

RESOLUTION NO. 2017-35

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE PURCHASE AND SALE AGREEMENT WITH THE ST. FRANCES CATHOLIC CHURCH FOR PURCHASE OF PROPERTY TO BE USED FOR THE EXTENSION OF CITY FACILITIES

WHEREAS, the City of Benton City has decided to extend and install its storm water drainage facilities; and

WHEREAS, this extension of City facilities is best completed using property owned by Corporation of the Catholic Bishop of Yakima containing the St. Frances Catholic Church that is adjacent to City-owned property; and

WHEREAS, the Corporation of the Catholic Bishop of Yakima and the City of Benton City have agreed upon a purchase price and terms for the purchase of a portion of the Church-owned property for the purpose of the extension of City facilities as described above; and

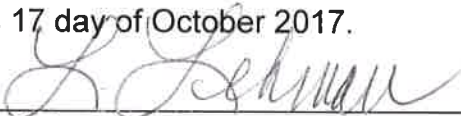
WHEREAS, said Purchase and Sale Agreement requires execution by the City. NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the PURCHASE AND SALE AGREEMENT with the Corporation of the Catholic Bishop of Yakima, dated October ___ 2017, a copy of which is attached hereto as Exhibit A, and incorporated herein by this reference; and to take all necessary steps required to complete this transaction.

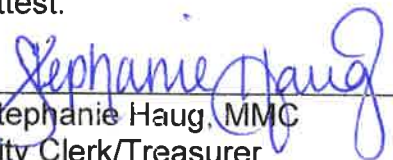
ADOPTED this 17 day of October 2017, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 17 day of October, 2017.

Resolution 2017-35 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 17 day of October 2017.




Linda Lehman, Mayor

Attest:



Stephanie Haug, MMC
City Clerk/Treasurer

Approved as to Form:



Kerr Law Group
City Attorney

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (hereinafter "Agreement") is entered into on this ___ day of October, 2017, between the City of Benton City, a Washington municipal corporation (hereinafter "City") and Corporation of the Catholic Bishop of Yakima, a Washington non-profit corporation (hereinafter "Seller") for establishing the terms and conditions for the sale of real property (hereinafter "Property") generally described as a portion of Benton County Parcel No. 107973000015000 located in Benton City, Benton County, WA.

RECITALS

A. Seller is the owner of real property located in Benton County, Washington, having an address of 1000 Horne Drive, Benton City, Washington, bearing Benton County Parcel ID number 107973000015000 ("Larger Parcel"), which real property is described as:

SECTION 7 TOWNSHIP 9 RANGE 27 BEGINNING AT INTERSECTION OF EAST LINE OF HORNE ROAD AND SOUTH LINE OF SAID SECTION. THEN EAST 150 FEET. THEN NORTH 160 FEET. THEN WEST 248 FEET. THEN SOUTHEASTERLY ALONG SAID EAST RIGHT OF WAY LINE TO POINT OF BEGINNING. TOGETHER WITH THE SOUTH 170 FEET OF THE POINT OF THE SOUTHWEST LYING EAST OF HORNE ROAD AND WEST OF KIONA DISTRICT CANAL RIGHT OF WAY. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD 7/19/61 EASEMENT 11/12/65 . 3/14/63 RELEASE OF EASEMENT 12/2/65

B. The parties want to provide for the sale of a portion of the Larger Parcel by Seller to City. As used in this Agreement, the term "Property" refers to a portion of the Larger Parcel consisting of approximately [.48] acres of land ("Real Property"), and the permanent improvements, if any, placed, constructed, installed or located on the Real Property, all plants and trees located upon, over or under the Real Property and any personal property located on the Real Property or in the improvements constructed on the Real Property. A diagram depiction of the location of the Property within the Larger Parcel is attached as Exhibit A to this Agreement. The Larger Parcel less and except the Property is hereafter referred to as the "Remaining Property".

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Purchase and Sale. Seller agrees to sell, and City agrees to purchase:
 - (a) The Property as generally described above and legally described in Exhibit B attached hereto.
 - (b) All development rights relating to the Property; (i) all rights to obtain utility service in connection with the Property; (ii) assignable licenses and other governmental permits and permissions relating to the Property and the operation thereof.

