

CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE: September 9, 2019

SUBJECT: Purchase and Sale Agreement between City of Blaine and Family Care Network for approximately Two and One Half Acres of Property

DEPARTMENT: City Manager

PREPARED BY: _____

AGENDA LOCATION: Consent Agenda Council Action Unfinished Business

ATTACHMENTS:

1. Purchase and Sale Agreement
2. Purchase and Sale – Hold Back Agreement

BACKGROUND/SUMMARY:

The City has been in negotiations to sell approximately two and one half acres of property in the Gateway General Binding Site Plan (former airport site) to the Family Care Network. The buyer intends to develop a primary care medical facility, a medical laboratory, and an urgent care facility with associated parking and site improvements. The proposal originally involved property at the north end of the site adjacent to H Street, SR-543, and Grant Avenue. Negotiations have changed the location to a middle portion of the site, just north of the area sold to Boblett Properties LLC for construction of a restaurant, convenience store, and vehicle fueling center. The proposed parcel would extend from SR-543 to Grant Avenue. The size and dimensions are subject to site planning and final agreement between the buyer and seller.

Price has been established at \$3.10 per square foot. A hold back agreement allows for up to 10-percent of the purchase price as a rebate to the buyer based on meeting performance standards. The two performance standards are 1) receipt of an occupancy permit within 24 months of closing, and 2) creation of at least one full time job for every 500 square feet of building floor area. If both performance measures are achieved the effective purchase price would be \$2.79 per square foot.

Budget Implications: Current Budget New Budget Request Non-Budgetary

The property sale would add income to the City, but it does not impact the 2019 Budget directly.

Recommendation:

The City Manager recommends that the Council authorize the City Manager to sign the purchase and sale agreement and hold back agreement with the Family Care Network for the sale of approximately 2.5 acres of land.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

**PURCHASE AND SALE AGREEMENT
[SQUARE FOOTAGE BASIS]**

This **PURCHASE AND SALE AGREEMENT** (this "Agreement"), made as of the day of _____, 20____ (the "Effective Date"), is by and between the **CITY OF BLAINE**, a Washington State municipal corporation (referred to as the "City" or "Seller"), and **BUILDING PARTNERSHIP LLC** a Washington limited liability company (referred to as "Buyer").

I. RECITALS

WHEREAS, Seller desires to sell, and Buyer desires to purchase, certain property located in Whatcom County, Washington, consisting of approximately 2.5 acres (108,900 square feet) in the area approximately depicted in *Exhibit A*, attached hereto (the "Property") at a price of Three Dollars and Ten Cents (\$3.10) per square foot as adjusted by a post-closing performance incentive provided in Section 3.2 below; and

WHEREAS, the Parties acknowledge that the Property is not a legal lot of record at the time of the execution of this Agreement and is to be created by the City as part of a subdivision (referred to herein as the "Subdivision", and anticipated to be either a specific binding site plan, short plat or lot line adjustment), and each party may terminate this Agreement at any time at no cost to either Party prior to the creation of the Property as a legal lot of record; and

WHEREAS, the sale of property by a municipal entity is exempt from SEPA review. WAC 197-11-800 (5)(a) and (b).

II. TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. RECITALS INTEGRATED

1.1 The Recitals set forth above are material parts of the agreement between the Parties and are integrated herein as if fully set forth herein.

SECTION 2. SALE AND PURCHASE

2.1 Property and Purchase Price. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller certain property located in the City of Blaine, Washington consisting of approximately 2.5 acres (108,900 square feet) in the area approximately depicted in *Exhibit A*, attached hereto (the "Property") at a Purchase Price to be computed at a price of Three Dollars and Ten cents (\$3.10) per square foot as adjusted by a post-closing performance incentive provided in Section 3.2 below, and all on the terms, covenants and conditions set forth herein. Prior to post-closing adjustment, the Purchase Price is estimated to be Three Hundred and Thirty-Seven Thousand Five Hundred and Ninety Dollars (\$337,590.00). The Property to be purchased has not yet

been legally defined or platted. Buyer and Seller agree that the outline of the property being sold shall be substantially as depicted on *Exhibit A* attached hereto. The Parties further agree and acknowledge that the final southern and western boundary lines of the Property shall be a line aligned with the southern and western boundaries of the Lot B of the Boblett Properties, LLC Lot Line Adjustment recorded under Whatcom County Auditor File Number 2018-1202475. The Property will be approximately 108,900 square feet. The final area of the Property will be set forth in the Subdivision and may differ from the area depicted in *Exhibit A*, hereto. The final Purchase Price will be determined by and agreed to by the Parties based upon the agreed upon area of the Property and recorded in the Subdivision. The final area and legal description of the Property shall be agreed upon by the Parties at Closing, and shall, upon such approval, modify *Exhibit A* and shall add an *Exhibit B* that shall be the legal description of the Property.

