



CITY OF BLAINE

435 Martin Street, Suite 4000

Blaine, WA 98230

SPECIAL CITY COUNCIL AGENDA

Thursday, September 12, 2019

5:00 PM

Bonnie Onyon, Mayor
Steve Lawrenson, Mayor Pro Tem

A. CALL TO ORDER

Moment of Silence and Pledge of Allegiance ***Please turn off all cell phones and other electronics that may interfere with the sound system***

ROLL CALL:

COUNCILMEMBERS: Jaime Arnett, Eric Davidson, Charlie Hawkins, Steve Lawrenson, Mary Lou Steward, Bonnie Onyon, and Alicia Rule.

B. COUNCIL ACTION ITEMS

1. Authorize the City Manager to enter into a Purchase and Sale Agreement for sale of approximately 5 acres of the Gateway property to White-Leasure Development Company.

E. ADJOURN

Americans with Disability Act (ADA) Requirement: The meeting location is accessible. If you require a special accommodation during your attendance at any public meeting, please contact the City Clerk's Office (360) 332-8311, 24 hours prior to the meeting date you will be attending. Thank you.

CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE: September 12, 2019

SUBJECT: Purchase and Sale Agreement between City of Blaine and White-Leasure Development Company for approximately Five Acres of Property

DEPARTMENT: City Manager

PREPARED BY: _____

AGENDA LOCATION: ☐ Consent Agenda ☒ Council Action ☐ Unfinished Business

ATTACHMENTS:

1. Purchase and Sale Agreement
2. Purchase and Sale Addendum

BACKGROUND/SUMMARY:

The City has been in negotiations to sell approximately five acres of property in the Gateway General Binding Site Plan (former airport site) to the White-Leasure Development Company. The buyer intends to develop a commercial center, with an undetermined mix of tenants/owners. The proposal involves all remaining, uncontracted property on the former airport site. It is located at the north end of the site adjacent to H Street, SR-543, and Grant Avenue. The size and dimensions are subject to site planning and final agreement between the buyer and seller; however, the agreement stipulates the purchase of all the land that remains after the Family Care Network's site planning is complete, and requires the purchase of the entire 7-acre +/- site if the Family Care Network chooses not to proceed with their purchase.

Price has been established at \$5.50 per square foot. The agreement allows for a 180-day feasibility period, with an option for the City Manager to grant an additional 180-day feasibility extension. Earnest money, in the amount of \$50,000 would become non-refundable upon the granting of a feasibility extension. The agreement also requires the buyer to report to the City Manager on the status of their tenant recruitment and contracting at 90-day increments throughout the feasibility period.

Budget Implications: ☐ Current Budget ☐ New Budget Request ☒ Non-Budgetary

The property sale would add income to the City, but it does not impact the 2019 Budget directly.

Recommendation:

The City Manager recommends that the Council authorize the City Manager to sign the purchase and sale agreement and addendum with the White-Leasure Development Company for the sale of approximately 5.0 acres of land subject to final review by the City Attorney and City Manager.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

**VACANT LAND PURCHASE AND SALE AGREEMENT
SPECIFIC TERMS**

1. **Date:** September 10, 2019 **MLS No.:** _____ **Offer Expiration Date:** 09/20/2019
2. **Buyer:** White-Leasure Development Company **A corporation**
Buyer Status
3. **Seller:** The city of Blaine, Washington
Seller
4. **Property:** Legal Description attached as Exhibit A. Tax Parcel No(s): _____
see addendum , approx 5 acres Blaine Whatcom WA
Address City County State Zip
5. **Purchase Price:** \$ \$5.50 per square foot, see addendum Dollars
6. **Earnest Money:** \$ 50,000.00 ☐ Check; ☒ Note; ☐ Other _____ (held by ☐ Selling Firm; ☒ Closing Agent)
7. **Default:** (check only one) ☒ Forfeiture of Earnest Money; ☐ Seller's Election of Remedies
8. **Title Insurance Company:** Whatcom Land Title
9. **Closing Agent:** Whatcom Land Title
Company Individual (optional)
10. **Closing Date:** see addendum; **Possession Date:** ☒ on Closing; ☐ Other _____
11. **Services of Closing Agent for Payment of Utilities:** ☐ Requested (attach NWMLS Form 22K); ☒ Waived
12. **Charges/Assessments Levied Before but Due After Closing:** ☒ assumed by Buyer; ☐ prepaid in full by Seller at Closing
13. **Seller Citizenship (FIRPTA):** Seller ☐ is; ☒ is not a foreign person for purposes of U.S. income taxation
14. **Subdivision:** The Property: ☒ must be subdivided before closing; ☐ is not required to be subdivided
15. **Feasibility Contingency Expiration Date:** ☐ _____ days after mutual acceptance; ☒ Other _____
16. **Agency Disclosure:** Selling Broker represents: ☒ Buyer; ☐ Seller; ☐ both parties; ☐ neither party
Listing Broker represents: ☒ Seller; ☐ both parties
17. **Addenda:** _____

