

RESOLUTION NO. 021/2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MONROE, WASHINGTON, AUTHORIZING THE SALE OF  
CERTAIN REAL PROPERTY TO REAL PROPERTY  
INVESTORS, LLC.

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WHEREAS, the City of Monroe owns the real property legally described in the Purchase and Sale Agreement attached hereto as Exhibit A, incorporated herein by this reference as if set forth in full; and

WHEREAS, the City desires to sell, and Real Property Investors, LLC. desires to purchase, said property in accordance with the terms and conditions set forth in the Purchase and Sale Agreement; NOW, THEREFORE

IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF MONROE  
AS FOLLOWS:

Section 1. Approval of Purchase and Sale Agreement. The City Council hereby declares the property described in the attached Purchase and Sale Agreement to be surplus to the City's needs and authorizes its disposition in accordance with said agreement. The Mayor is authorized to execute the Purchase and Sale Agreement on behalf of the City in substantially the form attached hereto, together with such minor revisions as the Mayor may deem necessary or appropriate.

Section 2. Effective Date. This resolution shall take effect immediately upon passage.

PASSED BY THE MONROE CITY COUNCIL AT A REGULAR MEETING  
THEREOF ON THE 13th DAY OF October, 2020.

CITY OF MONROE



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MAYOR GEOFFREY THOMAS

ATTEST/AUTHENTICATED:



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Becky Hasart (Oct 16, 2020 08:41 PDT)

RABECA HASART, INTERIM CITY CLERK

**Exhibit A**

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into this 13<sup>TH</sup> day of October, 2020 (“Effective Date”), by and between the City of Monroe, a Washington municipal corporation (“Seller”), and Real Property Investors, LLC, a Washington limited liability company (“Purchaser”).

### RECITALS

A. Seller owns that certain parcel of real property situate in Snohomish County, State of Washington, as defined, identified and legally described in Section 1 below.

B. Purchaser desires to purchase, and Seller desires to sell, the Property, in accordance with the terms and conditions set forth in this Agreement.

### TERMS

To provide for the purchase and sale of the Property as herein described, and in consideration of the covenants and promises set forth herein, the receipt and sufficiency of which are mutually acknowledged, it is hereby agreed by and between Seller and Purchaser (collectively, “the parties”) as follows:

1. PURCHASE AND SALE. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, the following real property (“Property”):

Parcel 7 of the North Kelsey Short Plat, comprising approximately 1.26 acres, identified as Snohomish County Assessor’s Parcel No. 27060100115500, and legally described in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full.

2. PURCHASE PRICE AND TERMS OF PAYMENT. The total purchase price for the Property (“Purchase Price”) is Eight Hundred Fifty Thousand Dollars and 00/100 cents (\$850,000.00). The balance of the Purchase Price, less the Earnest Money Deposit, is due and payable at Closing.

3. EARNEST MONEY DEPOSIT. Within three (3) business days following the Effective Date, Purchaser shall deliver to Escrow Company, for the benefit of Seller, a promissory note (hereinafter “Earnest Money Deposit”) in the amount of Fifty Thousand Dollars (\$50,000). Within one (1) business day following Purchaser’s waiver of the Inspection Condition, Purchaser shall convert the promissory note to cash. The Earnest Money Deposit shall thereafter be nonrefundable, except in the event of a Seller default as provided in subsection 13(a), and shall be applied to the Purchase Price at closing. PROVIDED, IN THE

EVENT PURCHASER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY AS SPECIFIED HEREIN, THE EARNEST MONEY DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES, BUT NOT AS A PENALTY, AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER. Purchaser and Seller agree that the liquidated damages represent a reasonable sum considering all of the circumstances existing on the date of this Agreement and further represent a reasonable estimate of the losses that Seller will incur if Purchaser fails to purchase the Property after all conditions precedent to Purchaser's performance have been satisfied. The Earnest Money Deposit shall be refunded to Purchaser in the event that Purchaser gives Seller and Escrow Company written notice of its decision not to proceed with the purchase of the Property prior to the end of the Due Diligence Period, including any extensions thereof.

