

RESOLUTION NO. 2021-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON**, authorizing the Mayor and City Manager to execute the Agreement for the Purchase and Sale of Real Estate and other related documents for the sale of surplus property owned by the City of Ellensburg ("City") to Steve and Susan Gunn ("Buyers").

**WHEREAS**, the City Council of Ellensburg ("City Council") approved Resolution No. 2021-09 on April 19, 2021, which declared the property commonly referred to as the "Ellensburg Incubator Building," which includes approximately 2.1 acres located at 1000 Prospect Street, Kittitas County Tax Parcel No. 328736 ("subject property"), as surplus to the City's needs, and its sale by any means authorized in the Ellensburg City Code and state law; and

**WHEREAS**, the City has commissioned an appraisal of the subject property, following which the property was advertised for sealed public bids, which included a requirement for the reservation of a certain access and utility easement to the City as a condition of the sale; and

**WHEREAS**, in response to the advertisement for public bid for the subject property, Steve and Susan Gunn submitted a bid of \$710,000 and were determined to be the highest qualified bidder;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, AS FOLLOWS:

Section 1. The "Whereas" provisions set forth above are hereby incorporated in this Resolution as findings in support of the actions authorized in this Resolution.

Section 2. The disposition of the City's property as authorized herein shall be by "Negotiated sale" with Buyers pursuant to ECC 2.06.100(C).

Section 3. The Mayor is hereby authorized to execute an agreement for the purchase and sale of the subject property, attached hereto as Exhibit 1 and incorporated by reference herein. The Mayor and City Manager are also authorized to execute all other documents necessary to complete the sale of the property as set forth herein.

Section 4. If any section, sentence, clause, or phrase of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Resolution.


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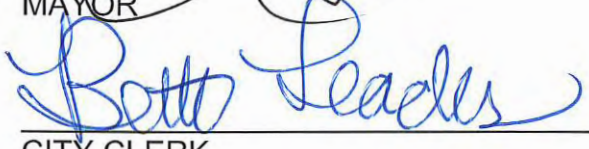
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ADOPTED by the City Council of the City of Ellensburg this 7<sup>th</sup> day of June,  
2021.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK



## AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This Agreement for Purchase and Sale of Real Property ("Agreement") is made and entered into this 7<sup>th</sup> day of June, 2021 between the City of Ellensburg, a Washington municipal corporation ("Seller"), and Steve Gunn and Susan Gunn, husband and wife ("Buyer").

1. Purchase and Sale of Property. Seller agrees to sell, and Buyer agrees to purchase from Seller, the following (collectively, "the Property") pursuant to the terms and conditions set forth herein.

1.1 Approximately 2.1 acres of property located at 1000 Prospect Street, Ellensburg, Washington, identified as Kittitas County Tax Parcel No. 328736, and legally described as:

Lot 1, ELLENSBURG INDUSTRIAL PARK, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 8 of Plats, page 19, records of said County.

AND

That portion of Vacated Lot C of that certain Survey as recorded June 8, 1989, in Book 16 of Surveys, page 32, under Auditor's File No. 520966, records of Kittitas County, Washington; being a portion of the Southeast Quarter of the Southeast Quarter of Section 34, Township 18 North, Range 18 East, W.M., in the County of

Kittitas, State of Washington; accruing thereto by operation of law.

EXCEPTING THEREFROM:

Lot B of that certain Survey as recorded June 8, 1989, in Book 16 of Surveys, page 32, under Auditor's File No. 520966, records of Kittitas County, Washington; being a portion of the Southeast Quarter of the Southeast Quarter of Section 34, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington; accruing thereto by operation of law.

And including:

1.1.1 The buildings, structures, fixtures and other improvements affixed to or located on the land, excluding fixtures owned by tenants (collectively, the "Improvements");

1.1.2 Any and all of Seller's right, title and interest in and to the following (collectively, the "Leases"), acting by and through the Ellensburg Business Development Authority dba CenterFuse under a separate Interlocal Agreement: (i) the leases, licenses and occupancy agreements and amendments identified in the list of leases and rent roll for the Property attached as Exhibit C, in accordance with the covenants set



forth in Section 6.1.8 (the "Rent Roll"); (ii) all rents, reimbursements of real estate taxes and operating expenses, and other sums due under all agreements identified in the Rent Roll and relating to periods after the Closing (the "Rents"); and (iii) all refundable security, cleaning and other deposits in Seller's possession in connection with the foregoing (the "Security Deposits"); and

**1.2. Seller's Reservation of Easement.** Seller desires to reserve a non-exclusive easement right on the Property as contained substantially in the form attached hereto as Exhibit B (the "Easement"). In consideration for the sale, Buyer shall execute the Easement and deposit the executed Easement with the Escrow Agent prior to Closing. The Escrow Agent shall have the Easement recorded immediately after Closing. In the event Closing does not occur or this Agreement is otherwise terminated, the Escrow Agent shall return the Easement to Buyer and Seller agrees that the Easement shall automatically terminate.

