

## REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is between City of Olympia ("Seller") and Low Income Housing Institute (LIHI) Inc., a Washington non-profit corporation ("Buyer"), jointly referred to as "the Parties."

### Recitals

Seller is the owner of certain real property located at **318 State Avenue NE, Olympia, Thurston County, Washington**, consisting of approximately 15,960 square feet and more particularly described on **Exhibit A** (legal description and sketch) attached hereto and by this reference incorporated herein.

The Seller is interested in having new residential housing east of the Intercity Transit Center and north of State Avenue in the City of Olympia, because this area lacks new residential development. It is Seller's hope that new residential development at that location will help spur additional new development. The Washington State Constitution allows municipal funds to be spent in support of the infirm and the poor. Buyer agrees to develop and build low income residential housing upon the real property described in Exhibit A, attached hereto.

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 number 78503200500 and more particularly described on Exhibit A attached hereto (the "Land"). Buyer agrees that the use of the Land will be restricted to use as low income housing and ancillary supportive uses for a period of fifteen (15) years from issuance of a certificate of occupancy following all required building and structural inspections for Buyer's low income residential development

**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 the Land.

**1.4 Personal Property.** Not applicable.

**1.5 Right of Access.** The Seller shall have the right to access monitoring wells 4 and 17 as described in the environmental documents provided to Buyer, until such time as Buyer has a need to construct over them.

**1.6 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.

**1.7 License.** Seller shall grant Buyer a license to use and occupy the Property described in Exhibit D for construction staging and temporary construction access, excluding diesel equipment storage and subject to DOE requirements and disapproval.

All of the items described in **Paragraphs 1.1, 1.2, 1.3 and 1.4** 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 **One Hundred Thousand and 00/100 Dollars (\$100,000.00)**.

**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 the later of September 30, 2015, or the omnibus project financial closing no later than April 14, 2016, 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.

**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 thirty (30) 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 section 5.

**6. Conditions to Buyer's Obligations.**

**6.1 Documents and Reports.** Within thirty (30) 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 section 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. Buyer shall reasonably restore the Property to its condition immediately prior to any invasive testing. 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. Buyer's obligation to purchase the Property is also conditioned on the Washington State Housing Finance Commission's ("WSHFC") approval of Buyer's pending proposal to build a low income residential housing project at this location (the "WSHFC Approval"). Buyer shall notify Seller of the WSHFC Approval by June 15, 2015, at 5 p.m. or that Buyer has not received the WSHFC Approval by said date.

**6.5 Contingency Period.** As used herein, the term "Contingency Period" means the period ending at 5:00 p.m. on June 15, 2015.

**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. There had been an underground storage tank on the site. To the best of Seller's knowledge, the tank was decommissioned 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. However, Buyer will cooperate and assist the Seller in Seller's efforts to obtain a no further action letter for the Property (the "No Further Action Letter") from the Washington State Department of Ecology ("DOE").

**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.

Seller shall, at its sole cost, obtain a boundary line adjustment necessary to conform the legal lot lines to the lot lines depicted in Exhibit A prior to the Closing date. Said boundary line adjustment shall be effective and recorded at or before Closing, prior to the Buyer receiving title from Seller.

**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.

**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.** From the date of this Agreement to the Closing date, 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, 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) **Assignment.** An instrument of transfer in the form set forth on attached Exhibit G, pursuant to which Seller shall convey and assign to Buyer certain environmental indemnification rights more particularly described in Exhibit E.

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

(vi) **Restrictive Covenant.** A restrictive covenant or other mutually agreeable document that limits the use of the land for fifteen (15) years to low income housing and supportive uses to that primary use as specified in Paragraph 1.1. The restrictive covenant may be part of the Deed or be a separate document.

**9.3 Payment of Costs.** At Closing, Buyer shall pay all charges for their title insurance, the escrow fee, the recording fee, and the technology fee.

**9.4 Taxes.** Seller 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. Seller warrants, represents, covenants and agrees:

**10.1 Environmental Indemnity.** A. Until the December 31st following fifteen (15) years after the issuance of a certificate of occupancy on the Improvements made by Buyer on the

Property, but in no event more than twenty (20) years after the recording of the Statutory Warranty Deed with the Thurston County Auditor, the Seller shall defend, indemnify, and hold Buyer and its successors and assigns (collectively, "Indemnitees") harmless from any and all claims, liabilities, losses, damages, costs, liens, causes of action, suits, demands, judgments and expenses (including without limitation, reasonable court costs, attorneys' fees and costs of investigation), removal and remediation and governmental oversight costs (collectively, "Losses") arising out of or relating to the presence, disposal, escape, migration, leakage, spillage, discharge, emission, release or threatened release of any Hazardous Substance, as defined below, that exists in, on, under, or from the Property, upon and subject to the terms and conditions set forth below.

B. Notwithstanding anything to the contrary in this Agreement or otherwise, the Seller shall have no obligation to defend, indemnify, or hold Buyer or any other Indemnitee harmless with respect to any Losses arising (a) out of the release or threatened release of Hazardous Substances on the Property after Closing, or (b) out of the past release or threatened release of any Hazardous Substance on the Property caused by Buyer or any other Indemnitee, or any employee, agent, tenant, or contractor of Buyer or any other Indemnitee.