4. **CONVEYANCE/SELLER'S WARRANTIES.** Upon Closing, title to the Property shall be conveyed from Seller to Purchaser by a Statutory Warranty Deed ("the Deed"), subject only to the exceptions described in Section 9. Seller warrants that it has marketable title to the Property subject only to the exceptions listed in the title report to be provided by Seller to Purchaser pursuant to Section 9.

5. **DUE DILLIGENCE PERIOD.** Commencing upon the Effective Date, Purchaser shall have a period ("Due Diligence Period") of not more than ninety (90) days to inspect the Property and to review any relevant reports and studies ("Inspection Condition"), during which period Purchaser shall proceed with due diligence and in good faith to satisfy the Closing contingencies set forth herein. Provided, the Due Diligence Period may be extended at Purchaser's option for up to two (2) extensions of thirty (30) days each by: (i) providing written notice of each extension to Seller, and (ii) depositing an additional Twenty-Five Thousand Dollars with Escrow Company, to be added to the Earnest Money Deposit, concurrently with each such notice. Each such additional deposit shall be made in cash and shall be nonrefundable but applicable to the Purchase Price.

6. **CLOSING CONTINGENCIES.** Purchaser's obligation to proceed with the Closing of the purchase of the Property is contingent upon the following:

a. **Expiration of the Due Diligence Period.** Upon expiration of the Due Diligence Period, including any extensions thereof, without written notice having being delivered by Purchaser to Seller and Escrow Company stating that Purchaser's acquisition of the Property is not feasible or desirable in Purchaser's sole discretion, Purchaser shall be deemed to have waived the Inspection Condition and shall be obligated to proceed with the Closing of the purchase of the Property. If during the Due Diligence Period, including any extensions thereof, Purchaser gives written notice to Seller and Escrow Company that such acquisition is not feasible or desirable in Purchaser's sole discretion, Purchaser shall be entitled to a refund of the Earnest Money Deposit, and all rights and obligations of the Parties under this Agreement shall thereupon be terminated except as expressly provided herein.

b. **Information.** No later than five (5) days after the Effective Date, Seller shall provide Purchaser with copies of the following documents in Seller's possession that relate directly to the Property:

- i. As-built surveys;
- ii. Construction documents, including any architectural, mechanical, electrical, plumbing and civil drawings;
- iii. Soils or other engineering reports;
- iv. Environmental studies; and
- v. Other reports or studies that Purchaser may reasonably request in writing.

The parties mutually acknowledge that the above-referenced documents are public records and may be disclosed to third parties. Seller makes no warranty about the truthfulness, accuracy or completeness of such documents.

c. **Access; Testing.** Upon at least three (3) days prior written to Seller, Purchaser and its authorized representative(s) may access and enter upon the Property at reasonable times for purposes of inspection and to conduct such noninvasive studies as are reasonably necessary for Purchaser. Such written notice by Purchaser may include Purchaser's request for Seller's permission, which shall not be unreasonably withheld, to conduct invasive testing upon the Property, including without limitation borings and/or sampling for soil suitability. All such entry, inspection and testing shall be at Purchaser's sole expense, and Purchaser at its sole expense shall thereafter return the Property to its pre-inspection/testing condition. Purchaser shall promptly provide Seller with a copy of any report(s) arising from any inspection, testing or sampling conducted with respect to the Property. Separate from the provisions of Section 8, Purchaser shall defend, hold harmless and indemnify Seller, its officers, officials and employees from and against any and all claims, demands, penalties, fees, liens, damages, losses, expenses, including reasonable attorneys' fees and costs, incurred by Seller for any personal injury, property damage and/or other liability resulting from Purchaser's entry onto and use of the Property pursuant to this section.