The parties acknowledge and agree that the Property under this Agreement does not include any of the following: (i) the Remaining Property, (ii) any improvements now or hereafter located on the Remaining Property, (iii) any easement rights, rights-of-way or appurtenances related to the Remaining Property and not the Property, including, without limitation, easements and appurtenances, if any, in roads, streets, and lanes whether public or private, reasonably required for the installation, maintenance, operation, and/or service of sewers, water, gas, drainage, electricity, and other utilities and for driveways and approaches to and from abutting roads, streets, and lanes, for the use and benefit of the Remaining Property, (iv) any public ways adjoining the Remaining Property, (v) any existing permits, entitlements, licenses, applications, approvals, and authorizations issued by or submitted to any governmental authority attributable to the Remaining Property (and not solely attributable to the Property), including, without limitation, any rights under development agreements, mitigation agreements, and development allocations and other development rights and the right to receive any building fee or similar credits and entitlements and any refunds thereunder or rebates thereof attributable to the Remaining Property.

2. Purchase Price/Financing. The purchase price (“Purchase Price”) for the Property shall be Fifteen Thousand Dollars and 00/100 (\$15,000.00). The Property totals approximately 21,001 gross square feet. Purchase price shall be supported by a fair market value analysis, which shall be obtained from a local realtor within sixty (60) days of the effective date of this Agreement. In the event that a fair market value analysis assesses a value to the property that is less than the Purchase Price, City shall have the option to terminate this Agreement by the end of the Inspection Period in Section 7(c) and receive a full refund of the earnest money deposit.
3. Method of Payment. Within ten (10) days of the Effective Date of this Agreement, City will deposit with Benton-Franklin Title Company, 3315 W Clearwater Ave #100, Kennewick, WA 99336, (509) 783-0661, (“Title Company”) an earnest money deposit (“Deposit”) in the sum of One Thousand and 00/100ths Dollars (\$1,000.00), which shall be held in an interest-bearing trust account. The remainder of the Purchase Price (less the Deposit) as adjusted for expenses, prorations and credits as otherwise specifically provided in this Agreement, will be payable at the closing in immediately available funds. The Deposit shall be applied to the Purchase Price except that the City agrees that the Deposit shall be paid to Seller if the sale does not close after City has removed all contingencies in writing.
4. Survey. City will, at City’s sole cost and expense, within thirty (30) days following the Effective Date, obtain and record a survey of the Larger Parcel, the Remaining Parcel and the Property (each having its own legal description) (“Survey”). The Survey will be certified to Seller, Title Company and City. Seller will cooperate with surveyor in conducting the Survey. At the time City obtains the Survey, City will deliver to Seller and the Title Company a complete and legible copy of the Survey.
5. Title. Title will be conveyed to City by statutory warranty deed. Title to the Property is to be so insurable at closing under terms of the Policy required to be delivered by Seller under terms of Section 6 below. All title insurance charges for the Policy referenced in

Section 6 below in the amount of the Purchase Price shall be shared equally by the City and Seller.