**1.3. Scrivener's Errors.** In the event of an error in the legal description, the parties agree that either party or a scrivener may correct the error.

**1.4. Laws and Rights.** It is understood that the sale and conveyance to be made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations.

**1.5. Conveyance; Deed Restriction.** The real property described in Section 1.1 shall be conveyed to Buyer by Warranty Deed subject only to the permitted exceptions and free and clear of all encumbrances and defects that interfere with Buyer's intended use of the Property, in Buyer's sole and absolute discretion.

**1.6 City Property Declared to be Surplus to the City's Needs.** The City warrants that its City Council declared in Resolution 2021-09 as surplus to the City's needs the Property identified in Section 1 above, and that in declaring the property surplus it has followed the required legal procedures for declaring the Property surplus and selling the Property to Buyer.

## **2. Purchase Price; Payment.**

**2.1 Purchase Price; Earnest Money.** Subject to the terms of this Agreement, Buyer shall pay to Seller as the Purchase Price for the Property the sum of Seven Hundred and Ten Thousand Dollars and no/100ths (\$710,000.00). The earnest money under this Agreement will be in the sum of Thirty-Five Thousand and Five Hundred Dollars and no/100ths Dollars (\$35,500), which will be held by the closing agent and applied to the Purchase Price paid at closing. Buyer will deposit the Earnest Money with the closing agent within ten (10) days of the Executed Contract Date (defined in Section 3.1) of this Agreement by Buyer and Seller.

**2.2 Cash Purchase.** Not later than 10 a.m., Pacific time, on the Closing Date



(as defined in Section 4.2), Buyer shall deposit with the Escrow Holder (as identified in Section 4), via wire transfer, the Purchase Price set forth in Section 2.1, less the amount of Earnest Money deposited with the Escrow Holder, together with the Buyer's share of closing costs and prorations.

**2.3 Costs Upon Termination.** If this Agreement is properly terminated, any costs authorized under this Agreement to be advanced from the earnest money deposit will be deducted before the remaining earnest money is refunded to Buyer or forfeited to Seller if and as permitted under this Agreement. If a dispute arises regarding the disbursement of the earnest money, the closing agent may interplead the earnest money and interest earned thereon into the registry of the superior court of the county in which the real property subject to this Agreement is situated pursuant to RCW 64.04.220 and the closing agent will recover all reasonable costs and attorney fees associated with the interpleader action incurred by the closing agent from the earnest money before any other disbursements from the earnest money are made.

**3. Conditions Precedent to Sale.** This Agreement is made and executed by the parties hereto subject to the following conditions precedent.

**3.1. Executed Contract.** The "Executed Contract Date" is the date that both parties have signed this Agreement. If the Agreement is signed on different days, the Executed Contract Date is the date of the last signing party. Both Buyer and Seller must sign this Agreement within fifteen (15) days of approval from the Ellensburg City Council. If signatures are not received by both parties within fifteen (15) days, this Agreement shall immediately terminate and be without any further force and effect, and without further obligation of either party to the other.

**3.2. Title Review.** Prior to or within ten (10) days after the Executed Contract Date, Seller shall order from AmeriTitle title company, Ellensburg, WA, (the "Title Company") a preliminary title report on the Property, and copies of all documents referred to therein.

**3.4. Due Diligence; Inspection.** Upon execution of this Agreement by both parties, Buyer is granted a due diligence period until and including thirty (30) days after the Executed Contract Date. Said due diligence period may be extended an additional thirty (30) days upon written notice delivered to Seller. Buyer may conduct, at its own expense, a full review of legal, title, environmental, archaeological and any other related issues regarding the Property. Buyer shall have the right to make a physical inspection of the Property (including 100% of the units therein). If the results of said review and inspection are unsatisfactory in Buyer's sole absolute discretion, Buyer may, at its option, elect to terminate this Agreement by giving Seller written notice of termination prior to the end of the due diligence period. In the event of termination by Buyer under this section, this Agreement shall immediately terminate and be without any further force and effect, and without further obligation of either party to the other; provided that in such event, Buyer shall be entitled to a refund of the earnest money.



**3.5** Termination of Service Contracts. Prior to expiration of the Due Diligence Period, Buyer may give notice to Seller specifying which Service Contracts Buyer elects to assume and which Service Contracts Buyer elects to be terminated as of Closing. Buyer's failure to give notice, prior to expiration of the Due Diligence Period, of its election to assume any Service Contract as of Closing shall be deemed to constitute Buyer's election that such Service Contract be terminated. Notwithstanding the foregoing, Buyer shall not be deemed to assume, and Seller shall in any event terminate at or before Closing, each existing property management agreement, listing agreement and lease brokerage agreement with respect to the Property and each Service Contract that is not assignable by its terms. Effective at or before Closing, and at Seller's sole cost, Seller shall terminate each Service Contract that is not assignable by its terms, or that Buyer has elected or is deemed to have elected to be terminated as of Closing. Buyer shall be responsible for any charges accruing on or after the date of Closing under any Service Contracts that Buyer has elected to assume. Seller shall be responsible for all other charges accruing under the Service Contracts.

