

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into as of this ____ day of _____, 2019 (the “**Effective Date**”), by and between Oak Ridge Properties Investments LLC as to Parcel 1 and Filiberto Moreno as to Parcel 2 (collectively the “**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, identified as tax lots 083W17C00600 and 083W17C00601 and commonly known as 5864 Skyline Road South in Marion County, as shown on Exhibit A. The property consists of approximately four and thirty-five hundredths (4.35) acres.

B. Buyer desires to purchase a 27,908 square foot portion of the property (the “**Easement Property**”) as a permanent easement (the “**Easement**”) (Exhibit B), for future conversion to fee title for a right of way as an extension of Mildred Lane S. from Seller, and Seller wishes to sell a portion of the Property to Buyer, on the terms and conditions contained herein.

AGREEMENT

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 a permanent and exclusive easement over, substantially similar in form to that shown in Exhibit “C”, and across the Easement Property for all purposes including later converting said Easement Property to fee title ownership by the Buyer for locating the future extension of Mildred Lane to Skyline Road as shown on Exhibit B. The Buyer retains the option to convert the Easement Property to fee title for ONE Dollar (\$1) when the property can lawfully be transferred to the Buyer. This Easement Property shall be free and clear of any other claims by Seller to any right, title, or interest in the Easement Property, save and except for Seller’s right to locate underground pipes for water and sewer, subject to Marion County requirements, for development of a new homesite on Parcel 1 prior to the construction of the extension of Mildred Lane S. on the Easement Property, as well as the existing septic line and drain field for the residence on Parcel 2. The parties agree to work cooperatively upon the installation of Mildred Lane S. to maintain the septic drain fields for Parcel 1 and Parcel 2, or work to find alternative service options for the two residences.

2. Purchase Price. The purchase price for the Easement (the “**Purchase Price**”) is SEVENTY THOUSAND Dollars (\$70,000.00).

3. Earnest Money. Within thirty (30) days of the Effective Date, Buyer shall deliver to the Title Company the amount of Seven Thousand Dollars (\$7,000.00) (the “**Earnest Money**”) as earnest money. Should the execution of the Easement 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 Buyer notifies the Seller with the Buyer’s intent to proceed with the acquisition of the Easement, the Parties shall deposit an executed copy of this Agreement with First American Title Company in Salem, Oregon (the “**Title Company**”).

(b) Title Report. Seller shall deliver to Buyer a current preliminary commitment for title insurance for the Easement Property, issued by the Title Company, together with copies of the underlying documents (the “**Title Report**”).

5. Buyer’s Review Period.

(a) Contingencies. Buyer’s purchase of the Easement is contingent on the following:

(i) Buyer’s approval of any and all aspects and characteristics of the Easement 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 ninety (90) days after the Buyer’s receipt of the Preliminary Title Report (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 Easement 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 Parcel 1 and Parcel 2 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) Completion of survey and legal description of Easement area to be acquired, at sole cost and responsibility of Seller.

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

(b) Buyer agrees to allow Seller to located necessary systems for water and sewer service across the Easement Property in a manner that will not prevent Buyer's intended use of the Easement Property, to allow Seller to develop a homesite on Parcel 1 consistent with Marion County's approvals prior to the extension of Mildred Lane.

(c) If possible, Buyer shall use its best effort to, at the earliest possible time, provide to Seller the street/engineering grade elevation information for the eventual installation of Mildred Lane S. for review and use by Seller in development of the homesite on Parcel 1, and specifically related to the installation of the driveway for the homesite on Parcel 1 so Seller can attempt to match the grade elevation to the future Mildred Lane S. extension.

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 as soon as possible, but no later than Ninety (90) days from receipt of the Title Report as stated in Section 5.

The date on which Closing occurs is the “**Closing Date.**”

9. Conveyance of Property. At Closing, Seller shall convey the Easement across Parcel 1 and Parcel 2 to Buyer by a perpetual easement appurtenant in nature to the Buyer, subject only to the Permitted Encumbrances and Seller’s right to locate water and sewer lines across the Easement Property as provide in Section 1 and Section 7(b) of this Agreement.

10. 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.

11. 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 10, above.

(b) to the Escrow Company:

- (i) immediately available funds in the Escrow Amount; and
- (ii) the Escrow Agreement, executed by Buyer.

12. 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 Easement; and

- (ii) immediately available funds in the amount of all Closing costs and expenses to be paid by Seller at Closing pursuant to Section 10, above (which Seller may elect to have deducted from the proceeds deposited into escrow by Buyer for the Purchase Price).
- (b) to the Escrow Company:
 - (i) the Escrow Agreement, executed by Seller.

