

EXHIBIT B

INTERGOVERNMENTAL AGREEMENT

Between

Portland Development Commission

And

Portland Parks & Recreation

For the

Gateway Park & Redevelopment Acquisition Project

This Intergovernmental Agreement (“Agreement”), dated this _____ day of _____, 2008, (“Effective Date”) is made and entered into by and between the **City of Portland, Parks & Recreation Bureau** (“Parks,” “City” or “PPR”) and the **Portland Development Commission** (“PDC” or “Commission”), collectively referred to as “the Parties”.

RECITALS

- A. PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
- B. PPR is responsible for parks, open space, and recreation operations, services and improvements within the City.
- C. An acquisition opportunity has been identified which, if pursued, could facilitate achievement of certain park and urban development goals in the Gateway Regional Center Urban Renewal Area (URA).
- D. The Parties wish to cooperate on efforts to acquire the subject properties, with the understanding that subsequent planning and development agreements will be necessary to achieve the PDC and PPR redevelopment goals associated with the subject properties.

Now therefore, the parties agree as follows:

AGREEMENT

1. **Subject Property.** The proposed property acquisition is comprised of three lots in the URA on a busy commercial corridor, NE Halsey Street. The three lots are depicted on Exhibit A hereto and are collectively referred to as the “Property”. The Property is bounded by NE Halsey Street to the north, NE 106th Avenue to the east, NE Wasco Street to the south, and NE 105th Avenue to the west.

2. **Purpose.** The purpose of this Agreement is to define the responsibilities and obligations of the Parties with respect to the acquisition, allowable uses, and interim management of the Property.
3. **Term.** The Term of this Agreement will be for two (2) years.
4. **Acquisition.**
 - A. **Purchase Agreement.** Subject to the terms and conditions of this Agreement, PDC is authorized to act as an agent of the City for the purpose of negotiating and closing the purchase of the Property. The purchase will be in accordance with a purchase and sale agreement (PSA) substantially the same as Exhibit B hereto, with the purchase price not to exceed \$4.6 million. At or before closing, PDC will assign fifty percent (50%) of its rights under the purchase and sale agreement to the City.
 - B. **Purchase Price.** The Parties will share the purchase price on a 50/50 basis, with PPR to deposit its share of the purchase price in an escrow account established for the purchase prior to the closing date provided for in the PSA.
 - C. **Earnest Money.** PDC will disperse earnest money deposits but both Parties will share in the costs of these deposits as described in the offer letter on a 50/50 basis. The payment of 100 percent of earnest money deposits will be credited to the purchase price at closing.
 - D. **Due Diligence.** PDC shall be responsible for completing or arranging for completion of necessary due diligence actions, including, but not limited to title review, survey, appraisal and environmental assessment. PPR will be provided with copies of work products as they are completed. Third party diligence costs (e.g., title search, appraisal and survey) will be shared on a 50/50 basis.
 - E. **Title.** The Parties will receive statutory warranty deeds to the Property, with the Property to be conveyed to the Parties as tenants in common on a 50/50 basis.
 - F. **Closing.** PDC will draft closing instructions on behalf of the Parties in consultation with PPR, and will supervise all closing actions including deed preparation, recording, providing copies of legal documents to PPR, and payment of pro-rated taxes. PDC will not proceed to closing without PPR's written approval to do so, which can be reasonably withheld as a result of due diligence findings. Closing costs will be shared on a 50/50 basis.
 - G. **Supplemental Funding.** The Parties will apply to Metro for supplemental acquisition funding through Metro's Nature in Neighborhoods Capital Grant program. Grant funds, if received, will be considered a joint PDC/PPR contribution to the project.
 - H. **PPR Withdrawal.** Should PPR elect to not proceed to closing due to due diligence findings, PDC reserves the right to purchase the property for redevelopment, which may or may not include a public park. In said event, PPR will still be responsible for its share of due diligence costs incurred under the Agreement. However, title will vest solely in PDC.
5. **Interim Management**
 - A. **Contact of Record.** The PDC property manager will serve as the contact of record for the purpose of receiving third party communication regarding the Property (e.g. nuisance

notices, permit requests, etc.). PDC will consult with PPR as reasonably necessary when responding to said third party contacts (e.g., media inquiries), whether verbally or in writing.