## 7. HAZARDOUS MATERIAL.

a. **Definition of Hazardous Material.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "hazardous substance" or similar term under the Federal Water Pollution Control Act (33 U.S.C. §1317), (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (iv) petroleum, (v) asbestos or (vi) which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law.

b. Presence of Hazardous Material. Purchaser acknowledges that the Property may or may not contain certain Hazardous Materials and that Seller only warrants to the best of Seller's actual knowledge, that as of the Effective Date of this Agreement Seller is not aware of the presence on or beneath the Property of any legally unacceptable levels of Hazardous Materials. Seller makes no, and expressly disclaims any, other representation or warranty to Purchaser regarding the presence or absence of any Hazardous Materials on or under the Property. It shall be Purchaser's exclusive responsibility under this Agreement to examine the Property and to review such reports or other documents it deems necessary to satisfy itself as to the presence or absence of any such Hazardous Materials. For purposes of this section, "Seller's actual knowledge" means the actual knowledge, as of the Effective Date of this Agreement, of the City of Monroe Mayor or any director-level employee of Seller.

c. Right to Inspect. Prior to the expiration of the Due Diligence Period, Purchaser shall have the right, at its cost and expense, to conduct such physical inspections of the Property as necessary in order to determine the presence or absence of Hazardous Material on or under the Property in accordance with subsection 6(c).

d. Indemnification. If the parties proceed to the Closing, Purchaser shall indemnify, defend and hold Seller harmless from any and all claims, demands (including demands by any governmental agency), liabilities, costs, expenses, penalties, damages, losses and liens, including without limitation clean up costs and reasonable attorneys' fees, arising out of or with respect to any Hazardous Material released on or under the Property subsequent to the Closing. The indemnity provided for herein shall survive the Closing hereunder and shall not be merged into the Deed. Seller shall indemnify, defend and hold Purchaser harmless from any and all claims, demands, (including demands by any government agency), liabilities, costs, expenses, penalties, damages, losses and liens arising from any material breach of Seller's warranty in subsection 7(b). The indemnity provided for herein shall survive the Closing and shall not be merged into the Deed.

e. Release. If the parties proceed to Closing, then Purchaser and its employees, contractors, agents, and each of them, and its successors, assigns, heirs, devisees and executors, agree to forever release, discharge and acquit Seller and its contractors, agents, officials and employees, and each of them (collectively, "Releasees"), of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of duty of any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, costs, sums of money, accounts, compensations, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character (including without limitation reasonable attorneys' fees) (collectively "Claims"), and irrespective of how, why or by reason of what facts, whether heretofore or now existing, or which could, might or may be claimed to exist in the future, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, including all Claims for nondisclosure, or unsuitable recommendation, each as if fully set forth herein at length, which in any way arise out of, or are connected with or relate to (1) any Hazardous Material on or under the Property, or migrating to or from the Property, at the Closing or released on or under the Property subsequent thereto, and (2) any required clean-up of any and all Hazardous Material which might remain or subsequently be placed on or under the Property, including without limitation any personal injuries suffered by any person or persons. The release

provided for herein shall survive the Closing and shall not be merged into the Deed. This subsection 7(e) shall not apply to any violation of the limited knowledge representation provided in subsection 7(b) above.

8. **INDEMNITY.** The parties agree to defend, hold harmless, and indemnify each other, their respective officers, officials and employees, from and against any claims, demands, penalties, fees, liens, damages, losses, expenses, including reasonable attorneys' fees and costs incurred by the indemnitee for liability resulting from any breach of the warranties and representations in this Agreement by the indemnitor. The representations and warranties contained in this Agreement and this indemnity shall survive Closing.

9. **TITLE.** Seller, at Seller's expense and upon delivery, shall provide Purchaser with an Alta 2006 Standard Owner's Policy and report ("Title Policy") from Chicago Title Company ("Title Insurance Company"). Seller shall make request for the Title Policy within five (5) days from the Effective Date of this Agreement. Purchaser shall inform Seller of any objections it has to the listed exceptions to insurable title identified in the Title Policy within thirty (30) days of Purchaser's receipt of the Title Policy, and Seller shall thereupon have the option of curing any stated objection. If Seller declines to cure any exception objected to by Purchaser, this Agreement shall terminate, and Purchaser, as its sole and exclusive remedy, shall be refunded the Earnest Money Deposit, unless Purchaser agrees within 15 days to withdraw its objection to the exception. Seller's conveyance of title by the Deed pursuant to subsection 10(e) shall be subject to all exceptions to insurable title listed in the Title Policy and not objected to by Purchaser.