**4.** Escrow Holder; Closing. Upon execution of this Agreement, or as soon thereafter as is convenient, the parties shall open an escrow with AmeriTitle, 101 West Fifth Street, Ellensburg, Washington, 98926, attention Schiree Minor, telephone number (509) 925-1477 (the "Escrow Holder") for the purpose of closing the purchase and sale of the Subject Property. Escrow shall close no later than the Closing Date specified in Section 4.2, below, provided that closing will be subject to Seller being in a position to convey title to the Subject Property and subject to the satisfaction of the conditions precedent set forth in Paragraph 3 above. On or before the date of closing, Buyer shall deliver to the Title Company the Purchase Price for the Property, whereupon the Title Company shall issue a standard owner's policy of title insurance in the full amount of the Purchase Price, Title Company shall record and deliver to Buyer the standard owner's policy of title insurance.

**4.1.** Closing Costs. Seller and Buyer shall each pay one-half (1/2) of the costs of a standard form title policy. Buyer shall pay any excess premium attributable to any extended coverage title policy. This sale of the Seller's property to Buyer is not subject to the state Real Estate Excise Tax pursuant to RCW 82.45.010(3)(n).

**4.2.** Closing Date. The closing of the transaction, payment to Seller, and delivery of all items shall occur at AmeriTitle, Ellensburg, WA, and shall occur on a date specified by Buyer and occurring within 45 days of Buyer's notice to Seller that all conditions precedent to closing have been deemed satisfied or waived by Buyer in Buyer's sole absolute discretion. In the event closing shall not have occurred within 180 days after the Execution Date, this agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other.

**5.** Covenants, Representations and Warranties.



**5.1. Seller's Covenants.** Seller hereby covenants and agrees as follows:

**5.1.1.** From the date of this Agreement through the closing date (the "Contract Period"), the Seller shall not make any material alterations to the Property or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Property, nor enter into any leases or agreements pertaining to the Property without the Buyer's prior written consent.

**5.1.2.** During the Contract Period, Seller shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, easement or the like against the title to the Property without Buyer's prior written consent.

**5.1.3.** Seller shall remove all disapproved exceptions including all monetary liens affecting the property prior to closing.

**5.1.4.** During the Contract Period, Seller will operate and maintain the Property in a manner consistent with Seller's past practices relative to the Property and so as not to cause waste to the Property.

**6.1. Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties to Buyer, each of which shall be true on the date hereof and on the date of closing. Seller shall immediately provide Buyer with written notice of any event which would make any representation or warranty set forth below incorrect or untrue, and upon receipt of such notice, Buyer may elect to terminate this Agreement. Upon Buyer's election to terminate, this Agreement shall be without any further force and effect, and without further obligation of either party to the other; provided that in such event, Buyer shall be entitled to a refund of the earnest money.

**6.1.1.** Seller has full power and authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Seller necessary to confer such authority upon the persons executing this Agreement and such other documents have been, or will be, taken, inclusive of obtaining the consent and approval to this Agreement and to any conveyance instrument required herein by any person or persons holding a monetary lien interest in the Property. Consummation of this transaction will not breach any agreement to which Seller is a party. Buyer shall have no obligation to pay any funds prior to, at, or following closing to any third party, including any person or persons holding a monetary lien interest in the Property.

**6.1.2.** Seller has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Property are pending or threatened.



**6.1.3.** Seller has not received any written notice of pending or threatened investigation, litigation or other proceeding before a governmental body or regulatory agency which would materially and adversely affect the Property.

**6.1.4.** Seller has not received any written notice from any governmental authority or regulatory agency that Seller's use of the Property is in violation of any applicable zoning, land use or other law, order, ordinance or regulation affecting the Property.

**6.1.5.** No special or general assessments have been levied against the Property except those disclosed in the Preliminary Title Report and Seller has not received written notice that any such assessments are threatened.

**6.1.6.** Seller is a municipal corporation organized under the laws of the State of Washington and owns the Property, which is otherwise subject to no unrecorded leases, easements, encumbrances or other agreements affecting the property except as shown on the Preliminary Title Report.

**6.1.7.** To the knowledge of Seller: (a) no hazardous substances are, will be, or have been, stored, treated, disposed of or incorporated into, on or around the Property in violation of any applicable statutes, ordinances or regulations; (b) the Property is in material compliance with all applicable environmental, health and safety requirements; and (c) any business heretofore operated on the Property has disposed of its waste in accordance with all applicable statutes, ordinances and regulations. Seller has no actual notice of any pending or threatened action or proceeding arising out of the condition of the Property or any alleged violation of environmental, health or safety statutes, ordinances or regulations.

