

REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is between **John C Hawthorne**, as his separate estate ("Seller") and the **City of Olympia**, a municipal corporation organized under the laws of the State of Washington ("Buyer"), jointly referred to as "the Parties."

Recitals

Seller is the owner of certain real property commonly located at **1860 Yew Avenue NE, Olympia, Thurston County, Washington**, consisting of approximately 2.98 acres, more or less, and legally described on **Exhibit A** (legal description) and shown on **Exhibit B** (sketch of property), both of which are attached hereto and by this reference incorporated herein.

The signatories to this Agreement are authorized to execute associated documents, to correct legal descriptions if need be, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

1. **Property.** Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

1.1 **Land.** That certain real property located in Olympia, Thurston County, Washington, comprising tax parcel numbers 52103900600, 52101000800, 52103900100, 52101000100, and legally described on **Exhibit A** attached hereto (the "Land").

1.2 **Appurtenances.** All rights, privileges and easements appurtenant to the Land, including without limitation all minerals, oil, gas and other hydrocarbon substances on and under the Land, all development rights, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (all of which are collectively referred to as the "Appurtenances");

1.3 **Improvements.** All improvements and fixtures located on or under the Land.

1.4 **Personal Property.** Not applicable.

1.5 **Abandoned Property.** Any of Seller's personal property left on the Land, including but not limited to any furniture and fixtures owned by Seller, shall be considered abandoned property, and at Closing title to such abandoned property shall pass to Buyer as if it had been conveyed by a bill of sale.

All of the items described in **Paragraphs 1.1, 1.2, 1.3, 1.4, and 1.5** above are herein collectively referred to as the "Property."

2. **Purchase Price.** The purchase price to be paid by Buyer to Seller for the Property (the "Purchase Price") is **Sixty Thousand and 00/100 Dollars, U.S. (\$60,000.00)**.

3. **Payment of Purchase Price.** On the Closing Date, Buyer shall deposit with Escrow Agent the amount of the Purchase Price, less any amounts to be credited against the Purchase Price pursuant to this Agreement. Within five (5) days following the execution and delivery of this Agreement, Buyer shall open escrow with Thurston County Title Insurance Company (the "Escrow Agent"), by depositing with Escrow Agent a copy of this executed Agreement.

4. Closing Date. The Closing (the "Closing") shall be held at the offices of the Escrow Agent, on or before August 12, 2016, or unless otherwise agreed by the Parties. Closing shall occur when the Deed (as hereinafter defined) to Buyer is recorded and the Purchase Price is delivered to the Escrow Agent for delivery to Seller or to pay any lienholders of the Property.

5. Title and Survey Matters.

5.1 Title Binder. Buyer has ordered a preliminary commitment for an ALTA owner's standard coverage title insurance policy issued by Thurston County Title Insurance Company ("Title Company") describing the Property, showing all matters of record pertaining to the Property and listing Buyer as the prospective named insured. Following the mutual execution of this Agreement, if necessary, Buyer shall obtain from Title Company a written supplemental report to such preliminary commitment, in a form acceptable to Buyer, updating the preliminary commitment to the execution date of the Agreement. Such preliminary commitment, supplemental reports and true, correct and legible copies of all documents referred to in such preliminary commitment and supplemental reports as conditions or exceptions to title to the Property are collectively referred to herein as the "Title Binder."

5.2 Title Review. Within fifteen (15) business days of mutual execution hereof, Buyer shall review the Title Binder and any surveys of the Property, and shall notify Seller what exceptions to title, if any, affect the marketability or insurability of the title to the Property or which adversely affect the use of the Property. If Seller shall fail to remove any such exceptions objected to by Buyer from title prior to the Closing date, and Buyer is unwilling to take title subject thereto, Buyer may elect to either terminate this Agreement, or take title despite the existence of such exception. If Buyer elects to terminate, neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement which shall then become null and void and of no further force or effect.

5.3 Title Policy. At Closing, Seller and Buyer shall cause Title Company to issue a standard ALTA owner's policy ("Title Policy") to Buyer, at Buyer's cost. The Title Policy shall (a) be satisfactory to Buyer, (b) be issued in the amount of the total Purchase Price and (c) insure fee simple, indefeasible title to the Property in Buyer. The Title Policy shall contain endorsements as Buyer may require. Buyer's obligation to close this transaction shall be contingent on Buyer's approval, in its sole and absolute discretion of the Title Policy required under this **Paragraph 5**.

