

**CITY OF BLAINE**  
**REQUEST FOR COUNCIL ACTION**  
**MEETING DATE: September 23, 2019**

**SUBJECT:** Purchase Agreement In Lieu of Foreclosure for 665 Peace Portal Way.

**DEPARTMENT:** Legal/City Manager/Planning    **PREPARED BY:** City Attorney

**AGENDA LOCATION:**    Consent Agenda         Council Action         Unfinished Business

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**ATTACHMENTS:**

1. Purchase Agreement In Lieu of Foreclosure for 665 Peace Portal Way.

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**BACKGROUND/SUMMARY:**

The City completed the removal of a dangerous building on at 665 Peace Portal Drive, Blaine, Washington, identified by Whatcom County Tax Parcel No. 415136 499023 0000 (the "Property") pursuant to statute and applicable code. The City recorded a Notice of Claim of Lien under Whatcom County Auditor File Number 2019-0700415 and a Notice of Assessment under Whatcom County Auditor File Number 2019-0803824 on the Property for the recovery of the costs related to the removal of the dangerous building on the Property upon which the City intends to foreclose upon said lien and the Property, should the lien not be paid in full. The underlying individual landowner has passed away. The Estate of the underlying landowner has offered to transfer the Property in lieu of foreclosure.

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**BUDGET IMPLICATIONS:** The transaction will avoid incurring costs related to foreclosure.

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**RECOMMENDATION:**  Waive the second reading.

Pass the following motion: Move to approve the Purchase Agreement In Lieu of Foreclosure for 665 Peace Portal Way subject to final approval by the City Attorney and authorize the City Manager to sign said Agreement.

**REVIEWED BY:**

City Manager \_\_\_\_\_ Finance Director \_\_\_\_\_ City Clerk \_\_\_\_\_  
(Digital Signature) (Digital Signature) (Digital Signature)

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## REAL ESTATE AGREEMENT IN LIEU OF FORECLOSURE

THIS CONTRACT CONTROLS THE TERMS OF SALE OF THE PROPERTY  
(READ CAREFULLY BEFORE SIGNING)

**THIS REAL ESTATE PURCHASE AND SALE AGREEMENT IN LIEU OF FORECLOSURE** (the "Agreement") is made and entered into on the \_\_\_\_\_ day of September, 2019 by and between **THE ESTATE OF GUENTER MANNHALT**, (hereinafter called the "Estate"), who hereby agrees to sell, and the **CITY OF BLAINE**, a Washington Municipal Corporation (hereinafter called the "City"). The Estate agrees to convey, and the City agrees to receive, the following described real estate in lieu of foreclosure upon the terms and conditions set out below.

### I. RECITALS

**WHEREAS**, the Estate owns the property located at 665 Peace Portal Drive, Blaine, Washington, identified by Whatcom County Tax Parcel No. 415136 499023 0000, and legally described in Exhibit A, attached hereto (the "Property"); and

**WHEREAS**, The City of Blaine, having completed the removal of a dangerous building on the property has, pursuant to statute and applicable code, recorded a Notice of Claim of Lien under Whatcom County Auditor File Number 2019-0700415 (the "Lien") and a Notice of Assessment recorded under Whatcom County Auditor File Number 2019-0803824 (the "Assessment") on the Property for the recovery of the costs related to the removal of the dangerous building on the Property upon which the City intends to foreclose upon said lien and the Property, should the lien not be paid in full; and

**WHEREAS**, in lieu of foreclosure, the Estate has agreed to convey the Property to the City to satisfy the obligation set forth in the Lien and the Assessment.

### II. TERMS AND CONDITIONS

**NOW, THEREFORE**, the Parties agree as follows:

1. **Real Property.** Estate agrees to convey, and City agrees to receive on the following terms, property located in Whatcom County, Washington, commonly known as 665 Peace Portal Drive, Blaine, Washington (the "Property"). The Property bears the tax parcel number 415136 499023 0000 and is legally described in Exhibit "A" attached hereto.

2. **Conveyance in Lieu of Foreclosure.** The Property shall be conveyed to the City via Deed in Lieu of Foreclosure in a form approved by the City at Closing in lieu of and in satisfaction of the Lien and Assessment.

3. **Conveyance of Title.** This Agreement is for conveyance of fee title. Such title shall be conveyed by Deed in Lieu of Foreclosure, free of encumbrances or defects except those noted herein.

3.1. Rights reserved in federal patents or state deeds, building or use restrictions general to the district, existing easements not inconsistent with City's intended use, and building or zoning regulations or provisions shall not be deemed encumbrances or defects.

4. **Delivery of Possession.** City shall be entitled to possession on the date of Closing.

5. **Real Property Transfer Disclosure Statement.** To the extent allowed by law, the City waives receipt of the disclosure required under Chapter 64.06 RCW.

