


 Real Estate Excise Tax
 Exempt

Kittitas County Treasurer

 By Amey Mice

 Affidavit No. 2015-1209

 Date: 11/20/15

When recorded return to:

 City of Cle Elum, a Washington Municipal Corporation
 119 W. First Street, c/o Robert Omans
 Cle Elum, WA 98922

Order No.: 64692AM

AMT 64692 73-

STATUTORY WARRANTY DEED

 THE GRANTOR(S) **Michael E Miller, as his sole and separate property**

for and in consideration of Ten and no/100 Dollars (\$10.00) and other valuable consideration

 in hand paid, conveys, and warrants to **City of Cle Elum, a Washington Municipal Corporation**

the following described real estate, situated in the County of Kittitas, State of Washington:

Blocks D and E; Lots 1, 2, 3 and 4, Block 15; Lots 1, 2, 3, 4, 5 and 6, Block 16; Lots 1, 2, 3, 4, 5 and 6, Block 17; Lots 1, 2, 3 and 4, Block 19; Lots 1, 2, 3, 4, 5 and 6, Block 20; Lots 1, 2, 3, 4 and 5, Block 23; and Lots 1, 2, 3, 4, 5 and 6, Block 24, HILLCREST ADDITION TO CLE ELUM, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 2 of Plats, page 45, records of said County.

Subject to: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

Tax Parcel Number(s): 20-15-26050-0004 (431534), 20-15-26050-2401 (621534), 20-15-26050-1901 (631534), 20-15-26050-2001 (911534), 20-15-26050-2301 (941534), 20-15-26050-0005 (950399), 20-15-26050-1503 (950400), 20-15-26050-1504 (950401), 20-15-26050-1602 (950402), 20-15-26050-1603 (950403), 20-15-26050-1604 (950404), 20-15-26050-1605 (950405), 20-15-26050-1606 (950406), 20-15-26050-1702 (950407), 20-15-26050-1703 (950408), 20-15-26050-1704 (950409), 20-15-26050-1705 (950410), 20-15-26050-1706 (950411), 20-15-26050-1903 (950412), 20-15-26050-1904 (950413), 20-15-26050-2002 (950414), 20-15-26050-2003 (950415), 20-15-26050-2004 (950416), 20-15-26050-2005 (950417), 20-15-26050-2006 (950418), 20-15-26050-2303 (950419), 20-15-26050-2304 (950420), 20-15-26050-2403 (950421), 20-15-26050-2404 (950422), 20-15-26050-2405 (950423), 20-15-26050-2406 (950424), 20-15-26050-1501 (051534), 20-15-26050-1601 (061534), 20-15-26050-1701 (071534)

 Dated: 11/17/15

Michael E Miller
 Michael E Miller



State of Washington) ss

County of Kittitas)

On this 17th day of November, 2015, before me, Eryn A. Micallef a Notary Public in and for said state, personally appeared Michael E. Miller, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Eryn A. Micallef
 Notary Public for the State of Washington
 Residing at Ellensburg
 Commission Expires: 8/21/2018

ORIGINAL

DONATION AGREEMENT

THIS DONATION AGREEMENT ("Agreement") is made on the last date signed below and is made between Michael E. Miller and Shirley Miller, husband and wife ("Donors"), and the City of Cle Elum, a Washington municipal corporation of the State of Washington ("City") (together the "Parties").

RECITALS

The following recitals are a part of this Agreement and are agreed to and accepted by the parties:

A. Donors are the current owners of certain real property legally described on the attached Exhibit A incorporated herein by this reference (the "Property"). The Property consists of thirty-four (34) distinct tax parcels. Each parcel consists of vacant land zoned single-family residential.

B. Donors desire to donate the Property to City pursuant to Cle Elum Municipal Code 13.20.070(C)(2).

C. City desires to accept the donation of the Property subject to the terms and conditions set forth in this Agreement.

D. The Parties agree that the Property will be used as a park for the benefit of the community, and that the water connections from the Property will be processed as previously approved Excess Connections under CMC 13.20.070(C)(2).

