

PURCHASE AND SALE AGREEMENT
City of Spokane Real Property

This Agreement is entered into as of _____ (the “**Effective Date**”), by and between the CITY OF SPOKANE, a Washington municipal corporation (“**Seller**” or “**City**”), and QueenB Radio, Inc., a Washington corporation (“**Buyer**” or “**KXLY**”), hereinafter referred to as the “**Parties**”.

Whereas, the parties are desirous of entering into an agreement whereby the Buyer will purchase property owned by the Seller and described in Exhibit “A” (the “**Property**”).

NOW, THEREFORE, in consideration of the respective agreements set forth below and for valuable consideration, the receipt and sufficiency of which is acknowledged, Seller and Buyer agree as follows:

1. Sale of Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the real property, which property is situated in the City and County of Spokane, State of Washington, and legally described in Exhibit “A” hereto, together with all of Seller’s right, title and interest in and to any rights, licenses, privileges, reversions and easements pertinent to the real property, including, without limitation, all minerals, oils, gas and other hydrocarbon substances on and under the real property as well as all development rights, air rights, water rights, water and water stock relating to the real property and any other easements, rights of way or appurtenances used in connection with the beneficial use and enjoyment of the real property (collectively, the “**Property**”).

2. Earnest Money. Upon execution of this Agreement by both Seller and Buyer, Buyer shall deliver to First American Title Insurance Company in Spokane, Washington (“**Title Company**”), as escrow agent for the closing of this transaction, a promissory note payable to the City of Spokane upon satisfaction or waiver of Buyer’s contingencies under this Agreement, in the principal sum of EIGHTY NINE THOUSAND NINE HUNDRED SIXTY SIX and 80/100 DOLLARS (\$89,966.80), to be paid or delivered as earnest money (the “**Earnest Money**”) in part payment for the Purchase Price of the Property. The Title Company will hold the Earnest Money for the benefit of the parties pursuant to the terms of this Agreement; provided, subject to section 15.3 herein below, if this Agreement has not been terminated prior to December 31, 2016, the promissory note shall become due and payable to Seller in cash on

or before December 31, 2016, and shall become a non-refundable fee that the City may treat as its own. Notwithstanding the above, at Closing the Earnest Money shall be applied to the Purchase Price.

3. Purchase Price. The purchase price for the Property (the “**Purchase Price**”) is EIGHT HUNDRED NINETY NINE THOUSAND SIX HUNDRED SIXTY EIGHT and 09/100 DOLLARS (\$899,668.09). The Purchase Price, including the Earnest Money, will be paid to Seller in cash through escrow at closing.

4. Adjustment of Price on Basis of Survey and Land Use Approvals. The purchase price has been negotiated based on the parties’ good-faith estimate that the Property comprises _____ square feet (or ____ acres). In the event the Survey (as defined in Section 5 below) shows that the Property contains more (or less) than the above square feet, the Purchase Price will be increased (or decreased) proportionately so that the final Purchase Price will be equal to the price per square foot multiplied by the actual number of square feet of the Property as determined by the Survey. The purchase price assumes that the Property may be used in a manner similar to the adjacent KXLY property (which is identified in the Development Agreement referenced in section 7.1.2, below).

5. Alta Survey. Prior to closing, Buyer may, at Buyer’s cost, secure a Survey of the Property (the “**Survey**”). The Survey will be made by a registered public surveyor acceptable to the Parties and will be prepared in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys as adopted by the American Congress of Surveying and Mapping and the American Land Title Association (the “**Survey Standards**”). Without limitation to the foregoing, the survey will show the location of all easements with recording numbers, all encroachments, if any, the zoning of the property, and whether any part of the Property is in a designated flood plain.

6. Title to the Property.

6.1 Conveyance. At closing Seller shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged statutory warranty deed (the “**Deed**”), free and clear of all defects and encumbrances and subject only to those exceptions that Buyer approves pursuant to Section 6.2 below (the “**Permitted Exceptions**”).

