



**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, APPROVING  
SETTLEMENT AGREEMENT IN TRONSTAD v BONNY**

**WHEREAS**, Jorn and Ashild Tronstad filed a lawsuit in November 2008 that named the City of Sunnyside as a defendant; and

**WHEREAS**, the parties have proposed a Settlement Agreement whereby the plaintiffs have agreed to dismiss the City from the lawsuit with prejudice in exchange for certain consideration; and

**WHEREAS**, the City Council finds that approving the Settlement Agreement is in the best interest of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

**SECTION 1.** That the Settlement Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference, by and among the City of Sunnyside, Jorn and Ashild Tronstad, and Roland and Mary Ann Bonny, is hereby approved; and the Interim City Manager is hereby authorized to execute and administer such agreement for and on behalf of the City of Sunnyside and take those steps reasonable necessary to complete the transaction.

**SECTION 2.** This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

**PASSED** this 13<sup>th</sup> day of May, 2013.

  
\_\_\_\_\_  
JAMES A. RESTUCCI, MAYOR

**ATTEST:**

  
\_\_\_\_\_  
DELILAH SAENZ, CMC, CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
KERR LAW GROUP, LLP  
Attorneys for the City of Sunnyside

EXHIBIT "A"

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and among Jorn Tronstad and Ashild Tronstad, husband and wife (collectively "Tronstads"); Roland Bonny and Mary Ann Bonny, husband and wife (collectively, "Bonnys"); and City of Sunnyside, a Washington municipal corporation (the "City").

Recitals

A. The Tronstads have filed a civil action in the Yakima County Superior Court of the State of Washington, under cause number 08-2-04661-2 (the "Action"), asserting claims against both the City and the Bonnys.

B. The Tronstads, the Bonnys, and the City wish to settle all claims set forth in the Action, all on the terms and conditions set forth herein.

NOW THEREFORE, for adequate consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Terms and Conditions

1. *Purchase of Property.* The Bonnys agree to sell and the City agrees to purchase the following described real property (the "Property") on the terms and conditions set forth in this paragraph 1:

The Easterly 20.00 feet of Lot 2 as depicted on Short Plat No. 92-38, lying North of the parcel as depicted on the record survey recorded under auditor's file no. 7183602, lying in the Northwest Quarter of Section 29, Township 10 North, Range 23, W.M., Yakima County, Washington, described as follows:

Beginning at the Northeast corner of above said Lot 2; thence South 00°07'58" West along the Easterly line of said Lot 225 feet to the Northwest corner of Lot 4 of said Short Plat; thence South 89°46'11" West along the Northerly line of the parcel depicted on the above said record survey 20.00 feet; thence North 00°07'58" East along a line parallel with and 20.00 feet westerly of said easterly line a distance of 225.00 feet to the northerly line of said Lot 2; thence North 89°46'11" East along said Lot 2 northerly line 20.00 feet to the said true point of beginning.

Contains 4,500 sq. ft.

EXHIBIT "A"

a. Purchase Price. The purchase price for the Property is Four Thousand Five Hundred Dollars (\$4,500.00) ("Purchase Price"). The Purchase Price shall be paid in cash at Closing (as that term is defined below).

b. Lot Line Adjustment. In September, 2010, the City submitted to itself a Simultaneous Merger Application ("SM Application") seeking to combine the Property with the City-owned parcel 231029-24903. The Bonnys signed the SM Application seeking approval of the simultaneous merger. The City approved the SM Application. The City warrants that no further approvals are needed to permit a conveyance of the Property to the City.

c. Condition of Title and Conveyancing. At Closing (as that term is defined below), the Bonnys shall convey fee title to the Property by statutory warranty deed. Title to the Property at Closing shall be free of all encumbrances or defects, except rights reserved in federal patents, state or railroad deeds, building or use restrictions general to the district; zoning regulations and zoning overlays; and any pending or future adjudication of surface water rights by an appropriate federal and/or state proceeding.

d. Title Insurance. At Closing the Bonnys shall provide to the City, at the Bonnys' cost, an ALTA standard owner's form policy of title insurance. The policy shall contain no exceptions other than those provided for in such standard form and the encumbrances and defects permitted in subparagraph (c) above.

The City, at the City's expense, shall apply for a preliminary commitment ("Commitment") for an ALTA standard owner's form policy of title insurance as described above. The City shall apply for the Commitment within five (5) business days of mutual acceptance of this Agreement. The City's obligation to purchase the Property is contingent on the condition of the title to the Property being as set forth in subparagraph (c) above. If the title to the Property is not in said condition this Agreement shall be null and void, unless the City waives such defects. The City shall conclusively be deemed to have accepted the condition of title if the Bonnys and the Tronstads do not receive written notice of the City's objections within ten (10) business days after the Commitment is made available to the City.

