

being used for the primary purpose of a City Park. The second parcel is intended to be used for a future Fire Station. City agrees City will record deed restrictions necessary to insure that the Property will be used for the public benefit, in perpetuity.

1. **PURCHASE AND SALE OF THE PROPERTY.** Developer agrees to transfer Developer's interest in and to the Property to City and City agrees to accept Developer's interest in and to the Property from Developer on the terms and conditions set forth below. The transfer of the Property is contingent on:

A. City bringing the Property into the City's Urban Growth Boundary, with an R-1 residential zoning designation.

B. Developer receiving approval for a subdivision containing 4 units per acre, as set forth as an outright permitted use under the City's R-1 Zone.

2. **TERMS OF THE TRANSFER.**

2.1 **Consideration for the Transfer.** The Parties agree that the City bringing the entire property into the Urban Growth Boundary is valuable consideration, and both the future Park and a potential future Fire Station are amenities.

3. **PRECONDITION TO PARTIES OBLIGATION.** In addition to the Preconditions listed in Section 1 of this Agreement, the following preconditions also apply.

3.1 **City's Inspection.** At City's expense, City may have the Property inspected by one or more professionals of City's choice. City shall specifically identify in this Agreement any desired inspections which may include testing or removal of any portion of the Property due to the possible presence of any environmentally hazardous substance or condition. If an inspection shows a material defective condition in the Property, City may terminate the transaction by delivery to Developer of a written notice of City's disapproval of the inspection report by the date stated in Section 3.2. City understands that if City does not disapprove of an inspection report in writing within the time provided, that constitutes acceptance of the condition of the Property.

3.2 **Termination.** In the event that City is unable to bring the Property into the Urban Growth Boundary, in twelve calendar months, this Agreement will terminate, unless both Parties agree to extend the term.

4. **DEVELOPER'S TITLE TO THE PROPERTY.**

4.1 **Title Report.** As soon as practicable after the execution of this Agreement, Developer at its expense shall furnish to City a preliminary title report from Pacific Title Company of Gearhart ("Title Company") showing its willingness to issue title insurance on the Property together with full copies of all exceptions. City shall have ten (10) days after receipt of the preliminary title report and exceptions within which to notify Developer in writing of City's disapproval of any exceptions shown in the report, other than exceptions for any liens to be satisfied by Developer at Closing. In the event of such disapproval, Developer shall have until

the Closing to eliminate any disapproved exception. Failure of City to disapprove any exception within the 10-day period shall be deemed an approval of the exceptions shown in the title report. If Developer is unable to eliminate any disapproved exception, the City may either elect to rescind the Agreement by notice to Developer or elect to waive its prior disapproval and proceed to close the sale.

5. **DEVELOPER'S REPRESENTATIONS AND WARRANTIES.** Developer makes the following representations and warranties, which representations and warranties will survive Closing and the conveyance of the Improvements to City:

5.1 Developer is the owner of the Property and has the right and power to transfer the Property to City.

5.2 Developer has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Improvements.

5.3 Developer is not a "foreign person" as that term is defined in IRC § 1445. On the Closing, Developer will execute and deliver to City a certification of the nonforeign status on a form required by the IRS.

5.4 Except as provided above, Developer has made no representations, warranties, or other agreements concerning matters relating to the Property. Developer has made no agreement or promise to alter, repair, or improve the Property. City represents that City has made their own examination of the Property and is buying the Property based on City's own examination and personal knowledge of the Property and that City takes the Property in the condition, known or unknown, existing at the time of this Agreement "AS IS." Developer has provided City with a Developer's Property Disclaimer Statement.

6. **CLOSING.**

6.1 **Closing.** This transaction will be closed on a date to be selected by the parties but no later than twelve months after the execution of this Agreement. ("Closing").

6.2 **Manner and Place of Closing.** This transaction will be closed in the offices of Pacific Title Company of Gearhart, Oregon ("Escrow"), or at such other place as the parties may mutually select. Closing shall take place in the manner and, in accordance with the provisions set forth in this Agreement.