6.2 Preliminary Commitment. No later than fifteen (15) business days after the Effective Date of this Agreement, Buyer shall order a preliminary commitment for an owner’s standard coverage policy of title insurance (or, at Buyer’s election, an owner’s extended coverage policy of title insurance) in the amount of the Purchase Price to be issued by the Title Company and accompanied by copies of all documents referred to in the commitment (the “**Preliminary Commitment**”). Buyer shall advise Seller by written notice of the

exceptions to title, if any, that are disapproved by Buyer (“**Disapproved Exceptions**”) within fifteen (15) business days of receipt of the Preliminary Commitment and legible copies of all exceptions to title shown in the Preliminary Commitment. All monetary encumbrances other than nondelinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) days after receipt of Buyer’s notice to give Buyer notice that (i) Seller will remove Disapproved Exceptions or (ii) Seller elects not to remove Disapproved Exceptions. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Exceptions. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer.

If Seller elects not to remove any nonmonetary Disapproved Exemptions, Buyer will have ten (10) days from Seller's notice to notify Seller of Buyer’s election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives notice that it will cause one or more nonmonetary exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Buyer will have the right to either (i) elect to terminate this Agreement by written notice to Seller or (ii) proceed with the purchase, with an abatement of the Purchase Price equal to the actual cost of removing from title those exceptions not approved by Buyer, and to take the Property subject to those exceptions. If Buyer elects to terminate this Agreement under this Section 6.2, the escrow will be terminated, the Earnest Money shall be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

6.3 Title Policy. Seller shall cause Title Company to issue to Buyer at closing a standard coverage owner’s policy of title insurance insuring Buyer’s title to the Property in the full amount of the Purchase Price subject only to the Permitted Exceptions (the “**Title Policy**”). The Title Policy must be dated as of the Closing Date.

7. Conditions to Closing.

7.1 Buyer’s Conditions Precedent to Closing. Closing of this Agreement is subject to the satisfaction or waiver by Buyer of the following conditions. If the following conditions are not satisfied or waived prior to Closing, in Buyer's sole discretion, Buyer reserves the right to terminate this Agreement by delivering written notice of termination to the City and the Title

Company, whereupon the Earnest Money shall be returned to KXLY, subject to the provisions of Section 2 above.

7.1.1 Title Policy. Buyer's receipt of Title Company's firm commitment to issue, upon closing, the Title Policy as described in Section 6.3;

7.1.2 Land Use Approvals. Applications submitted by KXLY for a Comprehensive Plan amendment, rezone of the Property and binding site plan shall have received final approval, authorizing use and development of the Property generally and substantially consistent with the approvals previously received by Buyer, as documented in the KXLY Development Agreement recorded under Spokane County Auditor's file no. 5865674 ("**Land Use Approvals**"); provided, SEPA and/or other mitigation conditions will be determined at the time of application pursuant to established City procedures. KXLY reserves the right to determine whether the mitigation is reasonable or consistent with the matters contained in the above development agreement; provided, this reservation shall be exercised in good faith. "Good faith" means that the City Land Use Approvals provide for the reasonable use and development of the Property in a manner similar to other adjacent KXLY properties without conditions that materially: (1) affects the amount of Property available for commercial development in Buyer's reasonable business judgment, or (2) increases the cost to develop streets, sidewalks, paths, landscaping and similar public improvements on the Property "Final approval" means all administrative, quasi-judicial, and judicial appeals have been exhausted or waived with no further right to litigate the Land Use Approvals.

KXLY shall, at no cost or expense to the City, submit an application to the City for the Land Use Approvals no later than October 31, 2015, and shall diligently pursue approval of the same according to the procedures set forth in chapter 17G.020 of the Spokane Municipal Code. KXLY shall be solely responsible for: (a) submitting and assuming the cost of the Land Use Approvals, provided KXLY may, upon written notice to the City, terminate or withdraw the applications for Land Use Approvals subject to the good faith standard or if the approvals become economically unfeasible in KXLY's business judgment; (b) submitting an application for the Land Use Approvals during the 2016 Comprehensive Plan review period; and (c) satisfying any required mitigation and/or conditions of approval, and preparation of site plans and construction documents for any improvements on the Property, and shall be solely responsible for development of improvements on the Property. To commence the City land use review process, the City, as owner of the Property, shall sign such application documents as are reasonably necessary to commence the review process for the Land Use Approvals.

7.1.3 Condition of Property. There shall have been no material adverse change to the Property on the date of Closing.

7.1.4 Adjacent Park Property. KXLY shall have obtained from the City of Spokane Park Board a vehicle and pedestrian access and utility easement, in a form that is reasonably acceptable to KXLY, which provides the Property with vehicle and pedestrian access to the intersection of S. Regal Street and the Palouse Highway (“Park Easement”). KXLY shall diligently pursue Park Board approval of the Park Easement and shall use commercially reasonable efforts to obtain such approval at least 180 days before the Closing Date. If, following 180 days after the Effective Date of this Agreement, it reasonably appears to the City that KXLY has failed to diligently pursue Park Board approval of the Park Easement consistent with this deadline, the City may terminate this Agreement unless KXLY, within five (5) days of receiving the City notice of termination, KXLY waives the Park Easement closing condition.

7.1.5 No Litigation. No lawsuit, arbitration or other action, proceeding or claim shall be pending which: (i) seeks to restrain or prevent the sale of the Property to KXLY; or (2) the outcome of which would have a potential adverse effect on KXLY’s ownership of the Property.

7.1.6 Representation. The representations and warranties in this Agreement are true and correct on the date of Closing.

The foregoing conditions contained in Section 7.1 are collectively referred to in this Agreement as “**Buyer’s Contingencies.**” The parties shall diligently attempt to timely satisfy all of the Buyer’s Contingencies.

7.2 Satisfaction/waiver of Buyer’s Contingencies. Buyer’s contingencies are solely for the benefit of Buyer. The parties shall diligently attempt to timely satisfy all of the Buyer’s Contingencies. If any of Buyer’s Contingencies are not timely satisfied, Buyer will have the right at its sole election either to waive any of them in writing and proceed with the purchase or to terminate this Agreement. If Buyer elects to terminate this Agreement, the escrow will be terminated, the Earnest Money must immediately be returned to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the cost of terminating the escrow.

7.3 Seller’s Contingencies/Conditions Precedent to Closing. Closing of this Agreement is subject to the satisfaction or waiver by Seller of the following conditions; provided, any waiver must be approved by the City Council. If the following conditions are not satisfied or waived prior to Closing, in Seller’s reasonable discretion, Seller reserves the right to terminate this Agreement by delivering written notice of termination to the Buyer and the Title Company, whereupon the Earnest Money shall be returned to KXLY, subject to the provisions of Section 2 above.

7.3.1 SNC Appeal Settlement. Both Buyer and the Southgate Neighborhood Council shall have acknowledged and agreed to the implementation of the SNC Appeal Settlement, which consists of a memorandum to the Southgate Integrated Site Plan file, in substantial form and content as set forth in Exhibit B to this Agreement, and dismissal of the appeal.

7.3.2 Notification. Development of the City property is subject to neighborhood notification provisions adopted by the City Council in Ordinance C35299, and the notification of both Council Members representing District #2.

7.3.3 Zoning. The property must be zoned CC2-DC to match the adjoining property owned by Buyer.

7.3.4 Development Agreement. Buyer must agree that the Property will be subject to the KXLY Development Agreement recorded under Spokane County Auditor's file no. 5865674, except, with respect to the Property that is the subject of this Agreement, the amount of the impact fee in section 8 shall be deleted with traffic mitigation determined according to present City practices. The term of said Development Agreement shall be extended so that the new expiration date of the agreement shall be ten (10) years after the effective date of the Land Use Approvals referred to in this Agreement.

7.3.5 Integrated Site Plan. The Development Agreement shall bind this Property to its terms, including the Integrated Site Plan referenced in said development agreement, and development of the Property shall be consistent with the Integrated Site Plan.

