

OPTION TO PURCHASE REAL ESTATE

This OPTION TO PURCHASE REAL ESTATE (“Option” or “Agreement”) is made by and between Jill A. Floberg, as her separate estate, (“Optionor”), and the CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington (“Optionee”), together known as the Parties (the “Parties”), effective as of the Effective Date (as defined below in Section 3.9.15).

A. Optionor is the owner of certain real property located in the City of Olympia, Thurston County, Washington, legally described on Exhibit A-1 attached hereto (“the Property”).

B. Optionee has determined that Optionor’s Property is suitable property for a public park for recreation and/or open space purposes.

C. 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 are hereby acknowledged, Optionor and Optionee agree as follows:

1. Property. Optionor hereby agrees to and does grant to Optionee an Option to Purchase the fee title rights to certain real property legally described herein on Exhibit A-1, subject to the terms and conditions set forth herein, and Optionee hereby agrees to and does purchase an option from Optionor for purchase of the Property legally described on Exhibit A-1, subject to the terms and conditions set forth herein:

1.1 Land. Approximately 1.61 acres, more or less, constituting the entire site commonly known as the Property, which is located adjacent to and south of 1421 West Bay Drive NW in the City of Olympia, Thurston County, Washington, Thurston County Tax Parcel No. 095100320000, as shown in a sketch on Exhibit A-2 attached hereto (the “Land”).

1.2 Appurtenances. This Option shall include all rights, privileges and easements appurtenant to the Land owned by Optionor, including without limitation 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”);

The Land and Appurtenances described in **Section 1** above are herein collectively referred to as the “Property.”

2. Option Terms. The terms of the Option shall be as follows:

2.1 Term of Option. The term of this Option shall be for a period expiring on December 31, 2017.

2.2 Purchase Price for the Property. If Optionee exercises its Option, the purchase price for the Property (the "Purchase Price") shall be **Two-Hundred Ten Thousand Dollars and No Cents (\$210,000.00)**.

2.3 Payment for Option and Application to Purchase Price. Optionee shall pay to Optionor **Fifteen Thousand Seven-Hundred and Fifty Dollars and No Cents (\$15,750.00)** for the Option period ending on December 31, 2017. The Option payment made hereunder shall be non-refundable, except as expressly provided herein or in the event of a default by Optionor hereunder.

Should Optionee exercise its Option to Purchase the Property, the full amount of the Option payment paid to Optionor shall be applied to and deducted from the Purchase Price for the Property.

2.4 Option to Purchase shall be a Covenant. The Option granted by Optionor to Optionee shall be a covenant running with the Land and shall be binding on all present and future owners and occupiers of the Property, their successors, heirs and assigns. This Option shall be recorded with the Auditor of Thurston County, Washington, on the Option Closing Date (as defined below).

2.5 Option Closing Date and Deposit of Documents. Subject to the satisfaction of the contingencies set forth in Sections 2.7 and 2.8 below, the Closing for this Option to Purchase shall be at the offices of the "Escrow Agent" on a mutually acceptable date not later than thirty (30) days after the Effective Date of this Option (the "Option Closing Date"), unless otherwise agreed to by the Parties. The Escrow Agent shall be Stewart Title Company, in its capacity as Escrow Agent, located at 300 Deschutes Way SW, Tumwater, Washington 98501. On the Option Closing Date, Escrow Agent shall record the executed Option to Purchase Real Estate between Optionor and Optionee and the Option amount for the first Option period shall be delivered by Optionee to the Escrow Agent for delivery to Optionor. Optionor and Optionee will use their reasonable best efforts, consistent with and subject to their respective rights and obligations as otherwise set forth in this Option, to cause Closing for the Option to Purchase to occur within thirty (30) days of the Effective Date.

2.6 Exercise of Option to Purchase. The Optionee may exercise this Option to Purchase by timely giving written notice to Optionor or her successors, heirs or assigns, as provided in Section 3.8 below of Optionee's decision to purchase the Property upon the terms set forth herein. If Optionee fails to timely exercise the Option to Purchase, this Agreement shall terminate and no longer be effective.