Addendum attached, Exhibit A, Exhibit B

Buyer's Signature _____ Date _____

Buyer's Signature _____ Date _____

Buyer's Address _____

City, State, Zip _____

Phone No. _____ Fax No. _____

Buyer's E-mail Address _____

Cohen Group NW
Selling Firm _____ MLS Office No. _____

Leo Cohen
Selling Broker (Print) _____ MLS LAG No. _____

Firm Phone No. _____ Broker Phone No. _____ Firm Fax No. _____

Selling Firm Document E-mail Address _____

Selling Broker's E-mail Address _____

Selling Broker DOL License No. _____ Selling Firm DOL License No. _____

Seller's Signature _____ Date _____

Seller's Signature _____ Date _____

Seller's Address _____

City, State, Zip _____

Phone No. _____ Fax No. _____

Seller's E-mail Address _____

Windermere Real Estate **Mike Kent**
Listing Firm _____ MLS Office No. _____

Mike Kent/Jeff Johnson
Listing Broker (Print) _____ MLS LAG No. _____

Firm Phone No. _____ Broker Phone No. _____ Firm Fax No. _____

Listing Firm Document E-mail Address _____

mike@mikekent.com
Listing Broker's E-mail Address _____

Listing Broker DOL License No. _____ Listing Firm DOL License No. _____

**VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

Continued

- a. Purchase Price.** Buyer shall pay to Seller the Purchase Price, including the Earnest Money, in cash at Closing, unless otherwise specified in this Agreement. Buyer represents that Buyer has sufficient funds to close this sale in accordance with this Agreement and is not relying on any contingent source of funds, including funds from loans, the sale of other property, gifts, retirement, or future earnings, except to the extent otherwise specified in this Agreement. The parties shall use caution when wiring funds to avoid potential wire fraud. Before wiring funds, the party wiring funds shall take steps to confirm any wire instructions via an independently verified phone number and other appropriate measures.
- b. Earnest Money.** Buyer shall deliver the Earnest Money within 2 days after mutual acceptance to Selling Broker or to Closing Agent. If Buyer delivers the Earnest Money to Selling Broker, Selling Broker will deposit any check to be held by Selling Firm, or deliver any Earnest Money to be held by Closing Agent, within 3 days of receipt or mutual acceptance, whichever occurs later. If the Earnest Money is held by Selling Firm and is over \$10,000.00 it shall be deposited into an interest bearing trust account in Selling Firm's name provided that Buyer completes an IRS Form W-9. Interest, if any, after deduction of bank charges and fees, will be paid to Buyer. Buyer shall reimburse Selling Firm for bank charges and fees in excess of the interest earned, if any. If the Earnest Money held by Selling Firm is over \$10,000.00 Buyer has the option to require Selling Firm to deposit the Earnest Money into the Housing Trust Fund Account, with the interest paid to the State Treasurer, if both Seller and Buyer so agree in writing. If the Buyer does not complete an IRS Form W-9 before Selling Firm must deposit the Earnest Money or the Earnest Money is \$10,000.00 or less, the Earnest Money shall be deposited into the Housing Trust Fund Account. Selling Firm may transfer the Earnest Money to Closing Agent at Closing. If all or part of the Earnest Money is to be refunded to Buyer and any such costs remain unpaid, the Selling Firm or Closing Agent may deduct and pay them therefrom. The parties instruct Closing Agent to provide written verification of receipt of the Earnest Money and notice of dishonor of any check to the parties and Brokers at the addresses and/or fax numbers provided herein.
- Upon termination of this Agreement, a party or the Closing Agent may deliver a form authorizing the release of Earnest Money to the other party or the parties. The party(s) shall execute such form and deliver the same to the Closing Agent. If either party fails to execute the release form, a party may make a written demand to the Closing Agent for the Earnest Money. Pursuant to RCW 64.04, Closing Agent shall deliver notice of the demand to the other party within 15 days. If the other party does not object to the demand within 20 days of Closing Agent's notice, Closing Agent shall disburse the Earnest Money to the party making the demand within 10 days of the expiration of the 20 day period. If Closing Agent timely receives an objection or an inconsistent demand from the other party, Closing Agent shall commence an interpleader action within 60 days of such objection or inconsistent demand, unless the parties provide subsequent consistent instructions to Closing Agent to disburse the earnest money or refrain from commencing an interpleader action for a specified period of time. Pursuant to RCW 4.28.080, the parties consent to service of the summons and complaint for an interpleader action by first class mail, postage prepaid at the party's usual mailing address or the address identified in this Agreement. If the Closing Agent complies with the preceding process, each party shall be deemed to have released Closing Agent from any and all claims or liability related to the disbursement of the Earnest Money. If either party fails to authorize the release of the Earnest Money to the other party when required to do so under this Agreement, that party shall be in breach of this Agreement. For the purposes of this section, the term Closing Agent includes a Selling Firm holding the Earnest Money. The parties authorize the party commencing an interpleader action to deduct up to \$500.00 for the costs thereof.
- c. Condition of Title.** Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. The following shall not cause the title to be unmarketable: rights, reservations, covenants, conditions and restrictions, presently of record and general to the area; easements and encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property; and reserved oil and/or mining rights. Seller shall not convey or reserve any oil and/or mineral rights after mutual acceptance without Buyer's written consent. Monetary encumbrances or liens not assumed by Buyer, shall be paid or discharged by Seller on or before Closing. Title shall be conveyed by a Statutory Warranty Deed. If this Agreement is for conveyance of a buyer's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a buyer's assignment of the contract sufficient to convey after acquired title. If the Property has been short platted, the Short Plat number is in the Legal Description.
- d. Title Insurance.** Seller authorizes Buyer's lender or Closing Agent, at Seller's expense, to apply for the then-current ALTA form of standard form owner's policy of title insurance from the Title Insurance Company. If Seller previously received a preliminary commitment from a Title Insurance Company that Buyer declines to use, Buyer shall pay any cancellation fees owing to the original Title Insurance Company. Otherwise, the party applying for title insurance shall pay any title cancellation fee, in the event such a fee is assessed. The Title Insurance Company shall send a copy of the preliminary commitment to Seller, Listing Broker, Buyer and Selling Broker. The preliminary commitment, and the title policy to be issued, shall contain no exceptions other than the General Exclusions and Exceptions in said standard form and Special Exceptions consistent with the Condition of Title herein provided. If title cannot be made so insurable prior to the Closing Date, then as Buyer's sole and exclusive remedy, the Earnest Money shall, unless Buyer elects to waive such defects or encumbrances, be refunded to the Buyer, less any unpaid costs described in this Agreement, and this Agreement shall thereupon be terminated. Buyer shall have no right to specific performance or damages as a consequence of Seller's inability to provide insurable title.