- B. Interim Management Plan and Budget. The Parties will make a good faith effort to complete and agree on an interim management plan and budget within sixty days after closing. The interim management plan will include reasonable procedures for approving interim management expenditures incurred by the Parties.
 - C. Security. The Parties will agree on reasonable measures (e.g. fencing) necessary to secure the Property upon closing and be prepared to complete said measures within thirty (30) days of closing.
 - D. Revenues and Costs. Revenues attributable to the Property will be treated as Gateway URA program income. Operations and maintenance expenditures will be paid from a Gateway URA budget code specific to the Property, in accordance with the agreed upon interim management plan and budget.
 - E. Consultation and Reporting. The Parties will confer quarterly to review interim management staffing needs and performance, and identify desired changes, if any. When an interim management matter is deemed to be significant in nature by either party, the other party will be informed of said matter within twenty-four hours, exclusive of weekends and holidays.
 - F. Public Involvement. Where interim management actions will require public involvement, the Parties will agree how to seek and/or respond to said involvement in a mutually agreed upon manner.
6. **Planning and Development Agreement**. In the event that the Property is acquired, the Parties will amend this agreement to add responsibilities for the timely and cost effective planning for and development of park and urban development improvements on the Property.
7. **Designated Representatives**. The following personnel are being assigned to perform the work provided for under this Agreement.
- A. Acquisition
 - 1) PDC: Justin Douglas
 - 2) PPR: Steve Planchon
 - B. Interim Management
 - 1) PDC: Kristy Branson, Steve Blank, Justin Douglas
 - 2) PPR: Steve Planchon, Doug Brenner
8. **PDC Commission and City Council Approval**. This Agreement is not binding until approved by the PDC Commission and Portland City Council.
9. **Notices**. Any notices permitted or required by this contract shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid,

certified, return receipt requested and addressed to the representative designated in Section 7. Either party may change its address by notice given to the other in accordance with this paragraph. Notices shall be provided to the following addresses:

Portland Parks and Recreation
Attention: Property Manager
1120 SW 5th Avenue, Suite 1202
Portland, OR 97204

Portland Development Commission
Attention: Justin Douglas
222 NW 5th Avenue
Portland, OR 97209

10. **General Provisions.**

- A. Meeting Participation. The Parties shall invite each other to attend their respective meetings as reasonably necessary.
- B. Work Product Ownership. Work products resulting from this Agreement will be jointly owned, with reproduction costs to be shared equally.
- C. Subcontractors. The procuring party shall have the sole authority to direct the work of subcontractors required under this Agreement. Costs incurred will be shared by both Parties on a 50/50 basis. Any future subcontracting contracts over \$15,000 shall be reviewed by PPR prior to authorization. Current and expected subcontractors and estimated costs include:
 - 1) ECONorthwest, serving as a subcontractor to PDC for acquisition and negotiation processes: \$995;
 - 2) Integra Realty Resources, serving as subcontractor to PDC for real estate appraisal purposes: \$2,800;
 - 3) GeoEngineers, Inc., serving as subcontractor to PDC for environmental assessment purposes: \$33,000;
 - 4) Ticor Title, serving as subcontractor to PDC for title insurance purposes;
 - 5) Bluedot Group, serving as subcontractor to PDC for surveying purposes: \$14,444;
 - 6) Professional Service Industries, serving as subcontractor to PDC for building hazardous material assessment purposes: \$2,936.
- D. Termination. The Agreement will terminate: (i) in the event that the intended acquisition does not close; (ii) by mutual written consent; or (iii) in the event the acquisition closes but PPR is not a party. In the event of automatic or voluntary termination, work under the Agreement shall cease promptly and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the project's termination will be reimbursed.
- E. Conflict Resolution. If a dispute arises regarding performance, the Parties agree to make a good faith effort to resolve the dispute in a manner that is consistent with the intent of the Agreement.

