

**AGREEMENT FOR SALE OF REAL PROPERTY  
(CHERRY PARK EXPANSION)**

181896

This Agreement for Sale of Real Property is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the **CITY OF PORTLAND**, a municipality of the State of Oregon, ("Buyer"), and **THE TRUST FOR PUBLIC LAND**, a nonprofit California public benefit corporation, ("Seller").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

BUYER:

City of Portland  
Portland Parks and Recreation  
1120 S.W. 5<sup>th</sup> Ave. Room 1302  
Portland, Oregon 97204  
Attn: Property Manager  
  
Tel: (503) 823-5229

SELLER:

Oregon Field Office  
The Trust for Public Land  
806 SW Broadway  
Suite 300  
Portland, Oregon 97213  
Attn: Robert Betcone  
Office: (503) 228-6620  
Dir: (971) 244-4109  
FAX: (503) 228-4529

B. Seller holds a purchase and sale agreement to acquire and will be the owner of certain real property located in Multnomah County, Oregon. The Property is part of a larger parcel as depicted in Exhibit A. Exhibit B describes the subject of this agreement and is approximately 4.5 acres.

Said real property, together with any improvements, fixtures, timber, water and minerals located thereon, and any and all rights appurtenant thereto owned by Seller, including but not limited to development rights, timber rights, water rights, grazing rights, access rights and mineral rights, shall be referred to in this Agreement as the "Subject Property."

C. Buyer wishes to purchase the Subject Property from Seller and Seller wishes to sell the Subject Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Subject Property on the terms and conditions set forth herein.

1. **Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Subject Property on the terms and conditions set forth herein.

2. **Purchase Terms.**

- A. **Price.** The purchase price for the Subject Property shall be \$1,500,000 (One Million Five Hundred Thousand Dollars) (The "Purchase Price").
- B. **Method of Payment.** The Purchase Price shall be paid in cash on the closing date.

3. **Conditions to Closing:**

- A. **Closing Date.** The Parties acknowledge the intent to close the purchase within twelve to fourteen months of the effective date of this Agreement.
- B. **State Parks Grant.** The Buyer intends to apply for a State Parks Grant. Buyer shall obtain a waiver of the State Parks standard regarding pre-acquisition grant application or Buyer shall make application to State Parks, if at all, within 3 months of the date of this agreement. Closing is not contingent upon the subsequent award of a State Parks grant to Buyer.
- C. **Land Use Compliance.** Seller shall apply for a written opinion from the Portland Bureau of Development Services regarding compliance with LUR 92-00358DZ. Closing shall be contingent upon a BDS finding that the property is not noncompliant. Subject to Sellers representations and warranties provided herein, non compliance as to other aspects of the current owners land or operation is not a contingency to closing.
- D. **Parcel Creation.** The Seller, at its cost, shall arrange for the creation of the parcel that will constitute the Property. The resulting parcel shall be approximately 4.5 acres in general accord with Exhibit B.
- E. **Fill to Grade and Storm Water Management** The Seller shall arrange for the grading of the parcel in accord with LUR 92-00358DZ (the Land Use Decision), on file with the City of Portland Bureau of Development Services and incorporated herein by reference. The Parties acknowledge that the Grading Plan within the Land Use Decision creates inappropriate contours relative to the surrounding grade. Consequently, Buyer and Seller agree that the property grade will be feathered to match the surrounding grade at the north, south and east boundaries of the Property, with sufficient measures taken to prevent stormwater flow onto those properties. "Sufficient Measures" may be the creation of a shallow swale in the area of the eastern boundary and northern boundary if necessary and a shallow dissipation swale in the vicinity of the northeast corner. Seller shall commission from a registered land surveyor and provide to Buyer an "as built" description of the elevations of the property post-grading with specificity to the satisfaction of BDS.
- F. **Encroachments.** The Seller, at its cost, shall cure existing property encroachments (approx. 6' deep) that are located on the east side of the Property. The cure may be either the removal of the physical encroachments or the conveyance away of that aspect of the Property that is subject to the encroachments. Title transferred to Buyer will be free of said encroachments.
- G. **Fencing.** Seller, at its cost, shall ensure that chain-link fencing is installed on the perimeter of the Property in accordance with requirements of the Land Use Decision.
- H. **Surface Preparation:** Consistent with the intent of the Land Use Decision, Seller shall arrange for the removal materials on the surface which exceed 12 inches in diameter, including but not limited boulders, concrete blocks, asphalt, discarded tires and other inert materials. Seller shall also coordinate with Buyer on the seeding of the site. Buyer shall contribute up to one half the cost of seeding.
- I. **Slope Easements.** The Property will be transferred to Buyer along with a slope easement in accord with Exhibit C. Buyer's acceptance of the slope easement will not constitute a

waiver of Buyer's right to make a claim against the adjacent land owner as to deficient slope protection measures that the adjacent land owner may be guilty of.