2.7 Title and Survey Matters for Option. Optionee has ordered a preliminary commitment for an ALTA owner's standard coverage title insurance policy issued by or through Stewart Title Company ("Title Company"), describing the Property, showing all matters pertaining to the Property and Optionor as vested fee owner in the Property. Nothing

herein shall be construed as imposing any cost obligation upon the Optionor. In the event that the initial title binder contains unacceptable title exceptions to Optionee, then Optionee shall notify Optionor within fifteen (15) days after the Effective Date. Optionor shall notify Optionee thereafter within ten (10) days if Optionor agrees, in her sole discretion, to remove or otherwise cure such objectionable matters (failure to timely respond shall be deemed an election not to remove or cure). If Optionor elects to remove or cure any matters, Optionor shall not be obligated to remove or cure unless and until Optionee exercises the Option to Purchase under Section 2.6. If Optionor elects or is deemed to have elected not to remove or cure any matter objected to, then this Option shall terminate and neither Optionor nor Optionee shall thereafter have any further liability or obligation under this Option and Optionee shall receive a full and complete refund of its Option payment. All title matters referenced in the initial preliminary commitment and not objected to by Optionee within fifteen (15) days after the Effective Date shall be deemed "Pre-Approved Title Matters." Optionor agrees that she shall not, except as permitted herein, further encumber title to the Property at any time during the period of the Option in any manner that would materially and adversely affect title to the Property (as determined by Optionee in its reasonable discretion), otherwise Optionee may terminate this Agreement and shall receive a full and complete refund of its Option payment.

2.8. Initial Inspection; Environmental Reports. Optionor shall provide Optionee any environmental reports that Optionor has related to any hazardous materials or chemicals regulated by the Model Toxics Control Act concerning the Property, including phase I and 2 environmental assessments, until the Sale Closing Date. Optionee shall be entitled to perform any of its own tests or other studies concerning all aspects of the Property, including without limitation the environmental condition of the Property, within the period after the Effective Date and prior to the Option Closing Date in Section 2.5, and shall have the right and permission for its employees, representatives, consultants and agents to enter upon the Property or any part thereof at all reasonable times for the purpose, at Optionee's cost and expense, of making all tests and/or studies of the Property that Optionee may wish to undertake, including, without limitation, soils tests, toxic and hazardous waste studies, and surveys, provided, however, that Optionee shall schedule all access to the Property in advance with Optionor and shall be required to obtain Optionor's written consent prior to conducting any invasive testing, which consent shall not be unreasonably withheld. Optionee shall further indemnify and hold harmless Optionor from and against any mechanic's or other liens or claims, causes of action, costs, expenses, or liabilities that may be filed or asserted against the Property or Optionor arising out of or relating to any actions taken by Optionee or its employees, agents, consultants or representatives in connection with the Property. Optionee, to the extent necessary, shall reasonably restore the Property at Optionee's sole cost and expense to its conditions immediately prior to any access or testing by Optionee or its employees, agents, consultants and representatives. If Optionee performs a phase I environmental assessment on the Property as a part of its initial inspection and such phase I recommends or otherwise indicates that a phase II environmental assessment or other supplemental environmental testing should be conducted, the Parties agree that the Option Closing Date shall be extended to the date that is seven (7) business days after Optionee receives the results back on its phase II or supplemental testing in order to provide adequate time for issuance of reports or laboratory analysis of testing results obtained by Optionee or its employees, representatives, consultants and agents. The environmental and all other studies and assessments of the Property shall be subject to Optionee's satisfaction in all

aspects of the Property for Optionee's intended use, and in Optionee's sole discretion. If Optionee is not satisfied with its environmental and other studies and assessments of the Property prior to the Option Closing Date, then Optionee may terminate this Agreement in its sole discretion and neither Optionee nor Optionor shall have any further liability or obligation under this Option and Optionee shall receive a full and complete refund of its Option payment.