e. Closing. The transaction will be closed (the "Closing") on the date established by the City and reasonably acceptable to Bonnys, but not later than twenty (20) days after the Commitment is made available to the City (the "Closing Date"). The sale shall be closed by Fidelity Title Company at its office in Yakima, Washington, or at such other place as the parties may mutually select ("Closing Agent"). The City and the Bonnys will, immediately on demand, deposit with the Closing Agent all instruments and monies required to complete the purchase of the Property in accordance with this Agreement. "Closing" means the

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date on which all documents are recorded and the sale proceeds are available to the Bonnys. In the event this sale does not close within said time period, the Closing Date shall automatically be extended until any party to this Agreement shall give a three-day notice to the other parties requiring the Closing to occur. In no event shall the Closing be later than June 1, 2013.

f. Closing Costs/Prorations. At Closing, the City shall pay any excise tax owing as a result of the transaction, the cost of an owner's standard form of title insurance, all escrow fees and recording costs, and the cost for preparing the deed and excise tax affidavit. Taxes for the year of Closing shall be prorated as of the date of Closing. Water assessments, if any, for the year of Closing shall be prorated as of the date of Closing.

g. Certification of Non-Foreign Status. The Bonnys warrant that they are not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and that such warranty will be true as of Closing Date. The Bonnys shall deliver to the City at Closing a Certificate of Non-Foreign Status, setting forth the Bonnys' address and United States taxpayer identification number and certifying that the Bonnys is not a foreign person as so defined.

h. Open Space. If any portion of the Property has a current use classification as Farm and Agricultural Land or other current use or open space classification, the City shall pay all compensating or additional taxes, penalties, and interest to owing as a result of the change in or removal of the classification of the Property.

i. Default. If either the Bonnys or the City default in their contractual obligations under this Paragraph 1, any of the other parties to this Agreement may seek specific performance pursuant to the terms of this Agreement. In the event of litigation, the prevailing party shall be awarded all reasonable attorney's fees, litigation costs, and expenses, title report fees, and other expenses incident to enforcement of rights hereunder.

j. Time of Essence. Time is of the essence for the terms and conditions of this paragraph.

k. Effect of a Failure to Close. If the sale of the property does not Close within the time period set forth in paragraph 1(e) without the fault of any party, this Agreement shall be null and void.

2. Expansion of Lease. Upon recording of the deed described in paragraph 1, the legal description of existing lease between the City and the Tronstads will be modified and expanded to include the Property described in paragraph 1. Except for the change in the description of the real property covered

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by that lease, the terms and conditions of that lease remain unchanged, including the rental rate.

3. Stipulated Dismissal of the Action. When the deed described in paragraph 1 is recorded, the Tronstads, the Bonnys and the City shall execute a stipulated motion and order dismissing the Action, with prejudice. The stipulated motion and order shall expressly state that the dismissal includes all claims arising out of the transactions or occurrences that are the subject of the Action. Said order shall further provide that each party shall bear their and its own attorney fees and costs.

4. Withdrawal of Objections to Bonnys' Short Plat. When the deed described in paragraph 1 is recorded, the Tronstads shall deliver a written notice with the City withdrawing all objections they have to the short plat filed by the Bonnys, recorded under AFN 7711457. Notwithstanding the provisions of paragraph 8(c), said notice shall be addressed to Jamey Ayling, Planning Supervisor for the City.

5. Maintaining Status Quo. So long as this Agreement remains in effect and until the deed described in paragraph 1 shall be recorded, the parties agree that the Tronstads and the City may continue to use the Property as they have in the past, without any interference; and the parties will not prosecute the Action.

6. Signature Authority. The person signing on behalf of the City represents that he is authorized to sign on behalf of the City, and this Agreement is legally binding on the City.

7. Third Party Beneficiary. The Tronstads are third party beneficiaries of the Bonnys and the City's agreements under paragraph 1 and they may enforce those agreements.

8. General Provisions.

a. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures shall be valid to the same extent as original signatures.

b. In the event suit or action is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, both trial and appellate, in addition to its costs and disbursements allowed by law. Any legal action or proceeding with respect to this Agreement shall be brought in Yakima County Superior Court, and the parties submit to the jurisdiction of such court.

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c. Any notice, request, claim or other communication required or permitted hereunder will be in writing and will be deemed to have been duly given if delivered by hand or if sent by certified mail, postage and certification prepaid:

To Tronstads:       Jorn and Ashild Tronstad  
                          P.O. Box 747  
                          Sunnyside, WA 98944

To Bonnys:         Roland Bonny and Mary Ann Bonny  
                          2980 E. Edison Road  
                          Sunnyside, WA 98944

To City:            John C. Darrington  
                          Interim City Manager  
                          City of Sunnyside  
                          818 East Edison Avenue  
                          Sunnyside, WA 98944

or to such other address or addresses as any party may have furnished to the others in writing in accordance herewith.

IN WITNESS THEREOF the parties have set their hands as of the date first above written.

\_\_\_\_\_  
Jorn Tronstad

\_\_\_\_\_  
Roland Bonny

\_\_\_\_\_  
Ashild Tronstad

\_\_\_\_\_  
Mary Ann Bonny

City of Sunnyside, Washington

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

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