6. Preliminary Commitment.

- (a) Within fifteen (15) days from the Effective Date, Seller shall cause the Title Company to furnish City a current title commitment for standard coverage title insurance regarding the Property (the "Commitment"), together with copies of all exceptions of record referenced in the Commitment. On or before the date which is the forty-fifth (45th) day after the Effective Date, City may deliver to Seller City's written notice identifying any matters, conditions and exceptions reflected in the Commitment and the Survey, if any, which are not acceptable to City (the "Objected Exceptions"). If any update of the Commitment shows any new or additional exception not previously reflected in the Commitment or any update thereof, City may, on or before the date for City's objection notice set forth in above, or, if later, the day that is the third (3rd) day after City's receipt of any update of the Commitment first disclosing such new or additional exception (but not in any event later than the closing), deliver to Seller City's notice objecting to such new or additional exception. All matters, conditions and exceptions reflected in the Commitment and the Survey which are not Objected Exceptions will be deemed permitted exceptions (the "Permitted Exceptions") including all exceptions for which City does not deliver a timely notice designating such matters, conditions and exceptions as Objected Exceptions.
- (b) Seller has no obligation to cure or remove any Objected Exceptions. If City gives timely notice of any Objected Exceptions, City and Seller will have a period of seven (7) days ("Title Resolution Period") to negotiate in good faith to reach an agreement for the resolution of such Objected Exceptions and the closing will be postponed, if necessary, to allow such Title Resolution Period to expire. The foregoing notwithstanding, Seller will have no obligation to expend any funds in connection with any resolution of an Objected Exception. If such an agreement (each a "Resolution Agreement") is entered into, such Resolution Agreement will become a supplement to this Agreement and City and Seller will be bound to perform their respective obligations thereunder to the same extent as if such obligations were set forth in this Agreement. If City and Seller do not enter into a Resolution Agreement as to each Objected Exception within the Title Resolution Period, City may terminate this Agreement by written notice given to Seller within three (3) days after the expiration of the Title Resolution Period and receive a full refund of the Deposit. If City does not give its notice of termination within three (3) days after the expiration of the Title Resolution Period, City will be deemed to have accepted any such Objected Exception which is not made the subject of a Resolution Agreement within the Title Resolution Period as an additional Permitted Exception. Immediately following the closing, Seller will cause the Title Company to issue to City a standard coverage owner's policy (the "Policy") in the amount of the Purchase Price insuring fee simple title to the Property in City, subject to Permitted Exceptions, which cost and expense shall be equally shared by the City and the Seller.

7. Due Diligence; Inspection Period.

- (a) Within fifteen (15) days following the Effective Date of this Agreement, Seller shall provide City with the Commitment described in Section 6 above, together with all exception documents related thereto.
- (b) City shall have sixty (60) days from the Effective Date of this Agreement (the "Inspection Period") within which to conduct an examination of the Property, including examinations of title, engineering tests, soils tests, water percolation tests, ground water tests, market studies, appraisals and any other tests or inspections which City shall have deemed necessary or desirable for the purpose of determining whether the Property is suitable for his intended uses, including, but not limited to a Phase I Environmental Site Assessment ("Environmental Report"). No invasive testing (such as Phase II environmental work) may be performed on the Property without Seller's prior written consent, in its sole discretion. No such examination tests are required to be made by the City, but may be made at the City's sole discretion.
- (c) On or before the expiration of the Inspection Period, the City shall notify Seller in writing, with a copy to Title Company, whether City intends to purchase the Property or terminate this Agreement. If City elects to purchase the Property, then the Inspection Period shall terminate upon such notification and City's obligation to purchase and Seller's obligation to sell the Property shall remain, subject to the other terms and conditions of this Agreement. If City elects not to purchase the Property, then this Agreement shall be void and of no further force and effect, and the Deposit shall be returned to City. In the event City fails to notify Seller in writing of its election to purchase the Property or terminate this Agreement prior to the expiration of the Inspection Period, then City shall be deemed to have elected to terminate this Agreement.
- (d) City agrees to repair any damage to the Property resulting from any activities of City or his agents or consultants on the Property or Remaining Property before closing. City agrees to defend, indemnify and hold the Seller harmless from any and all damages, expenses, claims, or liabilities (including but not limited to attorney's fees and costs) arising out of any activities of City or his agents or consultants on or about the Property or Remaining Property before closing, except to the extent that the same results from the Seller's negligence. City shall not be liable for any inspection claim resulting from City's discovery of any pre-existing condition (including, but not limited to, the existence of any hazardous materials) in, on, under or about the Property or any exacerbation of a pre-existing condition in, on, under or about the Property, except to the extent that the exacerbation results from the negligent act or omission of City or his agents or consultants. If City terminates this Agreement under this Section 7, City will provide Seller with copies of and assign City's rights in any Survey, environmental reports, and other reports or documentation commissioned by City regarding the Property. City will bear the risk of loss to any of City's personal property, if any, located on the

Property and hereby releases Seller from any and all damage or claim related to such loss. The provisions of this Section 7(d) will survive the termination of this Agreement.