2.9. Physical Condition to Remain Substantially the Same. The physical condition of the Property, including forest cover, shall remain substantially the same as it is at the time of Optionee's signature to this Agreement. If at any time during the Option period, the Land is cleared, logged, mined, or the forest cover is otherwise materially disturbed, Optionee is entitled to the return of its Option payment made under Section 2.3.

2.10 Additional Terms. The additional terms in Sections 3.8 and 3.9, and all subsections respectively thereunder, shall also apply to this Option to Purchase.

3. After Exercise of Option to Purchase. If Optionee timely exercises the Option to Purchase, the Parties shall enter into a "Purchase and Sale Agreement" for such Property, based upon the following terms and conditions, within thirty (30) days after Optionee's exercise of its Option to Purchase the Property. The Parties agree that such Purchase and Sale Agreement shall be entered into solely for the purpose of memorializing the following terms and conditions and shall not contain any new or modified terms or conditions that are contrary to those set forth below, unless agreed upon by the Parties in their sole and absolute discretion. The Parties acknowledge and agree that all material terms and conditions of a purchase and sale agreement for the Property are set forth below.

3.1 Payment of Purchase Price upon Exercise of Option to Purchase. On the "Sale Closing Date" (defined below), Optionee as "Buyer" (or the "City of Olympia" or the "City") shall deposit with Escrow Agent the amount of the Purchase Price set forth in Section 2.2 above, less any amounts to be credited against the Purchase Price pursuant to the Option to Purchase as provided in Section 2.3 above. The Purchase Price shall be paid to Optionor as "Seller" at the time of the Sale Closing Date by wire transfer, or by certified, cashier's, treasurer's or bank check(s) based on Seller's instruction to the Escrow Agent. Within three (3) business days following the execution and delivery of the Purchase and Sale Agreement, Buyer and Seller shall open escrow with Escrow Agent, by depositing with Escrow Agent a copy of the Purchase and Sale Agreement and Buyer's notice exercising the Option to Purchase.

3.2. Closing Date for Purchase and Sale Agreement. The Closing shall be held at the offices of the Escrow Agent on a date that is mutually acceptable to the Parties not later than thirty (30) days after the exercise of the Option to Purchase and complete execution of the Purchase and Sale Agreement (the "Sale Closing Date"), 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. Seller and Buyer will use their reasonable best efforts, consistent with and subject to their respective rights and obligations as otherwise set forth in this Purchase and Sale Agreement, to cause the Sale Closing to occur on or not later than the Sale Closing Date, which shall be not later than thirty (30) days after the

Option to Purchase has been exercised and complete execution of the Purchase and Sale Agreement by the Parties.

3.3. Title and Survey Matters.

3.3.1 Title Binder. Promptly after exercising the Option to Purchase, Buyer shall order an updated preliminary commitment for an ALTA owner's standard coverage title insurance policy issued by Title Company describing the Property, showing all matters pertaining to the Property and listing Buyer as the prospective named insured, in a form acceptable to Buyer, updating the initial preliminary commitment to the exercise date of the Option to Purchase and Purchase and Sale Agreement. Such updated 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." Nothing herein shall be construed as imposing any cost obligation upon Seller.

3.3.2 Title Review. Within seven (7) business days of Buyer's receipt of the updated commitment ("Title Review Period"), Buyer shall review the Title Binder, and, shall notify Seller what new exceptions to title since the initial commitment, if any, are unacceptable. Any new exceptions that are not disapproved by Buyer in writing during the Title Review Period and all Pre-Approved Title Matters shall constitute "Permitted Exceptions." Seller shall remove any or all exceptions that are not Permitted Exceptions prior to the Sale Closing Date or shall notify Buyer that it will not remove such exceptions; if Seller shall fail to remove any such exceptions objected to by Buyer from title prior to the Sale Closing Date, and Buyer states in writing that it is unwilling to take title subject thereto, then the Purchase and Sale Agreement shall terminate and neither Seller nor Buyer shall thereafter have any further liability or obligation under the Purchase and Sale Agreement and Buyer shall be entitled to return of its Option Payment(s) under this Option Agreement. However, if Seller causes any new exception to title on the Property after the Option Closing Date (other than Pre-Approved Title Matters) that materially and adversely affects title to the Property (as reasonably determined by Buyer), then Buyer may terminate the Purchase and Sale Agreement and, in such event, Buyer is entitled to receive full and complete return of the Option payment paid to Seller. Seller shall not be required to incur any expense in order to render her title marketable or remove any matter disapproved by Buyer; provided that, Seller shall not refuse to remove any disapproved item that involves only payment of a monetary obligation secured by a lien or other encumbrance on the Property.

