

**PORTLAND STATE UNIVERSITY ACADEMIC AND STUDENT RECREATION  
CENTER, A CONDOMINIUM  
PURCHASE AND SALE AGREEMENT**

BETWEEN: STATE OF OREGON, acting by  
and through the State Board of Higher Education  
on behalf of Portland State University (“Seller”)  
Seller’s address is:  
PO Box 751  
Portland, Oregon 97207-0751

AND: CITY OF PORTLAND (“Purchaser”)  
Purchaser’s address is:  
c/o Office of Management and Finance  
Attn: Jim Coker/Andrew Scott  
1120 SW 5<sup>th</sup> Avenue, Room 1204  
Portland, Oregon 97204

**RECITALS:**

A. This Purchase and Sale Agreement (this “Agreement”) provides for the acquisition by Purchaser of the real property to be known as the Archives Unit (the “Unit”) of the Portland State University Academic And Student Recreation Center, A Condominium (“Condominium”), a condominium project to be located at 1800 SW 6<sup>th</sup> Avenue, in the City of Portland, County of Multnomah, State of Oregon, including the interest in the common elements of the Condominium (“Common Elements”) appurtenant to such Unit. The Unit and Common Elements are sometimes collectively referred to herein as the “Property”. The legal description of the property on which the Condominium will be constructed is: Lots 1-8, Block 161, PORTLAND ADDITION, in the City of Portland, County of Multnomah, State of Oregon, together with that portion of SW Montgomery Street which inured thereto by Vacation Ordinance No. 173238 recorded July 7, 2000 as Fee No. 2000-09375.

**AGREEMENT:**

Seller and Purchaser agree as follows:

1. Agreement to Sell and Buy. Seller and Purchaser are parties to that certain Intergovernmental Agreement dated \_\_\_\_\_, 2007 (the “Intergovernmental Agreement”). Pursuant to the terms of the Intergovernmental Agreement, Seller has agreed to develop the Condominium, construct the Unit as part of such Condominium to serve as the new location for the archives of the City of Portland and sell the Property to Purchaser. The terms of the Intergovernmental Agreement are hereby incorporated into this Agreement, provided that in the event of conflict, the Intergovernmental Agreement shall govern. A copy of the Intergovernmental Agreement is attached hereto as Exhibit A.

Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, the Property. Purchaser acknowledges that although Purchaser will have exclusive rights to use and enjoy the limited Common Elements associated with the Unit. The limited Common Elements and all other Common Elements of the Condominiums will be owned by Purchaser jointly with other unit owners. Purchaser's interest in the Common Elements will be established under and set forth in Declaration and the Condominium Documents (defined below).

2. Purchase Price and Payment. The "Purchase Price" shall be an amount equal to Nine Million Eight Hundred Seventy-One Thousand Four Hundred Thirty-Six and No/100 Dollars (\$9,871,436.00). The Purchase Price shall be payable to Seller in the amounts and at the times specified in Exhibit C of the Intergovernmental Agreement.

3. Title. Seller shall convey the Property to Purchaser subject only to the following "Permitted Exceptions": (i) Exception Nos. \_\_\_\_\_ of the lot book report issued by First American Title Insurance Company of Oregon ("Title Company") concerning the Unit and the Common Elements of the Condominium attached hereto as Exhibit B; (ii) utility or other easements granted as part of the development and construction of the Condominium; and (iii) the Condominium Documents. The "Condominium Documents" are, collectively, the Development Agreement, the Declaration of Condominium Ownership for Portland State University Academic and Student Recreation Center, a Condominium ("Declaration"), the Bylaws and Articles of Incorporation for the Owners' Association of Portland State University Academic and Student Recreation Center, a Condominium ("Association"), and the condominium plat (the "Plat"). The Condominium Documents may be modified by Seller prior to Closing, subject to Purchaser's review pursuant to the Intergovernmental Agreement and provided that such modifications may not reduce or adversely affect Purchaser's rights as owner of the Unit unless approved by Purchaser. Purchaser shall not unreasonably withhold such approval.

4. Construction of Property. Seller shall construct the Property pursuant to the terms set forth in the Intergovernmental Agreement.