Buyer's Initials Date

Buyer's Initials Date

Seller's Initials Date

Seller's Initials Date

**VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

Continued

- e. Closing and Possession.** This sale shall be closed by the Closing Agent on the Closing Date. "Closing" means the date on which all documents are recorded and the sale proceeds are available to Seller. If the Closing Date falls on a Saturday, Sunday, legal holiday as defined in RCW 1.16.050, or day when the county recording office is closed, the Closing Agent shall close the transaction on the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed. Buyer shall be entitled to possession at 9:00 p.m. on the Possession Date. Seller shall maintain the Property in its present condition, normal wear and tear excepted, until the Buyer is provided possession. Buyer reserves the right to walk through the Property within 5 days of Closing to verify that Seller has maintained the Property as required by this paragraph. Seller shall not enter into or modify existing leases or rental agreements, service contracts, or other agreements affecting the Property which have terms extending beyond Closing without first obtaining Buyer's consent, which shall not be unreasonably withheld.
- f. Section 1031 Like-Kind Exchange.** If either Buyer or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys' fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding the Assignment paragraph of this Agreement, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.
- g. Closing Costs and Prorations and Charges and Assessments.** Seller and Buyer shall each pay one-half of the escrow fee unless otherwise required by applicable FHA or VA regulations. Taxes for the current year, rent, interest, and lienable homeowner's association dues shall be prorated as of Closing. Buyer shall pay Buyer's loan costs, including credit report, appraisal charge and lender's title insurance, unless provided otherwise in this Agreement. If any payments are delinquent on encumbrances which will remain after Closing, Closing Agent is instructed to pay such delinquencies at Closing from money due, or to be paid by, Seller. Buyer shall pay for remaining fuel in the fuel tank if, prior to Closing, Seller obtains a written statement from the supplier as to the quantity and current price and provides such statement to the Closing Agent. Seller shall pay all utility charges, including unbilled charges. Unless waived in Specific Term No. 11, Seller and Buyer request the services of Closing Agent in disbursing funds necessary to satisfy unpaid utility charges in accordance with RCW 60.80 and Seller shall provide the names and addresses of all utilities providing service to the Property and having lien rights (attach NWMLS Form 22K Identification of Utilities or equivalent).
- Buyer is advised to verify the existence and amount of any local improvement district, capacity or impact charges or other assessments that may be charged against the Property before or after Closing. Seller will pay such charges that are or become due on or before Closing. Charges levied before Closing, but becoming due after Closing shall be paid as agreed in Specific Term No.12.
- h. Sale Information.** Listing Broker and Selling Broker are authorized to report this Agreement (including price and all terms) to the Multiple Listing Service that published it and to its members, financing institutions, appraisers, and anyone else related to this sale. Buyer and Seller expressly authorize all Closing Agents, appraisers, title insurance companies, and others related to this Sale, to furnish the Listing Broker and/or Selling Broker, on request, any and all information and copies of documents concerning this sale.
- i. Seller Citizenship and FIRPTA.** Seller warrants that the identification of Seller's citizenship status for purposes of U.S. income taxation in Specific Term No. 13 is correct. Seller shall execute a certification (NWMLS Form 22E or equivalent) under the Foreign Investment In Real Property Tax Act ("FIRPTA") at Closing and provide the certification to the Closing Agent. If Seller is a foreign person for purposes of U.S. income taxation, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.
- j. Notices and Delivery of Documents.** Any notice related to this Agreement (including revocations of offers or counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and shall be deemed delivered only when the notice is received by Seller, by Listing Broker, or at the licensed office of Listing Broker. Notices to Buyer must be signed by at least one Seller and shall be deemed delivered only when the notice is received by Buyer, by Selling Broker, or at the licensed office of Selling Broker. Documents related to this Agreement, such as NWMLS Form 17C, Information on Lead-Based Paint and Lead-Based Paint Hazards, Public Offering Statement or Resale Certificate, and all other documents shall be delivered pursuant to this paragraph. Buyer and Seller must keep Selling Broker and Listing Broker advised of their whereabouts in order to receive prompt notification of receipt of a notice.
- Facsimile transmission of any notice or document shall constitute delivery. E-mail transmission of any notice or document (or a direct link to such notice or document) shall constitute delivery when: (i) the e-mail is sent to both Selling Broker and Selling Firm or both Listing Broker and Listing Firm at the e-mail addresses specified on page one of this Agreement; or (ii) Selling Broker or Listing Broker provide written acknowledgment of receipt of the e-mail (an automatic e-mail reply does not constitute written acknowledgment). At the request of either party, or the Closing Agent, the parties will confirm facsimile or e-mail transmitted signatures by signing an original document.