3.3.3 Title Policy. At Sale Closing, Seller and Buyer shall cause Title Company to issue an Owner's standard coverage title insurance policy (ALTA 2006 Owners Policy) ("Title Policy") to Buyer, at Seller's cost. The Title Policy shall (a) be issued in the amount of the total Purchase Price and (b) insure fee simple, indefeasible title to the Property in Buyer, subject only to the Permitted Exceptions and the standard printed exceptions. The Title Policy may contain endorsements as Buyer may require; provided that Buyer shall be solely responsible for all additional costs and requirements to obtain such endorsements.

3.4. Conditions to Buyer's Obligations.

3.4.1 Continued Inspection of the Property. For the sole purpose of confirming that no aspect of the Property has materially and adversely changed from the date of Buyer's initial inspection and assessment of the Property under Section 2.8 above, Buyer and its employees, representatives, consultants and agents shall have the right and permission from the Option Closing Date through the Sale Closing Date (or earlier termination of the Option or Purchase and Sale 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, toxic and hazardous waste studies, surveys, structural studies and review of zoning, fire, safety and other compliance matters; provided, however, that Buyer shall schedule all access to the Property in advance with Seller and shall be required to obtain Seller's written consent prior to conducting any invasive testing. Buyer shall further indemnify and hold harmless Seller from and against any mechanic's or other liens or claims, causes of action, costs, expenses, or liabilities that may be filed or asserted against the Property or Seller arising out of or relating to any actions taken by Buyer or its employees, agents, consultants or representatives in connection with the Property. To the extent necessary, Buyer shall reasonably restore the Property at its sole cost and expense to its condition immediately prior to any access or testing by Buyer or its employees, agents, consultants and representatives. Buyer's exercise of its Option to Purchase and any subsequent purchase of the Property shall be subject to its satisfaction that no aspect of the Property has materially and adversely changed for Buyer's intended use from the date of Buyer's initial inspection and assessment of the Property under Section 2.8 above, in Buyer's reasonable discretion. Buyer shall be required to satisfy itself of this condition prior to exercising the Option to Purchase under Section 2.6. Upon exercising the Option to Purchase, Buyer shall be deemed to have accepted the condition and all aspects of the Property. Buyer acknowledges that the sale of the Property shall be strictly on an "As-Is" basis, with all faults and defects, whether known or unknown, and Buyer agrees that, as of the Sale Closing Date, Buyer shall be deemed to have waived and released Seller from any and all claims, suits, demands, liabilities, damages and other obligations arising in connection with or related to the Property, other than those arising as a result of any intentional wrongful act of Seller. Notwithstanding the foregoing, in the event of a material and adverse change occurring upon or relating to the condition of the Property after exercising the Option to Purchase and before the Sale Closing, then Buyer may terminate the Option to Purchase and Purchase and Sale Agreement and Buyer shall be entitled to a full and complete refund of its Option payment(s).

Buyer hereby waives the right to any Seller's disclosure statement which would otherwise be required under RCW Chapter 64.06. Further, in the event a Seller's disclosure statement or any portion thereof is required under RCW Chapter 64.06, pursuant to RCW 64.06.040(3), Buyer hereby waives any right of rescission of the Purchase and Sale Agreement that Buyer might otherwise have under RCW Chapter 64.06.