- F. Compliance with Laws. The Parties shall comply with all applicable federal, state and local laws and regulations.
- G. Indemnification.
- 1) Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PPR agrees to indemnify, hold harmless and defend, PDC, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of PPR, its officers, employees or agents under this Agreement.
 - 2) Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PDC agrees to indemnify, hold harmless and defend, Bureau, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of PDC, its directors, employees or agents under this Agreement.
- H. Delivery / Maintenance of Records. The Parties shall maintain records on a current basis and shall make said records available to one another with reasonable notice.
- I. Funding Acknowledgement / Signage. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between the PPR and the Portland Development Commission and, if appropriate, financed by “the Gateway Park & Redevelopment Project”
- J. Time is of the Essence. The Parties acknowledge the importance of negotiating and closing the intended acquisition in a timely manner and will act accordingly.
- K. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement
- L. Amendments. This Agreement may only be amended in writing.
- M. Merger. This agreement contains the entire agreement between PDC and PPR. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

[Signature page to follow]

IN WITNESS WHEREOF, the City of Portland, through the Portland Parks and Recreation Bureau and the Portland Development Commission has executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Dan Saltzman, Commissioner

Bruce A. Warner, Executive Director

Gary Blackmer, City Auditor

APPROVED AS TO FORM:

PDC Legal Counsel

APPROVED AS TO FORM:

City Attorney

EXHIBIT A



EXHIBIT B

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made and entered into as of the last date of signature indicated below (the "**Effective Date**"), by and between TANASIY MOLOFIY and DOMNIKA MOLOFIY, ("**Seller**") and the CITY OF PORTLAND, acting by and through THE PORTLAND DEVELOPMENT COMMISSION ("**Buyer**").

RECITALS

- A. Seller is the owner of real property and all improvements and rights appurtenant thereto, commonly known as 10506-10512 NE Halsey Street, Portland, Oregon and more particularly described as Tax Assessor's I.D. R320001 Sec. 34 1 N 2 E; TL 3100, as more particularly described in the attached Exhibit A, in the City of Portland, County of Multnomah and State of Oregon (the "**Property**").
- B. Buyer desires to purchase the Property for future development pursuant to the urban renewal plans and purposes of the City of Portland.
- C. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all right title and interest in the Property.

AGREEMENT

1. **Purchase and Sale.** The Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property upon the terms and conditions set forth in this Agreement. The Recitals are hereby incorporated into this Agreement by this reference.
2. **Purchase Price.** The Purchase price for the Property will be two million, one hundred eighty-nine thousand, five-hundred fifty DOLLARS (\$2,189,550).
3. **Payment of Purchase Price.** The Purchase Price will be payable as follows:
 - 3.1 **Escrow Deposit.** Within the following days after execution of this Agreement, Buyer will deposit these amounts into escrow ("**Escrow Deposit**") with TICOR TITLE INSURANCE COMPANY, located at 1000 SW Broadway, Portland, Oregon ("**Escrow Holder**"):
 - Within sixty (60) days, a deposit of twelve-thousand five hundred dollars (\$12,500)
 - Within ninety (90) days, another twelve-thousand five hundred dollars (\$12,500)
 - If Buyer exercises a 30 day extension after the 120 day escrow period, Buyer shall deposit an additional seven-thousand five hundred dollars (\$7,500)

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The Escrow Deposit will be non-refundable to Buyer, except as provided below. The Escrow Holder will invest the Escrow Deposit in a federally insured, interest-bearing account. The accrued interest will be treated as part of the Escrow Deposit at Closing. If Buyer retains the Escrow Deposit, Buyer will receive the interest. At Closing, the Escrow Deposit, together with interest on it, if any, will be credited toward payment of the Purchase Price.

3.2 Payment of Purchase Price. The Purchase Price will be paid at Closing as follows:

3.2.1 The Escrow Deposit, together with interest earned will be credited to the Purchase Price and the outstanding balance will be paid in immediately available funds to Seller.

4. **Closing.** This transaction will close on or before December 31, 2008 (the "Closing Date" or "Closing") unless otherwise extended in writing by the parties.