- (e) Seller makes no representation or warranty regarding, and does not assume liability or responsibility for, the truth, accuracy or completeness of any reports, materials, tests or information prepared by third parties, including, but not limited to, any Survey and any Environmental Report, regardless of whether such reports, materials, tests or information are delivered to City by Seller. City will be responsible for obtaining, at City's sole cost and expense, any Survey or Environmental Report required by City.
8. Prorations. Any assessments and other expenses related to the Property shall be prorated up to the date of closing. All expenses, fees and sums owing or incurred for the Property for periods prior to closing shall be paid by Seller, when and as due. The provisions of this Section 8 shall survive the closing.
 9. Possession. City shall be entitled to sole possession of the Property at closing.
 10. Closing. Closing shall occur on the date which is ten (10) days after the first to occur of the (i) last day of the Inspection Period, or (ii) the date the notice is given under Section 7(c) that the City has elected to purchase the property.
 - (a) At closing, Seller will deposit with the Title Company: (i) a duly executed statutory warranty deed covering the Property; (ii) a FIRPTA affidavit; and (iii) all other documents required of it to close this transaction in accordance with the terms hereof.
 - (b) At closing, City will deposit with the Title Company the monies required of it to close the transaction in accordance with the terms hereof.
 11. Closing Costs. The title insurance premium, recording fees on the deed, deed taxes or stamps and all other closing fees, regardless of local custom, shall be equally divided and paid by both Seller and City. The Seller shall pay the Washington State Real Estate Excise Tax. The City shall bear all costs associated with the Subdivision and the Survey. Each party shall bear its own attorneys' fees, except as otherwise expressly provided herein.
 12. Counterparts. This Agreement may be signed in counterparts which, taken together, shall constitute the complete Agreement.
 13. Actions During Term. During the term hereof, Seller shall not enter into any lease or other agreement affecting the Property or its operation, or modify, extend or otherwise change the terms of any lease or other agreement affecting the Property or its operation or otherwise permit any change in the status of title to the Property without City's prior written consent.

14. Assignment. City may not assign City's interest in this Agreement without Seller's prior written consent, which may be withheld in Seller's sole discretion.

15. Seller's Warranties; Indemnity. Seller makes the following representations and warranties, which shall be deemed remade as of the closing date:

- (a) The Property and improvements are not in violation of any applicable covenant, condition or restriction or any applicable statute, ordinance, regulation, order, permit, rule or law, including, without limitation, any building, private restriction, zoning or environmental restriction.
- (b) Other than the obligations of record, there are no obligations in connection with the Property, which will be binding upon City after closing other than liability for the payment of real estate taxes and utility charges.
- (c) There are no claims, actions, suits or governmental investigations or proceedings existing or, to the best of Seller's knowledge, threatened against or involving Seller or the Property (including, without limitation, any condemnation or eminent domain proceeding or matter related to the formation of or assessment by a local improvement district) and Seller has received no written notice thereof.
- (d) All insurance policies now maintained on the Property, if any, will be kept in effect, up to and including the closing. Seller has received no notice from any insurance company or rating organization of any defects in the condition of the Property or of the existence of conditions which would prevent the continuation of existing coverage or would increase the present rate of premium.
- (e) There are no leases affecting the Property.
- (f) The Property is currently zoned R-2 (Residential, Medium Density District).
- (g) There are no commissions due to any real estate broker or agent that arise from this Agreement.
- (h) All such representations and warranties shall be reaffirmed by Seller as true and correct as of the Closing Date and shall survive the Closing for a period of two (2) years.

If, prior to closing, Seller becomes aware of any fact or circumstance which would change a representation or warranty, then Seller will immediately give notice of such changed fact or circumstance to City, but such notice shall not relieve the Seller of its obligations hereunder.

16. Environmental Indemnification.

- (a) Seller will defend, indemnify, and hold City and his partners, agents and employees and assignee (collectively, the "Indemnified Parties") harmless from

and against any and all claims, obligations, damages, causes of action, costs and expenses, losses, fines, penalties, and liabilities, including, without limitation, attorneys' fees and costs, imposed upon or incurred by or asserted against an Indemnified Party arising out of or in connection with the occurrence of any of the following: (i) prior to closing: (A) any Environmental Matter affecting or relating to the Property arising out of Seller's use and ownership of the Property; or (B) any violation of any Environmental Law by Seller with respect to the Property; and (ii) subsequent to closing: (C) the manufacture, storage, sale, use, disposal, release, or discharge of Hazardous Substance in, on or under the Property by Seller; or (D) any violation of any Environmental Law by Seller with respect to the Property. Seller shall also be responsible for all costs, expenses, fines, and penalties arising out of or in connection with the investigation, removal, remediation, clean-up, and restoration work resulting from the matters described in the preceding sentence. In the event that Seller sells or otherwise conveys all or part of the Remaining Property after the closing date under this Agreement, the Seller shall not be liable for any actions of the future property owner(s) of all or part of the Remaining Property. Seller represents that to the best of its knowledge, after reasonable inquiry, it is not aware of any violation of any Environmental Laws relating to the Property, any Hazardous Materials located on the Property or any Environmental Matter relating to the Property. Seller's obligations and representations under this Section 16 shall survive closing.