3.4.2 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) All representations and warranties of Seller contained in the Purchase and Sale Agreement shall be true, accurate and complete at the time of the Sale Closing as if made again at such time;

(ii) Seller shall have performed all obligations to be performed by her hereunder on or before the Sale Closing (or, if earlier, on or before the date set forth in the Purchase and Sale Agreement for such performance);

(iii) At Sale Closing, title to the Property shall be in the condition required by **Section 3.3** herein and in the Purchase and Sale Agreement and Escrow Agent shall deliver the Title Policy to Buyer; and

(iv) At Closing, the physical condition and forest cover of the Property shall be substantially the same as on the date the Option is signed by Optionee, ordinary wear and tear excepted.

(v) The Purchase and Sale Agreement must be approved by the City of Olympia's City Council.

If the conditions set forth in this **Section 3.4** are not satisfied as of Sale Closing and Buyer does not waive the same, Buyer or Seller may terminate the Purchase and Sale Agreement, and thereafter neither Buyer nor Seller shall have any further liability one to the other under the Purchase and Sale Agreement, and Buyer shall be entitled to receive return of the Option payment paid to Seller.

3.5 Seller's Representations. Seller, Jill A. Floberg, as her separate estate, is authorized to enter into this Purchase and Sale Agreement. Seller has all necessary power and authority to enter into the Purchase and Sale Agreement for the Property. The Purchase and Sale Agreement shall constitute the legal, valid, binding and enforceable obligation of Seller and Buyer.

3.6 Seller's Provision of Further Information. From the Option Closing Date to the Sale Closing Date, Seller will notify Buyer of each event of which Seller becomes aware materially affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

3.7 Closing in the Purchase and Sale Agreement.

3.7.1 Time and Place. Provided that all the contingencies set forth in the Purchase and Sale Agreement have been previously fulfilled, the Sale Closing shall take place at the place and time determined as set forth in **Section 3.2** above.

3.7.2 Documents to be Delivered by Seller. For and in consideration of, and as a condition precedent to, the payment to Seller of any 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) **Deed.** A statutory warranty deed (“Deed”), conveying to Buyer title to the Property, free and clear of all liens, encumbrances, conditions, easements, assignments, and restrictions, except for the Permitted Exceptions, in the form attached hereto as **Exhibit B**.

(ii) **Title Documents.** Such other documents, including, without limitation, certificates of good standing as shall be reasonably required by the Title Company (at no cost or additional liability to Seller) as a condition to its insuring Buyer’s fee simple title to the Property free of any exceptions, other than the Permitted Exceptions, and any other documents reasonably requested by Title Company to close the sale.

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

3.7.3 Delivery by Buyer. Buyer shall deliver the Purchase Price to Seller at Sale Closing and any other documents reasonably requested by Title Company to close the sale.

3.7.4 Payment of Costs. Notwithstanding the foregoing, Seller and Buyer shall pay their own respective costs incurred with respect to the consummation of the purchase and sale of the Property including, without limitation, attorneys’ fees. Notwithstanding the foregoing, Seller shall pay the premium for the Owner’s Title Policy to be issued by Title Company to Buyer, the fee to record the Deed, one-half of the escrow fees and any excise tax due upon the sale of the Property to Buyer.

3.7.5 Property Taxes. In the event Seller has prepaid any taxes on the Property as of the date of Sale Closing, Seller shall be entitled to a pro rata refund on the amount paid pursuant to RCW 84.60.050.

3.7.6 Monetary Liens. Seller shall pay or cause to be satisfied at or prior to Sale Closing all recorded 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.

3.7.7 Possession. Possession and use of the Property shall be delivered to Buyer at Sale Closing.

3.8 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 (FedEx) 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 Seller: Name: Jill A. Floberg
 Address: P.O. Box 7683
 City, State, Zip: Olympia, WA 98507-7683
 E-mail: ja.floberg@gmail.com
 Phone: 360-791-0619

To Buyer: Attn: Mark Barber, City Attorney
 City of Olympia
 601 4th Avenue E
 P.O. Box 1967
 Olympia, WA 98507-1967
 E-mail: mbarber@ci.olympia.wa.us
 Phone: 360-753-8338; Fax 360-570-3791

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 Parties hereto.

3.9 Miscellaneous.

3.9.1 Applicable Law and Venue. The Option to Purchase and Real Estate Purchase and Sale Agreement shall in all respects, be governed by the laws of the State of Washington. Venue for any lawsuits concerning this Agreement shall be in Thurston County Superior Court.