10. **ESCROW AND CLOSING.**

a. **Closing Agent; Date of Closing.** The sale shall be closed at the Everett, Washington offices of Chicago Title Company ("Closing Agent" or "Escrow Company"), no later than thirty (30) days following the expiration of the Due Diligence Period unless Purchaser has provided Seller with written notice pursuant to subsection 6(a). Purchaser and Seller shall deposit with the Closing Agent, all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. Seller agrees to maintain the Property and its improvements, if any, in their present condition, normal wear and tear excepted, until Purchaser is entitled to possession. In the event that this sale cannot be closed by the date provided herein due to the unavailability of either party, the Closing Agent, or financing institution to sign any necessary document, or to deposit any necessary money, because of any interruption of available transport; strikes, fire, pandemic, flood or extreme weather; governmental regulations; incapacitating illness; acts of God; or other similar occurrences; the Closing date may be extended beyond cessation of such condition with written agreement of the parties.

b. **Expenses of Escrow.** Title insurance premiums and all other costs or expenses of escrow shall be paid as follows:

- (i) the cost of securing the above-referenced standard title insurance policy for Purchaser shall be paid by Seller;

- (ii) the cost of obtaining any extended coverage title insurance, including without limitation the cost of any survey update or new survey required to obtain such extended title insurance coverage, shall be paid by Purchaser; provided, that Seller shall provide Title Company's standard affidavit/indemnity in connection with any such extended coverage title insurance;
- (iii) the cost of discharging any liens or encumbrances to clear title, shall be paid for by Seller; and
- (iv) all other expenses of escrow, including without limitation the costs of recording the Deed, shall be shared equally by the parties.

c. **Pro-Rations.** All real property taxes and utility charges against the Property shall be pro-rated as of the date of Closing. Said prorations, if any, shall be effected on the basis of the latest available utility and/or tax bills and other applicable statements and based upon a 365-day calendar year. If current year utility and/or tax statements are not available at the close of escrow, the prorations will be made as provided above and shall be adjusted between Purchaser and Seller outside of escrow as soon as the utility and/or tax bills or other information is available.

d. **Closing Defined.** Closing for the purpose of this Agreement, is defined as the date that all documents are executed and the sale proceeds are available for disbursement to Seller. When notified, Purchaser and Seller will deposit, without delay, in escrow with Closing Agent, all instruments and monies required to complete the transaction in accordance with this Agreement and/or otherwise required by the Closing Agent or by law.

e. **Statutory Warranty Deed.** At closing, Seller will convey marketable title to the Property to Purchaser by statutory warranty deed (the "Deed"), subject only to the exceptions set forth in the Title Policy not timely objected to by Purchaser and those exceptions timely objected to by Purchaser but agreed in writing by Seller to be satisfied by the time of Closing. Without prejudice to Section 12, Purchaser will acquire the Property "as is" with respect to any matter which a physical inspection of the Property would disclose.

11. **POSSESSION.** Purchaser shall be entitled to possession of the Property at Closing.

12. **CONDITION OF PROPERTY; DISCLAIMER.** Except as expressly provided herein, Purchaser agrees to purchase the Property in its present condition on the terms noted. Purchaser accepts the Property "AS IS" "and "WITH ALL FAULTS," and Seller makes no, and hereby expressly disclaims any, warranty of any kind, express or implied, with respect thereto. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, IT IS EXPRESSLY AGREED THAT SELLER MAKES NO WARRANTY AS TO THE MARKETABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PROPERTY. Without prejudice to the foregoing, Purchaser shall be solely and exclusively responsible for all costs associated with the future development and use of the Property,

including without limitation any and all on-site and off-site improvements, except as expressly provided herein.

13. **DEFAULT.**

a. **By Seller.** In the event of any default by Seller, Purchaser shall be entitled to immediately cancel this Agreement (in which case the Earnest Money Deposit not yet forfeited under the terms of this Agreement prior to Seller's default shall be refunded to Purchaser); provided, however, Purchaser may, at its option, waive any default by Seller and proceed with the purchase of the Property.

b. **By Purchaser.** In the event of any default by Purchaser, prior to the close of the escrow, Seller may waive the default, or at Seller's option, terminate the escrow and Purchaser's right to purchase the Property and retain the forfeited Earnest Money Deposit.