7.3.6 Access Road / Park Easement. The access road referenced in 7.1.4 shall match the concept of a grid of streets as outlined in the Comprehensive Plan and in prior Design Review discussions regarding implementation of the Urban Form section of the Developer's Agreements. In this case, that would mean creating a 250'-300' setback between Regal Street and the Access Road.

7.3.7 Trail Development. The City will set aside \$300,000 of the property sale price to be used for trail development in the Southgate Neighborhood. All trail development to be in conformance with the Southgate Connectivity Plan.

7.3.8 Neighborhood Collaboration. Guaranteed substantive input/collaboration with KXLY/final developers on the site plan(s), infrastructure, amenities, public realm, architecture and any other items related to the ISP or Southgate Neighborhood Plans. The process, timing and effect of the input/collaboration shall be defined prior to closing of the City Property.

7.4 Satisfaction/waiver of Seller's Contingencies. Seller's contingencies are solely for the benefit of Seller. The parties shall diligently attempt to timely satisfy all of Seller's contingencies. If any of Seller's Contingencies are not timely satisfied, Seller will have the right at its sole election either to waive any of them in writing or to terminate this Agreement; provided any waiver of Seller's Contingencies must be approved by the City Council. If Seller elects to terminate this Agreement, the escrow will be terminated, the Earnest Money must immediately be returned to Buyer (Subject to Section 2), all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each party shall pay one-half (1/2) of the costs of terminating the escrow.

8. Closing Date. This transaction will be closed in escrow by the Title Company acting as escrow agent ("**Escrow Agent**"). The closing will be held at the offices of the Title Company on or before 5:00 p.m. Pacific time, no later than sixty (60) days following final approval of the Land Use Approvals, or December 30, 2017, whichever is earlier (the "**Closing Date**"). If closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Earnest Money to the party entitled to receive it as provided in this Agreement, and return all documents to the party that deposited them.

9. Closing.

9.1 Seller's Escrow Deposits. On or before the Closing Date, Seller shall deposit into escrow the following:

9.1.1 the duly executed and acknowledged Deed;

9.1.2 a duly executed and acknowledged Real Estate Tax Affidavit;
and

9.1.3 any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered.

9.2 Buyer's Escrow Deposits. On or before the Closing Date, Buyer shall deposit into escrow the following:

9.2.1 cash in an amount sufficient to pay the Purchase Price and Buyer's share of closing costs;

9.2.2 a duly executed and completed Real Estate Excise Tax Affidavit; and

9.2.3 any other documents or instruments Buyer is obligated to provide pursuant to this Agreement (if any) in order to close this transaction.

9.3 Additional Instruments and Documentation. Seller and Buyer shall each deposit any other instruments and documents that are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.

9.4 Closing Costs.

9.4.1 Seller's Costs. Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price and one-half of Title Company's escrow fee. It is understood between the parties that pursuant to WAC 458-61-420(c) this sale will be exempt from the Washington State real estate excise tax, and Buyer agrees to cooperate with Seller in executing such documents as are required to qualify Seller for such exemption.

9.4.2 Buyer's Costs. Buyer shall pay the additional premium, if any, attributable to the extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer, the cost of recording the Deed and one-half of Title Company's escrow fee.

9.5 Foreign Investment in Real Property Tax Act. The parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder (the "**Regulations**").

10. Adjustments and Prorations. The following adjustments and prorations will be made as of the Closing Date (with Buyer either responsible for or entitled to a credit for, as the case may be, the actual Closing Date).

10.1 Property Taxes. All property taxes payable in the year of closing and assessments approved by Buyer, if any, will be prorated as of the Closing Date.

10.2 Utilities. All gas, electric and other utility charges will be prorated as of the Closing Date.

11. Representations and Warranties.

11.1 Seller's Representations and Warranties. Except as specifically provided in this Agreement, Seller makes no warranty or representation, express or implied, with respect to the condition of the Property or its suitability for any particular purpose.

11.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that Buyer is a Washington Corporation, duly organized and validly existing under the laws of the state of Washington; this Agreement and all documents executed by Buyer that are to be delivered to Seller at closing are, or at the time of closing will be (i) duly authorized, executed and delivered by Buyer, (ii) legal, valid and binding obligations of Buyer, and (iii) in compliance with all provisions of all agreements and judicial orders to which Buyer is a party or to which Buyer is subject.