13. 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:

(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.

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

(a) Buyer understands, acknowledges and agrees that Buyer is buying the Easement "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 Easement is conditioned upon Buyer's inspection of the Easement 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 Easement Property.

15. 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.

16. 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.

17. 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 return of the Earnest Money, and the remedy of specific performance.

(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 right to retain the Earnest Money, 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.

18. 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 18(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 18(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
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.

19. 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 the Parties hereto.

(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.

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

Exhibit A:	Site Map
Exhibit B:	Proposed Easement Property
Exhibit C:	Draft Easement

[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:

Parcel 1:

OAK RIDGE PROPERTIES INVESTMENTS LLC

By: _____ Date: _____
Name: M&S General Contractors & Remodeling, LLC
Its: Member (by Filiberto Moreno, Member)

Address: 1855 Commercial Street SE
City, State, ZIP: Salem, OR 97302
ATTN: Filiberto Moreno

Parcel 2:

Filiberto Moreno, Individually Date: _____

Address: 5864 Skyline Road S.
City, State, ZIP: Salem, OR 97306
ATTN: Filiberto Moreno

BUYER:

THE CITY OF SALEM, an Oregon municipal corporation

By: _____ Date: _____
Name: _____
Its: _____

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

EXHIBIT A
Site Map



EXHIBIT B

SOUTHEAST CORNER PARCEL 1
PARTITION PLAT 2017-64
5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED
[HEPLER, PARTITION PLAT 2017-64]

1" I.P., UP 2"
[BARNES, 19607]
S9°16'W 2.47'

DETAIL SCALE: 1"=1'

WEST LINE BELLA CRESTA TRAIL

EAST LINE PARTITION PLAT 2017-64

N89°44'25"W 0.29'

0.36'

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "MULTI TECH ENG."
[HAMMAN, PARTITION PLAT 2015-06]
S89°44'25"E 0.42'

SKYLINE ROAD COUNTY ROAD

(25') (30')

ARC=33.92'
RADIUS=30.00'
DELTA= 64°46'34"
CHORD=S07°29'08"E 32.14'

HEPLER, PARTITION PLAT 2017-64

N56°53'36"E 194.03'
N56°53'36"E 118.71'

MILDRED LANE

177.54'
1785 SQ FT

BASIS OF BARNES PLAT 2017-64

82.16'

165.98'

1612.3 SQ FT

261.45'

72.45' EASEMENT

N33°04'24"W 11.29'

ARC=47.12'
RADIUS=30.00'
DELTA= 90°00'00"
CHORD=N84°52'25"W 42.43'

PARCEL 2

CHRISTINA LARSON TRUST;
FILIBERTO MORENO & AURORA MORENO, CONTRACT PURCHASERS

PARCEL 1

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED
"AZIMUTH SURVEYING"
[HEPLER, PARTITION PLAT 2017-64]

OAK RIDGE PROPERTIES INVESTMENTS, LLC

N43°08'14"E 310.76'
156.15'

N39°32'25"W 386.99'

S00°45'00"W 110.25'

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED
"AZIMUTH SURVEYING"
[HEPLER, PARTITION PLAT 2017-64]

N00°45'00"E 718.23'

SEE DETAIL

Exhibit C

After recording, return to:
City Recorder, City of Salem
555 Liberty Street SE, Room 205
Salem OR 97301-3513

Street and Roadway Easement

KNOW ALL MEN BY THESE PRESENTS, that [INSERT GRANTOR NAME HERE] (Grantor), [INSERT GRANTOR MAILING ADDRESS HERE], for the consideration of [SELECT ONE OF THE FOLLOWING PHRASES (delete quote marks): “_____ DOLLARS to it paid, the receipt of which is hereby acknowledged,” **OR** “for no money, but for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,”] do forever grant unto the CITY OF SALEM, an Oregon municipal corporation (Grantee), 555 Liberty Street SE, Salem, Oregon 97301-3513, a permanent easement for street and roadway purposes, over and along the following described premises for the purposes of constructing, maintaining, and repairing a the improvement of [INSERT STREET NAME HERE].

The real property covered by this easement is described as follows, to-wit:

See Exhibit A attached and as shown on Exhibit B attached.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor, its heirs, and assigns from claims for injury to person or property as a result of the negligence of Grantee, its agents, or employees in the construction, operation, or maintenance of said project. This instrument, and the covenants and agreements contained in this instrument, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.

By: _____

Title

This instrument was acknowledged before me on _____, 20____, by _____, as _____ of _____.

ACCEPTED ON BEHALF OF THE CITY
OF SALEM BY:

APPROVED AS TO FORM:

Print Name

November 4, 2019