sustainable changes in its municipal energy consumption, and can significantly lower the City's greenhouse gas emissions and overall carbon impact; and

**WHEREAS**, citywide building electrification is necessary to achieve Olympia's greenhouse gas reduction targets, and such actions will also improve public health and increase the quality of life throughout the City;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OLYMPIA**, that the City of Olympia recognizes the global and local benefits of accelerating the transition to all-electric buildings throughout the City; and be it



**FURTHER RESOLVED** as follows:

**Section 1.** The City Manager is directed to electrify all newly constructed City-owned buildings and major renovations of existing City buildings, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints. Additional upfront costs of five percent (5%) or less shall not be considered a cost constraint. Exemptions must be approved by the City Council and exempt buildings should be built in a manner to support the easy transition to electric systems at any time during the life of the building. This policy will become effective January 12, 2022.

**Section 2.** The City Manager is directed to require the electrification of all new projects and major renovations of existing buildings receiving City funding of \$50,000 or more, a donation of City property with an appraised value of \$50,000 or more, or a sale of City-owned property where the difference between the appraised value and sale price is \$50,000 or more, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints. Council may consider the total cost of construction and operating costs in determining the issue of cost constraints. Exemptions must be approved by the City Council and exempt buildings should be built in a manner to support the easy transition to electric systems at any time during the life of the building. This policy will become effective following a work session to discuss citywide electrification on or before April 1, 2022.

**Section 3.** The City Manager is directed to inventory City-owned facilities that use fossil fuels and evaluate the feasibility of retrofitting existing buildings to become all-electric by 2030. The inventory and evaluation will make use of existing reports and data to prepare preliminary feasibility recommendations by January 1, 2024.


**Section 4.** The City of Olympia will encourage the Washington State Legislature and State Building Code Council, and other local entities, such as Thurston County, neighboring cities, school districts, and major institutions, to join in this step to address regional greenhouse emissions from our built environment, by adopting similar building electrification policies to invest in clean energy assets.

**Section 5.** The City Manager is directed to schedule a City Council work session no later than April 1, 2022, to discuss policy pathways and potential challenges to citywide electrification of all new buildings


**PASSED BY THE OLYMPIA CITY COUNCIL** this 18th day of January 2022.

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY