

**NORTH BEACH WATER DISTRICT  
PACIFIC COUNTY, WASHINGTON**

**RESOLUTION NO. 24-2013**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF NORTH  
BEACH WATER DISTRICT, PACIFIC COUNTY, WASHINGTON,  
AUTHORIZING THE PURCHASE OF REAL ESTATE**

**WHEREAS**, the Board of Commissioners have determined that the south well field requires improvements; and

**WHEREAS**, the Board of Commissioners have determined that south well field lacks sufficient room to accommodate the required improvements; and

**WHEREAS**, the Board of Commissioners located real estate owned by the Wiegardt Group that has the potential to accommodate the required improvements to the south well field; and

**WHEREAS**, the Board of Commissioners, at a special meeting held July 9, 2012, authorized the general manager to negotiate a purchase and sales agreement with the Wiegardt Group for real estate located in Pacific County, specifically the easterly eleven (11) acres of a thirty two and one half (32.5) acre parcel located on the corner of 250<sup>th</sup> Street and U Street in Ocean Park, Washington (Tax parcel number 12113313001); and

**WHEREAS**, the general manager, on August 8, 2013, successfully negotiated a purchase and sales agreement with the Wiegardt Group that contained a feasibility contingency along with two subsequent addendums attached hereto and incorporated herein as "Exhibit A"; and

**WHEREAS**, the Board of Commissioners, at their September 16, 2013 regular meeting waived all contingences and instructed the general manager to proceed with the closing of the transaction; now, therefore,

**BE IT RESOLVED** by the Board of Commissioners of North Beach Water District, Pacific County, to authorize the general manager to finalize and close the purchase of the real estate from the Wiegardt Group for a purchase price of one hundred and twenty thousand one hundred ten dollars and no cents (\$120,110.00) plus closing cost as soon as possible.

**ADOPTED** by the Board of Commissioners on North Beach Water District, Pacific County, Washington at its regular meeting held on the 18<sup>th</sup> day of November, 2013.

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**Brian Sheldon, Commissioner**  
**Position #1**

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**Gwen Brake, Commissioner**  
**Position #2**

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**RD Williams, Commissioner**  
**Position #3**

Official seal of North Beach  
Water District

# "Exhibit A"

## VACANT LAND PURCHASE AND SALE AGREEMENT

THIS VACANT LAND PURCHASE AND SALE AGREEMENT (this "*Agreement*") is entered into by and between WIEGARDT GROUP, LLC, a Washington limited liability company ("*Seller*") and the NORTH BEACH WATER DISTRICT, a municipal corporation (the "*District*") with regard to the following:

### RECITALS

A. Seller is the owner of certain undeveloped real property located in Ocean Park, Pacific County, Washington, consisting of approximately 10.5 acres, having a physical address of XXX U Street, Ocean Park, Washington 98640 and legally described on Exhibit "A," attached hereto and incorporated by this reference (the "*Original Parcel*"). The Original Parcel is identified as Tax Parcel No. 12113313001.

B. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser a portion of the Original Parcel, consisting of approximately the east 365 feet +/- of the Original Parcel and totaling approximately 10.5 acres (the "*Property*").

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth below, the parties agree as follows:

1. Purchase and Sale Terms. The District shall purchase the Property from Seller and Seller shall sell the Property to the District on the following terms and conditions:

1.1 Purchase Price. The Purchase Price to be paid by the District to Seller for the Property shall be Eleven Thousand Dollars and No/100ths (\$11,000.00) per acre (the "*Purchase Price*"), to be paid in cash at Closing. The Purchase Price shall be calculated based on the total acreage of the Property, as determined by that Survey to be performed in accordance with Paragraph 2 below. Upon completion of the Survey, the parties shall execute an Addendum to this Agreement setting forth the Purchase Price.

1.2 Earnest Money. Within five (5) business days after mutual acceptance of this Agreement, the District shall deposit with the Closing Agent (as identified in Paragraph 3 below) a check in the sum of Five Thousand Dollars and No/100ths (\$5,000.00)(the "*Earnest Money*"). The parties will instruct the Closing Agent to deposit the Earnest Money into an interest bearing escrow account (the "*Escrow Account*") at a federally insured banking institution, to be held and applied pursuant to the terms of this Agreement. Except as otherwise provided in this Agreement, the Earnest Money and all accrued interest will be credited to the District at Closing and applied to payment of the Purchase Price.

1.3 Date of Closing. The purchase and sale transaction set forth in this Agreement shall be closed as soon as reasonably possible following the expiration of each and all of the contingencies set forth in Paragraphs 2 and 3 below, and in no event later than February 28, 2013 (the "*Closing Date*").