12. Hazardous Materials. The City makes no representation regarding any Hazardous Materials Condition, as defined below, affecting the Property. The City will, within 90 days of the Effective Date of this Agreement, secure a Phase 1 Environmental Assessment for the Property and will provide Buyer with a copy of the same. Following Buyer's receipt of a copy of the Phase 1, Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not suitable for Buyer's intended use or does not meet Buyer's intended investment objectives. Buyer's right to terminate must be exercised by delivering written notice of its election to Seller no later than thirty (30) days following Buyer's receipt of a copy of the Phase 1. If Buyer terminates this Agreement pursuant to this Section 12, the Earnest Money will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement. If Buyer does not elect to terminate this Agreement following Buyer's receipt of the Phase 1, and if the Parties thereafter proceed to closing, Buyer shall be deemed to have taken the Property "AS IS" and solely in reliance on Buyer's own investigation and Buyer acknowledges that no warranties or representations of any kind whatsoever, express or implied, have been made by the City, its agents and employees. For the purposes of this paragraph, "Hazardous Materials" shall include, but not be limited to, substances defined as "Hazardous Substances," "Hazardous Materials," "Hazardous Waste," "Toxic Substances", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Section 9601 et seq., the Model Toxic Control Act of the State of Washington and all regulations adopted and publications promulgated pursuant to such laws, collectively "Environmental Laws". A "Hazardous Materials Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of Hazardous Materials that would require remediation and/or removal under applicable Federal, State or local law.

13. Eminent Domain. If all or any part of the Property is taken by condemnation or eminent domain and the value of the portion of the Property

so taken exceeds One Hundred Thousand Dollar (\$100,000.00), Buyer may, upon written notice to Seller, elect to terminate this Agreement, and in such event all monies theretofore paid on account must be returned to Buyer, and neither party will have any further liability or obligation under this Agreement. If all or any portion of the Property has been or is hereafter condemned or taken by eminent domain and this Agreement is not canceled, Seller's right, title and interest in and to any awards in condemnation or eminent domain, or damages of any kind, to which Seller may have become entitled or may thereafter be entitled by reason of any exercise of the power of condemnation or eminent domain with respect to the Property or any portion thereof shall accrue to Buyer.

14. Possession. Seller shall deliver possession of the Property to Buyer at Closing.

15. Events of Default and Termination.

15.1 By Seller. If there is an event of default under this Agreement by Seller (including a breach of any representation, warranty or covenant), Buyer will be entitled (a) in addition to all other remedies available at law or in equity, to seek specific performance of Seller's obligations under this Agreement or (b) to terminate this Agreement by written notice to Seller and Escrow Agent. If Buyer terminates this Agreement, the escrow will be terminated, the entire Deposit must immediately be returned to Buyer, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement except that Seller shall pay any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

15.2 By Buyer. IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY, THE EARNEST MONEY DEPOSIT MADE BY BUYER WILL BE FORFEITED TO SELLER AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER FOR SUCH FAILURE.

Seller's Initials

Buyer's Initials

15.3 Termination by Buyer. Buyer may in its sole discretion prior to December 31, 2016 terminate this Agreement by providing written notice to Seller; provided Buyer may not exercise its right to terminate this Agreement if the City Council has approved the Land Use Approvals in a manner consistent with the standards set forth in section 7.1.2, above.

16. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given

by Mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Seller: City of Spokane
Attn: Asset Management
808 W Spokane Falls Blvd
Spokane, WA 99201

With a copy to: Office of the City Attorney
808 W Spokane Falls Blvd
Spokane, WA 99201

Buyer: Tim Anderson
QueenB Radio, Inc.
500 W. Boone Ave.
Spokane, WA 99201-2491

With a copy to: Stanley M. Schwartz
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit at any post office in the United States of America, and if delivered via facsimile, the same day as verified, provided that any verification that occurs after 5 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9 a.m. on the following business day.