5. Closing.

5.1. Closing Date. "Closing" means the recording of the deed for the Unit from Seller to Purchaser and the delivery of the remainder of the Purchase Price to Seller, if any portion was not paid previously. Closing shall occur on a business day (the "Closing Date") selected by Seller and reasonably acceptable to Purchaser which date shall be after the latest to occur of: (i) substantial completion of construction of the Condominium, (ii) issuance of a temporary certificate of occupancy for the Unit, and (iii) recording of the Declaration, Bylaws and Plat for the Condominium.

5.2. Conveyance. At Closing, Seller shall convey the Property to Purchaser by statutory bargain and sale deed (the "Deed"), subject to the Permitted Exceptions. In addition, the Memorandum of Right of First Offer provided for in Section IV (8) of the Intergovernmental Agreement shall be recorded at Closing, notifying third parties of the rights granted under Section IV of the Intergovernmental Agreement.

5.3. Escrow. Closing shall occur on the Closing Date at the offices of Title Company. Both Seller and Purchaser shall execute all closing documents and deliver to Title Company all funds required of such party in connection with the Closing at least one (1) day prior to the Closing Date, including, without limitation, an executed affidavit from Seller certifying that Seller is not a foreign person, trust, partnership or corporation in accordance with IRC § 1445. The parties may, by mutual consent, elect to Close outside of escrow.

5.4. Possession. Purchaser shall be entitled to exclusive possession of the Unit on the Closing Date.

5.5. Taxes and Assessments. Assessments, including, without limitation, assessments levied by the Association and any LID assessments, shall be prorated as of the Closing Date. If actual assessment information is not available as of the Closing Date, the Title Company will be permitted to utilize estimates in order to complete the Closing.

5.6. Closing Costs and Other Payments. Purchaser shall pay at Closing Purchaser's prorated share of the Association assessments for the month in which the Closing occurs, if any, one-half (1/2) of Title Company's escrow fees, all recording costs, and one-half (1/2) of transfer taxes, if any. Seller shall pay at Closing the premium for a standard coverage owner's policy of title insurance described in Section 5.7, one-half (1/2) of the Title Company's escrow fee, and one-half (1/2) of transfer taxes, if any. The parties may elect to prorate Association assessments outside of escrow.

5.7. Title Insurance. It shall be a condition to Closing that Title Company shall be prepared to deliver to Purchaser within a reasonable time after Closing a standard coverage owner's policy of title insurance in the amount of the Purchase Price insuring title to the Unit in the name of Purchaser, subject to the Permitted Exceptions.

6. Default. If Seller or Purchaser defaults in its obligations under this Agreement, then, subject to any limitation of remedies contained elsewhere in this Agreement, the non-defaulting party shall have the right to any remedy available at law or equity, including specific performance.

7. Representations; No Warranties.

7.1. Condition of Property. Seller represents that, to the best of Seller's knowledge, there are no pending or threatened notices of violations of any laws, codes, rules or regulations applicable to the Property and Seller is not aware of any such violation or of any concealed material defects in the Property. For purposes of this Section 6.1, "to the best of Seller's knowledge" shall mean the knowledge of Seller's Project Manager, as defined in the Intergovernmental Agreement.

7.2. No Warranties; AS IS. THE CONDOMINIUM BUILDING IS A COMMERCIAL CONDOMINIUM. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY WARRANTIES REGARDING CONSUMER PRODUCTS AS DEFINED IN THE MAGNUSON-MOSS WARRANTY ACT OR THE

UNIFORM COMMERCIAL CODE, WITH RESPECT TO THE BUILDING, THE UNITS, ANY COMMON ELEMENTS, FIXTURES, APPLIANCES, PERSONAL PROPERTY OR ANY OTHER PART OF THE CONDOMINIUM. PURCHASER ACCEPTS THE PROPERTY IN ITS AS IS CONDITION AT CLOSING, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. Seller shall assign to Purchaser at Closing certain rights, remedies and warranties against Skanska Design, the contractor constructing the Condominium, manufacturers and others, pursuant to the terms of the Intergovernmental Agreement.