6. **Escrow.** Upon execution of this Agreement, the Parties hereto shall deposit an executed counterpart of this Agreement with the Bellingham, Washington office of Whatcom Land Title Insurance Company (the "Escrow Holder") and this Agreement shall serve as the instructions to Escrow Holder for consummation of the conveyance contemplated hereby. Estate and City 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.

7. **Title Insurance:** Estate shall, within five (5) days of the mutual execution of this Agreement, cause Whatcom Land Title Insurance Company to deliver to City a preliminary commitment for a standard form title insurance (the "Commitment") covering the Property together with a full and complete legible copy of all recorded items or exceptions disclosed therein. Estate covenants and agrees to remove on or before Closing any encumbrances or defects except those allowed in this Agreement.

7.1 The amount of said title insurance policy shall be \$277,066.10.

7.2 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 Estate shall not be obligated to remove them at or before Closing (the "Permitted Exceptions").

7.3 City's Objections. City will make any objections it may have regarding the Title Commitment and any Schedules thereto within ten (10) days of receiving the Title Commitment. City'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 City shall be included as a "Permitted Exception" hereunder. In the event of City's objection to any exceptions or defects set forth in the Title Commitment and the Schedules thereto, Estate shall have five (5) days from delivery of City's notice to notify City, in writing, that: (i) Estate will cause the disapproved exceptions to be removed from the policy of title insurance to be issued in favor of City on or before Closing; or (ii) that Estate will not eliminate the disapproved exceptions.

If Estate: (i) notifies City, in writing, that Estate will not eliminate the objected to exceptions on or before Closing; or (ii) Estate does not notify City, in writing, that Estate will cause the objected to exceptions to be eliminated on or before Closing, then this Agreement shall terminate, unless within three (3) days of the earlier of (i) the expiration of said five (5) day period, or (ii) the date that Estate notifies City that Estate will not eliminate the objected to exceptions, City 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.

**8. Closing.** The Closing hereunder (the "Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Escrow Holder on or before October 23, 2019, or such other prior date as City and Estate may mutually agree in writing. Such date may not be otherwise extended, except as provided herein, without the written approval of Estate and City. All documents shall be deemed delivered on the date the Deed is recorded.

**9. Estate's Representations and Warranties.** As an inducement to City and as part of the consideration provided by Estate, the Estate hereby represents and warrants the following:

9.1 That the Recitals set forth above are true and accurate, that the Estate is the owner of the Property and is duly authorized to sell the Property to the City and no further action is necessary on the part of Estate to make this Agreement fully and completely binding upon Estate in accordance with its terms or to sell the Property.

9.2 Neither the Property nor, to the best of Estate's knowledge, any real estate adjacent to the Property, is in violation of any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Material ("Environmental Laws "). Neither Estate, nor to the best of Estate's knowledge, any third party, has used, manufactured, generated, treated, stored, disposed of, or released any Hazardous Material on, under or about the Property or real estate adjacent to the Property or transported any Hazardous Material over the Property. Neither Estate, nor to the best of Estate's knowledge, any third party has installed, used or removed any storage tank on, from or in connection with the Property, and, to the best of Estate's knowledge, there are no storage tanks or wells (whether existing or abandoned) located on, under, or about the Property. The Property does not consist of any building materials that contain Hazardous Material. For the purposes hereof, "Hazardous Materials" shall mean asbestos or any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency ordinance or law, including without limitation, the Model Toxics Control Act, Chapter 70.105D RCW.

9.3 The representations and warranties contained herein shall survive Closing.

**10. Documents to be Delivered by Estate for Closing.** On or prior to the Closing Date, Estate shall deposit with Escrow Holder, the following:

- a. The Deed duly executed and acknowledged by Estate, together with a duly signed real estate excise tax affidavit; and
- b. Any reconveyance documents required to eliminate of record any existing deeds of trust and other security documents which are a lien on the Property; and
- c. Any other documents, instruments, data, records, correspondence or agreements called for hereunder which have not previously been delivered; and
- d. A standard form title insurance policy insuring the title in name of the City and in the amount set forth in Section 7.1; and
- e. Such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

**11. Documents to be Delivered by City for Closing.** On or before the Closing Date, City shall deposit with Escrow Holder the following:

- a. Written approval of the Deed; and
- b. Any other documents, instruments, data, records, correspondence or agreements called for hereunder which have not previously been delivered; and
- c. Such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

**12. 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.

**13. Costs and Expenses Paid at Closing.** Estate shall pay one-half of the Escrow Agent's fee, the premium for a standard owner's policy of title insurance with liability in the amount of the Purchase Price, all real estate excise taxes, and the cost of any other documentary or other transfer taxes applicable to the sale. Real and personal property taxes and assessments are payable in the year of Closing; interest, utilities and other operating expenses shall be prorated as of Closing. City shall pay one-half of the Escrow Agent's fee and the increase in premium necessary to obtain an extended coverage title insurance policy.