**6.1.8** To Seller's knowledge, the Rent Roll, and each revision thereof, is correct and complete in all material respects as of the Effective Date and the date of each such revision. There are no leases, rental agreements, license agreements or other occupancy agreements currently in effect which affect the Property other than the Leases listed in the Rent Roll, true and correct copies of which (including all amendments thereto and all guaranties thereof) have been or will be delivered to Buyer pursuant to Section 3.1 (in the case of Leases existing as of the Effective Date) or promptly following the execution thereof (in the case of Leases or amendments executed after the Effective Date). To Seller's knowledge, each of such Leases is in full force and effect and there exists no uncured default on the part of landlord, or on the part of any tenant or licensee, under any of the Leases. Except as set forth on the Rent Roll, to Seller's knowledge, no tenant under any of the Leases has, or as of Closing will have, prepaid any rent or other charges for more than one (1) month in advance.

**6.2.** Buyer's Representations and Warranties. Buyer hereby makes the following representations and warranties to Seller, each of which shall be true on the date hereof and on the date of closing:



**6.2.1.** Buyer has full power and authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Buyer necessary to confer such authority upon the persons executing this Agreement and such other documents have been, or will be, taken.

**6.2.2.** Buyer represents that it has sufficient funds to close this transaction.

**6.2.3.** To Buyer's knowledge, there is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending or threatened against Buyer which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement.

**6.2.4.** No bankruptcy, insolvency, reorganization, or similar action or proceeding, whether voluntary or involuntary, is pending, or, to Buyer's knowledge, has been threatened in writing, against Buyer.

**6.2.5.** BUYER ACKNOWLEDGES THAT THE PURCHASE PRICE HAS BEEN NEGOTIATED TO REFLECT THE CURRENT CONDITION OF THE PROPERTY, "AS IS" AND "WHEREE IS." BUYER ALSO REPRESENTS HE HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON HIS OWN COMPLETED INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY. SUBJECT TO THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT OR IN THE SELLER CLOSING DOCUMENTS, BUYER FURTHER ACKNOWLEDGES THAT IT HAS NOT RECEIVED FROM ANY SELLER ANY ACCOUNTING, TAX, LEGAL, DEVELOPMENT PLANNING, ENVIRONMENTAL, ARCHITECTURAL, ENGINEERING, MANAGEMENT OR OTHER ADVICE WITH RESPECT TO THIS TRANSACTION AND IS RELYING SOLELY UPON THE ADVICE OF ITS OWN ADVISORS.

**6.3.** Survival of Covenants. The covenants, representations, and warranties contained in Sections 5 and 6 of this Agreement shall survive the delivery and recording of the Warranty Deed from the Seller to the Buyer.

**7.** Possession. Buyer shall be entitled to possession of the Property the day after the Closing. Prior to Closing, Seller agrees to remove the several large containers holding an unknown liquid, which are currently located on the Property.

**8.** Casualty and Condemnation. If, prior to closing, any of the Property is destroyed or materially damaged by fire or other casualty, Buyer may (a) elect to terminate this Agreement and have all of the earnest money returned to Buyer or (b) continue to closing and have all rights to any property insurance claims and/or proceeds that result from said destruction or damage assigned to Buyer at the time of closing.



8. Default Remedies. If Seller, without legal right, refuses or otherwise fails to complete the transaction contemplated in this Agreement, Buyer may seek specific performance, damages, or any other remedy available at law or equity. If Buyer, without legal right, refuses or otherwise fails to complete the transaction contemplated in this Agreement, Seller's remedy will be limited as follows: the earnest money deposit will be forfeited to Seller as Seller's sole and exclusive remedy for such refusal or failure.

9. Miscellaneous.

9.1. Finder's Fee. Buyer and Seller each agree that a real estate finder's fee ("Real Estate Compensation") is not due to each other or to any third party. Each party hereby agrees to indemnify and defend the other against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for Real Estate Compensation by any person or entity other than provided herein. The provisions of this section shall survive the closing.

9.2. Time of the Essence. Time is of the essence of every provision of this Agreement.

9.3. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO BUYER:

Steve Gunn  
381 Fields Rd  
Ellensburg, WA 98926

AND TO:

Jeff Slothower  
Lathrop, Winbauer, Harrel, Slothower &  
Denision, LLP  
P.O. Box 1088  
Ellensburg, WA 98926

TO SELLER:

Heidi Behrends Cerniwey, City Manager  
City of Ellensburg  
501 N. Anderson St.  
Ellensburg, WA 98926

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of actual delivery thereof or three (3) days after having been mailed as provided above, as the case may be.



**9.4. Amendment.** This Agreement may be amended only by the written agreement of each of the parties to this Agreement.

**9.5. Assignment.** Except as otherwise expressly provided in this Agreement, Buyer may not assign this Agreement or Buyer's rights hereunder without Seller's prior written consent, which consent may not be unreasonably withheld or delayed; provided, however, Buyer, with written notice to Seller, is permitted to assign Buyer's interest under this Agreement to an entity wholly-owned by Buyer.