2.2 Title to Property. Seller shall convey to Buyer at the Closing, as hereinafter defined, insurable fee simple title free and clear of all encumbrances except the Permitted Exceptions, as defined below, and those provided for in the standard form title insurance policy by execution and delivery of a Statutory Warranty Deed to the Property in a form acceptable to Buyer (the "Deed"). Evidence of delivery of insurable fee simple title shall be the issuance by Chicago Title Insurance Company (the "Escrow Holder") of an ALTA standard coverage Owner's Policy of Title Insurance or report preliminary thereto with liability in the amount of the Purchase Price insuring fee simple title to the Property in Buyer, subject only to those accepted by the Seller and the Buyer and those provided for in the standard form title insurance policy. Rights reserved in federal patents or state deeds, building or use restrictions general to the district, and building or zoning regulations or provisions shall not be deemed encumbrances or defects. Encumbrances to be discharged by Seller may be paid out of purchase money on the date of Closing.

SECTION 3. PURCHASE PRICE AND PAYMENT

3.1 Earnest Money Deposit. Upon execution of this Agreement, the Buyer shall deliver to the Seller the amount of Ten Thousand Dollars (\$10,000.00) as earnest money (the "Earnest Money") to be deposited and held by the Escrow Holder, which Earnest Money shall be (i) applied against the Purchase Price for the Property due on the Closing Date; (ii) forfeited to Seller if this transaction fails to close due to Buyer's default; or (iii) refunded to Buyer if this transaction fails to close due to Seller's default.

3.2 Post-Closing Purchase Price Adjustment. Pursuant to City Council Resolution No. 1708-17 (the "Resolution"), the City Council has determined that it is in the public interest and of significant value to the City to sell City owned land at the former City Airport that (a) attracts new high quality businesses consistent with the applicable City Comprehensive and Economic Development Plans, (b) brings a significant number of new living wage jobs to the City, (c) provides a property value lift to further growth potential of surrounding industrial and manufacturing lands, (d) develops within a defined time period, and (e) provides for the opportunity for development that enhances the quality of life within the City of Blaine.

The City Council determined that the sale of the Property to the Buyer achieves these goals, upon the occurrence and completion of certain post-Closing actions. Accordingly, and pursuant to the Agreement and the Resolution, the City agrees to return to the Buyer up to a maximum of ten percent (10%) of the Purchase Price [estimated to be Thirty Three Thousand and Seven Hundred and Fifty Nine Dollars (\$33,759.00)] upon the satisfaction of the following conditions set forth below:

At closing, the Parties shall execute a Holdback Agreement, the form of which is attached as Exhibit C hereto, which provides that ten percent (10%) of the final Purchase Price paid by Buyer ("Holdback Funds") shall be held in the trust account of the City Attorney, Chmelik Sitkin & Davis P.S., (the entity holding the Holdback Funds in trust is referred to herein as the "Holdback Agent") for disbursal to the Seller or return to the Buyer upon the satisfaction of the following provisions:

- A. One-half of the Holdback Funds held in escrow, which is estimated to be Sixteen Thousand Eight Hundred Seventy Nine Dollars and Fifty Cents (\$16,879.50), shall be released to Buyer no later than ten (10) business days after (i) the City's receipt of written notice from Buyer that Buyer has received an Occupancy Permit or Certificate of Occupancy (which may be a Temporary Occupancy Permit) by the City of Blaine for the Building within twenty four (24) months after Closing, and (ii) the Buyer has delivered to the Holdback Agent a written authorization to release said funds on a form approved by the Holdback Agent.
- B. The second and final one-half of the Holdback Funds held in escrow, which is estimated to be Sixteen Thousand Eight Hundred Seventy Nine Dollars and Fifty Cents (\$16,879.50), shall be released to Buyer no later than ten (10) business days after (i) One (1) full-time job per 500 square feet of the Building (for the purpose of this section, full-time jobs shall be any job that requires 35 or more hours per week) by certification under penalty of perjury by the Buyer's Chief Executive Officer, Chief Financial Officer or Chief Operating Officer that such jobs have been assigned, or employed at the Property and as verified by the City Manager or his/her designee, which may include an on-site inspection, and (ii) the Buyer has delivered to the Holdback Agent a written authorization to release said funds on a form approved by the Holdback Agent.

