

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of this 12th day of April, 2018 (the "Effective Date"), by and between Westwood Homes LLC ("Seller"), and the City of Salem, an Oregon municipal corporation ("Buyer"). Buyer and Seller are each a "Party" and together the "Parties."

RECITALS

- A. Seller is the owner of that certain real property located in Marion County, Oregon, known as Tax Lot 083W11D00200 in Salem.
- B. Buyer desires to purchase a portion of the property consisting of approximately seven acres (the "Property") from Seller, and Seller wishes to sell the Property to Buyer, on the terms and conditions contained herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Seller and Buyer agree as follows:

1. **Agreement of Purchase and Sale.** Subject to and upon the terms and conditions herein, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property, together with all of Seller's right, title and interest in and to any rights licenses, privileges, reversions and easements appurtenant to the Property.
2. **Purchase Price.** The purchase price for the Property (the "Purchase Price") is EIGHTY THOUSAND Dollars (\$80,000) per acre. Total price subject to final acreage of revised legal lot plus the Purchase Price credit provided for in Section 10.
3. **Earnest Money.** Within thirty (30) days of the Effective Date, Buyer shall deliver to the Title Company the amount of Twenty Five Thousand Dollars (\$25,000.00) (the "Earnest Money") as earnest money. Should the transfer of property not occur for any reason, except those listed in Sections 5 and 6, the Earnest Money shall be fully due to Seller.
4. **Title Company and Title Report.**
 - (a) **Title Company.** On or before three (3) business days after the Effective Date, the Parties shall deposit an executed copy of this Agreement with Ticor Title Company in Salem, Oregon (the "Title Company").
 - (b) **Title Report.** Seller has delivered to Buyer a current preliminary commitment for title insurance for the Property, issued by the Title Company, together with copies of the underlying documents (the "Title Report").

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5. **Buyer's Review Period.**

(a) Contingencies. Buyer's purchase of the Property is contingent on the following:

- (i) Buyer's approval of any and all aspects and characteristics of the Property (including, but not limited to, title encumbrances, environmental matters, survey matters and zoning); and
- (ii) Buyer's approval of the Title Report

(b) Objection and Termination. If any condition set forth in Section 5(a) above is not satisfied to Buyer's satisfaction within forty-five (45) days after the Effective Date (the "**Review Deadline**"), then Buyer may terminate this Agreement by notifying Seller on or before three (3) business days after the Review Deadline, in which event the Parties shall have no further obligations under this Agreement and the Earnest Money shall be returned to Buyer. Buyer's failure to timely terminate this Agreement pursuant to this Section 5(b) shall be deemed a waiver or satisfaction of the conditions set forth in Section 5(a) above.

(c) Access.

(i) From the Effective Date through the Review Deadline, Seller grants to Buyer and Buyer's agents a right of reasonable access to the Property, for the purposes of inspecting the Property pursuant to Section 5(a) above. Buyer may obtain at Buyer's expense, a Phase I and, if necessary, a Phase II environmental site assessment of the Property. With respect to any inspection or testing that is invasive or involves digging, boring or removing any portion of the Property, Buyer must first submit to Seller a written request for any such invasive testing, and Buyer may not proceed with any such invasive testing unless Seller has given written approval of Buyer's plan; and Seller's approval shall not be unreasonably withheld, conditioned or delayed. Buyer shall conduct any such invasive testing in strict accordance with the plan approved by Seller. Seller will be entitled to have a representative present at all times during any inspection or testing on the Property. Buyer shall pay when due all costs and expenses of Buyer's inspections, tests and studies of the Property, regardless of whether the Closing of the purchase and sale of the Property occurs. Buyer agrees to provide Seller with a true and complete copy of all environmental studies, tests, and reports that Buyer obtains in connection with its inspection of the Property.

(ii) Indemnification. Buyer shall protect, defend, indemnify and hold Seller and Seller's agents and employees harmless for, from and against any claims, liabilities, damages, liens, attorneys' fees, penalties, demands, causes of actions and suits of any nature whatsoever which are the proximate result of the entry onto the Property by Buyer, its agents, employees, representatives or contractors. This indemnity obligation shall survive the Closing or the termination of this Agreement, as applicable.