**9.6. Attorneys' Fees and Costs.** If any party to this Agreement brings a legal action to interpret or enforce this Agreement, the substantially prevailing party in the action will be entitled to an award of the reasonable attorneys' fees and costs it incurs in the action, whether in arbitration, at trial, on appeal, or in a bankruptcy proceeding.

**9.7. Governing Law and Venue.** This Agreement will be interpreted, construed, and governed by the laws of the State of Washington. The exclusive venue for any legal action to interpret or enforce this Agreement shall be in Kittitas County Superior Court.

- **9.8. Captions.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

**9.9. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, that provision and the remainder of this Agreement will continue in effect and be enforceable to the fullest extent permitted by law. Furthermore, it is the intention of the parties to this Agreement that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision will have the meaning that renders the provision valid.

**9.10. Exhibits.** All exhibits attached hereto shall be incorporated by reference as if set out in full herein.

**9.11. Binding Effect.** Regardless of which party prepared or communicated this Agreement, this Agreement shall be of binding effect between Buyer and Seller only upon its execution by an authorized representative of each such party.

**9.12. Construction; Role of Legal Counsel.** The parties acknowledge that each party has reviewed this Agreement, and that the normal rule of construction providing that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto. If Buyer has any questions regarding this Agreement and any addenda, attachments, or other related documents, Buyer should consult an attorney or tax advisor of Buyer's own



choice. Buyer, by the signature appearing below, agrees and affirms that it has had an adequate opportunity to secure independent legal counsel of its own choosing to review this Agreement and the documents attached hereto.

**9.13. Counterparts.** This Purchase and Sale Agreement may be executed in several counterparts, each of which shall be an original, but all of such counterparts shall constitute one such Agreement.

**9.14. Cooperation and Further Assurances.** Each party shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold responses to requests for information, approvals, or consents provided for in this Agreement. The parties agree to take further action and execute further documents, both jointly or within their respective powers and authority, as may be reasonably necessary to implement the intent of this Agreement.

**9.15. Merger.** The delivery of the Warranty Deed and any other documents and instruments by Seller and the acceptance and recordation thereof by Buyer shall effect a merger, and be deemed the full performance and discharge of every obligation on the part of Buyer and Seller to be performed hereunder, except those clauses, covenants, warranties and indemnifications specifically provided herein to survive the closing.

**9.16. Complete Agreement.** This Agreement represents and contains the entire understanding between the parties related to the acquisition of the Property. The parties acknowledge that no other oral or written collateral agreements, understandings, or representations exist outside of this document, with the exception of any documents expressly incorporated by reference in this Agreement. Any prior agreements, whether verbal or written, not specifically referred to in this Agreement are hereby terminated.

**9.17. Scrivener.** The party drafting this Agreement is the Seller. The Seller makes no representations regarding the rights or responsibilities of Buyer under this Agreement. Buyer is encouraged to review the completed contract with legal counsel before signing this Agreement.

**9.18 Waiver.** Failure of either Party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

**9.19 Successors and Assigns.** All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.


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IN WITNESS WHEREOF, the Buyer has executed this Agreement on the date shown next to its signature, and Seller has accepted on the date shown next to its signature.

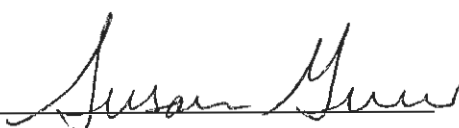
**BUYER:**

**STEVE GUNN**



Date: 5-28-21

**SUSAN GUNN**



Date: 5/28/21

**SELLER:**


**CITY OF ELLENSBURG,  
WASHINGTON, a Washington  
municipal corporation - SELLER**



By: Heidi Behrends Cerniwey  
Its: City Manager

Date: 6-8-2021

Approved by Legal Counsel for the  
City of Ellensburg:



By: Terry Weiner, City Attorney



## EXHIBIT A

### Legal Description and Depiction of Property

Approximately 2.1 acres of property located at 1000 Prospect Street, Ellensburg, Washington, identified as Kittitas County Tax Parcel No. 328736, and legally described as:

Lot 1, ELLENSBURG INDUSTRIAL PARK, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 8 of Plats, page 19, records of said County.

AND

That portion of Vacated Lot C of that certain Survey as recorded June 8, 1989, in Book 16 of Surveys, page 32, under Auditor's File No. 520966, records of Kittitas County, Washington; being a portion of the Southeast Quarter of the Southeast Quarter of Section 34, Township 18 North, Range 18 East, W.M., in the County of

Kittitas, State of Washington; accruing thereto by operation of law.

EXCEPTING THEREFROM:

Lot B of that certain Survey as recorded June 8, 1989, in Book 16 of Surveys, page 32, under Auditor's File No. 520966, records of Kittitas County, Washington; being a portion of the Southeast Quarter of the Southeast Quarter of Section 34, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington; accruing thereto by operation of law.



## **EXHIBIT B**

Form of Easement Agreement  
[begins on following page]



**After recording return to:**

Public Works Department  
City of Ellensburg  
501 N Anderson St  
Ellensburg, WA 98926

DOCUMENT TITLE:

NON-EXCLUSIVE PERPETUAL ACCESS AND  
UTILITY EASEMENT

GRANTORS:

STEVE GUNN AND SUSAN GUNN

GRANTEE:

City of Ellensburg, a Washington municipal corporation.