5. **Conditions Precedent to Closing.**

5.1 Conditions Precedent to Buyer's Obligations. In addition to any other conditions contained in this Agreement, the following conditions precedent must be satisfied prior to Buyer's obligation to acquire the Property. These conditions are intended solely for Buyer's benefit and Buyer will have the sole right and discretion to waive, by written notice, any of the conditions. In the event any condition is not satisfied or waived on or before Closing, or other date as set forth herein, Buyer shall have the right to terminate this Agreement and be refunded its Escrow Deposit:

5.1.1 Title. At Closing Seller will convey fee simple title to the Property by statutory warranty deed. Title will be good and marketable and will be insured by an Owner's Standard Form of Title Policy issued by Title Company in the full amount of the Purchase Price, insuring fee simple title vested in Buyer or its nominees. Title insured will be subject only to the standard exceptions of such policy, current taxes not yet delinquent, and the Permitted Exceptions, as hereinafter defined. Buyer will have the right, if Buyer so elects, to cause the title policy to be issued as an ALTA extended coverage policy, provided Buyer pays the additional premiums and survey costs associated therewith.

5.1.2 Title Report. Within fifteen (15) days of the Effective Date, Seller, at Seller's expense, will cause the Title Company to deliver to Buyer a Title Report covering the Property, together with legible copies of all documents, plats and exceptions to title referenced in the Title Report. Within fifteen (15) days of its receipt of the Title Report or at completion of the ALTA/ACSM Land Title Survey, Buyer will give written notice to Seller of the Exceptions that Buyer will require Seller to remove of record at or before Closing (the "Unacceptable Exceptions"). Exceptions to

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which Buyer makes no objection are deemed "**Permitted Exceptions.**" Seller will thereafter have fifteen (15) days to use its best efforts to remove such exceptions at Seller's sole cost or inform Buyer in writing that it is unable to remove any such exception. Upon Buyer's request, Seller shall provide an updated Title Report prior to Closing. All new exceptions appearing on subsequent title reports will be considered unacceptable, unless accepted in writing by Buyer. If for any reason Seller cannot remove any of the Unacceptable Exceptions before Closing, then Buyer may elect to either:

5.1.2.1 accept title to the Property subject to such exceptions;

5.1.2.2 waive its objection in writing to Seller and elect to have any monetary lien or encumbrance removed at Closing to the extent that it can be satisfied and removed by application of all or a portion of the Purchase Price payable to Seller at Closing; or

5.1.2.3 refuse to accept the Property and terminate this Agreement.

5.1.3 **Environmental and Structural Review.** Within ten (10) days after the Effective Date of this Agreement, Seller will then deliver to Buyer copies of all environmental studies, analyses, and reports relating to the Property within its possession or control not previously provided Buyer ("Environmental Reports"). Buyer may, at its own expense, engage consultants, surveyors or engineers of Buyer's choosing to conduct further environmental studies, soil analyses, surveys, and appraisals of the Property, and structural, mechanical and electrical inspections of the Property as Buyer in its sole discretion deems necessary. Buyer or its agents will have the right to enter the Property at reasonable times before Closing to make such tests, inspections, soil analyses, studies, surveys, appraisals and other investigations as Buyer may require, at Buyer's sole discretion and Seller will cooperate with Buyer in making such tests and studies. Any area disturbed by such tests and studies will be restored by Buyer, at Buyer's expense, to its pre-inspection condition. It will be a condition to Closing that the results of such environmental studies, appraisals, surveys or analyses be acceptable to Buyer in its sole discretion. If prior to the Closing Date Buyer and Seller have not reached an agreement regarding the scope of work or the results of the environmental and structural investigations, then Buyer may elect to either:

5.1.3.1 accept title to the Property subject to such results;

5.1.3.2 waive its objection to such results in writing to Seller; or

5.1.3.3 refuse to accept the Property and terminate this Agreement.