6. Buyer's Conditions to Close.

- (a) Seller shall have timely performed, in all material respects, all of the obligations required to be performed by Seller by the terms of this Agreement, including delivery of all of the items required to be delivered by Seller pursuant to this Agreement; and
- (b) Buyer shall have obtained a commitment from the Title Company to issue the Title Insurance Policy.
- (c) Seller shall create, at its own expense, a Legal Lot for sale to Buyer, substantially similar in design to Exhibit A.
- (d) Seller shall complete, at its own cost, construction of entrance road, complete with crosswalk connection, on north side of Property from Reed Road SE to proposed subdivision.
- (e) Seller shall be responsible for any and all street improvements required to Reed Road SE.
- (f) Any necessary right of way to be necessary for the improvement of Reed Road SE shall not be within the boundary of the Legal Lot.
- (g) Seller to install a black, coated four foot tall chain link fence along the south and east sides of the Property.

7. Seller's Conditions to Close. The following are conditions precedent to Seller's obligations to consummate the transaction described herein:

- (a) Buyer shall have timely performed, in all material respects, all of the obligations required to be performed by Buyer by the terms of this Agreement, including delivery of all of the items required to be delivered by Buyer pursuant to this Agreement; and

8. Closing. So long as all conditions precedent to closing set forth herein have then been satisfied or waived in accordance herewith, the closing of the purchase and sale of the Property ("Closing") under this Agreement shall occur within fifteen (15) days of Buyer removing the review deadline contingency and Seller having provided Buyer with a copy of the newly created tax lot, whichever is later..

The date on which Closing occurs is the "Closing Date."

9. Conveyance of Property. At Closing, Seller shall convey the Property to Buyer by a warranty deed (the "Deed") conveying fee simple title in Buyer, subject only to the Permitted Encumbrances.

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10. Possession. Seller will retain possession and use of the property for 180 days after closing. Seller also retains the right to sub-lease, or allow use of, the Property to Boulder Hill LLC solely for farm and cattle grazing. Seller and Boulder Hill LLC shall add the City of Salem as an additionally insured as required by City of Salem Risk Management Division. A Purchase Price credit of SIX THOUSAND dollars (\$6,000) shall be credited to Buyer at Closing for the extended possession.

11. Closing Costs and Taxes. Seller shall pay one-half of any closing fees, including escrow fees. Recording Fees, transfer taxes and assessments, deed stamps and one-half of any closing fees, including escrow fees, shall be paid by Buyer. Any property taxes paid by Seller shall be prorated as of the Closing Date, and Buyer shall be responsible for any additional or deferred taxes that may result from this sale or Buyer's use of the Property. Each party shall pay its own attorney fees, consultant fees and costs, and other expenses solely incurred by that Party.

12. Buyer's Closing Deliveries. On or before the Closing Date, Buyer shall deliver the following:

(a) to the Title Company:

- (i) all documents required to be executed in connection with this Agreement; and
- (ii) immediately available funds in the amount of the Purchase Price minus the Escrow Amount, and Earnest Money, and the amount of all Closing costs and other expenses to be paid by Buyer at Closing pursuant to Section 9, above.

(b) to the Escrow Company:

- (i) immediately available funds in the Escrow Amount;

13. Seller's Closing Deliveries. On or before the Closing Date, Seller shall deliver the following:

(a) to the Title Company:

- (i) the executed and acknowledged Deed; and
- (ii) immediately available funds in the amount of all Closing costs and expenses to be paid by Seller at Closing pursuant to Section 9, above.

14. Representations and Warranties.

(a) Parties' Representations and Warranties. Each Party makes the following representations and warranties which are true on the date hereof and shall be true on the Closing Date as if made on such date:

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(i) *Power and Authority.* The Party is duly organized and existing under the laws of Oregon, and has the requisite right, power and authority to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The Party has taken all action necessary to authorize the execution, delivery and performance of this Agreement. The performance by the Party of its obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, document or instrument to which the Party is a party or by which it is bound or affected. All proceedings required to be taken by or on behalf of the Party to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.