NOW THEREFORE, in consideration of the conveyance of the Property to City, the Parties agree as follows:

AGREEMENT

1. Conveyance. Donors agree to convey the Property to City pursuant to a Statutory Warranty Deed in the form attached hereto as Exhibit B, incorporated herein by this reference (the "Deed"). Donors shall convey fee simple title to the Property with the Deed. The Parties agree that the Deed will include a restrictive covenant restricting future use of the water rights on the Property consistent with the transfer of Excess Connections under CMC 13.20.070(C)(2).

2. Use Restrictions.

2.1 Permitted Uses. As a condition of the conveyance of the Property, City promises and agrees that it shall operate the Property as a City park to be known as Miller-Guzzie Park

2.2 Prohibited Uses. Without limiting the generality of the foregoing, the following activities and uses pertaining to the Property are expressly prohibited:

(a) None.

3. Excess Connections. City has determined, pursuant to CMC 13.20.070(C)(2)a., that the number of previously approved Excess Connections for the Property is 34. The Parties agree that Donors are authorized under CMC 13.20.070(C)(2) to sell the Excess Connections, subject to terms and use consistent with CMC 13.20.070(C)(2). City agrees that until Miller has sold/transferred the 34 excess connections allocated to Miller City will not sell/transfer any connections for less than the rate specified in CMC 13.20.070(D) as the same currently exists, or as the rate shall be increased by subsequent amendment to CMC 13.20.070, plus the applicable capital reimbursement cost.

4. Time and Place. The completion of the transaction contemplated in this Agreement ("Closing") shall be no later than September 30, 2015, unless both Parties mutually agree in writing to an extension (the "Closing Date"). The "Escrow Agent" for the Closing shall be AmeriTitle in Cle Elum, Washington, or such other Escrow Agent as City may select in its reasonable discretion.

5. Title Commitment. Within ten (10) days after the date of this Agreement, City shall request from Escrow Agent a current, effective commitment for title insurance for the Property (the "Title Commitment") issued by a title company reasonably acceptable to City, in the amount of \$330,000 (the "Property Value"), and accompanied by true, complete, and legible copies of all documents referred to in the Title Commitment.

6. Title Insurance.

6.1 Within thirty (30) days of its receipt of the Title Commitment, City shall review title to the Property as disclosed by the Title Commitment and advise Donors in writing of any objections thereto that interfere with City's ability and desire to accept the Property as a donation from Donors. If City timely objects to any exception disclosed in the Title Commitment, Donors shall have no obligation to cure title objections, but Donors agree to notify City in writing within fifteen (15) days after receipt of an objection notice from City whether Donors agree to remove such objectionable matter(s) from the Title Commitment or whether Donors elect not to remove such objectionable matter(s). If Donors notify City that Donors have elected not to remove any such matters, then City shall notify Donors within five (5) days of receipt of such notice from Donors whether City elects to terminate this Agreement or to proceed, taking title subject to such objectionable matters. If City elects to terminate this Agreement, this Agreement shall terminate and neither party hereto shall have any further rights, duties or obligations under this Agreement, except as provided elsewhere in this Agreement.

6.2 Any updates to the Title Commitment prior to the Closing showing new matters of title shall be subject to the same review process and termination rights as provided above, except that City's initial review of such new matters shall be limited to five (5) business days after receipt of the updated Title Commitment.

6.3 At the Closing, as a condition to City's obligation to close, the Title Company shall deliver to City an ALTA Owner's Policy of Title Insurance ("Title Policy") dated the date and time of the recording of the Deed in the amount of the Property Value insuring City as owner of good, marketable and indefeasible fee simple title to the Property, free and clear of all encumbrances and defects, subject only to the exceptions City agreed to as provided above. The Title Policy shall include any endorsements that City requested and the Title Company agreed to provide during the title review period.