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- 5.1.4 **Boundaries/Access; Delivery of Surveys and Reports.** It is a condition to closing that: (1) there are no discrepancies in the boundaries of the Property; and (2) there are no encroachments or prescriptive or adverse rights on or affecting the Property or any portion thereof. If Buyer notifies Seller prior to the Closing Date that any of the requirements are not satisfied, Buyer may elect to either:
- 5.1.4.1 accept title to the Property subject to such items;
 - 5.1.4.2 waive its objection to such items in writing to Seller; or
 - 5.1.4.3 refuse to accept the Property and terminate this Agreement.
- 5.1.5 **Investigation and Review.** It will be a condition to closing that the documents described herein (the "Investigation Documents") be delivered to the Buyer and approved as provided below. Within 10 days after executing this Agreement, unless otherwise specified, Seller will deliver or cause to be delivered to the Buyer the Investigation Documents. The Buyer will have the right to review and approve each and every Investigation Document to its sole satisfaction within 30 days after the Buyer receives it. The Buyer's failure to respond timely will constitute the Buyer's approval of the Investigation Document provided. In the event the Buyer disapproves any Investigation Document, the Buyer will timely notify Seller in writing, and Seller will have 5 days in which to cure. If a cure acceptable to the Buyer is not timely achieved, the Buyer may waive the requirement in writing, or elect to terminate this Agreement for failure to satisfy a condition precedent to the Buyer's obligation to close. The Investigation Documents shall include:
- 5.1.5.1 **Records and Plans.** Copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, records pertaining to repairs and restoration of the Property in connection with fire damage, environmental studies, inspection reports, and all topographical surveys and soil tests for or relating to the Property in Seller's possession or reasonably available to Seller.
 - 5.1.5.2 **Permits and Leases.** Copies of all certificates of occupancy, permits, leases, orders, letters, and other documents available to Seller relating to the operation, zoning and permitted uses of the Property.
 - 5.1.5.3 **Tax Notices.** Copies of all tax and assessment notices and bills for the Property for the most recent two property tax years.
 - 5.1.5.4 **Past Uses.** Any information in Seller's possession or available to Seller relating to the past uses of the Property.

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- 5.1.5.5 **Management, Service, and/or Maintenance Contracts.** Copies of all management, service, and/or maintenance contracts with respect to the Property.
- 5.1.6 **Representations, Warranties, and Covenants of Seller.** The Seller will have duly performed every agreement to be performed by Seller hereunder and Seller's representations, warranties, and covenants set forth in this Agreement will be true and correct as of the Closing Date.
- 5.1.6.1 **No Material Changes.** At the Closing Date, there will have been no material adverse changes related to or connected with the Property.
- 5.1.6.2 **Seller's Deliveries.** The Seller will have timely delivered each item to be delivered by Seller pursuant to this Agreement.
- 5.1.6.3 **Title Insurance.** As of the close of the escrow, the Escrow Holder will have issued or committed to issue the title policy to Buyer.
- 5.1.6.4 **Taxes.** Seller agrees that all taxes, assessments and encumbrances that will be a lien against the Property at Closing, whether or not those charges would constitute a lien against the Property at settlement, will be satisfied of record by Seller. If Seller will fail to do so, Buyer may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real property taxes payable during the year in which closing occurs and any rents or income applicable to the Property will be prorated as of Closing.
- 5.1.7 **Commission Approval.** Buyer's Board of Commissioners will have approved this transaction at a public meeting.
- 5.1.8 **H. & M. Leromaho, LLC.** The purchase and sale agreement with H. & M. Leromaho, LLC (or its successor) for the related property must be valid and all conditions satisfied to close simultaneously with this Agreement.
- 5.1.9 **Parks Bureau Contribution.** Buyer will receive funding for one-half of the acquisition costs from the Portland Bureau of Parks and Recreation.
- 5.2 **Conditions Precedent to Seller's Obligations.**
- 5.2.1 The close of escrow and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to Buyer's delivery to the Escrow Holder on or before the Closing Date, for disbursement as provided herein, of the Purchase Price and the documents and materials described in Paragraph 6.