LEGAL DESCRIPTION: < Easement Area>: Beginning at the Northwest corner of Lot 1, ELLENSBURG INDUSTRIAL PARK, as per plat thereof recorded in Book 8 of Plats, at page 19, records of Kittitas County, Washington; thence S 00°44'39" E, along the west boundary of said Lot 1, 100.91 feet to the true point of beginning for said described line; thence S 45°18'00" E, along a line parallel with the northeasterly boundary of said Lot 1, 401.94 feet to a point 40 feet southwesterly, perpendicular measure, of said northeasterly boundary of Lot 1; thence S 00°44'39" E, 60.14 feet to a point on the northeasterly boundary of the Prospect Street cul-de-sac as delineated on Book 16 of Surveys at page 32, as recorded June 8, 1989, under Auditor's File No. 520966, records of Kittitas County, Washington, which point bears N 52°54'54" W, 56.77 feet from the southerly most corner of Lot C of that certain survey as recorded June 8, 1989 in Book 16 of Surveys at page 32, under Auditor's File No. 520966, records of said county; thence along the northerly boundary of said cul-de-sac, along a 60.00 foot radius curve to the right, through a central angle of 56°28'12", an arc distance of 59.14 feet to said southerly most corner of Lot C and the end of said described line. See Exhibit 1.

ASSESSOR'S TAX PARCEL NO.: 328736 / 18-18-34051-0001

**NON-EXCLUSIVE PERPETUAL ACCESS AND UTILITY EASEMENT**

THIS NON-EXCLUSIVE PERPETUAL ACCESS AND UTILITY EASEMENT (hereinafter referred to as the "Access and Utility Easement" or "Easement") is made, declared and established this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between STEVE GUNN and SUSAN GUNN, Grantors and the CITY OF ELLENSBURG, a Washington municipal corporation, Grantee (collectively referred to as the "Declarants").



WHEREAS, the Grantors own the real property situated in Kittitas County, State of Washington which is legally described above; and

WHEREAS, the Grantors desire to establish unto the City of Ellensburg certain non-exclusive, perpetual easements for access and utility purposes;

NOW, THEREFORE, for and in consideration of the benefits contained and derived hereunder, and for other good and valuable consideration, the receipt and sufficiency of which Grantors hereby acknowledge, Grantors, for and on behalf of themselves and their successors in interest and assigns, does hereby convey, grant, declare, reserve unto itself, and establish the following easements for the benefit of Grantee:

### **1. ACCESS AND UTILITY EASEMENT**

**1.1 Location.** The Grantors hereby grant, declare, reserve, and establish an exclusive, perpetual easement over, across, and under the parcel as previously described (the "Easement area").

**1.2 Use.** The Declarants acknowledge and agree the Access and Utility Easement exists for the benefit of Grantee's access, public utilities and burdens Grantors' property. The Access and Utility Easement is to be used by the Grantee, and its successors and assigns for the purposes of access, locating, constructing, operating, repairing, maintaining, improving, removing and enlarging utility systems, including but not limited to water, sewer, storm water, street, gas, electric, communications and light utility systems, and any and all associated facilities or appurtenances necessary or convenient to the foregoing. Following the initial construction of all or a portion of its systems, Grantee may, from time to time, construct such additional facilities as it may require for such systems. Grantee shall have the right of access over and across the above-described parcel to enable Grantee to exercise its rights hereunder. Further, Grantee reserves the right to convey, grant, or declare private utility easements within the Easement area, with the same access rights thereto over and across the above-described parcel, when Grantee determines the same to be in the public interest.

**1.3 Maintenance of the Surface of the Utility Easement.** If and when the Grantee maintains, repairs, or improves the Access and Utility Easement or the utilities within the Access and Utility Easement for any reason, the Grantee, at the conclusion of said maintenance, repair, or improvement of said access or utilities located on the Access and Utility Easement shall have the obligation of returning any unused surface area of the easement to the condition it was in prior to the maintenance, repair, or improvement which resulted in a disturbance of the surface. The cost of returning the surface to its prior condition shall be the sole and separate responsibility and obligation of the Grantee.

**1.4 Clearing and Maintenance.** Grantee shall have the right to remove, trim or cut any brush, trees, shrubs or other vegetation standing or growing upon or adjacent to said facilities which in the opinion of the Grantee constitute an obstruction to the maintenance, repair or improvement of, or a danger to, said facilities. Grantee shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees, shrubs or other vegetation in the Easement area. In addition, Grantee shall have exclusive use of the property as described in the easement.



The Grantors further agree and confirm that no permanent above ground structures will be located in the Easement Area. Further, the Grantors shall keep all new structures set back from the perimeter of the Easement Area a distance equal to that as contained in the zoning classification for the property in order to ensure that no conflicts arise between the permanent improvements on the remainder of the property not subject to the easement, and future construction of the access, utilities or other facilities.