3.9.2 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 under the Option to Purchase and Purchase and Sale Agreement, to carry out the intent of the Parties hereto.

3.9.3 Modification or Amendment, Waivers. No amendment, change or modification of the Option to Purchase or Purchase and Sale Agreement shall be valid, unless in writing and signed by all of the Parties hereto.

3.9.4 Successors and Assigns. All of the terms and provisions contained in the Purchase and Sale Agreement shall inure to the benefit of and shall be binding

upon the Parties hereto and their respective heirs, legal representatives, successors and permitted assigns. Optionee/Buyer shall not be permitted to assign the Option to Purchase or the Purchase and Sale Agreement, or any part thereof, to any other party or person without the express written consent of Optionor/Seller, which consent shall not be unreasonably withheld.

3.9.5 Entire Agreement. The Option to Purchase and Purchase and Sale Agreement shall constitute the entire understanding and agreement of the Parties with respect to their subject matters and any and all prior agreements, understandings or representations with respect to such subject matters are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under the Option to Purchase and Purchase and Sale Agreement to any person, firm or corporation other than the Parties.

3.9.6 Attorneys' Fees. Should any Party bring suit to enforce the Option to Purchase or Purchase and Sale 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.

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

3.9.8 Partial Invalidity. If any term or provision of the Option to Purchase or Purchase and Sale Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Option to Purchase or the Purchase and Sale Agreement shall not be affected thereby; and each such term and provision of the Option to Purchase or Purchase and Sale Agreement shall be valid and be enforced to the fullest extent permitted by law.

3.9.9 Survival. The covenants, agreements, representations and warranties made in the Option to Purchase or Purchase and Sale Agreement shall survive the Option or Sale Closing Dates unimpaired and shall not merge into the Deed and the recordation thereof.

3.9.10 Finders' or Brokers' Fees. Seller and Buyer each hereby represent and warrant to the other that no broker, agent or finders' fees or commissions, or other similar fees, are due or arising in connection with any of the transactions contemplated by the Option to Purchase or Purchase and Sale Agreement. Optionor/Seller and Optionee/Buyer each hereby agree to indemnify, defend and hold the other harmless from and against any loss, liability, damage, cost, damage, claim or expense, including interest, penalties and reasonable attorneys' fees, that a Party shall incur or suffer because of any claim by a broker, agent, or finder claiming by, through, or under such indemnifying party, whether or not such claim is

meritorious, for any compensation with respect to the entering into of the Option to Purchase or Purchase and Sale Agreement, the sale and purchase of the Property, or the consummation of the transactions contemplated herein.

3.9.11 Time. Time is of the essence of every provision of the Option to Purchase and Purchase and Sale Agreement.

3.9.12 Force Majeure. Performance by Seller or Buyer of their obligations under the Option to Purchase or Purchase and Sale 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).

3.9.13 No Individual Liability. In no event shall any shareholder, officer, director, member, partner, affiliate, agent or employee of Optionor/Seller be held liable or responsible in any way for the obligations or liabilities of Optionor/Seller under the Option to Purchase or Purchase and Sale Agreement.

3.9.14 Counterparts. The Option and Purchase and Sale Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one agreement; but in making proof of the Option to Purchase or Purchase and Sale Agreement, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of the Option or the Purchase and Sale Agreement may be combined to form multiple fully-executed counterparts; and (ii) a facsimile signature or an electronically scanned signature shall be deemed to be an original signature for all purposes. All executed counterparts of the Option to Purchase or Purchase and Sale Agreement shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same agreement either as Option to Purchase or Purchase and Sale Agreement.

3.9.15 Effective Date. The term, “**date of this Agreement**”, or “**date hereof**”, or “**Effective Date**”, as used herein, shall mean the later of the following dates: (1) the date of Buyer’s signature; (2) the last date of Seller’s signature; (3) or the date of approval by the City of Olympia’s City Council.