- (b) "Environmental Laws" shall mean any federal, state or local laws, ordinance, permits or regulations, or any common law, regarding health, safety, radioactive materials or the environment, including but not limited to, the following federal statutes: Clean Air Act (42 U.S. C. §§ 7401 et seq.) ("CAA"), Clean Water Act (33 U.S.C. §§ 1251 et seq.) ("CWA"), Resource Conservation and Recovery Act (42 U.S.C. §§ 6091 et seq.) ("RCRA"), Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), Emergency Planning and Community Right-To-Know Act (41 U.S.C. §§ 11001 et seq.) ("EPCRA"), Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) ("SDWA"), Hazardous Material Transportation Act of 1975 (49 U.S.C. §§ 1801 et seq.) ("HMTA"), Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.) ("TSCA"), Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.) ("ESA"), Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.) ("FIFRA"), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.) ("OSHA"), the Washington Model Toxics Control Act (RCW Chapter 70.150D) ("MTCA"), or the Hazardous Waste Management Act (RCW Chapter 70.105) ("HWMA"), each as amended, and any regulations promulgated thereunder, guidance and directives issued with respect thereto, or policies adopted by the applicable authorities thereunder.
- (c) "Hazardous Substances" shall mean: (i) any radioactive materials; (ii) any substance or material the transportation, storage, treatment, handling, use, removal or release of which is subject to any Environmental Law; or (iii) any substance or material for which standards of conduct are imposed under any Environmental Law. Without limiting the generality of the foregoing, "Hazardous

Substances” shall include: asbestos and asbestos-containing materials (whether or not friable); urea-formaldehyde in any of its forms; polychlorinated biphenyls; oil, used oil; petroleum products and their by-products; lead-based paint; radon; and any substances defined as “hazardous waste,” “hazardous substances,” “pollutants or contaminants,” “toxic substances,” “hazardous chemicals,” “hazardous pollutants,” or “toxic chemicals “under the CAA, CWA, RCRA, CERCLA, EPCRA, SDWA, HMTA, TSCA, OSHA, MTCA or HWMA.

- (d) “Environmental Matter” shall mean any of the following: (i) the release of any Hazardous Substance on or at the Property or any other property; (ii) the migration of any Hazardous Substance onto or from the Property; (iii) the environmental, health or safety aspects of transportation, storage, treatment, handling, use or release, whether any of the foregoing occurs on or off the Property, of Hazardous Substances in connection with the operations or past operations of the Property; (iv) the violation, or alleged violation with respect to the Property, of any Environmental Law, order, permit or license of or from any governmental authority, agency or court relating to environmental, health or safety matters; (v) the presence of any underground storage tanks within the confines of the Property; (vi) the presence of wetlands within the confines of the Property; (vii) the presence of any endangered species on, in or around the Property; or (viii) soil, groundwater and surface conditions on, in or around the Property which may have an adverse effect upon the use or value of the Property.

17. Costs and Expenses. Except as otherwise expressly provided herein, each party hereto will bear its own costs and expenses in connection with the negotiation, preparation and execution of this Agreement, and other documentation related hereto, and in the performance of its duties hereunder.
18. Notices. All notices provided for herein may be delivered in person, sent by commercial overnight courier, telecopied or mailed by U.S. registered or certified mail, return receipt requested, and, if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time-to-time direct:

Seller:

St. Frances Xavier Cabrini Church
1000 Horne Drive
Benton City, WA 99320

With a copy to:

Douglas W. Rich
Designated Broker
Prestige Realty
6 S. 2nd Street, Suite 918 / The Larson Building
Yakima, WA 98901