Buyer's Initials _____ Date _____

Buyer's Initials _____ Date _____

Seller's Initials _____ Date _____

Seller's Initials _____ Date _____

**VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

Continued

- k. Computation of Time.** Unless otherwise specified in this Agreement, any period of time measured in days and stated in this Agreement shall start on the day following the event commencing the period and shall expire at 9:00 p.m. of the last calendar day of the specified period of time. Except for the Possession Date, if the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of 5 days or less, except for any time period relating to the Possession Date, shall not include Saturdays, Sundays or legal holidays. If the parties agree that an event will occur on a specific calendar date, the event shall occur on that date, except for the Closing Date, which, if it falls on a Saturday, Sunday, legal holiday as defined in RCW 1.16.050, or day when the county recording office is closed, shall occur on the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed. If the parties agree upon and attach a legal description after this Agreement is signed by the offeree and delivered to the offeror, then for the purposes of computing time, mutual acceptance shall be deemed to be on the date of delivery of an accepted offer or counteroffer to the offeror, rather than on the date the legal description is attached. Time is of the essence of this Agreement.
- l. Integration and Electronic Signatures.** This Agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. No modification of this Agreement shall be effective unless agreed in writing and signed by Buyer and Seller. The parties acknowledge that a signature in electronic form has the same legal effect and validity as a handwritten signature.
- m. Assignment.** Buyer may not assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless the parties indicate that assignment is permitted by the addition of "and/or assigns" on the line identifying the Buyer on the first page of this Agreement.
- n. Default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then the following provision, as identified in Specific Term No. 7, shall apply:
- i. Forfeiture of Earnest Money.** That portion of the Earnest Money that does not exceed five percent (5%) of the Purchase Price shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure.
- ii. Seller's Election of Remedies.** Seller may, at Seller's option, (a) keep the Earnest Money as liquidated damages as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.
- o. Professional Advice and Attorneys' Fees.** Buyer and Seller are advised to seek the counsel of an attorney and a certified public accountant to review the terms of this Agreement. Buyer and Seller shall pay their own fees incurred for such review. However, if Buyer or Seller institutes suit against the other concerning this Agreement, or if the party holding the Earnest Money commences an interpleader action, the prevailing party is entitled to reasonable attorneys' fees and expenses.
- p. Offer.** This offer must be accepted by 9:00 p.m. on the Offer Expiration Date, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by the other party, by the other party's broker, or at the licensed office of the other party's broker pursuant to General Term j. If this offer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.
- q. Counteroffer.** Any change in the terms presented in an offer or counteroffer, other than the insertion of or change to Seller's name and Seller's warranty of citizenship status, shall be considered a counteroffer. If a party makes a counteroffer, then the other party shall have until 9:00 p.m. on the counteroffer expiration date to accept that counteroffer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by the other party, the other party's broker, or at the licensed office of the other party's broker pursuant to General Term j. If the counteroffer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.
- r. Offer and Counteroffer Expiration Date.** If no expiration date is specified for an offer/counteroffer, the offer/counteroffer shall expire 2 days after the offer/counteroffer is delivered by the party making the offer/counteroffer, unless sooner withdrawn.
- s. Agency Disclosure.** Selling Firm, Selling Firm's Designated Broker, Selling Broker's Branch Manager (if any) and Selling Broker's Managing Broker (if any) represent the same party that Selling Broker represents. Listing Firm, Listing Firm's Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Selling Broker and Listing Broker are different persons affiliated with the same Firm, then both Buyer and Seller confirm their consent to Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. If Selling Broker and Listing Broker are the same person representing both parties then both Buyer and Seller confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."