6. Conditions to Buyer's Obligations.

6.1 Documents and Reports. Within fifteen (15) calendar days after the execution and delivery of this Agreement (the "Document Delivery Date"), Seller shall deliver to Buyer copies of the documents and reports listed on attached **Exhibit C** to this Agreement and in Seller's possession. Seller shall certify to Buyer, as of the Document Delivery Date, as to any documents listed on **Exhibit C** not in Seller's possession. All existing leases or occupancy agreements for the Property shall be referred to herein as the "Leases." All existing service contracts for the Property shall be referred to herein as the "Contracts." Buyer shall inform Seller, prior to the expiration of the Contingency Period (defined in **Paragraph 6.5**), which Contracts, if any, Buyer desires to assume at Closing (the "Assumed Contracts").

6.2 Inspection of the Property. Buyer and its employees, representatives, consultants and agents shall have the right and permission from the date Seller signs this Agreement through the Closing Date (or earlier termination of this Agreement) to enter upon the Property or any part thereof at all reasonable times and from time to time for the purpose, at Buyer's cost and expense, of making all tests and/or studies of the Property that Buyer may wish to undertake, including, without limitation, soils tests (including borings), toxic and hazardous waste studies, surveys, structural studies and review of zoning, fire, safety and other compliance matters; provided, however, Buyer shall indemnify and hold harmless Seller from and against any mechanic's or other liens or claims that may be filed or asserted against the Property or Seller as a direct result of any actions taken by Buyer in connection with the Property, including but not limited to permitting Seller to review a written description of Buyer's proposed testing and work to ensure same is properly done and will not exacerbate any existing condition of contamination on the property. Buyer shall also provide Seller with a copy of all soil or environmental

test results for the property upon request. Buyer shall reasonably restore the Property to its condition immediately prior to any invasive testing. Buyer shall hold harmless and indemnify Seller from injury, damages or loss due to the negligence of Buyer, or Buyer's agents, employees or representatives, while upon Seller's Property. The effect of the representations and warranties made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

6.3 Appraisal of the Property. Buyer shall have the right to obtain an appraisal. Buyer's appraiser may enter onto the Property as is necessary to appraise the Property.

6.4 Approval of the Property. Buyer's obligation to purchase the Property shall be subject to and contingent upon Buyer's approval, in its sole and absolute discretion, prior to the expiration of the Contingency Period, of all aspects of the Property, including, without limitation, the physical condition of the Property, Buyer's financing, and all of the information delivered by Seller pursuant to **Paragraph 6.1** above or otherwise obtained by Buyer regarding the Property.

6.5 Contingency Period. As used herein, the term "Contingency Period" means the period ending at 5:00 p.m. on July 29, 2016.

6.6 Buyer's Right to Terminate. If Buyer's conditions set forth in **Paragraph 6.4** above are not satisfied in Buyer's sole and absolute discretion, Buyer shall have the right to terminate this Agreement by sending written notice to Seller and Escrow Agent (such notice referred to as a "Termination Notice") prior to the expiration of the Contingency Period. If Buyer gives its Termination Notice to Seller, this Agreement shall terminate and neither Buyer nor Seller shall have any further liability to the other under this Agreement.

6.7 Additional Closing Conditions. Buyer's obligation to purchase the Property shall also be subject to the following conditions that must be satisfied as of Closing.

(i) Prior to Closing, all Contracts (whether written or oral), with respect to the Property shall be terminated in writing, except for the Assumed Contracts. Seller shall provide Buyer, prior to Closing, with written termination agreements with respect to all Contracts, except for the Assumed Contracts, in a form acceptable to Buyer;

(ii) All representations and warranties of Seller contained herein, to the best of Seller's knowledge, shall be true, accurate and complete at the time of the Closing as if made again at such time;

(iii) Seller shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

(iv) At Closing, title to the Property shall be in the condition required by **Paragraph 5** of this Agreement and Escrow Agent shall deliver the Title Policy to Buyer; and

(v) At Closing, the physical condition of the Property shall be substantially the same as on the date hereof, ordinary wear and tear excepted.