Office: 509 965-1111
Cell: 509 952-7785

City:

Kerr Law Group
7025 W. Grandridge #A
Kennewick WA 99336
Attn: Leland B. Kerr, Attorney for City

19. Miscellaneous.

- (a) Further Documentation. Each of the parties agrees to execute, acknowledge, and deliver upon request by the other party any document which the requesting party reasonably deems necessary or desirable to evidence or effectuate the rights herein conferred or to implement or consummate the purposes and intents hereof, so long as such imposes no different or greater burden upon such party than is otherwise imposed hereunder.
- (b) Headings. The headings in this Agreement are for convenience only and do not in any way limit or affect the terms and provisions hereof.
- (c) Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5 p.m., Pacific Time.
- (d) Time of Essence. Time is of the essence of this Agreement.
- (e) Gender. Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.
- (f) Exhibits. The Exhibits referred to herein and attached to this Agreement are incorporated herein as if set forth in full.
- (g) Unenforceability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.
- (h) Amendment, Modifications. This Agreement may not be altered, amended, changed, waived, terminated or modified in any respect or particular unless the same shall be in writing and signed by or on behalf of the party to be charged therewith.

- (i) Confidentiality. This Agreement and its substance, any information given to a party under this Agreement and any information generated as a result of a party exercising its rights under this Agreement (for example, any report or information resulting from an environmental site assessment of the Property) will not be disclosed by either party to any person or entity, except: (a) to a party's legal counsel involved in this Agreement; (b) to those persons responsible for assisting with or fulfilling a party's obligations under this Agreement, provided that such persons are informed of the confidentiality provisions of this Agreement prior to such disclosures and agree to abide by the terms of this Section; or (c) as disclosure may otherwise be required by law. The parties will not make any public announcement or statement concerning this Agreement or the purchase and sale transaction contemplated in this Agreement unless the parties agree in writing on the form and substance of the public announcement or statement. Notwithstanding the foregoing, in the event this Agreement is terminated prior to closing by either party, Seller will be permitted to disclose the Survey and any environmental reports and other reports and documents commissioned by City and delivered to Seller to any future prospective buyer of the Property. The requirements of this Section 19(i) will survive closing and the recording of the deed or the expiration or termination of this Agreement.
- (j) Binding Effect. This Agreement will be binding upon and inure to the benefit of Seller, City and their respective successors and assigns, and is for the benefit of the parties and their respective successor and assigns, and not for any other person or entity. Except for Seller, City and their respective successors and assigns, this Agreement does not provide any other person or entity with any remedy, claim, liability, reimbursement or right of action, and there are no third-party beneficiaries, express or implied, of this Agreement.
- (k) First Right of Refusal. So long as the Seller remains an adjacent property owner, Seller shall have the first right of refusal to purchase the property from the City in the event that the City at some point in the future subsequent to closing chooses to sell the property. This first right of refusal does not guarantee that the purchase price for the Property in such an event will be determined by the terms of this Agreement. This subsection 19(k) shall survive closing.
20. Attorneys' Fees. If any lawsuit or arbitration arises in connection with this Agreement, the substantially prevailing party therein shall be entitled to receive from the losing party, the substantially prevailing party's costs and expenses, including reasonable attorneys' fees incurred in connection therewith, in preparation therefore and on appeal therefrom, which amounts shall be included in any judgment entered therein.
21. Waiver. A party may, at any time or times, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in writing signed by such party. No waiver shall reduce the rights and remedies of such party by reason of any breach of any other party. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

22. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.
23. Facsimile Signatures. Each party (a) has agreed to permit the use, from time-to-time and where appropriate, of telecopied signatures in order to expedite the transaction contemplated by this Agreement, (b) intends to be bound by its respective telecopied signature, (c) is aware that the other will rely on the telecopied signature, and (d) acknowledges such reliance and waives any defenses to the enforcement of the documents effecting the transaction contemplated by this Agreement based on the fact that a signature was sent by telecopy.
24. REMEDIES. IF CITY FAILS, AFTER THE REMOVAL OF ITS CONTINGENCIES, AND WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY, THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES AND THE SOLE AND EXCLUSIVE REMEDY TO SELLER FOR SUCH FAILURE; PROVIDED, HOWEVER, THAT SELLER WILL ALSO RETAIN THE RIGHT TO REMEDIES FOR BREACH OF ANY OBLIGATIONS WHICH SURVIVE THE TERMINATION OF THIS AGREEMENT.