3.2.1 The Parties elect to have the City Attorney, Chmelik Sitkin & Davis P.S., retain the Holdback Funds in its trust account. Pursuant to this Agreement, the Parties shall so stipulate as part of the Holdback Agreement S., which shall include a waiver of any conflict of interest and a release of claims against the Holdback Agent.

3.2.2 The Holdback Funds may be held in an interest-bearing account, at the discretion of the City. Any interest accrued on the funds held in escrow shall belong to the City.

3.2.3 Real Estate Excise Tax. Real estate excise tax, if any, shall be paid on the full Purchase Price, prior to adjustment as provided above.

3.3 Payment. The Purchase Price, less the Earnest Money Deposit, shall be payable in cash, wire transfer or certified check available to the Seller at Closing.

SECTION 4. CONDITIONS AND DISCLOSURE STATEMENT

4.1 Contingency. The obligations of Buyer under this Agreement and consummation of Closing are, at Buyer's option, subject to the complete satisfaction or waiver of each and every one of the following conditions:

4.1.1 Feasibility Period. Within ninety (90) days of mutual execution of this Agreement (the "Feasibility Period"), the Buyer shall complete a feasibility study satisfactory to the Buyer that it is feasible for Buyer to own and operate the Property and improvements to be constructed thereon by Buyer in a manner and upon terms and conditions satisfactory to Buyer, and shall within the Feasibility Period deliver to the City a proposed site plan including proposed boundaries of the Property ("Site Plan"). The feasibility study may include, but shall not be limited to, (i) Buyer's satisfaction that all permits, building permits, approvals and licenses, shoreline permits and any other governmental approvals or permits, including zoning, are available with conditions acceptable to Buyer and all appeals periods for such matters have expired; (ii) Buyer is satisfied that there are no Hazardous Materials (as defined in Section 5.1.6) on the Property; and (iii) Buyer is in receipt of all plans, specifications, permits, soil studies, environmental audits, and any other related information, including the Development Documents, if any, which are available to Seller.

4.1.1.1 Buyer agrees that it shall be solely responsible for the nature, scope and extent of its investigations of the Property, and no statements made or information provided by Seller shall be construed or relied upon as advice or recommendation as to the kind or extent of any studies, tests or evaluations which should be obtained by Buyer or will be adequate for Buyer's purposes. No physical intrusions of the Property shall occur without the Seller's prior written consent, which shall not be unreasonably withheld or delayed. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all liens, claims, loss or liability arising out of Buyer's or Buyer's Agents' entry onto the Property prior to Closing. Buyer shall return the Property to its pre-existing condition immediately upon completion of any invasive inspection.

4.1.2 Subdivision Contingency Period/ Creation of Legal Lot of Record. Upon the City's receipt of the Site Plan from the Buyer, the City shall thereafter make good faith efforts to apply and obtain subdivision approval for the creation of the Property as identified in the Site Plan, which is estimated to take between ninety (90) days. In conformance with RCW 58.17.205, the obligation of the Seller to

sell the Property, and the Buyer's obligation to buy the Property, and any deposit of funds into escrow are subject to and conditioned (i) upon the recording of a Subdivision creating the Property as a legal lot of record, and (ii) each Party's independent approval and acceptance of the legal description of the Property within ten (10) days of the recordation of the Subdivision ("Subdivision Acceptance Date").

4.1.3 Effect of No Notice. If Buyer fails to notify Seller in writing that all of the conditions set forth in either Section 4.1.1, or Section 4.1.2 have been satisfied or waived within the applicable time periods set forth herein, this Agreement shall terminate, the Earnest Money Deposit shall be returned to Buyer, and neither Party shall have any further rights or obligations whatsoever arising out of or in connection with this Agreement except as otherwise specifically set forth herein.

4.2 Buyer Acknowledges that Each Purchase of Property is an "As Is" Purchase.

As of closing, Buyer accepts the Property that it is acquiring in the condition existing on the date of this Agreement and confirms that neither Seller nor any agent or representative of Seller has given or made any warranty or representation whatsoever concerning the physical condition thereof or the uses or purposes to which the same may now or hereafter occur, except as set forth in the applicable Deed and Sections 5.1 and 11.2 of this Agreement. Buyer acknowledges that it is a sophisticated purchaser of real property, that it is conducting its own due diligence with respect to the physical and environmental condition of the Property, and the Property that it is purchasing is acquired on an "as is, where is" and with all faults basis only, without representations or warranties, express or implied, as to the merchantability, condition, fitness or habitability of the Property being acquired, or as to its suitability for a particular use, or its compliance with governmental requirements, or as to the physical or environmental condition of the Property. Each Party acknowledges that it has been provided access to the Property it is acquiring pursuant to this Agreement at reasonable times to conduct reasonable inspections.