6.4 City shall pay all costs for the Title Policy.

7. Closing.

7.1 The Closing shall occur on the Closing Date at the offices of the Escrow Agent. At Closing, Donors and City shall each deliver all funds and documents required of that Party to complete the donation. Funds shall be deposited into and held by the Escrow Agent in a closing escrow account with a bank satisfactory to the Parties. Upon satisfaction or completion of all closing conditions and deliveries, the Parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate Parties. The Escrow Agent shall agree in writing that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements, and (2) release of funds shall irrevocably commit the Escrow Agent to issue the Title Policy in accordance with this Agreement.

7.2 City shall pay all recording costs and the escrow fee. Donors shall pay all taxes, including without limitation real estate excise taxes, arising from or relating to this Agreement. Any special assessments or real property taxes which are levied or charged against the Property shall be prorated as of the Closing Date.

8. Possession. City shall have possession of the Property upon Closing.

9. Indemnification and Release. City agrees to indemnify, defend, release and hold harmless Donors from and against all "Indemnified Liabilities," which are defined as any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses of any kind or nature whatsoever that may be imposed on, or incurred by, or asserted against Donors by any person or entity, including any governmental entity, in any manner relating to or arising out of (i) this Agreement or the transactions contemplated hereunder, or (ii) the Property, arising from or related to events or conditions occurring after the date of the Agreement. City agrees to allow Donors to participate in the defense of any such claims for which City is indemnifying Donors, but in such case Donors shall bear their own expenses for such participation.

10. Representations, Warranties, and Authority.

10.1 Donors' Authority. Donors represent that they have full power and authority to execute this Agreement and all action necessary to confirm such authority has been duly and

lawfully taken. Upon execution hereof, this Agreement shall constitute a valid and legally binding obligation of Donors.

10.2 Donors' Environmental Representations. Donors represent and warrant that Donors have not disposed of or released any hazardous substances or hazardous wastes on, from or under the Property, and that to the best of Donors' knowledge there is no presence of, nor have there ever been any disposals, releases or threatened releases of, hazardous substances or hazardous wastes on, from, or under the Property. The terms "disposal," "release," "threatened release," "hazardous substances," and "hazardous wastes" shall have the definitions assigned to such terms or any similar terms by the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Washington Model Toxics Control Act, as amended, or any other applicable law, rule or regulation relating to the environment, health or safety. All warranties set forth in this Section shall survive the Closing, and Donors shall defend, indemnify and hold City harmless from any breaches thereof, including costs and attorneys' fees.

10.3 Assurances. Donors agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing, any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance of the Property to City.

10.4 City Authority. City represents that it has full power and authority to execute and perform this Agreement and all actions necessary to confirm such authority has been duly and lawfully taken. Upon execution hereof, this Agreement shall constitute a valid and legally binding obligation of City.

10.5 As Is. City represents and warrants that it has (i) examined the Property and become familiar with the physical condition thereof and has conducted such investigation of the Property as City considers appropriate; (ii) except for the representations made in this Agreement, neither Donors or their agents have made any verbal or written representations, warranties, promises or guaranties whatsoever to City with respect to the physical condition of the Property, expenses associated with the Property, or any other matter affecting the Property; and (iii) City has entered into this Agreement after having made and relied solely on its own independent investigation, inspection, analysis, examination and evaluation of the Property and related facts and circumstances. Without limiting the foregoing, City takes the Property in the condition, known or unknown, existing at the time of this Agreement, "AS IS."

11. Risk of Loss. Risk of loss of, or damage to, the Property shall be borne by Donors until Closing. Thereafter, City shall bear the risk of loss to the Property.

12. Default and Remedies.

12.1 Donors' Default. If this transaction fails to close as a result of Donors' default, City shall have, as its sole and exclusive remedy the right to terminate this Agreement upon

written notice to Donors, whereupon, neither Party hereto shall have any further rights, duties or obligations under this Agreement except as provided in Section 12.4 below for expenses.