14. **ATTORNEYS' FEES.** Each party shall be exclusively responsible for paying its own attorneys' fees incurred in the negotiation, drafting and execution of this Agreement. In the event any action or proceeding to compel compliance with, or for a breach of, the terms and provisions of this Agreement, the prevailing party shall be entitled to recover from the losing party all costs and expenses of such action or proceeding, including, but not limited to the reasonable attorneys' fees of the prevailing party.

15. **ASSIGNMENT.** This Agreement may not be assigned without the other party's prior written consent, which shall not be unreasonably withheld.

16. **CASUALTY LAW.** Seller agrees to maintain its own property and public liability insurance on the Property prior to Closing. Purchaser acknowledges and agrees that this obligation shall be deemed satisfied by Seller's current and continued membership in the Washington Cities Insurance Authority risk pool.

17. **WRITTEN NOTICE.** Except as otherwise provided herein, any and all notices provided under this Agreement must be in writing and shall be deemed given when delivered in person, or when deposited with Federal Express or other similar overnight service, return receipt requested, or when deposited in the United States mails, postage prepaid for certified mail, return receipt requested, or upon actual receipt of a facsimile or other similar transmission (provided that a copy of the facsimile is delivered or deposited within twenty-four hours in the manner specified above), properly addressed to Seller and to Purchaser as follows:

**TO SELLER:**

Deborah Knight, City Administrator  
City of Monroe  
806 West Main Street  
Monroe, WA 98272

**TO PURCHASER:**

Real Property Investors, LLC

c/o Evan Wong  
2151 Northlake Way , Suite 200  
Seattle, WA 98103

Either party may designate a different address for receiving notices hereunder by giving at least ten (10) days written notice thereof to the other party.

18. **TIME IS OF ESSENCE AND COMPUTATION OF TIME.** Time is of the essence of this Agreement. Unless otherwise stated in this Agreement, any period of time in this Agreement shall begin the day after the event starting the period and shall expire at 5:00 p.m. Pacific time of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday or legal holiday as defined in RCW 1.15.050, in which case the period shall expire on the next business day. Any specified period of five (5) days or less shall not include Saturday, Sunday or legal holidays.

19. **COMPLETE AGREEMENT.** This Agreement supersedes any and all agreements, written or oral between the parties hereto regarding the subject Property, which are prior in time to this Agreement. Neither Purchaser nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specified herein.

20. **COMMISSION.** Seller shall be solely responsible for payment to Seller's Broker (Lee & Associates and West Coast Realty LLC). Purchaser shall be solely responsible for payment to Purchaser's Broker (Sean Tufts of Capital Pacific, LLC—Washington and Keegan Uderitz and David Merisko of Mattis Partners). Provided, the parties mutually acknowledge that Seller's Broker shall pay a commission of Two and One Half Percent (2.5%) to Capital Pacific, LLC pursuant to a separate agreement between Seller's Broker and Purchaser's Broker; said commission shall be paid out of escrow at the Closing. The parties mutually represent and warrant that no other brokers are owed a commission with respect to the transaction set forth herein.

21. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed according to the laws of the State of Washington. Venue for any suit arising out of or related to this Agreement shall be in Snohomish County, Washington.

22. **NON-MERGER.** The terms and provisions of this Agreement shall not merge in the Deed or other conveyance instrument transferring the Property to Purchaser at Closing, but shall survive the Closing of this transaction.

23. **COUNTERPARTS AND FACSIMILE TRANSMISSION.** This Agreement may be executed in counterparts, all of which together shall be deemed to be one original, even if the parties have not executed the same original. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing or original document.



\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name legibly printed or stamped)

My appointment expires \_\_\_\_\_

ATTEST:

By:

\_\_\_\_\_  
Becky Hasart, City Clerk

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
J. Zachary Lell, City Attorney



**Exhibit A**

**Legal Description of Property**

Section 01 Township 27 Range 06 Quarter NE - PAR 7 CITY OF MON N KELSEY SP REC  
UND AFN 201210265003 BEING PTN E1/2 NE1/4 NE1/4 SD SEC 1