17. Brokers, Finders and Commissions. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or a finder's fee as procuring cause of the purchase and sale contemplated by this Agreement, except that Tom Quigley and Carl Guenzel of Kiemle & Hagood Company have represented Buyer. Upon closing Seller shall pay to Kiemle & Hagood Company a fee equal to three percent (3%) of the gross sales price. If any other broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and

against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim.

18. **AGENCY DISCLOSURE.** At the signing of this Agreement,

Selling Broker Tom Quigley and Carl Guenzel of Kiemle & Hagood Company represented QueenB Radio, Inc and the Listing Broker N/A represented N/A. Selling Firm, Selling Firm's Designated Broker, Selling Broker's Branch Manager (if any) and Selling Broker's Managing Broker (if any) represent the same party that Selling Broker represents. Listing Firm, Listing Firm's Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Selling Broker and Listing Broker are different persons affiliated with the same Firm, then both Buyer and Seller confirm their consent to the Brokers' Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as a dual agent. If Selling Broker and Listing Broker are the same person representing both parties, then both Buyer and Seller confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."

18. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

19. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Washington.

21. Entire Agreement. This Agreement and the exhibits to it constitute the entire agreement between the parties with respect to the purchase and sale of the Property, and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth.

22. Attorney Fees. Each party shall pay its own legal fees relating to negotiation and drafting of this Agreement and the documents to be executed

at closing. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not substantially prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy court proceeding.

23. Time of the Essence. Time is of the essence of this Agreement.

24. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of a subsequent breach of the same covenant.

25. Nonmerger. The terms and provisions of this Agreement, including, without limitation, all indemnification obligations will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

26. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

27. Governmental Approval. Buyer acknowledges and agrees that this Agreement does not bind the City of Spokane until it is signed by the Mayor following approval by the Spokane City Council in open public meeting.

28. Exhibit. The following exhibit is attached to and made a part of this Agreement by this reference.

EXHIBIT A – Legal Description of the Property
EXHIBIT A-1– Form of Promissory Note

29. Assignment. KXLY may assign this Agreement/ to any person, firm, partnership or corporation: (a) controlling, controlled by, or under common control with KXLY; (b) that is the successor in interest to KXLY; or (c) pursuant an agreement with a third party to purchase all or part of the Additional KXLY Property. The assignee shall be bound by and perform all the terms, conditions and covenants contained herein by expressly agreeing to assume the obligations of KXLY hereunder.

In witness whereof, the Buyer and Seller have signed this Agreement effective as of the date first hereinabove written.

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT A-1
FORM OF PROMISSORY NOTE

EXHIBIT B

ISP IMPLEMENTATION MEMORANDUM

Date: _____, 2015

To: Southgate Integrated Site Plan file

From: City of Spokane, Planning and Development Services

Regarding: Spokane Planning & Development interpretations for the Integrated Site Plan

Copy: G. Bernardo, BWA; T. Teske, Southgate Neighborhood Council

This memorandum to the file is intended, in part, to resolve a pending appeal filed by the Southgate Neighborhood Council (SNC) on or about April 14, 2014 and pending before the City of Spokane Hearing Examiner as the Regal Plaza Appeal, Hearing Examiner File #P1304658-AP (the "Appeal").

This memorandum to the file will guide evaluation of subsequent site plans and development projects for the area defined by the **Southgate Integrated Site Plan (ISP)**, for the duration of the Development Agreements that required the ISP (Ordinance Nos. C-34467, C-34468, and C-34469). This memorandum is not intended to amend or modify the terms of applicable development agreements approved by the City pursuant to chapter 36.70B RCW, and nor is it intended to provide a basis for exceeding the permissible scope of project review as set forth in chapter 36.70B RCW and other state and local regulations.