12.2 City's Default. If this transaction fails to close due to the default of City, then Donors' sole and exclusive remedy in such event shall be to terminate this Agreement, upon written notice to City, whereupon, neither Party shall have any further rights, duties or obligations under this Agreement except as provided in Section 12.4 below for expenses.

12.3 Notice of Default. Except for a Party's failure to close on the Closing Date, neither Party shall have the right to declare a default by the other Party and terminate this Agreement because of a failure by such other Party to perform under the terms of this Agreement unless the other Party shall fail to cure such failure to perform within three (3) business days after receipt of written notice of such failure to perform.

12.4 Other Expenses. If this Agreement is terminated due to the default of a Party, then the defaulting Party shall pay any fees due to the Title Company for cancellation of the Title Commitment and any fees due to the Escrow Agent due to cancellation of the transaction.

13. Assignment.

13.1 City may not assign its rights and obligations under this Agreement without the prior written consent of Donors, which consent may be withheld in Donors' sole and absolute discretion. Any attempt by City to assign this Agreement without prior written consent shall be void.

13.2 Donors may assign their rights under this Agreement.

14. Miscellaneous.

14.1 Notices. All notices to be given by each Party to the other pursuant to this Agreement shall be delivered in person, by e-mail, or deposited in the United States mail, properly addressed, postage fully prepaid, for delivery by certified or registered mail, return receipt requested. Notices given by personal delivery, e-mail or facsimile shall be deemed effective upon receipt; notices given by mail shall be deemed effective on the third day after deposit. Notices may be given at the following addresses and numbers, until further notice by either Party:

Donors: Michael E. Miller and Shirley Miller
P.O. Box 773
Roslyn, WA 98941

City: City Clerk
City of Cle Elum
[119 West First Street
Cle Elum, WA 98922]

14.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

14.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the donation of real property and cannot be changed or modified other than by a written agreement executed by both Parties.

14.4 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

14.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the Parties.

14.6 Survival. This Agreement shall survive Closing and thereafter remain binding on both Donors and City and their respective successors and assigns.

14.7 Event Date. If any event date falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended until the next business day.

14.8 Non-Waiver. No term or condition of this Agreement shall be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term shall not be a waiver of any subsequent breach of the same or any other term or condition.

14.9 Exhibits. The Agreement contains the following Exhibits, which are attached and made a part of the Agreement: Exhibit A and Exhibit B.

14.10 Brokers. Donors and City each represent and warrant that they have not engaged any broker, agent or consultant who might claim a commission in connection with this Agreement.

14.11 Time. Time is of the essence of this Agreement.

14.12 Attorneys' Fees and Litigation Expenses. Each Party shall pay its own attorneys' fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs and expenses of suit.

14.13 Captions. Paragraph headings are used for the purpose of convenience only and shall not be considered in construing this Agreement.

14.14 Severability. Should any one or more provisions of this Agreement or any agreement entered into pursuant hereto be determined to be illegal or unenforceable, all other provisions of this Agreement and such other agreements shall be given effect separately from the

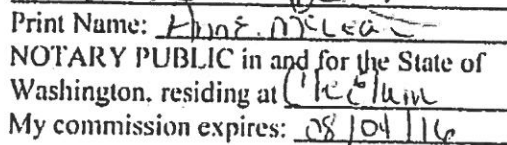
-7-

Shirley Miller

State of Washington)

) ss.

County of Kittitas)



My commission expires: 08/04/16

Charles Glondo, Mayor

State of Washington)

County of Kittitas)

mentioned in the instrument.

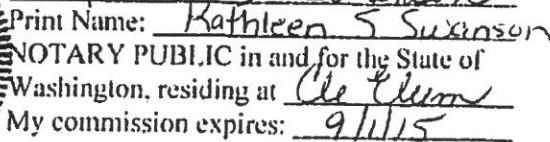


EXHIBIT A

Kittitas County Assessor's Tax Parcel Numbers

51534
61534
71534
431534
621534
631534
911534
941534
950399
950400
950401
950402
950403
950404
950405
950406
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