Buyer's Initials Date

Buyer's Initials Date

Seller's Initials Date

Seller's Initials Date

**VACANT LAND PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

Continued

- t. Commission.** Seller and Buyer shall pay a commission in accordance with any listing or commission agreement to which they are a party. The Listing Firm's commission shall be apportioned between Listing Firm and Selling Firm as specified in the listing. Seller and Buyer hereby consent to Listing Firm or Selling Firm receiving compensation from more than one party. Seller and Buyer hereby assign to Listing Firm and Selling Firm, as applicable, a portion of their funds in escrow equal to such commission(s) and irrevocably instruct the Closing Agent to disburse the commission(s) directly to the Firm(s). In any action by Listing or Selling Firm to enforce this paragraph, the prevailing party is entitled to court costs and reasonable attorneys' fees. Seller and Buyer agree that the Firms are intended third party beneficiaries under this Agreement.
- u. Feasibility Contingency.** It is the Buyer's responsibility to verify before the Feasibility Contingency Expiration Date identified in Specific Term No.15 whether or not the Property can be platted, developed and/or built on (now or in the future) and what it will cost to do this. Buyer should not rely on any oral statements concerning this made by the Seller, Listing Broker or Selling Broker. Buyer should inquire at the city or county, and water, sewer or other special districts in which the Property is located. Buyer's inquiry should include, but not be limited to: building or development moratoriums applicable to or being considered for the Property; any special building requirements, including setbacks, height limits or restrictions on where buildings may be constructed on the Property; whether the Property is affected by a flood zone, wetlands, shorelands or other environmentally sensitive area; road, school, fire and any other growth mitigation or impact fees that must be paid; the procedure and length of time necessary to obtain plat approval and/or a building permit; sufficient water, sewer and utility and any service connection charges; and all other charges that must be paid. Buyer and Buyer's agents, representatives, consultants, architects and engineers shall have the right, from time to time during and after the feasibility contingency, to enter onto the Property and to conduct any tests or studies that Buyer may need to ascertain the condition and suitability of the Property for Buyer's intended purpose. Buyer shall restore the Property and all improvements on the Property to the same condition they were in prior to the inspection. Buyer shall be responsible for all damages resulting from any inspection of the Property performed on Buyer's behalf. If the Buyer does not give notice to the contrary on or before the Feasibility Contingency Expiration Date identified in Specific Term No. 15, it shall be conclusively deemed that Buyer is satisfied as to development and/or construction feasibility and cost. If Buyer gives notice this Agreement shall terminate and the Earnest Money shall be refunded to Buyer, less any unpaid costs.
- Seller shall cooperate with Buyer in obtaining permits or other approvals Buyer may reasonably require for Buyer's intended use of the Property; provided that Seller shall not be required to incur any liability or expenses in doing so.
- v. Subdivision.** If the Property must be subdivided, Seller represents that there has been preliminary plat approval for the Property and this Agreement is conditioned on the recording of the final plat containing the Property on or before the date specified in Specific Term No. 14. If the final plat is not recorded by such date, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.
- w. Information Verification Period.** Buyer shall have 10 days after mutual acceptance to verify all information provided from Seller or Listing Firm related to the Property. This contingency shall be deemed satisfied unless Buyer gives notice identifying the materially inaccurate information within 10 days of mutual acceptance. If Buyer gives timely notice under this section, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.
- x. Property Condition Disclaimer.** Buyer and Seller agree, that except as provided in this Agreement, all representations and information regarding the Property and the transaction are solely from the Seller or Buyer, and not from any Broker. The parties acknowledge that the Brokers are not responsible for assuring that the parties perform their obligations under this Agreement and that none of the Brokers has agreed to independently investigate or confirm any matter related to this transaction except as stated in this Agreement, or in a separate writing signed by such Broker. In addition, Brokers do not guarantee the value, quality or condition of the Property and some properties may contain building materials, including siding, roofing, ceiling, insulation, electrical, and plumbing, that have been the subject of lawsuits and/or governmental inquiry because of possible defects or health hazards. Some properties may have other defects arising after construction, such as drainage, leakage, pest, rot and mold problems. Brokers do not have the expertise to identify or assess defective products, materials, or conditions. Buyer is urged to use due diligence to inspect the Property to Buyer's satisfaction and to retain inspectors qualified to identify the presence of defective materials and evaluate the condition of the Property as there may be defects that may only be revealed by careful inspection. Buyer is advised to investigate whether there is a sufficient water supply to meet Buyer's needs. Buyer is advised to investigate the cost of insurance for the Property, including, but not limited to homeowner's, flood, earthquake, landslide, and other available coverage. Buyer acknowledges that local ordinances may restrict short term rentals of the Property. Brokers may assist the parties with locating and selecting third party service providers, such as inspectors or contractors, but Brokers cannot guarantee or be responsible for the services provided by those third parties. The parties shall exercise their own judgment and due diligence regarding third-party service providers.

Buyer's Initials Date

Buyer's Initials Date

Seller's Initials Date

Seller's Initials Date

**ADDENDUM TO
PURCHASE AND SALE AGREEMENT**

THIS ADDENDUM ("Addendum") **TO PURCHASE AND SALE AGREEMENT** by and between the **CITY OF BLAINE, a Washington State Municipal Corporation**, ("City" or "Seller") and **WHITE-LEASEURE DEVELOPMENT COMPANY, an Idaho Corporation**, ("Buyer") dated _____, 2019, (collectively the "Agreement") related to the acquisition of between approximately 5 acres and seven, +/-, acres within the Gateway General Binding Site Plan, generally depicted in the "Map Exhibit" to the Agreement, is entered into this _____ day of _____, 2019.

1. **Effect of Addendum.** Other than as amended by this Addendum, all other terms and conditions of the Agreement, as modified by this Addendum, shall remain the same; provided, however, in the event of any conflict between the Agreement and this Addendum, including all terms and conditions herein, this Addendum shall control.

2. **Conversion of Earnest Money Note to Cash.** As consideration for Seller's execution and delivery of this Agreement, Buyer has deposited with Title Company a promissory note (the "Earnest Money Note") in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00). Provided that all of the conditions set forth in Section 4.1 hereof have been satisfied or waived by Buyer with respect to Property as provided therein, then prior to the end of said Feasibility Period, Buyer shall convert the Earnest Money Note to cash by the payment of the principal of the Earnest Money Note (the "Earnest Money") to Title Company and the Earnest Money Note shall be returned to Buyer. Thereafter, said Earnest Money Deposit shall be non-refundable. The Title Company shall retain and/or disburse the Earnest Money as provided in the Agreement. The term "Earnest Money Deposit" shall be used to refer, when appropriate, to the Earnest Money Note and, when paid, to the Earnest Money and any interest earned thereon. Buyer shall be entitled to direct Title Company to place the Earnest Money Deposit in an interest-bearing account of Buyer's choice. At Closing, the Earnest Money and any interest earned thereon shall apply toward the Purchase Price.

3. **Parties' Contingency – Legal Lot of Record.** Buyer and Seller agree that the size and configuration of the Property that is subject to the Agreement has not been determined as of the date of the Agreement. Accordingly, until the Parties agree upon the final configuration of the Property subject to the Agreement, this Agreement may be terminated at any time by any Party at no cost or right of claim by the other Party. Such agreement to the final configuration of the Property subject to agreement shall be in writing and accompanied by a legal description and map approved by the Parties. The Parties acknowledge that the intent of this Agreement is for the Buyer to acquire approximately the northerly 5 acres of land north of Lot B of the Boblett Properties, LLC Lot Line Adjustment recorded under Whatcom County Auditor File Number 2018-1202475, provided that if prior to Closing of the transaction contemplated herein, the City does not sell the approximately southerly 2.5 acres of Lot B of the Boblett Properties, LLC Lot Line Adjustment recorded under Whatcom County Auditor File Number 2018-1202475, the area of the Property subject to this Agreement may be expanded to include said approximate 2.5 acres.

