

**NORTH BEACH WATER DISTRICT  
PACIFIC COUNTY**

**RESOLUTION 05-2013**

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

**WHEREAS,** The Agnes J. Mayers Family Trust owns real estate described as, Lot 7, Block 1 of Sailfish Addition, according to the plat thereof on file in the office of the Pacific County Auditor, that is contiguous to real estate (North Wellfield) owned by the District that contains water wells approved by the Washington State Department of Health as sources of drinking water for the District's water system, and

**WHEREAS,** The Agnes J. Mayers Family Trust real estate has a source of contamination (septic system) that lies within the sanitary control area of two of the water wells contained on the District's North Wellfield; and

**WHEREAS,** The Washington State Department of Health has ordered the District to either, remove all sources of contamination from the sanitary control area of wells contained on the District's North Wellfield, or affected water wells will no longer be approved sources of drinking water for the District's water system; and

**WHEREAS,** The Agnes J. Mayers Family Trust has agreed to sell and the District has agreed to purchase the real estate; now, therefore,

**Be It Resolved,** by the Board of Commissioners of North Beach Water District, Pacific County, Washington, to authorize the purchase of the Agnes J. Mayers real estate as defined in the attached purchase and sales agreement (exhibit "A").

Continued on next page

**Adopted by** the Board of Commissioners of North Beach Water  
District, Pacific County, Washington at its regular meeting held  
on the 19<sup>nd</sup> day of February, 2013.



Brian Sheldon, Commissioner  
Position #1

Gwen Brake, Commissioner  
Position #2



RD Williams, Commissioner  
Position #3

Official Seal of North Beach  
Water District

EXHIBIT A

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered by and between the AGNES J. MAYERS FAMILY TRUST, by Betty A. Zakutney, Trustee ("Seller"), and the NORTH BEACH WATER DISTRICT, a municipal corporation (the "District"), and with regard to the following:

**RECITALS:**

A. Seller is the owner of certain real property located at 2306 272<sup>nd</sup> Street, Ocean Park, Washington 98640, as legally described on **Exhibit "A"**, attached hereto and incorporated by this reference (the "Property").

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

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, 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 for Property.** The purchase price to be paid by the District to Seller for Property shall be SIXTY THOUSAND DOLLARS AND NO/100THS (\$60,000.00) (the "Purchase Price") The Purchase Price shall be paid in cash at Closing.

1.2 **Earnest Money.** Within five (5) business days of mutual acceptance of this Agreement, Seller shall deliver to the Escrow Agent (as defined below) a cash deposit in the amount of ONE THOUSAND DOLLARS AND NO/100THS (\$1,000.00) as earnest money. Said earnest money shall be deposited by the Escrow Agent into an interest bearing escrow account with the interest thereon to be credited to the District. The earnest money together with the interest accrued thereon is referred to herein as the "Earnest Money."

1.3 **Date of Closing.** The transaction set forth in this Agreement shall be closed as soon as reasonably possible following review and approval of this transaction by the Board of Commissioners of the District ("Date of Closing"), and in no event later than February 28, 2013, subject only to the satisfaction of the contingencies set forth below.

2. **The District's Contingencies.**

2.1 **Board Approval.** This Agreement is subject to the approval of the Board of Commissioners of the District, which approval shall occur no later than February 19, 2013.

2.2 **Condition of Title.** Upon mutual execution of this Agreement, Seller shall cause First American Title Insurance Company, 408 Pacific Avenue #3, Long Beach, WA 98631 (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 five (5) 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; provided, that all monetary exceptions shall be automatically disapproved by the District (without any need for written disapproval) and shall be removed and/or satisfied on or before Closing.

If the District disapproves any of the exceptions or defects set forth in the Preliminary Commitment, Seller shall have ten (10) days from delivery of the District's notice to notify the District that Seller will eliminate or cause to be eliminated any disapproved exceptions from the policy of title insurance to be issued in favor of the District prior to Closing.

If Seller fails to notify the District within ten (10) 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 two (2) days after the earlier of (i) the expiration of said ten (10) 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 2.2 shall be referred to herein as the "Permitted Exceptions".

2.4 Waiver of Contingencies. The conditions contained in this Paragraph 2 are intended solely for the benefit of the District. 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, the Closing of this transaction shall thereafter proceed in accordance with the terms hereof. If this Agreement is terminated due to the failure of any District contingency, neither party shall have further recourse against the other pursuant to this Agreement and the Earnest Money shall be promptly returned to the District, without offset or recourse.

3. Conveyance of Title. On the Date of Closing, the Property shall be conveyed to the District by a Statutory Warranty Deed (the "Deed"), free and clear of all liens, encumbrances or defects except those approved by the District, subject only to the Permitted Exceptions. Prior to or concurrent with the delivery of the Deed, Seller shall also deliver or cause to be delivered to the District, for the District's benefit, a final 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.

#### 4. Closing and Escrow

4.1 Escrow Agent. Upon mutual execution of this Agreement, the District shall deposit an executed counterpart with the Title Company, who shall also serve as escrow agent for purposes of this transaction, (herein the "Escrow Agent") for consummation of the purchase and sale contemplated hereby. The District and Seller shall execute such additional and supplementary escrow instructions 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.

4.2 Closing Costs. At 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, if any. 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 pay any and all costs relating to its financing, if any.

4.3 Closing Obligations of the District. On or before Closing, the District shall deliver to the Escrow Agent duly executed and acknowledged documents (where appropriate) and funds as follows:

4.3.1 The Purchase Price, less the Earnest Money previously paid by the District, plus or minus applicable prorations and closing costs.