4.3 **Waiver of Disclosure Statement.** To the extent permitted by Chapter 64.06 RCW, as the Property is commercial real estate, the Buyer waives receipt of the disclosure statement.

SECTION 5. REPRESENTATIONS AND WARRANTIES

5.1 **Seller's Warranties.** Seller represents and warrants to Buyer that, to the best of Seller's actual knowledge without a duty of investigation, the following facts are true as of the date of Seller's execution hereof and as of Closing, or as of such other date as may be set forth herein:

5.1.1 Delivery of Information. Seller has delivered, or will deliver to Buyer within five (5) business days of execution of this Agreement, full and complete copies of (1) any existing surveys, geological reports, tests, and Hazardous Materials reports or investigations of the Property and (2) all government permits, licenses and approvals, any existing appraisals of the Property or any

portions thereof, and any studies or other reports or information in the possession of or available to Seller which pertain in any way whatsoever to the Property, including without limitation, the condition thereof and/or any present or potential development and/or use of the Property (all of which items in this clause being collectively, the "Development Documents"). The commencement of the Feasibility Period shall be extended one (1) day for each day the delivery of the Development Documents to Buyer is delayed.

5.1.2 Other Agreements. There are no other contracts or agreements in force or effect for sale of all or any portion of the Property, and Seller agrees (a) not to enter into any such contracts or agreements between the date hereof and Closing and (b) to use its best efforts to terminate any such contracts that come to its attention between the date hereof and Closing.

5.1.3 Litigation. There is no action, suit, investigation or proceeding (administrative or otherwise) pending or threatened against or affecting the Property or any portion of it, the transactions contemplated hereby, or which might affect the right of Buyer to own, operate, develop or possess the Property or which might have a material effect on the business of the Property or result in any liability of Buyer with respect thereto.

5.1.4 True and Accurate. No representation or warranty by Seller contained in this Agreement or any exhibit hereto or in any document, statement, certificate, financial information or schedule given to or to be given to Buyer as a result of or in connection with this Agreement, contains or on Closing will contain, an untrue statement of material fact, or omits or on Closing will omit to state a material fact necessary to make the statements and facts contained therein not misleading.

5.1.5 Encumbrances. Seller's execution, delivery and consummation of this Agreement shall not result in any default or violation of any agreement or law by which Seller is bound or which will result in any lien, charge or encumbrance on the Property.

5.1.6 Liens. All persons and entities supplying labor, materials and equipment to the Property have been paid and there are no claims of liens or service contracts applicable to the Property.

5.1.7 Closing Contingencies. Buyer's obligation to Close this transaction shall be further conditioned upon all of Seller's representations and warranties set forth in this Section 5.1 hereof being true, correct and complete as of the Closing.

The representations and warranties made by Seller shall be true and correct as of the date hereof and shall be deemed automatically reaffirmed on the Closing Date as true and correct. Buyer's rights to enforce such representations and warranties and covenants shall survive the Closing and such rights to enforce shall not be merged into any documents delivered by Seller at Closing.

5.2 Environmental Representation and Warranty. The Buyer acknowledges that it is a sophisticated purchaser of real property and that it is conducting its own due diligence with respect to the physical and environmental condition of the Property. The Property is being sold and conveyed and Buyer agrees to accept the property “as-is” and “with all faults” and subject to any physical or environmental condition which may exist on, in, under, about, emanating from or connected with the Property, without any representation or warranty by Seller except as expressly set forth herein.

5.2.1 Environmental Release. Buyer hereby releases Seller from and against, any and all losses, liabilities, damages, demands, claims, actions, judgments, assessments, penalties, costs, expenses, liens, fines, or penalties, as well as all foreseeable and unforeseeable consequential damages, and all other costs and expenses of any kind or nature, which are claimed by or against or suffered or incurred by Buyer with respect to the Property arising out of or as a result of the presence of any Hazardous Substance in, on, above, under or emanating from or connected with the Property as of the date of Closing, or any diminution in value of the Property attributable thereto, except to the extent the presence of such Hazardous Substances is attributable to the acts or omissions of the Seller or its agents or any permission granted by Seller or its agents. This release is part of the consideration paid by the Buyer to the Seller for the Property. This release shall survive Closing and shall be binding on Buyer’s heirs, successors, and assigns.