- J. **Drainage Easement.** The Property will be transferred to Buyer along with a drainage easement in accord with Exhibit D.
- K. **Due Diligence Information.** Within sixty days (60) days of the effective date of this agreement, Seller will provide Buyer with information it procured, collected or generated as part of its process of evaluating the current condition of the Property and assessment of future actions that will be necessary to cure known encroachments and otherwise comply with applicable provisions of law.
4. **Failure of Conditions of Closing.** In the event any of the conditions set forth Section are not timely satisfied or waived, for a reason other than the default of the Buyer or the Seller under this Agreement, this Agreement and the rights and obligations of the Buyer and the Seller shall terminate, except as otherwise provided.
5. **Damage or Destruction; Condemnation.** Until the transfer of legal title, the risk of loss shall be retained by the Seller. The Seller shall keep the Property fully insured until the transfer of legal title. In the event of any material portion of the Property is damaged, destroyed, or condemned or threatened with condemnation before the transfer of legal title, the Buyer may terminate this Agreement. In such event, this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or the Buyer's obligation to close this transaction as provided for here and to pay the full purchase price to the Seller. In such event, the Buyer shall be assigned all insurance proceeds or condemnation proceeds payable to or for the account of the Seller.
6. **Possession.** Except as specifically set forth in this Agreement, there are no leases, licenses or other agreements permitting, nor has Seller entered any course of conduct that would permit, any person or entity to occupy or use any portion of the Property. Seller shall deliver immediate and exclusive possession of the entire Property to Buyer at closing.
7. **Escrow.** Upon execution of this Agreement, or as soon thereafter as is convenient, the parties shall open an escrow with First American Title, Portland, Oregon (the "Escrow Holder") for the purpose of closing the purchase and sale of the Subject Property. Escrow shall close within 14 days of the date that the Conditions to Closing are satisfied.
8. **Seller to Deliver at Closing.**
- A. **Title.** Title shall be conveyed to Buyer, via statutory warranty deed and shall be free and clear of all title defects, liens, encumbrances, deeds of trust, and mortgages except: (a) the standard printed exceptions on a form of title insurance policy; (b) the special exceptions showing on the First American Title Preliminary Title Report, Order No. 319771; and (c) any such other matters including access across the Property as are approved by Buyer and Seller in writing.
- B. **Proof of Authority.** Such proof of the Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Seller to act for or bind the Seller, as many be reasonably required by the Title Company and/or the Buyer.

- C. **Nonforeign Certification.** The seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. If required by the Buyer, Seller will give an affidavit to the Buyer to this effect in the form required by that statute and related regulations
9. **Environmental/Geotechnical.** Within Seller's knowledge, there is no condition at, on or under the Subject Property connected with the presence of hazardous substances that presently or potentially poses a significant hazard to human health or the environment, and there are no hazardous materials stored at or on the Subject Property. Seller and Buyer have reviewed and approved an Environmental Assessment report prepared by GeoDesign. Seller shall notify Buyer of any change in the environmental condition of the property if any material change occurs prior to closing. Buyer has also reviewed and approved a geotechnical report of filled soils prepared by GeoDesign.
10. **Title Insurance.** Buyer shall be provided with a standard owner's policy of title insurance in the full amount of the Purchase Price insuring that title to the Subject Property is vested in Buyer upon close of escrow subject only to the exceptions noted in Section 5.
11. **Possession.** Possession shall be delivered to Buyer on close of escrow.
12. **Access Rights and Management Responsibility.** Seller hereby grants Buyer the right to enter the Property for the purposes of preparing to take ownership to the Property. Buyer's activities will include, but not be limited to, site evaluation work, surveying, and other actions necessary to ensure a smooth transition of the Property from private to public ownership. Furthermore, Seller and Buyer contemplate that Buyer will become responsible for general maintenance obligations associated with Property (e.g., mowing, trespass abatement, etc.) in accordance with a separate agreement to be entered into between the Buyer and Seller. Buyer will expect the ground cover required under this Agreement to be fully established prior to accepting said management responsibilities.
13. **Seller's Representations.** Seller makes the following representations:
- A. Seller has full power and authority to enter into this Agreement.
  - B. At the close of escrow, Seller will sell, transfer and deliver all right, title and interest in and to the Subject Property by Statutory Warranty deed.
  - C. Seller is not a "foreign person" and is not otherwise subject to back-up withholding of tax under Section 1445 of the Internal Revenue Code.
  - D. Within Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property or pending or threatened against Seller which could affect Seller's title to the Subject Property, affect the value of the Subject Property, or subject an owner of the Subject Property to liability. The representations and warranties of Seller contained herein shall be effective through the close of escrow.
14. **Buyer's Representations.** Buyer makes the following representations:
- A. Buyer has all requisite authority and power to enter into this Agreement.
  - B. Neither Buyer's execution of this Agreement nor its taking any of the actions contemplated hereunder will violate any City, County, State or Federal Codes or Ordinances, or other governmental regulations.