General procedures for project review throughout PDS Prior to Permit Issuance

We will notify and consult with the SNC on all development proposals and applications that involve new construction, including building permits, requests for variances, and other administrative determinations within the area defined by the **ISP** at the earliest possible date and prior to any decisions. All documents relevant to these matters will be promptly available to the public per applicable requirements of Washington's Public Records Act and notice provisions of the Spokane Municipal Code. The City will facilitate discussions between the applicants and SNC over use of retail tenant branding as justification for deviation from common design. Subject to chapter 36.70B RCW, SNC will have a reasonable time for evaluation and may make comments to the identified project manager or the director of Spokane Planning & Development.

No approvals in the development of the Target site shall serve as precedents for any future development within the area defined by the ISP.

Urban District

Spokane PDS will evaluate each development proposal and building permit as to its success in representing urban form as well as accommodation for future urban development intensity. This will include urban design that promotes pedestrian and vehicular circulation, without conflict, via a system of streets and pathways, identified ISP elements, applicable Center and Corridor Design Guidelines, the Spokane Municipal Code, and applicable provisions of the Comprehensive Plan in cases where approval criteria for the development proposal and/or building permit include consistency with the Comprehensive Plan. Whenever possible, driveways shall be aligned across Regal and Palouse to allow driveways to transition to future urban-style intersections and shall be located appropriately to provide urban-scale blocks.

Spokane PDS will recommend that the City Council memorialize these principles in The Comprehensive Plan as it considers the Southgate Neighborhood.

Public Plaza, Public Realm, and Streets

Spokane PDS will encourage and evaluate whether additional public plazas are consistent with the ISP, and those concepts from the neighborhood connectivity plan that were incorporated into the ISP, and The Comprehensive Plan.

Spokane PDS will require that all development and city-implemented improvements within the area defined by the ISP incorporate traffic calming measures, such as treed medians, as are set forth in the ISP, and relevant provisions of Center and Corridor Design Guidelines, the Spokane Municipal Code, and applicable provisions of the Comprehensive Plan in cases where approval criteria for the development proposal and/or building permit include consistency with the Comprehensive Plan. Spokane PDS will enforce the pedestrian lighting requirements of SMC 17C.122.060 (Attachment A at 6).

All development will be reviewed for consistency with the requirement that it will facilitate integration of the area defined by the ISP into an urban district with a unified character. The ISP “kit-of-parts” for streetscape furniture, fixtures, and equipment is shown in the May ISP final document. Any proposed deviation from these standards must demonstrate conformance to the design theme as a whole and consistency of urban design character.

The ISP and applicable Development Agreements call for urban form for development. With the exception of the square footage requirements of the large format stores allowed by the Development Agreements, Spokane PDS will evaluate all site plans and new construction to ensure conformance with urban design and development principles for public spaces – sidewalks, building access, transit, “build-to” lines for construction, and urban streetscape amenities.

Spokane PDS will also evaluate future uses (redevelopment) for conformance to an urban design system. Spokane PDS will evaluate all development and traffic impacts to determine where on-street parking can be accommodated.

The City agrees to develop planted medians along Regal Street and Palouse Highway as outlined in the Integrated Site Plan, including elements that originated in the Southgate Connectively Plan, and to create frictional traffic calming, as funding for such improvements becomes available to the City.

Subject to such approvals as may be required by the Spokane City Council, the City will lower speed limits on streets in the Southgate District Center to 30 MPH. The City also agrees to conduct engineering and traffic studies on a periodic basis to determine whether further reductions in the speed limit or other measures are necessary to create the pedestrian emphasized character called for by the Center and Corridor zoning. If determined to be necessary, the City agrees to take steps to reduce the speed and/or develop other measures in an expeditious manner.

Dismissal of the Appeal

The City and SNC shall jointly file a stipulated motion for dismissal with the City of Spokane Hearing Examiner for dismissal of the Appeal, with prejudice and without costs to either party. The appeal fee submitted by SNC will be refunded to SNC within 30 days of the execution of this appeal settlement.

Louis Meuler, Acting Director
Planning and Development

ACKNOWLEDGED AND AGREED

Southgate Neighborhood Council

By: _____

Its: _____

ACKNOWLEDGED AND AGREED PER TERMS OF PURCHASE AND SALE
AGREEMENT

By: _____

Its: _____

Date: _____