5.2.2 Hazardous Substances. The term “hazardous substances”, as used herein, shall mean any substance heretofore or hereafter designated as hazardous or deleterious under the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7401 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq.; or the Hazardous Waste Cleanup- Model Toxic Control Act, RCW 70.105D, all as amended and subject to all regulations and codes promulgated thereunder.

5.3 Buyer's Warranties. Buyer represents and warrants to Seller that Buyer is a limited liability company organized, validly existing and in good standing under the laws of the State of Washington, and execution of this Agreement by Buyer and its delivery to Seller have been duly authorized by Buyer's member(s) and no further corporate action is necessary on the part of Buyer to make this Agreement fully and completely binding upon Buyer in accordance with its terms. No other authorizations or approvals will be necessary for Buyer to enter into this Agreement.

SECTION 6. POSSESSION

6.1 Possession. Possession of the Property shall be delivered at Closing.

SECTION 7. TITLE

7.1 Title Commitment. Seller shall, within ten (10) days after the date of receipt of notice that the Subdivision has been recorded, furnish to Buyer a commitment (“Title

Commitment”) for a standard owner’s policy of title insurance, issued by the Escrow Agent, committing the Escrow Agent to insure good and marketable title to the Property free and clear of liens, deeds of trust, charges, defects or encumbrances other than the “Permitted Exceptions”.

7.2 Escrow Agent. The Escrow Agent shall be Chicago Title Insurance Co., Bellingham, Washington.

7.3 Permitted Exceptions. Rights reserved in federal patents or state deeds, building or use restrictions general to the district, existing easements, and building or zoning regulations or provisions shall not be deemed encumbrances or defects and Seller shall not be obligated to remove them at or before closing (the “Permitted Exceptions”).

7.4 Buyer’s Objections. Buyer will make any objections it may have regarding the Title Commitment and any Schedules thereto within ten (10) days of receiving the Title Commitment. Buyer’s failure to make Objections within such period will constitute a waiver of Objections with respect to matters disclosed in the Title Commitment and the Schedules thereto. Any specific matter shown in the Title Commitment and the Schedules thereto and not objected to by Buyer shall be included as a “Permitted Exception” hereunder. In the event Buyer’s objection to any exceptions or defects set forth in the Title Commitment and the Schedules thereto, Seller shall have five (5) days from delivery of Buyer’s notice to notify Buyer, in writing, that: (i) Seller will cause the disapproved exceptions to be removed from the policy of title insurance to be issued in favor of Buyer on or before Closing; or (ii) that Seller will not eliminate the disapproved exceptions. If Seller: (i) notifies Buyer, in writing, that Seller will not eliminate the objected to exceptions on or before Closing; or (ii) Seller does not notify Buyer, in writing, that Seller will cause the objected to exceptions to be eliminated on or before Closing, then this Agreement shall terminate, and neither Buyer nor Seller shall have any further rights, duties, or obligations hereunder except that the Earnest Money previously paid by Buyer together with any interest accrued thereon, shall be immediately refunded by the Closing Agent to Buyer, unless within three (3) days of the earlier of (i) the expiration of said five (5) day period, or (ii) the date that Seller notifies Buyer that Seller will not eliminate the objected to exceptions, Buyer waives its objections and elects to proceed with Closing subject to the objected to exceptions. The title exceptions approved as provided herein shall be included as Permitted Exceptions. Objections to be discharged by Seller may be paid out of the purchase money received at date of Closing.

SECTION 8. CLOSING

8.1 Closing Date. This transaction will be closed in escrow by the Closing Agent acting as escrow agent. The closing will be held at the offices of the Closing Agent on or before that date which is thirty (30) days following the recording of the Subdivision (the “Closing Date”). If closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by the City and Buyer, the Escrow Agent will immediately terminate the escrow, and return all documents to the Party that deposited

them. Either Party thereafter may seek specific performance to compel the transfer of any of the properties.

8.2 Deposit of Closing Documents.

8.2.1 By Seller. On or before the Closing Date, the City shall duly execute and deposit into escrow with the Closing Agent the following:

- (a) The duly executed and acknowledged Buyer Deed;
- (b) Duly executed and completed Real Estate Excise Tax Affidavit(s);
- (c) Duly executed and completed Holdback Agreement;
- (d) A standard owner's policy of title insurance with liability in the amount of the Purchase Price naming the Buyer as insured;
- (e) Any reconveyance documents required to eliminate of record any existing deeds of trust and other security instruments which are a lien on the Property;
- (f) Such resolutions, authorizations, certificates, court orders or other documents or agreements relating to Seller, as shall be reasonably required in connection with this transaction; and
- (g) Any other documents, instruments, records, correspondence, and agreements called for hereunder that have not previously been delivered.