C. Promptly after the receipt by Buyer of notice of any claim or the commencement of any action or proceeding for which the Seller has agreed to indemnify Buyer, Buyer shall give the Seller written notice of such claim or the commencement of such action or proceeding and the Seller shall thereafter defend on behalf of Buyer, but at the Seller's sole cost and expense, any such action or proceeding for which indemnification is sought. No settlement of any such action or proceeding shall be made without Buyer's prior written approval, which shall not be unreasonably withheld (unless Buyer has previously been discharged from all liability in connection with such action or proceeding); provided that this provision is subject to the limitations of RCW 4.24.115 to the extent applicable.

**10.2 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.

**10.3 Environmental cleanup.** The Seller originally acquired the property as part of a larger site from the Washington State Department of Transportation ("WSDOT") pursuant to an agreement that provided, amongst other things, for environmental indemnification. Seller and Buyer contemplate that the Seller will continue working towards obtaining the No Further Action Letter on the Property described in Exhibit A.

**10.4 Release.** As of Closing, Seller releases Buyer, and except as provided in Section 10.1, Buyer releases Seller, from any and all Losses arising out of the presence of Hazardous Substances on, under, above, or about the property, including Hazardous Substances that migrate to or from the Property.

**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, contractor 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: LIHI  
2407 First Avenue  
Seattle, WA 98121-1311  
Attn: Sharon Lee

To Seller: City of Olympia  
City Manager  
PO Box 1967  
Olympia, WA 98507  
Attn: Steven R. Hall

With a copy to: City of Olympia  
Legal Department  
PO Box 1967  
Olympia, WA 98507-1967  
Attn: City Attorney



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, including Buyer's covenant to use the Property for low income housing as specified in Paragraphs 1.1 and 9.2(vi).

Buyer may assign its rights and obligations under this Agreement to a limited partnership, limited liability company or limited liability limited partnership of which Buyer or an affiliate of Buyer is the general partner or manager without approval of the Seller. Any other assignment shall be subject to Seller approval, which shall not be unreasonably withheld, conditioned or denied. Buyer must notify and, if required, request approval by Seller of any such assignment prior to the Closing. Any such assignee shall for all purposes be regarded as Buyer under this Agreement.

**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.** Seller represents and warrants that it has not dealt with any broker or finder to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement and insofar as it knows, no broker or other person is entitled to any commission, charge or finder's fee in connection with the transactions contemplated by this Agreement. 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. Option to Purchase.** Seller agrees to pursue expeditiously the cleanup of the property described in Exhibit D, in order to receive a no further action letter from DOE for the property described in Exhibit D. Buyer shall have the option to purchase from Seller the property described in Exhibit D for One Dollar and No Cents (\$1.00) exercisable at any time within five (5) years of the Closing date of this Agreement. The exercise of this Option to Purchase shall be under the same general terms of this Agreement. Buyer agrees it shall execute a restrictive covenant that the Property described in Exhibit D shall be used solely in support of and ancillary to the low income residential housing to be constructed upon the Property described in Exhibit A to this Agreement, subject to the Seller's approval.

**18. Expiration.** This offer will expire if not executed by Seller and Buyer on or before 5:00 p.m. on April 22, 2015.

[Signatures appear on the following page]

SELLER:

City of Olympia, a Washington municipal corporation

By: 

Name: Steven R Hall

Its: City Manager

Date: 4/14/2015

Approved as to form:



City Attorney

BUYER:

Low Income Housing Institute (LIHI), a  
Washington nonprofit corporation

By: 