If the conditions set forth in this **Paragraph 6** are not satisfied as of Closing and Buyer does not waive the same, Buyer may terminate this Agreement, and thereafter neither Buyer nor Seller shall have any further liability to the other under this Agreement.

7. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties, to the best of Seller's knowledge, which representations and warranties shall be deemed made by Seller to Buyer also as of the Closing Date:

7.1 Title. Seller is the sole owner of the Property, except for reservations of record. At Closing, Seller shall convey the entire fee simple estate and right, title and interest in and to the Property by statutory warranty deed, free and clear of unapproved encumbrances of record.

7.2 Compliance with Law; Compliance with Property Restrictions. The Property complies in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property related to zoning, building, subdivision, and engineering.

7.3 Bankruptcy, etc. No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.

7.4 Taxes and Assessments. Other than amounts disclosed by the Title Binder, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property.

7.5 Foreign Person. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

7.6 Mechanics' Liens. No labor, material or services have been furnished in, on or about the Property or any part thereof as a result of which any mechanics', laborer's or materialmen's liens or claims might arise.

7.7 Underground Storage Tanks. Seller has no knowledge of (a) subterranean storage or underground storage tanks that exist on the Property, and (b) any previously existing underground storage tanks that have been removed or filled by the Seller in compliance with applicable law.

7.8 Leases and Other Agreements. Seller represents that there are no leases, occupancy agreements, service agreements, licenses, easements, or option agreements with regard to the Property.

7.9 Assumption of Liabilities. Buyer, by virtue of the purchase of the Property, will not be required to satisfy any obligation of Seller arising prior to the Closing Date. Other than such obligations expressly assumed by Buyer or any liens or other obligations with respect to the Property that result from any action or activities by or on behalf of Buyer before the Closing Date, Seller, at Closing will pay and discharge any and all liabilities of each and every kind arising out of or by virtue of the possession, ownership or use of the Property prior to the Closing Date, and shall indemnify, defend and hold Buyer harmless therefrom.

7.10 Defaults. Seller is not in default and there has occurred no uncured event which, with notice, the passage of time or both would be a default, under any contract, agreement, lease, encumbrance, or instrument pertaining to the Property.

7.11 Utilities. The Property is served by water, storm and sanitary or septic sewer, electricity, and telephone supplied directly to the Property by facilities of public utilities. All such utilities are located within the boundaries of the Property or within lands dedicated to public use or within recorded easements for the same.

7.12 Public Improvements. Seller has no knowledge of any federal, state, county, municipal or other governmental plans to change the road system in the vicinity of the Property.

7.13 Subdivision. The conveyance of the Property will not constitute a violation of any subdivision ordinance. The Improvements on the Property comply in all material respects with all applicable subdivision ordinances and statutes.

7.14 Due Authority. Seller and Buyer have all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and Buyer and constitute their legal, valid and binding obligation enforceable against Seller and Buyer in accordance with its terms.

7.15 No Omissions. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be and contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained therein not misleading.

7.16 Litigation. There is no litigation or threatened litigation which could now or in the future in any way constitute a lien, claim, or obligation of any kind on the Property, affect the use, ownership or operation of the Property or otherwise adversely affect the Property. For purposes of this provision, litigation includes lawsuits, actions, administrative proceedings, tax claims or liens, governmental investigations and all other proceedings before any tribunal having jurisdiction over the Property. If any such litigation exists affecting the Property, Seller shall give notice to Buyer and Escrow Agent and Seller shall remove any such litigation by settlement and release, dismissal, payment or other full and complete resolution on or before the Closing Date.

8. Covenants of Seller. Seller covenants and agrees as follows:

8.1 Perform Obligations. From the date of this Agreement to the Closing Date, Seller will perform any monetary and non-monetary obligations it has regarding the Property.

8.2 No Liens. Seller will not allow any lien to attach to the Property, nor will Seller grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Property or any part thereof without Buyer's written consent first having been obtained.

8.3 Provide Further Information. From the date of this Agreement to the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

9. Closing.

9.1 Time and Place. Provided that all the contingencies set forth in this Agreement have been previously fulfilled, the Closing shall take place at the place and time determined as set forth in **Paragraph 4** of this Agreement.