8. Construction Matters.

8.1. Continuing Construction. Purchaser understands that construction work on the Condominium and other units within the Condominium may continue for a period of time following closing. Purchaser hereby waives any claims against Seller related to noise or inconvenience arising from such construction activities by Seller or the lack of availability of certain Common Elements still under construction at Closing, provided that the limited Common Elements reserved for Purchaser are available for use by Purchaser and Purchaser has access to its Unit.

8.2. Punchlist Inspection. During Seller's normal weekday hours, and not sooner than sixty (60) days prior to the anticipated Closing Date, Purchaser shall inspect the Unit with a designated representative of Seller and Skanska Construction. At the time of such inspection, the parties shall note items to be completed or corrected by Skanska Construction in accordance with a punchlist prepared by the parties.

9. Dispute Resolution. The parties shall follow the dispute resolution procedures set forth in Article XVII of the Intergovernmental Agreement.

10. General Provisions.

10.1. Notices. Any formal notice that may be required to be given in this Agreement may be delivered personally to the Project Managers listed in the Intergovernmental Agreement or sent by first class mail to the following addresses:

The City of Portland  
Office of Management and Finance  
Attn: Jim Coker/Andrew Scott  
1120 SW 5<sup>th</sup> Avenue, Rm. 1204  
Portland, Oregon 97204

Portland State University  
Finance and Administration  
Attn: Ernest Tipton/Mark Gregory  
P.O. Box 751  
Portland, Oregon 97207-0751

With courtesy copies to:

City Attorney's Office  
Attn: Deputy City Attorney Linda Law  
1221 SW 4<sup>th</sup> Avenue, Rm. 430  
Portland, Oregon 97204

Office of the General Counsel  
Attn: Henry "Chip" Lazenby, Jr.  
P.O. Box 751  
Portland, Oregon 97207-0751

10.2. Entire Agreement. THIS AGREEMENT AND THE INTERGOVERNMENTAL AGREEMENT CONSTITUTE THE ENTIRE AGREEMENT BETWEEN PURCHASER AND SELLER WITH RESPECT TO THE MATTERS CONTEMPLATED BY THIS AGREEMENT, AND THERE ARE NO AGREEMENTS, UNDERSTANDINGS, WARRANTIES, OR REPRESENTATIONS BETWEEN PURCHASER AND SELLER EXCEPT AS SET FORTH IN THIS AGREEMENT. PURCHASER IS NOT RELYING ON ANY REPRESENTATION MADE BY SELLER OR ITS EMPLOYEES OR AGENTS, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE INTERGOVERNMENTAL AGREEMENT. This Agreement cannot be amended except by a written instrument executed by both Purchaser and Seller.

10.3. Assignment. Without Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion, Purchaser shall not assign or transfer its rights or obligations under this Agreement. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, heirs, personal representatives, and administrators.

10.4. Waiver. Waiver of performance of any provision of this Agreement shall not constitute a waiver of nor prejudice the party's right to require performance in the future of the same provision or any other provision. Any waiver under this Agreement shall be in writing signed by the party to be charged.

10.5. Attorney Fees. In the event of any claim determined by mediation, arbitration or by a court of law, each party shall bear their own costs, including, without limitation, filing fees, attorneys' fees, investigation expenses, consultant's fees and expert's fees. The other costs of mediation, arbitration, litigation and other court costs shall be divided and paid equally by the parties. To the extent permitted by law, statutory attorney's fees under the Unlawful Trade Practices Act or any other applicable statute are hereby waived.

10.6. Survival. All provisions of this Agreement, the full performance of which is not required prior to or at Closing, shall survive Closing and be fully enforceable thereafter, except as provided in this Agreement.

10.7. Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same document.

10.8. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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

11. Notice Required by Statute. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING

STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

**SELLER:**

THE STATE OF OREGON, acting by and through the State Board of Higher Education on Behalf of Portland State University

By: \_\_\_\_\_

Lindsay Desrochers,  
Vice President for Finance

Date: \_\_\_\_\_

**PURCHASER:**

CITY OF PORTLAND

By: \_\_\_\_\_

Gary Blackmer, City Auditor

Date: \_\_\_\_\_

By: \_\_\_\_\_

Tom Potter, Mayor

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

EXHIBIT A

Copy of Intergovernmental Agreement

[attached]

EXHIBIT B  
Copy of Lot Book Report

[attached]