Sharon Lee, Executive Director

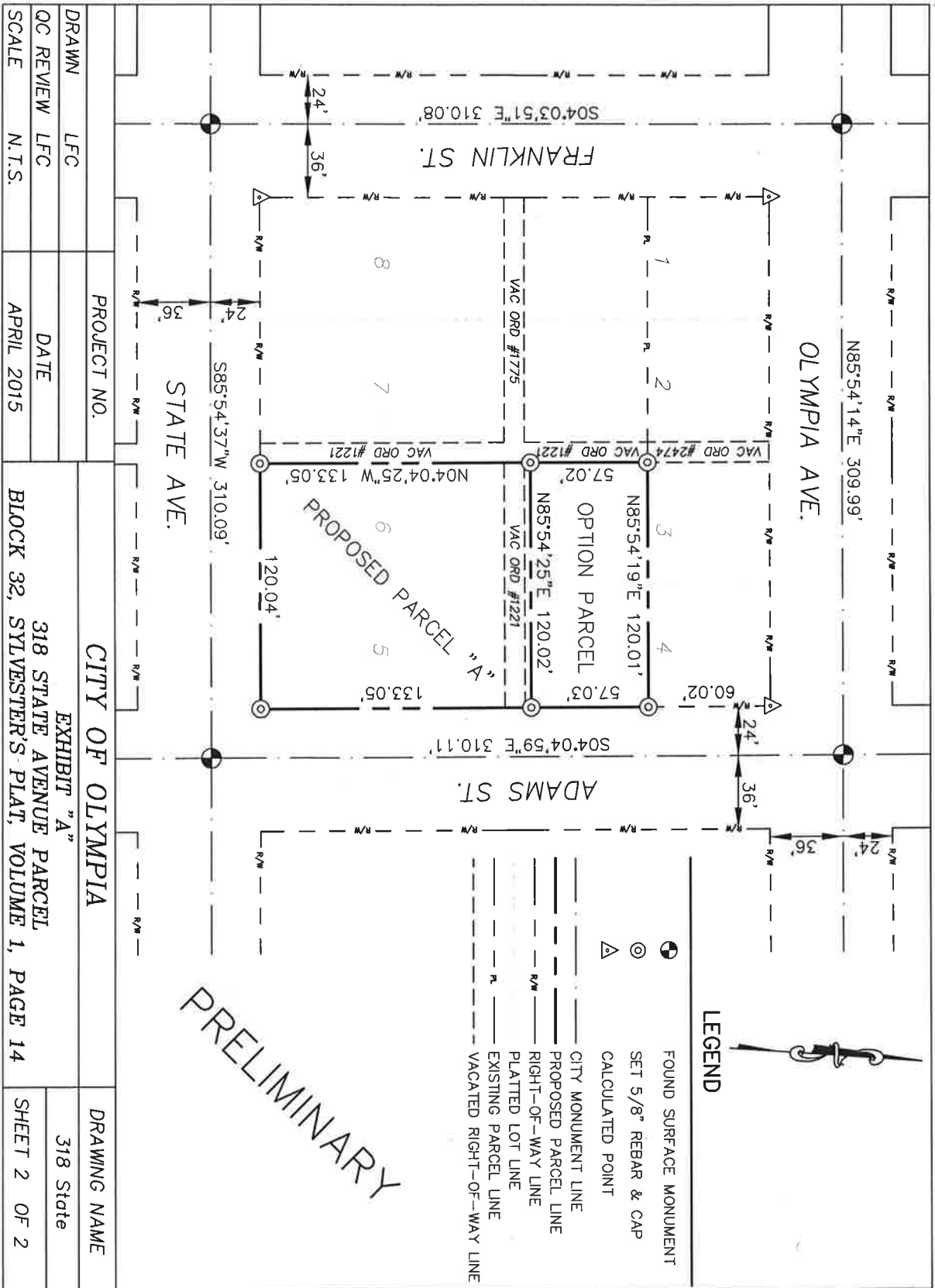
Date: 4/10/15

## EXHIBIT A

### Legal Description

Lots 5 and 6, the South 3.00 feet of Lots 3 and 4, Block 32, Sylvester's Plat of Olympia, as recorded in Volume 1 of Plats at page 14, records of Thurston County, Washington. TOGETHER WITH: the vacated east-west alley adjoining said Lots. EXCEPT THEREFROM: the north-south alley adjoining said Lots 3 and 6, as vacated by City of Olympia Ordinance No. 1775, dated June 5, 1923 and City of Olympia Ordinance No. 1221, dated October 22, 1912.

Containing 15,960 square feet, more or less.



DRAWN	LFC	PROJECT NO.	CITY OF OLYMPIA	DRAWING NAME	318 State
QC REVIEW	LFC	DATE	EXHIBIT "A"		
SCALE	N.T.S.	APRIL 2015	318 STATE AVENUE PARCEL		
			BLOCK 32, SYLVESTER'S PLAT, VOLUME 1, PAGE 14	SHEET 2 OF 2	

**EXHIBIT B**

**Personal Property**

NONE

## 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

The South half of Lots 3 and 4, Block 32, Sylvester's Plat of Olympia, as recorded in Volume 1 of Plats at page 14, records of Thurston County, Washington. EXCEPT THEREFROM: the South 3.00 feet of said Lots 3 and 4, the east-west alley adjoining said Lots, as vacated by City of Olympia Ordinance No. 1221, dated October 22, 1912, the north-south alley adjoining said Lot 3, as vacated by City of Olympia Ordinance No. 1775, dated June 5, 1923.

Containing 6,840 square feet, more or less.



**EXHIBIT E**

**Assignment**

**ASSIGNMENT AND ASSUMPTION**

THIS ASSIGNMENT AND ASSUMPTION (the "Assignment") is made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Transfer Date") by City of Olympia ("Assignor"), in favor of Low Income Housing Institute (LIHI), a non-profit 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 (the "Property"), to the extent assignable:

While equally retaining the Assignor's own rights, the Assignor assigns its rights to Assignee under Article VII of the Real Property Purchase and Sale Agreement signed by the City of Olympia on March 12, 2008 and by the Washington State Department of Transportation on April 2, 2008. If Washington State Department of Transportation fails to accept this assignment, the Assignor reserves all rights under Article VII of that agreement.

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

ASSIGNOR:

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ASSIGNEE:

Low Income Housing Institute (LIHI), a Washington nonprofit corporation

By: \_\_\_\_\_

Sharon Lee, Executive Director