3.1 **Seller and Buyer Contingency.** The obligations of Buyer and Seller under this Agreement are subject to the complete satisfaction or waiver of the following condition:

(a) Confirmation of Property. The obligation of Seller to sell the Property, and Buyer's obligation to buy the Property, are subject to and conditioned upon:

- (i) Each Party's independent written approval and acceptance of the legal description and map of the Property that is subject to the Agreement within ten (10) days of the City's determination of the final parcel that will be subject to this Agreement is a legal lot of record. If either party terminates this agreement pursuant to this contingency it shall not be liable to the other party for any costs, claims or damages of any kind or nature, and the Buyer shall be entitled to a return of its earnest money and any interest accrued thereon, if any as its sole and exclusive remedy.

Any deposit of funds into escrow shall remain refundable until such time as the foregoing condition is satisfied, and any other applicable feasibility condition has been satisfied or waived as provided in the Agreement.

4. **Buyer's Contingency**. The obligations of Buyer under this Agreement and consummation of Closing are, at Buyer's option, subject to the complete satisfaction or waiver of the following condition:

4.1 Feasibility. Buyer completion of a feasibility study satisfactory to the Buyer that it is feasible for Buyer to own and operate the Property and improvements to be constructed thereon by Buyer in a manner and upon terms and conditions satisfactory to Buyer. The feasibility study may include, but shall not be limited to, (i) Buyer's satisfaction that all permits, building permits, approvals and licenses, shoreline permits and any other governmental approvals or permits, including zoning, are available with conditions acceptable to Buyer and all appeal periods for such matters have expired; (ii) Buyer is satisfied that there are no Hazardous Materials (as defined in Section 7.4(b)) on the Property; and (iii) Buyer is in receipt of all plans, specifications, permits, soil studies, environmental audits, and any other related information, including the Development Documents, if any, which are available to Seller. Buyer shall have one hundred eighty (180) days after the recordation of the execution of the Agreement (the "Feasibility Period") to give Seller written notice that this condition is satisfied.

(a) Buyer agrees that it shall be solely responsible for the nature, scope and extent of its investigations of the Property, and no statements made or information provided by Seller shall be construed or relied upon as advice or recommendation as to the kind or extent of any studies, tests or evaluations which should be obtained by Buyer or will be adequate for Buyer's purposes. No physical intrusions of the Property shall occur without the Seller's prior written consent, which shall not be unreasonably withheld or delayed. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all liens, claims, loss or liability arising out of Buyer's or Buyer's Agents' entry onto the Property prior to Closing. Buyer shall return the Property to its pre-existing condition immediately upon completion of any invasive inspection. This indemnification and defense obligation shall survive the feasibility period, termination of this Agreement, and Closing.

4.2 The Buyer shall report to the City Manager on the status of their feasibility study and investigation at or about 90 days following the execution of this agreement, and at or

about 90 day increments thereafter, including as listed in Section 4.3, below.

4.3 The City Manager for the City of Blaine may extend the Feasibility Period up to one hundred eighty (180) days provided that prior to the expiration of the initial Feasibility Period:

- (i) The Buyer provides a report the City Manager of the status of their feasibility study and investigation, together with all potential and/or contracted tenants and/or users of the Property; and
- (ii) The Earnest Money Note has been converted to Cash as provided in Section 2, above.

5. **No Buyer Assignment.** Notwithstanding any other provision of the Agreement, Buyer may not assign its interest in the Agreement to any party unless such assignment is approved in advance in writing by the City Council for the City of Blaine except that Buyer's rights and obligations in this Agreement may be assigned to a new entity, provided that the majority and controlling owners of the new entity are the individuals who are the majority and controlling owners of the Buyer, H. Larry Leasure and H. James White, and Buyer has notified Seller of any proposed change in advance in writing.

6. **Waiver of Receipt of Commercial Real Estate Disclosure Form.** To the extent allowed by law, Buyer waives the receipt of Commercial Real Estate Disclosure Form pursuant to RCW 64.06.010.

7. **Representations and Warranties.**

7.1 Buyer Acknowledges that Purchase of the Property is an "As Is" Purchase. As of Closing, Buyer accepts the Property that it is acquiring in the condition existing on the date of this Agreement and confirms that neither Seller nor any agent or representative of Seller has given or made any warranty or representation whatsoever concerning the physical condition thereof or the uses or purposes to which the same may now or hereafter occur, except as specifically set forth in the Deed and/or in this Agreement. Buyer acknowledges that it is a sophisticated purchaser of real property, that it is conducting its own due diligence with respect to the physical and environmental condition of the Property, and the Property that it is purchasing is acquired on an "as is, where is" and with all faults basis only, without representations or warranties, express or implied, as to the merchantability, condition, fitness or habitability of the Property being acquired, or as to its suitability for a particular use, or its compliance with governmental requirements, or as to the physical or environmental condition of the Property. Each Party acknowledges that it has been provided access to the Property it is acquiring pursuant to this Agreement at reasonable times to conduct reasonable inspections.