## **2. AGREEMENTS BETWEEN GRANTORS AND GRANTEE.**

The rights, title, privileges, and authority hereby granted shall continue and be in full force until such time as the Grantee, its successors or assigns, shall permanently remove said facilities and/or appurtenances from said property, or shall otherwise permanently abandon said facilities, at which time all such rights, title, privileges, and authority hereby granted shall terminate, and Grantee, at the request of Grantors, shall execute a document evidencing such termination and clearing title of this easement.

## **3. EASEMENT RUNS WITH THE LAND.**

The easement granted herein, the restrictions established herein, and the covenants on the part of the Declarants, shall run with the land described herein and shall bind and be obligatory upon the parties and their respective successors and assigns, tenants, subtenants, licensees, and invitees.

## **4. SUCCESSORS AND ASSIGNS.**

Grantee shall have the right to assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in or under the easements conveyed, granted and reserved herein. Without limiting the generality of the foregoing, the rights and obligations of the Declarants shall inure to the benefit of and be binding upon their respective successors and assigns.

## **5. TITLES AND HEADINGS.**

Titles and headings are for descriptive purposes only and do not control or alter the meaning of this agreement or any provision thereunder as set forth herein.

## **6. WARRANTIES AND REPRESENTATIONS.**

Grantors represent and warrant to the Grantee that: (a) Grantors have all necessary power and authority to execute and deliver this easement to the Grantee; (b) that Grantors are the owners of the herein-described real property; c) to the best of Grantors' actual knowledge, Grantors have never generated, stored, handled, or disposed of any hazardous waste or hazardous substance on any of said real property, including the Easement Area and Grantors' adjacent real property, in violation of applicable laws and Grantors have no actual knowledge of any hazardous waste or hazardous substance on said real property.

## **7. ENTIRE AGREEMENT.**

This agreement constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon the execution of this agreement. No change in or amendment to this easement shall be valid unless set forth in writing and signed by all of the parties after



execution of this agreement.

STEVE GUNN, GRANTOR

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

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

CITY OF ELLENSBURG, GRANTEE

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

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

SUSAN GUNN, GRANTOR

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

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

STATE OF WASHINGTON                    )  
  ) ss.  
County of Kittitas                        )

On this day personally appeared before me, the undersigned Notary Public, in and for the State of Washington, duly commissioned and sworn, STEVE GUNN, as GRANTOR, a Washington municipal corporation, which executed the within and foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said university, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

Notary Public in and for the State of Washington, residing at \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON                    )  
  ) ss.  
County of Kittitas                        )

On this day personally appeared before me, the undersigned Notary Public, in and for the State of Washington, duly commissioned and sworn, SUSAN GUNN, as GRANTOR, a Washington municipal corporation, which executed the within and foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said university, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute



said instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

Notary Public in and for the State of Washington, residing at \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON                   )  
   ) ss.  
County of Kittitas                      )

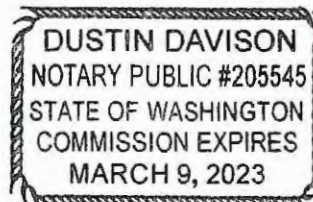
On this day personally appeared before me, the undersigned Notary Public, in and for the State of Washington, duly commissioned and sworn, Heidi Behrends Cerniwey, the City Manager of the CITY OF ELLENSBURG, as GRANTEE, a Washington municipal corporation, which executed the within and foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said city, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

Dated this 8<sup>th</sup> day of June, 2021.

Printed Name: Dustin Davison

Notary Public in and for the State of Washington, residing at ELLENBURG

My Commission Expires: March 9, 2023





**CRUSE**  
& ASSOCIATES  
PROFESSIONAL LAND SURVEYORS

CITY OF ELLENSBURG ACCESS & UTILITY EASEMENT  
5/5/21

An easement of variable width across the below described parcels, being that portion of said parcels lying east and northeast of a line described as follows:

Beginning at the Northwest corner of Lot 1, ELLENSBURG INDUSTRIAL PARK, as per plat thereof recorded in Book 8 of Plats, at page 19, records of Kittitas County, Washington; thence S 00°44'39" E, along the west boundary of said Lot 1, 100.91 feet to the true point of beginning for said described line; thence S 45°18'00" E, along a line parallel with the northeasterly boundary of said Lot 1, 401.94 feet to a point 40 feet southwesterly, perpendicular measure, of said northeasterly boundary of Lot 1; thence S 00°44'39" E, 60.14 feet to a point on the northeasterly boundary of the Prospect Street cul-de-sac as delineated on Book 16 of Surveys at page 32, as recorded June 8, 1989, under Auditor's File No. 520966, records of Kittitas County, Washington, which point bears N 52°54'54" W, 56.77 feet from the southerly most corner of Lot C of that certain survey as recorded June 8, 1989 in Book 16 of Surveys at page 32, under Auditor's File No. 520966, records of said county; thence along the northerly boundary of said cul-de-sac, along a 60.00 foot radius curve to the right, through a central angle of 56°28'12", an arc distance of 59.14 feet to said southerly most corner of Lot C and the end of said described line.