9.2 Documents to be Delivered by Seller. For and in consideration of, and as a condition precedent to the payment to Seller of the Purchase Price, Seller shall obtain and deliver to Buyer at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) **Title Documents.** Such other documents, including, without limitation, lien waivers or releases, indemnity bonds, indemnification agreements, and certificates of good standing as shall be required by Buyer, or by the Title Company as a condition to its insuring Buyer's good and marketable fee simple title to the Property.

(ii) **Authority.** Such evidence as the Title Company shall require as to authority of Seller to convey the Property to Buyer.

(iii) **Surveys and Drawings.** All surveys, site plans and plans and specifications relating to the Property as are in the possession or control of Seller, if any.

(iv) **General Assignment.** A general instrument of transfer in the form set forth on attached **Exhibit D**, pursuant to which Seller shall convey and assign to Buyer all of Seller's right, title and interest in and to (a) all Leases, (b) the Assumed Contracts, if any, and (c) all other rights of Seller relating to the Property, (the "General Assignment") to the extent such items exist.

(v) **Warranty Deed.** A statutory warranty deed ("Deed") conveying to Buyer a good, marketable and indefeasible title in fee simple absolute to the Property, in substantially the same form as attached **Exhibit E**.

9.3 Payment of Costs. At Closing, Buyer shall pay all charges for its title insurance, one-half of the escrow fee, the recording fee, and the technology fee. Seller shall pay one-half of the escrow fee.

9.4 Taxes. Buyer is exempt from payment of real property excise taxes for the Property pursuant to WAC 458-61A-205.

9.5 Monetary Liens. Seller shall pay or cause to be satisfied at or prior to Closing all monetary liens on or with respect to all or any portion of the Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, rents and/or easements, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements, except where Seller is exempt by statute or administrative rule or regulation.

9.6 Possession. Possession of the Property shall be delivered to Buyer at Closing. The Property, including without limitation the Improvements, shall be delivered to Buyer in good order.

9.7 Prorations. All amounts required to be prorated hereunder as of Closing, shall be calculated as if Buyer was in possession of the Property as of the date of Closing.

10. Environmental Compliance. In addition to and without limiting **Paragraphs 6, 7 and 8**, Seller warrants, represents, covenants and agrees:

10.1 Hazardous Substances. Seller has not used, generated, manufactured, produced, stored, released, discharged or disposed of upon, under, above or about the Property (or off-site of the Property that might affect the Property) or transported to or from the Property, any Hazardous Substance or allowed any other person or entity to do so. Seller has no knowledge nor has Seller observed any questionable practice or conduct indicating that any Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or above Property (or off-site of the Property that might affect the Property) or transported to or from the Property by any entity, firm or person, or from any source whatsoever.

10.2 Pre-closing Covenant. Seller will not use, generate, manufacture, produce, store, release, discharge or dispose of upon, under, above or about the Property (or off-site of the Property that might affect the Property), or transport to or from the Property, any Hazardous Substance or authorize any other person or entity to do so, prior to the Closing.

10.3 Definitions. The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes" or "solid waste" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; and (d) chlorinated solvents. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or hazardous substances.

10.4 Environmental Indemnity. Seller shall protect, indemnify, hold harmless and defend Buyer and its officers, directors, elected officials, contractors, employees, agents, representatives, successors and assigns, from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to a breach of any representation, warranty, covenant or agreement contained in this **Paragraph 10** including, without limitation, (a) all consequential damages, and (b) the costs of any required or necessary repairs, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity does not apply to actions of Buyer, its agents or independent contractors.

11. Indemnification. Seller shall pay, protect, pay the defense costs of, indemnify and hold Buyer and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Seller set forth in this Agreement, (b) the failure of Seller to perform any obligation required by this Agreement to be performed by Seller, (c) the ownership, maintenance, and/or operation of the Property by Seller prior to the Closing, not in conformance with this Agreement, or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Seller, its representatives, employees, contractors or suppliers that occurred before Closing; provided, however, that nothing in this **Paragraph 11** applies to Losses arising out of the presence of Hazardous Substance on, under, above, or about the Property, including Hazardous Substances that migrate or migrated to or from the Property.

12. Condemnation. In the event of any commenced, to be commenced or consummated proceedings in eminent domain or condemnation (collectively "Condemnation") respecting the Property or any portion thereof, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement neither Buyer nor Seller shall have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing date, this Agreement shall continue in effect, there shall be no reduction in the Purchase Price, and Seller shall, prior to the Closing date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to any condemnation award or settlement made or to be made in connection with such Condemnation proceeding. Buyer shall have the right at all times to participate in all negotiations and dealings with the condemning authority and approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such Condemnation respecting the Property.