7.2 Buyer's Representation and Warranties. Buyer represents and warrants to Seller that Buyer is a corporation organized, validly existing and in good standing under the laws of the State Idaho, and execution of this Agreement by Buyer and its delivery to Seller have been duly authorized by Buyer's member(s) and no further corporate action is necessary on the part of Buyer to make this Agreement fully and completely binding upon Buyer in accordance with its terms. No other authorizations or approvals will be necessary for Buyer to enter into this Agreement. Further, Buyer represents and warrants that the individuals who are the majority and controlling owners of the Buyer are H. Larry Leasure and H. James White.

7.3 Seller's Representation and Warranties. Seller represents and warrants to Buyer that, to the best of Seller's actual knowledge without a duty of investigation, the following facts are true as of the date of Seller's execution hereof and as of Closing, or as of such other date as may be set forth herein:

(a) Delivery of Information. Seller has delivered, or will deliver to Buyer within five (5) business days of execution of this Agreement, full and complete copies of (1) any existing surveys, geological reports, tests, and Hazardous Materials reports or investigations of the Property; and (2) all government permits, licenses and approvals, any existing appraisals of the Property or any portions thereof, and any studies or other reports or information in the possession of or available to Seller which pertain in any way whatsoever to the Property, including without limitation, the condition thereof and/or any present or potential development and/or use of the Property (all of which items in this clause being collectively, the "Development Documents"). The commencement of the Feasibility Period shall be extended one (1) day for each day the delivery of the Development Documents to Buyer is delayed.

(b) Other Agreements. There are no other contracts or agreements in force or effect for sale of all or any portion of the Property, and Seller agrees (a) not to enter into any such contracts or agreements between the date hereof and Closing and (b) to use its best efforts to terminate any such contracts that come to its attention between the date hereof and Closing.

(c) Litigation. There is no action, suit, investigation or proceeding (administrative or otherwise) pending or threatened against or affecting the Property or any portion of it, the transactions contemplated hereby, or which might affect the right of Buyer to own, operate, develop or possess the Property or which might have a material effect on the business of the Property or result in any liability of Buyer with respect thereto.

(d) True and Accurate. No representation or warranty by Seller contained in this Agreement or any exhibit hereto or in any document, statement, certificate, financial information or schedule given to or to be given to Buyer as a result of or in connection with this Agreement, contains or on Closing will contain, an untrue statement of material fact, or omits or on Closing will omit to state a material fact necessary to make the statements and facts contained therein not misleading.

(e) Encumbrances. Seller's execution, delivery and consummation of this Agreement shall not result in any default or violation of any agreement or law by which Seller is bound or which will result in any lien, charge or encumbrance on the Property.

(f) Liens. All persons and entities supplying labor, materials and equipment to the Property have been paid and there are no claims of liens or service contracts applicable to the Property.

(g) Closing Contingencies. Buyer's obligation to close this transaction shall be further conditioned upon all of Seller's representations and warranties set forth in this Section 6 hereof, being true, correct and complete as of the Closing.

(h) The representations and warranties made by Seller shall be true and correct as of the date hereof and shall be deemed automatically reaffirmed on the Closing

Date as true and correct. Buyer's rights to enforce such representations and warranties and covenants shall survive the Closing and such rights to enforce shall not be merged into any documents delivered by Seller at Closing.

7.4 Environmental Representations and Warranties. The Buyer acknowledges that it is a sophisticated purchaser of real property and that it is conducting its own due diligence with respect to the physical and environmental condition of the Property. The Property is being sold and conveyed and Buyer agrees to accept the property "as-is" and "with all faults" and subject to any physical or environmental condition which may exist on, in, under, about, emanating from or connected with the Property, without any representation or warranty by Seller except as expressly set forth herein.

(a) Environmental Release. Buyer hereby releases Seller from and against, any and all losses, liabilities, damages, demands, claims, actions, judgments, assessments, penalties, costs, expenses, liens, fines, or penalties, as well as all foreseeable and unforeseeable consequential damages, and all other costs and expenses of any kind or nature, which are claimed by or against or suffered or incurred by Buyer with respect to the Property arising out of or as a result of the presence of any Hazardous Substance in, on, above, under or emanating from or connected with the Property as of the date of Closing, or any diminution in value of the Property attributable thereto, except to the extent the presence of such Hazardous Substances is attributable to the acts or omissions of the Seller or its agents or any permission granted by Seller or its agents. This release is part of the consideration paid by the Buyer to the Seller for the Property. This release shall survive Closing and shall be binding on Buyer's heirs, successors, and assigns.

(b) Hazardous Substances. The term "hazardous substances", as used herein, shall mean any substance heretofore or hereafter designated as hazardous or deleterious under the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7401 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq.; or the Hazardous Waste Cleanup- Model Toxics Control Act, RCW 70.105D et seq., all as amended and subject to all regulations and codes promulgated thereunder.

8. **Right to Pursue Permits/Seller Not Obligated to Assist in Permitting, Nor Approve Any Permits.** The Buyer shall have the right to pursue regulatory permits and approval for potential development of the Property prior to Closing at its sole costs and expense; provided, however, the Buyer shall have no right or authority to encumber or otherwise impose on the Property or the Seller any covenant, obligation of any kind or nature, including without limitation any financial obligation. The Seller shall not be required to expend any funds or take any action in the pursuit or support of any permit or regulatory approval sought by the Buyer. Further, the Seller, as a municipal and regulatory entity, shall have no additional obligation as a result of this Agreement to approve any permit nor process any application in any manner or fashion. The Buyer shall have no right or claim against the Seller under this Agreement as to any manner in which the Seller processes or approves any permit application filed with the City.

