

**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-LEASURE 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.

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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