13. Casualty. If any fire, windstorm or casualty occurs and materially affects all or any portion of the Property on or after the date of this Agreement and prior to the Closing, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement neither Buyer nor Seller have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing date, this Agreement shall continue in effect, the Purchase Price shall be reduced by the amount of loss or damage occasioned by such casualty not covered by insurance, and Seller shall, prior to the Closing date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to all insurance claims and proceeds to which Seller may be entitled in connection with such casualty. Buyer shall have the right at all times to participate in all negotiations and other dealings with the insurance carrier providing such coverage and to approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such casualty respecting the Property.

14. Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express, UPS, USPS or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such

delivery. If such Notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given twenty four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Buyer: Attn: Dave Okerlund, Parks, Arts & Recreation Department
City of Olympia
601 4th Avenue East
PO Box 1967
Olympia, WA 98507-1967

With a copy to: City Attorney
City of Olympia
601 4th Avenue East
PO Box 1967
Olympia, WA 98507-1967

To Seller: John C. Hawthorne
c/o Kaaleen Gassin
Burger Professionals
~~2607 Martin Way E, #102~~
Olympia, WA 98506

RE/MAX PROFESSIONALS
3009 PACIFIC AVE SE
Olympia WA 98501

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

15. Event of Default. In the event of a default under this Agreement by Seller (including a breach of any representation, warranty or covenant set forth herein), Buyer shall be entitled, in addition to all other remedies, to seek monetary damages and specific performance of Seller's obligations hereunder.

16. Miscellaneous.

16.1 Applicable Law. This Agreement shall in all respects, be governed by the laws of the State of Washington.

16.2 Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, to carry out the intent of the parties hereto.

16.3 Modification or Amendment, Waivers. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

16.4 Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns.

16.5 Entire Agreement and No Third Party Beneficiaries. This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

16.6 Attorneys' Fees. Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

16.7 Construction. Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

16.8 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

16.9 Survival. The covenants, agreements, obligations to indemnify, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

16.10 Finders' or Brokers' Fees. Any broker, agent or finder commission or other fee due in connection with any of the transactions contemplated by this Agreement, shall be the sole responsibility of the Seller. Seller agrees to indemnify, defend and hold harmless Buyer against any loss, liability, damage, cost, claim or expense, including interest, penalties and reasonable attorneys' fees, that Buyer shall incur or suffer by reason of a breach by Seller of the representation and warranty set forth above.

16.11 Time. Time is of the essence of every provision of this Agreement.

16.12 Risk of Loss. All of Seller's personal property of any kind or description whatsoever on the Property shall be at Seller's sole risk. Buyer shall not be liable for any damage done to or loss of such personal property, injury to person or damage or loss suffered by the business or occupation of Seller caused in any manner whatsoever, unless and to the extent the damage is caused by the gross negligence or willful misconduct of Buyer.

16.13 Force Majeure. Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

16.14 Recitals. The Recitals set forth above are incorporated by this reference into this Agreement.

17. Expiration. This offer will expire if not executed by Seller and Buyer on or before 5:00 p.m. on June 24, 2016.

[Signatures appear on the following page]

BUYER:

City of Olympia, a Washington municipal corporation

By: _____

Name: Steven R. Hall, City Manager

Date: _____

Approved as to form:



City Attorney

SELLER:

John C. Hawthorne, as his separate estate

By: 

Date: 5/5/16

EXHIBIT "A"

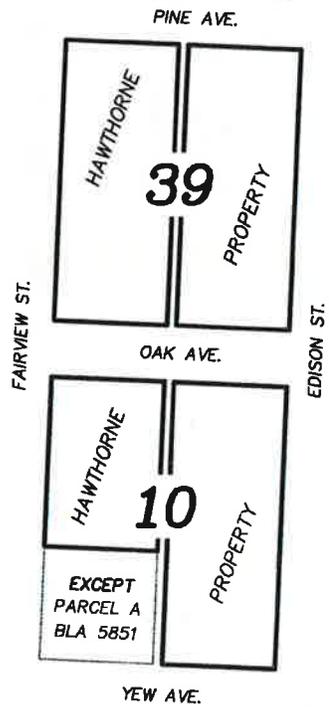
BLOCK 10 AND BLOCK 39 OF P.C.HALE'S SUBDIVISION OF C.H.HALE'S ADDITION TO OLYMPIA, AS RECORDED IN VOLUME 5 OF PLATS, PAGES 14 AND 15; EXCEPT THAT PORTION OF BLOCK 10 NOW KNOWN AS PARCEL A OF BOUNDARY LINE ADJUSTMENT NO. BLA-5851, AS RECORDED SEPTEMBER 29, 1994 UNDER AUDITORS FILE NUMBER 9409290295.