4.3.2 A Closing Statement in form and content reasonably satisfactory to the parties.

4.3.3 A Real Estate Excise Tax Affidavit executed by the District in form required by law.

4.3.4 Any other documents necessary to effect the transaction contemplated in this Agreement.

4.4 Closing Obligations of Seller. At Closing, Seller shall deliver to the Escrow Agent the following duly executed and acknowledged documents (where appropriate):

4.4.1 The Deed.

4.4.2 A Closing Statement in form and content reasonably satisfactory to the parties.

4.4.3 A Real Estate Excise Tax Affidavit executed by Seller in form required by law.

4.4.4 A Foreign Investment in Real Property Tax Act affidavit executed by Seller.

4.4.5 Such documentation, representations and/or warranties which may be reasonably required by the Escrow Agent and/or the District to confirm and verify the Co-Trustee's authorization to convey the Property on behalf of Seller.

4.4.5 Any other documents necessary to effect the transaction contemplated in this Agreement.

4.5 Possession. The District shall be entitled to possession of the Property upon Closing. "Closing" means the date on which all documents are recorded and the sale proceeds are available for unconditional disbursement to the District.



5. **Default.** If the District defaults on its obligation to purchase the Real Property from Seller pursuant to this Agreement, Seller's sole and exclusive remedy shall be to terminate this Agreement and retain the Earnest Money as liquidated damages. It has been agreed by the parties that the forfeiture of the Earnest Money constitutes a reasonable estimate of the risks and damages Seller could suffer as a result of the District's failure to close this transaction.

Seller's Initials BZ

The District's Initials mw

If Seller defaults in its obligation to sell and convey the Property to the District pursuant to this Agreement, the District shall have all of the rights and remedies available at law or in equity, including but not limited to the right to specific performance.

6. **Miscellaneous.**

6.1 **Attorneys Fees.** In the event of any dispute, including arbitration or litigation concerning this Agreement or if this Agreement is otherwise placed with an attorney for action, then the prevailing party shall be awarded all litigation costs and expenses, and reasonable attorney fees. In the event of trial, the amount of the attorney fees shall be fixed by the court. The venue of any such suit shall be Pacific County, Washington.

6.2 **Entire Agreement.** This Agreement constitutes the full and entire understanding between Seller and the District. There are no verbal agreements that modify or affect this Agreement.

6.3 **Binding Effect.** This Agreement applies to, inures to the benefit of, and is binding on not only the parties hereto, but on their heirs, devisees, legatees, administrators, executors and assigns.

6.4 **Computation of Time.** Any time limit in or applicable to a notice shall commence on the day following receipt of the notice and shall expire at midnight 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 1.16.050, in which event the time limit shall expire at midnight of the next business day. Any specified period of five (5) days or less shall include business days only. Time is of the essence on this Agreement.

6.5 **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be sent U.S. certified mail, return receipt requested, or by personal service, or by facsimile transmission, or by email transmission addressed as set forth below:

To the District:	Attn: District Manager
	25902 Vernon Avenue, Suite C
	P.O. Box 618
	Ocean Park, WA 98640
	(360)665-4144
	(360)665-4641 facsimile
	generalmanager@northbeachwater.com

To Seller:                      Attn: Betty A. Zakutney, Trustee  
27703 Y Lane  
Ocean Park, WA 98640  
boopzbetty@centurylink.net

Delivery shall be deemed effective three (3) days after said notice is placed in the U.S. Mail, postage prepaid, in the case of a mail delivery, or the date on which the notice is personally served, faxed or emailed; provided, that the sender shall retain proof of actual delivery.

6.7 Assignment. The District may assign this Agreement with Seller's prior consent; provided, that the District's assignment to another municipal or governmental entity, shall be deemed automatically approved by Seller. Notwithstanding any permitted assignment, the District shall remain liable for the obligations and liabilities set forth in this Agreement and, to the extent that the District's assignee defaults on such Agreement, the District and the District's assignee shall be jointly and severally liable hereunder.

6.8 No Real Estate Commissions. Seller and the District each represent and warrant to the other that they have not engaged the services of a Real Estate Broker or Agent in connection with this transaction. Seller shall indemnify, defend and hold harmless the District from and against any claims, fees (including attorney's fees and costs) or costs arising out of any claim made by any other broker or agent claiming a commission is due by or through Seller. The District shall indemnify, defend and hold harmless Seller from and against any claims, fees, or costs (including attorney's fees and costs) arising out of any claim made by any other broker or agent claiming a commission is due by or through Buyer. The indemnifications set forth in this Section 6.8 shall survive Closing.


6.9 Counterparts. This Agreement may be executed in multiple counterpart copies and by facsimile transmission. Each counterpart shall constitute an original of this Agreement, but all such counterparts shall constitute but a single Agreement.

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This Agreement is accepted without further change or counteroffer this 11<sup>th</sup> day of Feb., 2013, which shall be deemed the date of mutual acceptance of this Agreement.

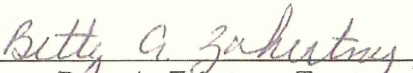
**THE DISTRICT:**

NORTH BEACH WATER DISTRICT, a  
municipal corporation:

By   
Name: Bill Neal, District Manager

**SELLER:**

AGNES J. MAYERS FAMILY TRUST

By , Trustee  
Name: Betty A. Zakutney, Trustee



**EXHIBIT A**  
**To**  
**Real Estate Purchase and Sale Agreement**

**LEGAL DESCRIPTION OF PROPERTY**

Lot 7, Block 1 of Sailfish Addition, according to the plat thereof on file in the office of the Auditor, Pacific County, Washington.