(ii) *Validity of Agreement.* This Agreement and all other documents required by this Agreement to be executed by Party shall constitute, when so executed, the valid and binding obligation of the Party thereto, enforceable against it in accordance with their respective terms.

(b) Survival. All representations and warranties made by the Parties hereunder shall survive Closing.

15. Purchase AS-IS; No Representations by Seller.

(a) Buyer understands, acknowledges and agrees that Buyer is buying Property "AS-IS" and "WHERE-IS," with all faults and without any representations or warranties, express, implied or statutory, of any kind whatsoever (including, without limitation, any representations or warranties regarding environmental matters), by Seller, its agents, brokers, consultants, counsel, employees, managers or any other person, except those expressly set forth in this Agreement. (b) The Parties acknowledge that the closing of the sale of the Property is conditioned upon Buyer's inspection of the Property, to Buyer's satisfaction, as provided in Section 5, above. Buyer shall have the opportunity, prior to closing, to fully inspect, investigate and complete all due diligence relating to the Property.

16. Attorneys' Fees. In the event of any arbitration or litigation between the parties to declare or enforce any provision of this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties, in addition to any other recovery and costs, reasonable attorneys' fees incurred in such action in arbitration, trial and all appellate courts.

17. Statutory Disclaimer. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND

195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

18. Defaults and Failure to Close

(a) **Default by the Seller.** If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Seller, the Buyer shall be entitled to all available legal and equitable remedies, including the remedy of specific performance and the right to recover all its out-of-pocket expenses incurred in connection with the transaction.

(b) **Default by the Buyer.** If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Buyer, the Seller shall be entitled to all available legal and equitable remedies, including the remedy of specific performance and the right to recover all its out-of-pocket expenses incurred in connection with the transaction.

(c) **Cancellation Charges.** If this Agreement is terminated because of the Seller's default, the Seller will bear any cancellation charges required to be paid to the Title Company. If this escrow terminates because of the Buyer's default, the Buyer will bear any cancellation charges required to be paid to the Title Company. Otherwise, the Parties shall each pay one-half of any required cancellation charges.

19. Notices.

(a) **Addresses.** An "Address" means the address set forth beneath a Party's signature on this Agreement. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 17(b) below to the other Party's Address, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 17(b) below.

(b) **Delivery.**

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt

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Email or Fax	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or fax shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

20. Miscellaneous.

(a) Time is of the Essence; Calculation of Days. Time is of the essence in relation to the Parties' performance of any and all of their obligations under this Agreement. Any reference in this Agreement to "days" shall mean calendar days, unless specified as "business days." A business day is any day that is not a Saturday, Sunday or a federal or state of Oregon holiday.

(b) Integration. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. The Parties have no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified herein.

(c) Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

(d) No Waiver of Performance. No waiver by a Party of performance of any provision of this Agreement by the other Party shall be deemed a waiver of nor prejudice the other Party's right to otherwise require performance of the same provision, or any other provision.

(e) Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

(f) Counterparts. This Agreement and any amendments hereto may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

(g) Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim between Seller and Buyer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

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(h) No Presumption against Drafter. No inference, presumption or conclusion shall be drawn against either Party by virtue of that Party having drafted this Agreement or any portion thereof.

(i) Brokers. Seller and Buyer warrant to each other that if Buyer or Seller is represented by a Broker, each Party shall be responsible for any commission or compensation due its Broker related to this Agreement.

(j) Exhibits. The Exhibit listed below is incorporated as part of this Agreement:

Exhibit A: Site Map
Exhibit B: Legal Description

[remainder of page intentionally left blank]

Each person signing this Agreement below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

SELLER:

Westwood Homes LLC

DocuSigned by:
Bill Wagoner, member
Bill Wagoner, Member
Date: 4/6/2018

Address: 12700 NW Cornell Road
City, State, ZIP: Portland, OR 97229
ATTN: Bill Wagoner

BUYER:

The City of Salem, an Oregon municipal corporation

By: Steven D. Powers Date: 04/12/2018
Name: Steven D. Powers
Its: City Manager

Address: 350 Commercial St. NE
City, State, ZIP: Salem, OR 97301
ATTN: Clint Dameron

EXHIBIT A
Site Map