8.2.2 By Buyer. On or before the Closing Date, the Buyer shall duly execute and deposit into escrow with the Closing Agent the following:

- (a) Cash or immediately available funds in an amount sufficient to pay the Purchase Price, plus Buyer's share of closing costs;
- (b) Duly executed and completed Real Estate Excise Tax Affidavit(s);
- (c) Duly executed and completed Holdback Agreement;
- (d) Such resolutions, authorizations, certificates, court orders or other documents or agreements relating to Buyer, as shall be reasonably required in connection with this transaction; and
- (e) Any other documents, instruments, records, correspondence, and agreements called for hereunder that have not previously been delivered.

8.2.3 Additional Instruments and Documentation. The City and Buyer shall each deposit any other instruments and documents that are reasonably required by Closing Agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.

8.3 Costs. Seller shall pay the cost of the policy of standard owner's coverage title insurance required hereby (except the cost of extended coverage or endorsements), all real property excise taxes due and payable in connection with the sale of the Property, the cost of any documentary or transfer tax or stamps and one-half of the other Closing expenses including Escrow fees and charges and any recording fees, except the cost of recording the Deed. Buyer shall pay the remaining one-half of the other Closing expenses including Escrow fees and charges, the cost of recording the Deed, the cost of the Policy in excess of the cost of ALTA standard owner's coverage, and any endorsements to the Policy required by Buyer. All real and personal property taxes shall be prorated between Seller and Buyer as of Closing. The real property taxes and assessments shall be prorated using the most recent tax information available.

8.4 Adjustments and Prorations. All revenues and all expenses of the Property, including, but not limited to, real property taxes, special assessments, rents, water, sewer and utility charges, amounts payable under the Agreement, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and any other expenses normal to the ownership, use, operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the Closing Date.

8.5 Foreign Investment in Real Property Tax Act. The Parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder (the "Regulations"). If Seller is not a "foreign person" (as defined in the Regulations), Seller shall deliver to Buyer through escrow a nonforeign certificate as prescribed by the Regulations, properly executed and in form and content satisfactory to Buyer. If Seller is a "foreign person" or fails or refuses to deliver the nonforeign certificate, or if Buyer receives notice, or has actual knowledge, that the nonforeign certificate is false, a tax equal to ten percent (10%) of the Purchase Price will be withheld through escrow and paid by Escrow Agent to the Internal Revenue Service in the manner prescribed by the Regulations, unless withholding is reduced or excused in the manner prescribed by the Regulations. In the event of any withholding, Seller's obligations to deliver title and close this transaction will not be excused or otherwise affected.

SECTION 9. REMEDIES

9.1 Default. If the transaction fails to Close due to default by Buyer, Seller's sole and exclusive remedy shall be to terminate this Agreement and collect and retain the Earnest Money Deposit and all interest accrued thereon, if any, as liquidated damages. Seller hereby releases any and all right to specific performance of this Agreement and/or to recover actual damages incurred as a result of Buyer's default. In the event of any breach of this Agreement by Seller, the Buyer's sole and exclusive remedies shall be the return of the Earnest Money (and all interest accrued thereon) to Buyer or alternatively the right to specific performance, but shall have no right to any damages of any nature and hereby releases any such right. The foregoing provisions represent the agreement of the Parties as to what the remedies will be if a party defaults by failing to close this transaction. In addition, each Party retains any cause of action arising from any other breach or default by Buyer under this Agreement related solely to indemnification obligations.

SECTION 10. ESCROW INSTRUCTIONS

10.1 Upon execution of this Agreement, the Parties shall deposit an executed counterpart of this Agreement with the Escrow Agent, and this Agreement shall serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such additional and supplemental escrow instructions as may be appropriate to enable the Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplemental escrow instructions, the terms of this Agreement shall control.

SECTION 11. MISCELLANEOUS

11.1 Notices. Any demand, request or notice which either Party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service (such as Federal Express), or three days after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows:

To Buyer: **BUILDING PARTNERSHIP LLC**
Attn: _____

With a copy to: _____
Attn: _____

To City: Michael Jones, City Manager
City of Blaine
435 Martin Street, Suite 3000
Blaine, WA 98230
Telephone: (360) 332-8311
Fax: (360) 332-8330

With a copy to: Jonathan K. Sitkin
Chmelik Sitkin & Davis P.S.
1500 Railroad Avenue
Bellingham, WA 98225
Telephone: (360) 671-1796
Fax: (360) 671-3781

or to such other single address which is not a post office box and person as either Party may communicate to the other by like written notice.