- C. The representations and warranties of Buyer contained herein shall be effective through the close of escrow.
15. **Closing Expenses and Fees.** The escrow fee shall be paid one-half by Buyer and one-half by Seller. Seller will pay the premium on the title policy insuring Buyer's interest. Real estate taxes, if any, on the Subject Property shall be prorated between the Seller and Buyer as of the close of escrow based upon the latest available tax bill. Other fees and charges shall be allocated in accordance with the customary practices of Multnomah County, Oregon.
  16. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.
  17. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.
  18. **Time of the Essence.** Time is of the essence of this Agreement.
  19. **Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.
  20. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.
  21. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Seller and Buyer pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
  22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.
  23. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
25. **Statutory Notice under ORS 93.040.** 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, which, in farm or forest zones, may not authorize construction or siting of a residence and which limit lawsuits against farming or forest practices as defined in ORS 30.930 in all zones. 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 and existence of fire protection for structures.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

BUYER:

THE CITY OF PORTLAND

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

Title: \_\_\_\_\_

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

Approved as to Form:

By: [Signature]

Title: Chief Deputy City Attorney

Date: May 23, 2008

SELLER:

THE TRUST FOR PUBLIC LAND

By: [Signature]

Title: Assoc Reg Counsel

Date: 5/23/08

EXHIBIT A





**Subject Parcel**

The Eastern 204,000 sq. ft. square feet, more or less, of Lot 11, EVERGLADE, in the County of Multnomah and State of Oregon. (Formed by a lot line adjustment projecting north that line that forms the eastern boundary of tax parcel 7600)

ALSO EXCEPTING THEREFROM any portion lying within the boundaries of SE 106th Avenue.

**SLOPE STABILITY EASEMENT**

Grantor: C & C Ventures LLC

Grantee: The Trust for Public Land

Burdened Property: That aspect of Lot 11 EVERGLADE after a proposed boundary line adjustment and Parcel 3 of the vesting instrument to C&C Ventures LLC.

Benefiting Property: Lot 11 EVERGLADE, Multnomah County, Oregon

Location: The location of this easement is generally the Eastern aspect of Lot \_\_\_ of Lot 11 EVERGLADE and the Northern half of (Parcel 3 in vesting to C&C Ventures LLC)

Purpose: The Benefited Property is generally fill, the stability of which is dependent upon sufficient fill and stability of filled material on the Burdened Property. Grantor permits the operation of a sand and gravel operation on the Burdened Property and the Burdened Property, unlike the Benefited Property, is not fully filled to the surrounding grade. Consequently, the Grantor must ensure that fill is placed adjacent to the Benefited Property and is properly placed, compacted and supported so as to avoid any instability of fill lands on the Benefited Property. Grantee may enter upon and conduct necessary work to stabilize the slope of adjacent lands on the Burdened Property if a private professional engineer determines that the Benefited Property could be impacted in any way by potentially unstable slopes on the Burdened Property. The Grantor shall permit the entry of any such private professional engineer for examination of slopes and fill. However, it shall first be Grantor's obligation to correct any instability issues raised by said professional engineer. Grantor may correct the instability issue in any manner, including use of his own equipment and need not necessarily include construction of retaining walls or piling, so long as the corrective action is subsequently deemed adequate by the professional engineer. If Grantor fails to correct any instability identified by said professional engineer within 20 days of written notice, the Grantee may enter and correct the instability and it shall be Grantor's liability for all costs, fees and liability faced by Grantee. However, Grantor may have incremental extensions, in 10-day increments, upon written notice to Grantee that delay has been caused by weather conditions. Said extensions may not exceed 90 days cumulatively.

Duration: This easement shall remain in effect in perpetuity.

Nature: This easement is appurtenant to the Benefiting Property.

Consideration: The consideration for this grant is part of the consideration paid as part of the purchase of the Benefiting Property from Grantor.

## EXHIBIT D

**DRAINAGE EASEMENT**

Grantor: C & C Ventures LLC

Grantee: The Trust for Public Land

Burdened Property: That aspect of Lot 11 EVERGLADE after a proposed boundary line adjustment and Parcel 3 of the vesting instrument to C&C Ventures LLC.

Benefiting Property: Lot 11 EVERGLADE, Multnomah County, Oregon

Location: The location of this easement is generally the Eastern aspect of Lot \_\_\_\_ of Lot 11 EVERGLADE and the Northern half of Parcel 3 of the vesting instrument to C&C Ventures LLC. Grantee may channel or direct surface water flow from the Benefiting Property to a singular discharge point on the Western boundary of the Benefiting Property. Grantor may then channel or direct the drainage course to the South.

Purpose: The purpose of this easement is to provide a course for drainage of surface water run off from the Benefiting Property. Grantor may not create impediments or otherwise impede the flow of surface water from the Benefiting Property to the Burdened Property. If Grantor does impede the free flow of surface water from the Benefited Property or create an impediment that backs up water on the Benefited Property then Grantor shall be liable for any and all damages, costs or liability faced by Grantee. It shall not be Grantor's obligation to construct or maintain any drainage facility on the Benefitted Property.

Duration: This easement shall survive until that time that the City of Portland develops a Park on the Benefiting Property with attendant surface water management infrastructure or 10 years from the date of this instrument, whichever comes first..

Nature: This easement is appurtenant to the Benefiting Property.

Consideration: The consideration for this grant is part of the consideration paid as part of the purchase of the Benefiting Property from Grantor.