3.9.16 Release of Option. If Optionee fails to timely exercise its Option to Purchase or should the Purchase and Sale Agreement terminate for any other reason hereafter, Optionee/Buyer shall promptly execute and deliver to Optionor/Seller a termination and release of the Option to Purchase or Purchase and Sale Agreement in recordable format in order for Optionor/Seller to clear title of the obligations hereunder.

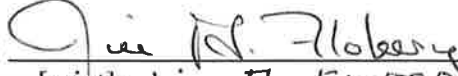
3.9.18 Default. If Optionee/Buyer defaults under any material provision of the Option to Purchase or Purchase and Sale Agreement and does not cure such material default after a ten (10) day notice and opportunity to cure is given by Optionor/Seller, Optionor/Seller may terminate the Option or Purchase and Sale Agreement by notice to

Optionee/Buyer and Optionor/Seller shall be entitled to retain the Option payments made hereunder, as their sole and exclusive remedy, except for the provisions set forth in Section 3.9.6 above. If Optionor/Seller defaults under any material provision of the Option or Purchase and Sale Agreement and does not cure such material default after a ten (10) day notice and opportunity to cure is given by Optionee/Buyer, Optionee/Buyer may terminate the Option to Purchase or Purchase and Sale Agreement by notice to Optionor/Seller and Optionee/Buyer shall be entitled to receive a full and complete refund of the Option payment(s) made hereunder, as its sole and exclusive remedy, except for the provisions set forth in Section 3.9.6 above.

[Signatures follow on next page.]

SELLER:

Jill A. Floberg, as her separate estate

By: 
Name [print]: Jill A. FLOBERG
Date: 8/10/16

BUYER:

City of Olympia, a Washington municipal corporation

By _____
Its: _____
Date: _____

APPROVED AS TO FORM:


City Attorney

EXHIBIT A-1
Property Legal Description

PARCEL A:

That part of Hurd Donation Claim No. 59, Township 18 North, Range 2 West, W.M., described as follows: Beginning at a point on the South line of said Hurd Claim 37.94 feet West of its intersection with the Westerly line of West Bay Drive; running thence West along said South line 460 feet, more or less, to a point 637.89 feet West of the Southeast corner of said Hurd Claim; thence North 146.19 feet and East 460 feet, more or less, to said Westerly line of West Bay Drive; thence Southeasterly along said Westerly line 120 feet, more or less; thence West 30 feet and South 30 feet to the point of beginning. EXCEPTING THEREFROM strip conveyed to the City of Olympia under File No. 988952.

PARCEL B:

An easement for ingress and egress purposes over that part of Lot 2 of Short Subdivision No. SS-5175 as recorded in Volume 11 of Short Plat at pages 57 through 62, records of Thurston County, Washington described as lying Southerly of Lot 1 of said Short Subdivision and lying Easterly of a line described as follows: Beginning at the Southwest corner of said Lot 1; thence Westerly and Southwesterly along a curve the radius point which bears South 0° 00' 41" West feet distant for an arc distance of 23.56 feet; and thence South 45° 00' 41" West 30.00 feet to the South line of said Lot 2.

Situate in Thurston County, Washington.

**EXHIBIT B
STATUTORY WARRANTY DEED**

Form of Deed

AFTER RECORDING MAIL TO:

Legal Department
City of Olympia
601 4th Avenue East
P.O. Box 1967
Olympia, WA 98507-1967

STATUTORY WARRANTY DEED

The Grantor, **Jill A. Floberg**, as her separate estate, for and in consideration of the sum of TEN and NO/100---(\$10.00) Dollars, and other valuable considerations, in hand paid, hereby conveys and warrants to the **CITY OF OLYMPIA**, a municipal corporation, the following described real estate and all rights thereto, situated in the City of Olympia, County of Thurston, in the State of Washington, including all after acquired title, the real property legally described as follows:

See legal description attached as Exhibit A.

Subject to the matters set forth on Exhibit B attached hereto. [Permitted Exceptions to be attached]

DATED this ____ day of _____, 201_.

By: _____
Jill A. Floberg, as her separate estate

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that **Jill A. Floberg** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 201__.

Signature
Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____