**Described Parcels:**

Lot C of that certain survey as recorded June 8, 1989 in Book 16 of Surveys at page 32, under Auditor's File No. 520966, records of Kittitas County, Washington; being a portion of the Prospect Street right of way vacated by City of Ellensburg Ordinance No. 3651.

**AND**

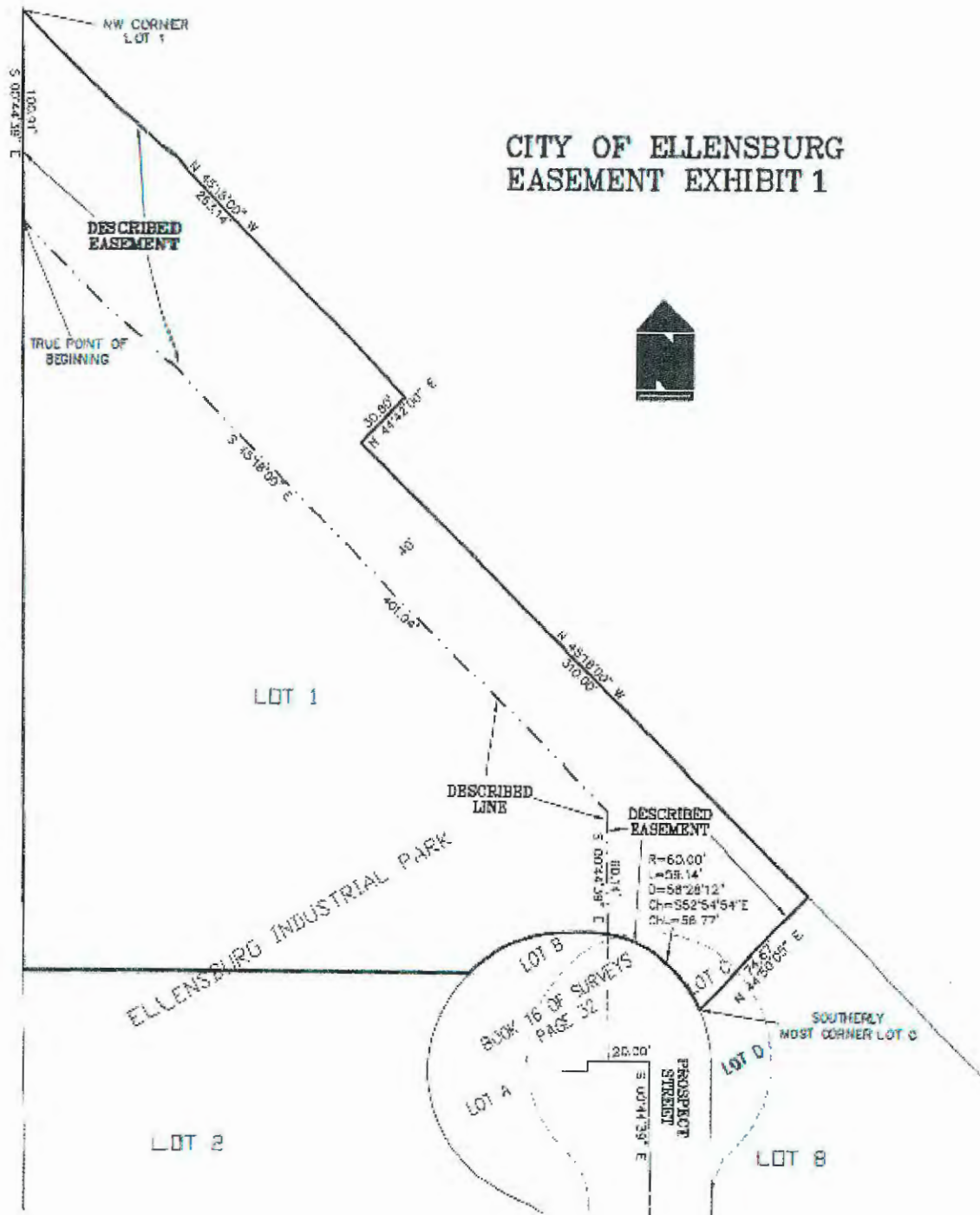
Lot 1, ELLENSBURG INDUSTRIAL PARK, as per plat thereof recorded in Book 8 of Plats, at page 19, records of Kittitas County, Washington; EXCEPT Lot B of that certain survey as recorded June 8, 1989 in Book 16 of Surveys at page 32, under Auditor's File No. 520966, records of Kittitas County, Washington.

All as per attached Exhibit.



217 E. FOURTH • P.O. BOX 959 • ELLENSBURG, WA 98926 • (509) 962-8242







## **EXHIBIT C**

### List of Leases and Rent Roll