6.3 **Prorations, Adjustments.** Real property taxes and assessments shall be prorated as of Closing. Developer shall be responsible for any and all deferred or abated taxes and related interest and charges, any past due taxes and assessments through Closing and shall cause such to be paid and removed at or before Closing. The current year's taxes shall be prorated between the parties as of Closing. In addition, insurance, interest, water and other utilities constituting liens shall be prorated as of Closing.

6.4 **Certification of Nonforeign Status.** Developer shall deliver to City at Closing a Certificate of Nonforeign Status, setting forth Developer's address and United States taxpayer identification number and certifying that Developer is not a foreign person as so defined.

6.5 **Events of Closing.** Provided the Title Company is in a position to cause the title insurance policy to be issued as described below, sale of the Improvements will be closed on the Closing as follows:

(a) The Escrow officer will perform the prorations described in **Section 6.3**, and the parties shall be charged and credited accordingly.

(b) Any liens required by this Agreement to be paid by Developer at closing and title exceptions and defects to be removed or cured by Developer at or before Closing shall be removed, cured, paid and satisfied of record at Developer's expense.

(c) Title Company will deliver its Commitment letter committing to issue the policy described in Section 6.6 insuring title to the Improvements upon recordation of the closing documents. The title insurance premium will be charged to City.

(d) The Escrow officer will record the Deed at City's Expense.

(e) The parties will split the escrow fee of the Title Company for closing this transaction. Each party shall pay its own attorney's fees and other items customarily required to be paid by the party.

6.6 **Possession.** Developer shall deliver possession of the Property to City on the Closing date.

7. **GENERAL PROVISIONS.**

7.1 **Time of Essence.** A material consideration to Developer entering into this transaction is that City will close the purchase of the Property by the Closing described above. Except as otherwise specifically provided in this Agreement, time is of the essence of each and every provision of this Agreement.

7.2 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns.

7.3 **Notices.** Notices under this Agreement shall be in writing and shall be effective when actually delivered. If mailed, a notice shall be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown above. Either party may change its address for notices by written notice to the other.

7.4 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of

any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

7.5 **Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

7.6 **Prior Agreements.** This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties.

7.7 **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

7.8 **Brokers.** Each party will defend, indemnify, and hold the other party harmless from any claim, loss, or liability made or imposed by any other party claiming a commission or fee in connection with this transaction and arising out of its own conduct.

7.9 **Changes in Writing.** This Agreement and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

7.10 **Survival of Covenants.** Any covenants and agreements which this Agreement does not require to be fully performed prior to Closing shall survive Closing and shall be fully enforceable thereafter in accordance with their terms.

7.11 **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

7.12 **Invalidity of Provisions.** In the event any provision of this Agreement, or any instrument to be delivered by City at Closing pursuant to this Agreement, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

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, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED. USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES. IF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505, ORS

358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF THE SALE OR TRANSFER OF THIS PROPERTY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the day and year first above written.

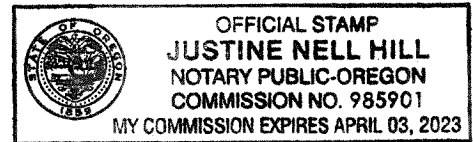
DEVELOPER:

By: [Signature]
The Cottages at Gearhart, LLC
On behalf of Property Owner

STATE OF OREGON)
) SS
COUNTY OF Clatsop)

This instrument was acknowledged before me on August 23, 2021 by Lawrence Popkin as a manager of the Cottages at Gearhart, LLC

[Signature]
Notary Public for Oregon My commission expires:



CITY:

By: [Signature]
City Administrator for the City of Gearhart
On behalf of the City of Gearhart

STATE OF OREGON)
) SS
COUNTY OF Clatsop)

This instrument was acknowledged before me on August 23, 2021 by Chad Sweet as City Administrator of City of Gearhart.

[Signature]
Notary Public for Oregon My commission expires:
April 3, 2023