IN THE EVENT OF SELLER'S DEFAULT AND SUCH DEFAULT CONTINUES UNCURED FOR TWO (2) BUSINESS DAYS AFTER WRITTEN NOTICE OF SUCH DEFAULT IS GIVEN BY CITY, CITY WILL ELECT ONE (1) OF THE FOLLOWING REMEDIES:

- (a) CITY WILL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO SELLER, IN WHICH EVENT, SO LONG AS CITY IS NOT IN DEFAULT OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT: (I) THE DEPOSIT WILL BE PAID TO CITY; AND (II) ALL OTHER OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT WILL TERMINATE EXCEPT FOR THOSE OBLIGATIONS WHICH EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT. CITY WILL HAVE NO RIGHT TO MONETARY DAMAGES.
- (b) CITY WILL HAVE THE RIGHT TO WAIVE THE BREACH OR DEFAULT IN WRITING AND PROCEED TO CLOSING IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT WITHOUT ADJUSTMENT OF THE PURCHASE PRICE AND WITHOUT LIABILITY OF SELLER FOR ANY SUCH FAILURE; OR
- (c) IF SELLER FAILS OR REFUSES TO CONVEY THE PROPERTY TO CITY AT CLOSING, CITY WILL HAVE THE RIGHT TO PURSUE A REMEDY FOR SPECIFIC PERFORMANCE, BUT NOT MONETARY DAMAGES, AGAINST SELLER SO LONG AS SUCH ACTION IS COMMENCED WITHIN SIX (6) MONTHS OF THE SCHEDULED CLOSING DATE.

For any breach by a party hereto of an obligation that survives the closing or termination of this Agreement, the non-breaching party will have the right to all remedies normally

available at law or in equity for such a breach, except where specifically indicated otherwise in this Agreement.

City's Initials L N

Seller's Initials _____

25. Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, express or implied, and all negotiations or discussions of the parties, whether oral or written, and there are no warranties, representations or agreements among the parties in connection with the subject matter hereof except as set forth herein.

26. Subdivision Contingency.

- (a) The parties acknowledge that the Property is currently part of the Larger Parcel. City will bear the cost and expense of obtaining a Subdivision of the Larger Parcel creating the Property and the Remaining Property. Said Subdivision will take place either by short plat or by boundary line adjustment subsequent to closing.
- (b) Seller will reasonably cooperate with City in City's efforts to obtain the Subdivision. Seller authorizes City to make any applications, petitions or submissions approved and signed by Seller as may be reasonably required for City to obtain any and all permits, consents or approvals reasonably required for obtaining the Subdivision. To the extent reasonably required, Seller will sign or join in any such Seller-approved applications, petitions or submissions, or similar documentation. City will use commercially reasonable efforts to obtain the Subdivision.
- (c) Should such Subdivision remove the Remaining Property's access to the easement located in the northwest corner of the Property (Existing Easement), City shall agree to grant to Seller or to the holder of the Existing Easement an easement (New Easement) on the Property after closing that is sufficient to access the Existing Easement that is present at the time of closing. The New Easement shall only be for the same use as the Existing Easement, and access to the Existing Easement shall be conditioned upon any and all terms of the Existing Easement. Should any term of the Existing Easement be in conflict with this Section 26.3, this Section shall be null and void. Unless any such conflict renders this Section 26.3 null and void, this Section 26.3 shall survive closing.
- (d) Said Subdivision shall not be conditioned upon any requirement or obligation that would unreasonably alter, restrict or interfere with the Seller's present or future use or enjoyment of the Remaining Property, including but not limited to its access to public rights of way and existing or future development. If said Subdivision is conditioned upon any unreasonable requirement that would so effect the Seller's Remaining Property, then Seller shall have the right to terminate this agreement and refund the Deposit to the City.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates noted below.