11.2 Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes any prior understandings and agreements between them respecting the subject matter hereof. There are no other representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto or any of them, relating to the subject matter of this Agreement. No amendment of or supplement to this Agreement shall be valid or effective unless made in writing and executed by the Parties hereto.

11.3 Construction. The section headings throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identification of the person or persons, firm or firms, corporation or corporations may require. The word "person" shall mean an individual, firm, association, corporation, limited liability company, trust or any other form of business or legal entity. The locative adverbs "herein", "hereunder", "hereto", "hereby", "hereinafter", etc., whenever the same appear herein, mean and refer to this Agreement in its entirety and not to any specific section or subsection hereof. Any reference herein to "days" means consecutive calendar days, unless otherwise stated. If the last day of any time period or any other specified date occurs on a day when the recording office of the county in which the Property is located is closed, such time period or date shall be extended to the next day such recording office is open. All parties hereto have been represented by legal counsel in this transaction and accordingly hereby waive the general rule of construction that an agreement shall be construed against its drafter.

11.4 Attorneys' Fees. In the event of litigation between the Parties hereto, declaratory or otherwise, in connection with or arising out of this Agreement, the prevailing Party shall recover from the non-prevailing Party all actual litigation costs, actual damages and actual expenses, including attorneys' fees, paralegals' fees and other professional or consultants' fees expended or incurred in connection therewith, as set by the court, including for appeals, which shall be determined and fixed by the court as part of the judgment.

11.5 Additional Documents. Each Party agrees to take such action and to execute, acknowledge and deliver any and all documents and instruments as may be desired by the other Party more effectively to carry out the purposes of this Agreement.

11.6 Condemnation. If prior to Closing any portion of the Property is the subject of an eminent domain action or threatened therewith, Buyer shall have the right to either terminate this Agreement and recover the Earnest Money Deposit or proceed with Closing and receive all proceeds resulting therefrom.

11.7 Brokers and Finders. Seller and Buyer shall pay a commission in accordance with any listing or commission agreement to which they are a party. The Party that

incurred such a fee or obligation shall be solely responsible for the payment thereof. The Seller's broker is Mike Kent/Jeff Johnson of Windermere Real Estate. The Buyer's Broker is Jeff Hopwood of Windermere Real Estate.

11.8 Applicable Law. This Agreement shall be construed and interpreted under the laws of the State of Washington.

11.9 Survival. All warranties, representations, covenants, obligations and agreements contained in or arising out of this Agreement shall survive the Closing and the transfer and conveyance of the Property hereunder and any and all performance hereunder. All warranties and representations shall be effective regardless of any investigation made or which could have been made.

11.10 Assignment. This Agreement may not be assigned, except that Buyer's rights and obligations in this Agreement may be assigned to a new entity, provided that the majority and controlling owners of the new entity are the same as the majority and controlling owners of the Buyer and Buyer has notified Seller of any proposed change in advance in writing.

11.11 Waiver. No failure by Seller or Buyer to insist upon the strict performance of any covenant, duty agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any Party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

11.12 Authority.

11.12.1 Seller's Authority. Seller represents and warrants to Buyer that the Seller is a Washington municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington. Seller has full right, power and authority to execute this Agreement, subject to City Council final approval of the Property as reflected in the Subdivision prior to closing, otherwise no other authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order for Seller to enter into this Agreement.

11.12.2 Buyer's Authority. Buyer represents and warrants to Seller that Buyer is a Washington corporation duly organized, validly existing and in good standing under the laws of the State of Washington. Buyer has full right, power and authority to execute this Agreement. No other authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order for Buyer to enter into this Agreement.

11.13 Counterparts. This Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution and delivery of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts. The signatures to this Agreement may be executed on separate pages and when attached to this Agreement shall constitute one complete document.