2. Subdivision. The parties acknowledge and agree that, in order to effectuate the transaction contemplated herein, the Original Parcel must be subdivided. In connection with such subdivision, the parties agree as follows:

2.1 Survey. Upon waiver or satisfaction of all contingencies contained in this Agreement, the District shall promptly obtain an ALTA survey of the Property (the "Survey"), to be conducted by a registered land surveyor doing business in the state of Washington that is mutually acceptable to the parties. Seller shall permit the surveyor reasonable access to the Original Parcel for purposes of conducting the Survey. The District shall be solely responsible for all costs and fees incurred in connection with the Survey. The District shall deliver to Seller a copy of the Survey within five (5) business days of the District's receipt of the same. The parties shall have twenty (20) days after delivery of the Survey to review and approve the Survey. If either party has any concerns about or objections to the Survey, the parties shall endeavor in good faith to resolve these concerns/objections. If these concerns/objections cannot be resolved, then either party may, within said 20 day period, terminate this Agreement by providing written notice to the other of a disapproval of the Survey. Upon such notice, this Agreement shall terminate and neither Seller nor the District shall have any further rights, duties or obligations hereunder, except that the Earnest Money delivered by the District, along with all accrued interest, shall be immediately returned to the District. If neither party provides written notice of a disapproval of the Survey, the Survey shall be deemed accepted and the parties shall execute an Addendum to this Agreement setting forth the Purchase Price of the Property based on the final acreage calculation and the legal description of the Property, as set forth in the Survey.

2.2 Subdivision Application. Upon waiver or satisfaction of all contingencies contained in this Agreement, Seller shall diligently apply for and pursue all necessary government approvals (or any applicable exemptions thereto) to subdivide the Original Parcel into two lots, including the Property as described and depicted in the Survey. Seller shall provide all documents, information and consents necessary to pursue such subdivision and shall execute any application documents necessary for the processing of such subdivision approval (or exemption); provided, that the District shall be responsible for all fees and costs associated with the subdivision process; provided, however, that Seller shall not charge the District for any fees associated with Seller's time in pursuing or effectuating the subdivision process.

2.3 Mutual Contingency. At Closing, Seller shall deliver the final subdivision approval (unless otherwise exempt) for recording, and such approval shall be recorded immediately prior to Closing. Seller shall promptly notify the District of any problems or issues arising with respect to the proposed subdivision or the application process as soon as Seller becomes aware of the same, and shall notify the District within three (3) business days of any governmental agency rejection or non-approval of Seller's subdivision application. If, for reasons outside the reasonable control of either party, the proposed subdivision is not approved by any federal, state or local governmental agency having jurisdiction over such matter, then either Seller or the District may terminate this Agreement by providing the other with a written notice of failure of contingency before Closing. Upon such notice, this Agreement shall be deemed terminated, and neither Seller nor the District shall have any further rights,

duties or obligations hereunder, except that the Earnest Money previously delivered by the District, and all interest accrued thereon, shall be immediately returned to the District.

3. District Contingencies. The District's obligations hereunder are expressly contingent upon the District determining, in its sole discretion, to waive each of the following contingencies.

3.1 Condition of Title. Upon receipt of the Survey, Seller shall cause \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Title Company, \_\_\_\_\_, Washington (the "*Title Company*") to issue to the District a preliminary commitment for standard owner's policy of title insurance for the Property, together with full copies of any exceptions set forth therein (the "*Preliminary Commitment*"). The District shall have ten business (10) days after delivery of the Preliminary Commitment within which to notify Seller, in writing, of the District's disapproval of any exceptions shown on the Preliminary Commitment.

If the District disapproves any of the exceptions or defects set forth in the Preliminary Commitment, Seller shall have five (5) business days from delivery of the District's notice to eliminate any disapproved exceptions from the policy of title insurance to be issued in favor of the District; provided, that all monetary encumbrances and liens, if any, shall be deemed automatically disapproved and shall be paid by Seller at Closing; and provided, further that, if such exceptions or defects cannot be eliminated within such five (5) business day period, Seller may notify the District in writing of Seller's agreement to remove such exceptions or defects, in which case such exceptions or defects shall be removed from title prior to Closing.

If disapproved exceptions are not eliminated within said five (5) business day period, or if Seller fails to notify the District within five (5) business days of Seller's willingness to remove such exceptions prior to Closing, or if Seller notifies the District in writing that Seller will not eliminate the same, then this Agreement shall terminate, and neither Seller nor the District shall have any further rights, duties or obligations hereunder, unless within three (3) business days after the earlier of (1) the expiration of said five (5) business day period, or (ii) the date that Seller notifies the District that Seller will not eliminate the disapproved exceptions, the District waives its prior disapproval and elects to proceed with Closing subject to the disapproved exceptions.

Those exceptions accepted by the District pursuant to this Paragraph 3.1.1. shall constitute "*Permitted Encumbrances*," and the District shall take title to the Property subject to said Permitted Encumbrances and no other encumbrances or liens on the Property.

3.2 Inspection/Feasibility. The District shall have 185 days from the date of mutual acceptance hereof (the "*Feasibility Period*") within which to determine, in the District's sole and absolute discretion, if the Property is feasible for the District's intended use and purposes.

If the District notifies Seller in writing of its disapproval of the Property on or before the expiration of the Feasibility Period, then this Agreement shall be deemed terminated, and neither Seller nor the District shall have any further rights, duties or obligations hereunder, except that the Earnest Money previously delivered by the District, and all interest accrued thereon, shall be immediately



returned to the District. If the District does not notify Seller of its disapproval of the Property on or before the expiration of the Feasibility Period, then this contingency shall be deemed satisfied and waived.