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- 5.3 **Failure of Conditions to Closing.** In the event any of the conditions set forth in Sections 5.1 or 5.2 are not timely satisfied or waived, for a reason other than the default of Buyer or Seller under this Agreement:
- 5.3.1 This Agreement, the escrow, and the rights and obligations of Buyer and Seller will terminate, except as otherwise provided herein; and
- 5.3.2 The Escrow Holder is hereby instructed to promptly return to Seller and Buyer all funds and documents deposited by them, respectively, in escrow that are held by the Escrow Holder on the date of the termination.
- 5.4 **Cancellation Fees and Expenses.** In the event this escrow terminates because of the nonsatisfaction of any condition for a reason other than the default of either Buyer or Seller under this agreement, the cancellation charges required to be paid by and to the Escrow Holder will be borne equally by the Buyer and Seller. In the event this escrow terminates because of default by either party, the cancellation charges required to be paid by and to the Escrow holder will be borne by the defaulting party.
- 5.5 **Prorates.** Except as otherwise provided herein, all items to be prorated, including rents, operating expenses, revenues, and other income, if any, will be prorated as of the Closing Date, in Escrow. For the purpose of calculating prorations, the Buyer will be deemed to be in title to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date. Unpaid rents will be prorated.
6. **Deliveries to Escrow Holder.**
- 6.1 **By Seller.** On or before the Closing Date, Seller will deliver the following to the Escrow Holder.
- 6.1.1 **Deed.** A statutory warranty deed (satisfactory in form and substance to Buyer) duly executed and acknowledged in recordable form by Seller, conveying the Property to Buyer subject only to Permitted Exceptions as established under Section 5.1.2 of this Agreement, and subject to any other matters that may be approved in writing by Buyer.
- 6.1.2 **Nonforeign Certification.** The Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. The Seller will give an affidavit to Buyer to this effect in the form required by that statute and related regulations.
- 6.1.3 **Documents.** Such other fully executed documents (satisfactory in form and substance to Buyer) and funds, including without limitation, escrow instructions, as are required to close the sale in accordance with this Agreement.

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6.2 **By Buyer.** On or before the Closing Date, Buyer will deliver the balance due for the Purchase Price to the Escrow Holder in accordance with Sections 2 and 3 above, less any adjustments allowed by this Agreement.

7. Deliveries to Buyer at Closing.

7.1 **Possession.** The Seller will deliver exclusive possession of the Property to Buyer at close of escrow except for any tenancies accepted by Buyer.

7.2 **Keys.** Keys (and security codes if applicable) to all entrance and other doors and keys to all personal property used in connection with the operation of the Property, which keys shall be tagged for identification (if applicable).

7.3 **Records and Plans.** To the extent not already delivered to Buyer, copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, environmental studies, inspection reports and all topographical surveys and soil tests for or relating to the Property that are in Seller's possession or reasonably available to Seller (if applicable).

7.4 **Deposits.** All prepaid rents and all other sums paid by tenants of the Property to Seller as deposits or fees (both refundable and nonrefundable), including, but not limited to, security deposits, pet fees and cleaning fees, will be transferred to Buyer by Seller at Closing (if applicable).

7.5 **Tenant Estoppel Statements.** At Buyer's request, Seller will deliver to Buyer an estoppel statement from each of the commercial tenants, if any, of the Property stating (1) the lease delivered to Buyer by Seller is in full force and effect without modification, (2) rent through the date of the estoppel letter has been paid to the landlord, (3) no rent has been prepaid, (4) the landlord is not in default in the performance of any of its obligations under the lease nor has any event occurred which with the giving of notice or passage of time or both would constitute such a default, (5) the tenant is not entitled to any free rent, concessions, rebates or refunds, and (6) landlord is not obligated to construct any improvements in the premises in addition to any already constructed and accepted by the tenant. Estoppel statements for residential tenants are not required (if applicable).