IN THURSTON COUNTY, WASHINGTON





FIR ST.



WILSON ST.

	PROJECT NO.	CITY OF OLYMPIA	DRAWING NAME
DRAWN MRW		EXHIBIT "B"	Sketch Block 10&39.dwg
QC REVIEW LFC	DATE	BLOCK 10 & 39 OF P.C.HALES SUB. OF C.H.HALES ADD.	
SCALE N.T.S.	5-2-16	V. 5 PG. 14 SECTION 13, T 18 N, R 2 W, W.M.	SHEET 1 OF 1

EXHIBIT C

Documents and Reports

1. Copies of all of leases or other occupancy agreements relating to the Property, with originals to be delivered at Closing.
2. Copies of all licenses, permits and approvals issued by governmental authorities for the use and occupancy of the Property or any facility located thereon.
3. Any other information about the Property reasonably requested by Buyer if in the possession or control of Seller.
4. Any service contracts or other similar agreements related to the Property.
5. Reports of environmental conditions related to the Property.
6. Surveys.
7. Soils reports.

EXHIBIT D
General Assignment

ASSIGNMENT AND ASSUMPTION

THIS ASSIGNMENT AND ASSUMPTION (the "Assignment") is made as of this ____ day of _____, 2016 (the "Transfer Date") by JOHN C. HAWTHORNE, as his separate estate ("Assignor"), in favor of THE CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington ("Assignee").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns and transfers to Assignee, as of the Transfer Date, all of the following relating to the real property legally described on attached EXHIBIT A (the "Property"), to the extent assignable:

1. Any and all of Assignor's right, title and interest, as lessor, in, to and under all leases, licenses and occupancy agreements together with any security deposits, affecting the Property (the "Leases");
2. Any and all of Assignor's right, title and interest in, to and under the contracts and agreements relating to the leasing, operation, maintenance and repair of Property set forth on EXHIBIT B (the "Contracts");
3. Any and all assignable governmental licenses, permits, certificates (including certificates of completion and certificates of occupancy), authorizations and approvals held by Assignor in connection with the current occupancy, use and operation of, and construction upon, the Property (collectively, the "Permits"); and
4. Any and all assignable warranties and guaranties including, without limitation, contractor's, architect's and manufacturer's warranties and guaranties held by Assignor and given by third parties with respect to the Property (collectively, the "Warranties").

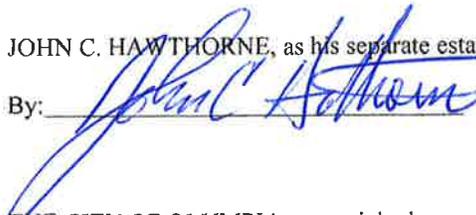
Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees, originating prior to the Transfer Date and arising out of the lessor's obligations under the Leases.

Assignee accepts this Assignment and hereby assumes and agrees to perform from and after the Transfer Date all of the covenants, agreements and obligations of the lessor under the Leases, as may be amended, and all of Assignor's covenants, agreements and obligations under the Contracts, Permits, and Warranties, and agrees to indemnify Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees, originating subsequent to the Transfer Date and arising out of the lessor's obligations under the Leases.

IN WITNESS WHEREOF, this Assignment and Assumption is made as of the day and year first above written.

ASSIGNOR:

JOHN C. HAWTHORNE, as his separate estate

By: 

ASSIGNEE:

THE CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington

By: _____

Name: Steven R. Hall

Its: City Manager

GRANTEE:

City of Olympia, a Washington municipal corporation

ACCEPTED AND APPROVED:

By: _____
Steven R. Hall, City Manager

Date: _____

Approved as to form:

City Attorney