14. **Liability Insurance.** Estate shall assume all risk for fire and casualty until the date of Closing. If, prior to Closing, improvements on said premises shall be destroyed by material damage, fire or other casualty, this Agreement, at the option of the Estate, shall become null and void.

15. **Default.** In the event of a material breach or default in or of this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof by City or Estate, then the other Party shall have, as its sole and exclusive remedy except as otherwise provided herein, the right to demand and have specific performance of this Agreement. In the event of termination of this Agreement, the City shall have all right to pursue the foreclosure of the Lien and the Assessment or to collect said Assessment in any manner allowed by law. In the event of termination, nothing herein shall waive or limit the City's right to collect interest on the assessment amount, or to collect its attorneys' fees and expenses incurred in collection of said Lien and/or Assessment.

16. **Brokerage Fees.** There are no claims for brokerage commissions or finders' fees in connection with the transaction contemplated by this Agreement.

17. **Legal Advice.** Each Party represents and warrants that they have had an opportunity to seek independent legal advice with respect to the terms of this Agreement and that they are fully informed with respect to the terms of this Agreement and that they desire no further legal advice from independent counsel.

18. **Construction.** Both Parties have reviewed the Agreement and have had a satisfactory opportunity to make any desired changes, and therefore any ambiguity in the drafting of this Agreement shall not be resolved against any Party merely because that Party has drafted the same.

19. **Enforcement of Terms/Attorneys' Fees.** If either Party hereto is required to retain an attorney to bring suit or seek arbitration to enforce any provisions of this Agreement, the prevailing Party shall be entitled to its reasonable attorney's fees and costs including, but not limited to, expert witness fees and consultant fees, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

20. **Survival.** All obligations of the City and Estate as provided for in this Agreement shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the date of Closing shall survive the Closing date of this Agreement.

21. **Counterparts.** This Agreement may be executed in any number of original counterparts, with the same effect as if all the Parties had signed the same document and will become effective when one or more counterparts have been signed by all of the Parties and delivered to the Parties' attorneys. All counterparts will be construed together and evidence only one Agreement.

22. **Governing Law.** This Agreement and the right of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Washington and the

parties agree that in any such action venue shall lie exclusively in Whatcom County, Washington.

**23. Execution by Facsimile.** This Agreement may be executed by the Parties and transmitted by facsimile and if so executed and transmitted this Agreement will be for all purposes as effective as if the Parties had delivered an executed original agreement.

**24. Notices.** Service upon the Parties of all demands, notices or other papers with respect to this Agreement may be made by personal delivery or United States Mail, postage prepaid, certified mail, return receipt requested, directed to:

To Estate:                   The Estate of Guenter Mannhalt  
                                  c/o Theresa Norris  
                                  P.O. Box 292  
                                  Lynnwood, WA 98046

With a copy to:           Nancy L. Cahill  
                                  Holman Cahill Garrett Ives Oliver & Andersen, PLLC  
                                  5507 35<sup>th</sup> Ave NE  
                                  Seattle, WA 98105  
                                  Telephone (206) 547-1400  
                                  Fax: (206) 547-1276

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 such other address as the respective Party may specify in writing.

**25. Time of Performance.** Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the Parties hereto.

**26. Invalidity.** In the event that any part of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof.

27. **Waiver.** No failure by Estate or City 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.

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

29. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. There are no other oral or written agreements or understandings between the Parties. Each Party hereby warrants that there have been no other oral or written promises, warranties or statements relied upon by the other Party as an inducement to entering this Agreement concerning the facts and circumstances of this Agreement. Any modifications to this Agreement must be approved in writing.

**IN WITNESS WHEREOF,** the Parties have signed this Agreement on the date set forth above.

**ESTATE: THE ESTATE OF GUENTER MANNHALT**

**CITY: CITY OF BLAINE**

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

\_\_\_\_\_  
By: Michael Jones  
Its: City Manager

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**EXHIBIT "A"**  
**[Legal Description of Property]**

THE NORTH 12 FEET OF A TRACT OF LAND LAYING BETWEEN LOTS 5 AND 6 (OTHERWISE DESCRIBED AS ALL OF SAID TRACT LAYING BETWEEN LOTS 5 AND 6, EXCEPT THE SOUTH 5 FEET THEREOF) AND ALL OF LOTS 6 AND 7, CAIN'S WATERFRONT ADDITION TO BLAINE, AS PER THE MAP THEREOF, RECORDED IN BOOK 4 OF PLATS, PAGE 5, IN THE AUDITOR'S OFFICE OF WHATCOM COUNTY, WASHINGTON, EXCEPT THE GREAT NORTHERN RAILWAY COMPANY'S RIGHT OF WAY AND SUBJECT TO AN EASEMENT FOR A BOARDWALK RECORDED IN WHATCOM COUNTY AUDITOR FILE NO. 2016-1100417.

SITUATE IN WHATCOM COUNTY, WASHINGTON.