9. **Title Insurance.**

9.1 Title Commitment. Seller shall, within ten (10) days after the date of mutual execution of the Agreement has been recorded, furnish to Buyer a commitment ("Title Commitment") for a standard owner's policy of title insurance as to Lot B of the Boblett Properties, LLC Lot Line Adjustment recorded under Whatcom County Auditor File Number 2018-1202475 from the Title Co. the Title committing the Title Co. to insure good and marketable title to the Lot B of the Boblett Properties, LLC Lot Line Adjustment recorded under Whatcom County Auditor File Number 2018-1202475 ("Lot B") free and clear of liens, deeds of trust, charges, defects or encumbrances other than the "Permitted Exceptions".

(a) The Parties acknowledge that the Property to be acquired may not be the entire Lot B necessitating a supplemental preliminary commitment for the final configuration of the Property.

9.2 Permitted Exceptions. Rights reserved in federal patents or state deeds, building or use restrictions general to the district, existing easements, and building or zoning regulations or provisions shall not be deemed encumbrances or defects and Seller shall not be obligated to remove them at or before closing (the "Permitted Exceptions").

9.3 Buyer's Objections. Buyer will make any objections it may have regarding the Title Commitment and any Schedules thereto within ten (10) days of receiving the Title Commitment. Buyer's failure to make Objections within such period will constitute a waiver of Objections with respect to matters disclosed in the Title Commitment and the Schedules thereto. Any specific matter shown in the Title Commitment and the Schedules thereto and not objected to by Buyer shall be included as a "Permitted Exception" hereunder. In the event Buyer's objection to any exceptions or defects set forth in the Title Commitment and the Schedules thereto, Seller shall have five (5) days from delivery of Buyer's notice to notify Buyer, in writing, that: (i) Seller will cause the disapproved exceptions to be removed from the policy of title insurance to be issued in favor of Buyer on or before Closing; or (ii) that Seller will not eliminate the disapproved exceptions. If Seller: (i) notifies Buyer, in writing, that Seller will not eliminate the objected to exceptions on or before Closing; or (ii) Seller does not notify Buyer, in writing, that Seller will cause the objected to exceptions to be eliminated on or before Closing, then this Agreement shall terminate, and neither Buyer nor Seller shall have any further rights, duties, or obligations hereunder except that the Earnest Money previously paid by Buyer together with any interest accrued thereon, shall be immediately refunded by the Closing Agent to Buyer, unless within three (3) days of the earlier of (i) the expiration of said five (5) day period, or (ii) the date that Seller notifies Buyer that Seller will not eliminate the objected to exceptions, Buyer waives its objections and elects to proceed with Closing subject to the objected to exceptions. The title exceptions approved as provided herein shall be included as Permitted Exceptions. Objections to be discharged by Seller may be paid out of the purchase money received at date of Closing.

9.4 Supplemental Title Report. If the Title Company issues a supplement to the Preliminary Commitment, the procedure set forth in this Section will apply to such supplement, except that Buyer will have five (5) business days to notify City of its disapproval of any new exceptions, and City will have five (5) business days to give the Buyer notice that City will either remove or not remove any new Disapproved Exceptions. If Receiving Party elects to terminate this Agreement under this Section, the escrow will be terminated, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this

Agreement. If this Agreement is terminated under this Section, then each party shall share equally in any costs of terminating the escrow and any cancellation fee for the Preliminary Commitments issued.

9.5 **Final Title Policy.** At closing, the Title Company shall issue to the Buyer an ALTA standard form owner's policy of title insurance insuring title to the final configuration of the Property as approved by the Parties in the full amount of the final purchase price, subject only to the Permitted Exceptions (the "Title Policies"). The final title policy must be dated as of the Closing Date.

10. **Closing.** Closing shall be thirty (30) days after the later of (i) satisfaction or waiver of all contingencies set forth in Sections 3 and 3 of this Agreement or (ii) the completion of the subdivision to create the Property as a legal lot if a subdivision is necessary to create the Property as a legal lot of record (See Section 3 above)..

11. **No Protest Agreement to Finance and Improve Public Improvements for stormwater facilities, including formation of a Local Improvement District.** At Closing, the Buyer shall execute a No Protest Agreement to Finance and Improve Public Improvements for stormwater facilities, including formation of a Local Improvement District in a form approved by the Seller.

12. **Miscellaneous.**

12.1 **Counterparts.** This Addendum may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

12.2 **Entire Agreement.** This Agreement contains the entire understanding between the Parties and supersedes any prior understandings and agreements between them respecting the subject matter hereof. There are no other representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto or any of them, relating to the subject matter of this Agreement. No amendment of or supplement to this Agreement shall be valid or effective unless made in writing and executed by the Parties hereto.

12.3 **Venue/Applicable Law.** Venue for any disputes arising under this Agreement shall be Whatcom County Superior Court, Bellingham, WA. This Agreement shall be construed and interpreted under the laws of the State of Washington.

12.4 **Approvals.** The undersigned representative of the Buyer represents and warrants in both their corporate and personal capacity that all necessary approvals by the Buyer as an entity, including officer, board of director, and/or shareholder approval, have been obtained prior to the undersigned officer's execution of this Addendum.

12.5 **Subject to City Council Approval.** Unless expressly stated otherwise in the Agreement, all actions of the City required by the City pursuant to this Agreement must be approved by the City Council at an open public meeting.

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IN WITNESS WHEREOF, the Parties have executed this Addendum the date and year set forth above.

CITY OF BLAINE

WHITE-LEASEURE DEVELOPMENT COMPANY

By: Michael Jones
Its: City Manager

By: _____
Its: _____

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