Seller agrees to deliver to the District on or before thirty (30) days from the date of mutual acceptance of this Agreement, copies of the following information and documentation in Seller's possession or control and relating to the Property: (i) any existing ALTA surveys; (ii) copies of soils and related reports; (iii) copies of tax assessments, LID's, etc.; (iv) all environmental reports, including but not limited to asbestos, Phase I or Phase II reports, soils, wetlands and hazardous substances tests and reports; (v) all engineering and related studies in connection with the Property; and (vi) any other relevant reports, studies or information in its possession. The documents and information required to be delivered by Seller as specified herein are referred to as the "*Property Information.*"

The District's inspections and studies may included (but are not limited to) environmental, water and soil studies, utilities availability and capacity, zoning, architectural and engineering studies, and the feasibility and costs of intended improvements and operation of the Property. Seller acknowledges and understands that, as part of the District's feasibility study, it may construct (i) a "water well" on the Property, for purposes of ascertaining suitability of site for District purposes, and (ii) a road and drill pad will be constructed to facilitate the water well construction. Such construction may require the removal of some trees. Any trees removed will be neatly stacked on site and remain the possession of Seller. Seller expressly consents to and authorizes such construction and tree removal. In connection with the District's studies and investigations, the District and its employees, contractors and agents shall have the right to enter onto the Property during reasonable times for the purposes of performing structural, engineering, environmental or topographic tests, surveys and/or related construction.

The District agrees to indemnify and save Seller harmless from any and all costs or expenses incurred by or on behalf of the District in undertaking its inspection/feasibility studies. If the District does not remove or waive the inspection/feasibility contingency, then the District shall immediately deliver to Seller the Property Information previously furnished by Seller together with all information and documentation obtained by the District in connection with its studies. The District shall also restore the Property at its sole cost to substantially the same condition as when the District commenced its studies; provided, that the District shall not be required to remove the access road or replace or replant any trees or vegetation removed in connection with the construction of the road or water well.

3.3 Financing Contingency. The District's obligations hereunder shall be contingent upon the District securing any necessary financing that the District deems necessary or advisable. If the District does not notify Seller of the failure of this financing contingency on or before the expiration of the Feasibility Period, this contingency shall be deemed satisfied or waived.

3.4 Board Approval. The District's obligations hereunder shall be contingent upon final approval of this Agreement by the District's Board of Commissioners. If such approval is not received

within thirty (30) days of mutual acceptance of this Agreement, this Agreement shall automatically terminate unless otherwise agreed to in writing by the parties.

3.5 Waiver of Contingencies. If the District notifies Seller in writing that the contingencies set forth herein have been waived, or if the contingencies otherwise are satisfied or expire on their own terms as set forth herein, the Closing of this transaction shall thereafter proceed in accordance with the terms hereof.

3.6 Failure of Contingencies. The conditions contained in this Paragraph 3.1 are intended solely for the benefit of the District. Except as otherwise expressly provided herein, if any of the foregoing conditions are not satisfied, the District will have the right as its sole election either to waive the condition in question and proceed with the transaction, or in the alternative to terminate this Agreement by the delivery of timely written notice to Seller, whereupon, except as otherwise provided in this Agreement, neither party hereto will have any further rights, duties or obligations under this Agreement, except that the Earnest Money previously delivered by the District, together with all interest accrued thereon, shall be immediately returned to the District.

4. Conveyance of Title. On the Closing Date, the title to the Property shall be conveyed by statutory warranty deed subject only to the Permitted Exceptions (the "*Deed*"). Prior to or concurrent with the delivery of the Deed, Seller shall pay for and the District shall obtain for the District's benefit, an ALTA Standard Coverage Owner's Policy of Title Insurance for the Property in the District's name and in the amount of the Purchase Price, containing only the Permitted Exceptions. The District may, in its discretion, elect to obtain an extended coverage owner's policy; provided, that the District shall be responsible for the additional costs associated with such coverage.

5. Closing and Escrow.

5.1 Escrow Agent. The Title Company shall act as the escrow agent for this transaction (the "*Escrow Agent*"). Upon mutual acceptance of this Agreement, the District shall deposit an executed counterpart with the Escrow Agent for consummation of the purchase and sale contemplated hereby. Seller and the District shall execute such additional and supplementary escrow instructions which are consistent with this Agreement and as may be reasonable or appropriate to enable the Escrow Agent to comply with the terms of this Agreement. In the event of a conflict between the provisions of this Agreement and any escrow instructions, the terms of this Agreement shall govern.

5.2 Proration's. All taxes and assessments for the Property shall be prorated as of the Closing Date.

5.3 Closing Costs. On Closing, the parties shall share equally: (i) all recording fees; and (ii) escrow fees charged by the Escrow Agent. Seller shall pay all real estate excise taxes associated with the sale of the Property. Seller shall pay the premium for the title insurance to be issued by the Title Company for the benefit of the District in the amount of the Purchase Price. The District shall be responsible for any costs associated with an extended owner's policy, should the District elect to obtain such coverage.