CITY OF BENTON CITY:

L. Lehman
By: Linda Lehman, Mayor

Date: 10/17/17

SELLER

By: _____
Name: _____
Title: _____
Date: _____



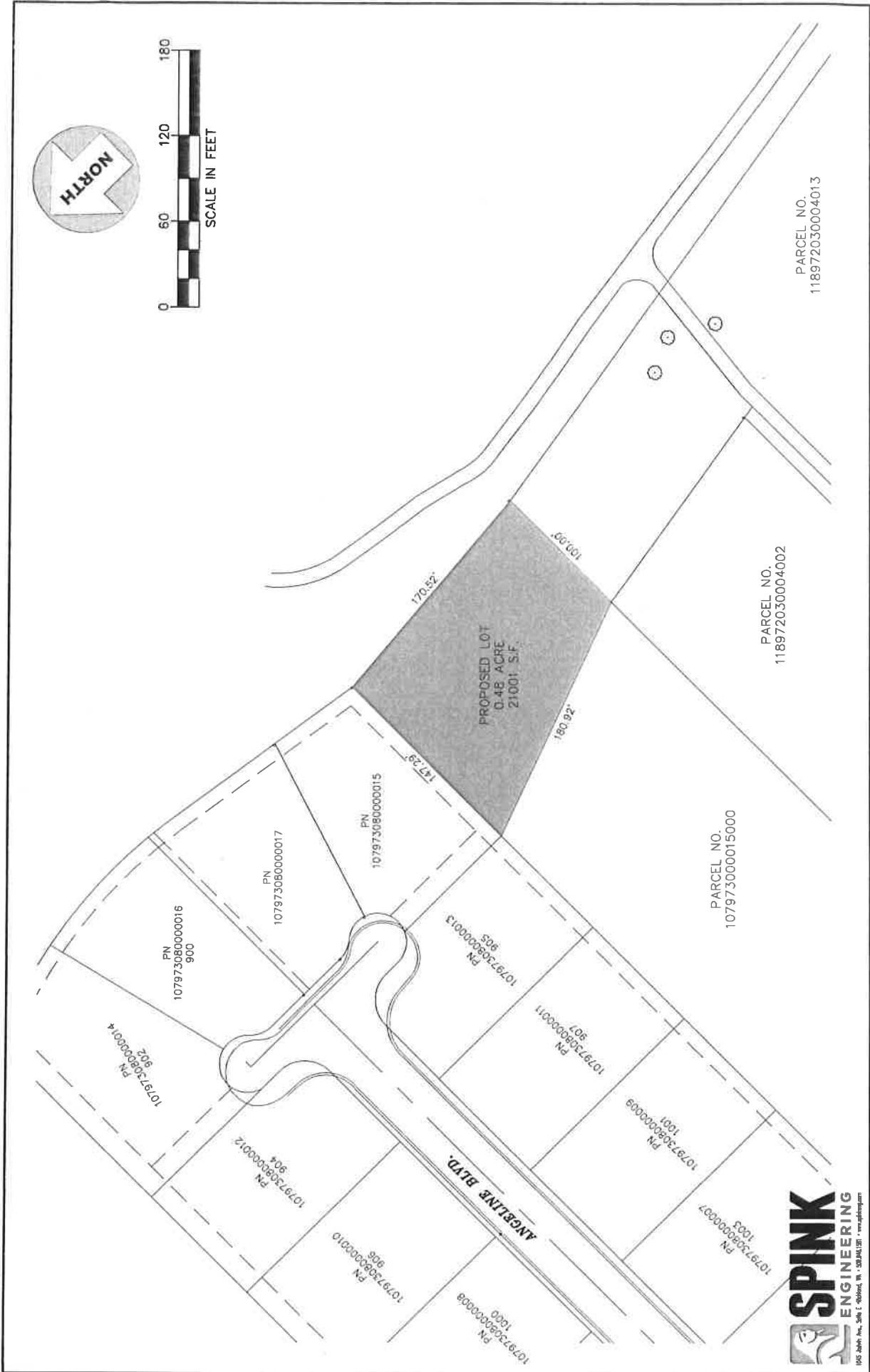


EXHIBIT B

Legal Description of Property

The legal description of the Property ("**Legal Description of Property**") will be determined by the Subdivision plat ("**Plat**"). Upon receipt and approval of the Plat by Seller, the Legal Description of the Property will be automatically substituted for this Exhibit B.