SELLER: CITY OF BLAINE

_____ Date: _____
By: Michael Jones
Its: City Manager

BUYER: BUILDING PARTNERSHIP LLC

_____ Date: _____
By: _____ [printed name]
Its: _____

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**EXHIBIT A
DEPICTION OF PROPERTY**

**EXHIBIT B
LEGAL DESCRIPTION OF PROPERTY**

To Be added and Agreed to by the Parties prior to end of Feasibility Period

**EXHIBIT C
HOLDBACK AGREEMENT**

**EXHIBIT C TO
PURCHASE AND SALE AGREEMENT**

HOLDBACK AGREEMENT

THISHOLDBACK AGREEMENT TO PURCHASE AND SALE AGREEMENT is by and between the **CITY OF BLAINE**, a Washington State municipal corporation (referred to as the "City" or "Seller"), and **BUILDING PARTNERSHIP LLC**, a Washington limited liability company (referred to as "Buyer") (collectively the "Parties") dated _____, 2019, related to the acquisition of approximately 2.5 acres within the City of Blaine, generally depicted in Exhibit A to the Purchase Agreement between the Parties entered into on ____ day of _____, 2019.

I. Property.

Buyer and Seller agree that the Property is depicted on the attached Exhibit A titled "_____", and shall be the final lot configuration of the Subject Parcel.

II. Purchase Price and Lot Size Amendment.

The purchase price is amended to _____ (\$____,____.00), which represents the final lot size of _____ square feet, at the price of Three Dollars and Ten Cents (\$3.10) per square foot.

III. Post-Closing Purchase Price Adjustment.

Pursuant to City Council Resolution No. 1708-17, (the "Resolution"), the City Council has determined that it is in the public interest and of significant value to the City to sell City owned land at the former City Airport that (a) attracts new high quality businesses consistent with the applicable City Comprehensive and Economic Development Plans, (b) brings a significant number of new living wage jobs to the City, (c) provides a property value lift to further growth potential of surrounding industrial and manufacturing lands, (d) develops within a defined time period, and (e) provides for the opportunity for development that enhances the quality of life within the City of Blaine.

The City Council determined that the sale of the Property to the Buyer achieves these goals, upon the occurrence and completion of certain post-Closing actions. Accordingly, and pursuant to the Purchase and Sale Agreement and the Resolution, the City agrees to return to the Buyer up to a maximum of ten percent (10%) of the Purchase Price, which is _____ Dollars (\$____.00) upon the satisfaction of the following conditions set forth below:

At closing, the Parties shall execute a Holdback Agreement, the form of which is attached as Exhibit C hereto, which provides that ten percent (10%) of the final Purchase Price paid by Buyer ("Holdback Funds") shall be held in the trust account of the City Attorney, Chmelik Sitkin & Davis P.S., (the entity holding the Holdback Funds in

trust is referred to herein as the "Holdback Agent") for disbursal to the Seller or return to the Buyer upon the satisfaction of the following provisions:

- A. One-half of the Holdback Funds held in escrow, which is _____ Dollars (\$_____.00), shall be released to Buyer no later than ten (10) business days after (i) the City's receipt of written notice from Buyer that Buyer has received an Occupancy Permit or Certificate of Occupancy (which may be a Temporary Occupancy Permit) by the City of Blaine for the Building within twenty four (24) months after Closing, and (ii) the Buyer has delivered to the Holdback Agent a written authorization to release said funds on a form approved by the Holdback Agent.
- B. The second and final one-half of the Holdback Funds held in escrow, which is estimated to be _____ Dollars (\$_____.00), shall be released to Buyer no later than ten (10) business days after (i) One (1) full-time job per 500 square feet of the Building (for the purpose of this section, full-time jobs shall be any job that requires 35 or more hours per week) by certification under penalty of perjury by the Buyer's Chief Executive Officer, Chief Financial Officer or Chief Operating Officer that such jobs have been assigned, or employed at the Property and as verified by the City Manager or his/her designee, which may include an on-site inspection, and (ii) the Buyer has delivered to the Holdback Agent a written authorization to release said funds on a form approved by the Holdback Agent.

3.2.1 The Parties elect to have the City Attorney, Chmelik Sitkin & Davis P.S., retain the Holdback Funds in its trust account. Pursuant to this Agreement, the Parties waive of any conflict of interest and release all potential known or unknown of claims against the Holdback Agent.

3.2.2 The Holdback Funds may be held in an interest-bearing account, at the discretion of the City. Any interest accrued on the funds held in escrow shall belong to the City.

3.2.3 Real Estate Excise Tax. Real estate excise tax, if any, shall be paid on the full Purchase Price, prior to adjustment as provided above.

IN WITNESS WHEREOF, the Parties have executed this Holdback Agreement the date and year set forth above.

CITY OF BLAINE

Michael Jones
City Manager

BUYER: BUILDING PARTNERSHIP LLC

By: _____ [printed name]

Its: _____

Date: _____

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EXHIBIT A

[Lot 1 Gateway Specific Binding Site Plan No. 2]