8. **Costs.** Buyer will pay the cost of recording the deed; Seller will pay all other recording charges, if any. Seller will pay the premium for the standard title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Buyer will pay any and all costs associated with its request for the title policy to be issued as an ALTA extended coverage policy. Seller shall execute any required documents and cooperate with Buyer to obtain extended coverage. Buyer and Seller will each pay one-half of all escrow fees and costs. Buyer and Seller will each pay its own legal and professional fees of other consultants incurred by Buyer and Seller, respectively. All other costs and expenses will be allocated between Buyer and Seller in accordance with the customary practice in Multnomah County, Oregon.

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9. **Seller's Representations and Warranties.** Seller hereby represents and warrants to Buyer the following matters, and acknowledges that they are material inducements to Buyer to enter into this Agreement. Seller agrees to indemnify, defend, and hold Buyer harmless from all expense, loss, liability, damages and claims, including attorney fees, arising out of any breach of the following representations, warranties and covenants. Seller represents, warrants and covenants:

9.1 **Seller's Authority.**

- 9.1.1 Seller, at or upon closing with Buyer, will receive title from the Ukrainian Bible Church-“Pathway to God”, and be the legal and beneficial fee simple titleholder of the Property and will convey good, marketable and insurable title to Buyer simultaneously for the Property, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments or other matters, except as disclosed to Buyer by the preliminary title report.
- 9.1.2 Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.
- 9.1.3 All requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
- 9.1.4 The persons executing this Agreement and the instruments referred to herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions of this Agreement.
- 9.1.5 This Agreement and all documents required to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.
- 9.1.6 Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Seller is a party, or, affecting the Property.

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9.2 Environmental Matters.

- 9.2.1 For purposes of this Agreement, the phrase “Environmental Laws” includes all state and federal law, rules, regulations, standards and permit requirements regulating the generation, storage, transport, disposal, discharge or release of Hazardous Substances, as hereafter defined.
- 9.2.2 For purposes of this Agreement, “Hazardous Substances” means and includes: (i) all substances subject to regulation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and any other applicable federal, state or local laws and regulations now in force or hereafter enacted relating to the use, storage and disposal of hazardous substances; (ii) all substances listed in the United States Department of Transportation Table (49 C.F.R. §§ 172.101 and amendments thereto) or by the Environmental Protection Agency, or any successor agency thereto, as hazardous substances (40 C.F.R. §§ 302 and amendments thereto).
- 9.2.3 “Toxic Substance” means and includes any material that has been shown to have significant adverse effects on human health or the environment, or that is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §§ 2610 et seq., or any other applicable federal, state or local laws and regulations now in force or hereafter enacted relating to toxic substances, including, without limitation, asbestos, polychlorinated biphenyls (PCBs), petroleum products, and lead-based paint.
- 9.2.4 For purposes of this Section 9, the phrase “Knowledge” means: (1) the knowledge Seller would have, had it exercised reasonable diligence and was reasonably familiar with any information contained in Seller’s electronic or paper files.
- 9.2.5 Information. Seller has provided Buyer with all studies, reports and analysis in Seller's possession referred to in Section 5.1.3 with respect to the presence of Hazardous Substances on or below the surface of the Property.
- 9.2.6 Remaining Contamination. To the Knowledge of Seller, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or released from the Property in violation of any Environmental Laws.
- 9.2.7 Migration. To the Knowledge of Seller, no Hazardous Substances have migrated from or through the Property onto or below the surface of the surrounding real property, in violation of any Environmental Laws.

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- 9.2.8 **Transportation.** To the Knowledge of Seller, Seller has not transported Hazardous Substances from the Property in violation of Environmental Laws. To the Knowledge of Seller, Seller has not transferred Hazardous Substances from the Property to another location in violation of Environmental Laws. To the Knowledge of Seller, no other entity or person has transported Hazardous Substances from the Property in violation of Environmental Laws. To the Knowledge of Seller, no other entity or person has transferred Hazardous Substances from the Property to another location in violation of Environmental Laws.
- 9.2.9 **No Pending Government Action.** To the Knowledge of Seller, there are no proceedings, administrative actions, or judicial proceedings pending or, to Seller's Knowledge, contemplated under any Environmental Laws, related to the Property, and Seller has received no notice of violation or advisory action by state or federal regulatory agencies regarding compliance with Environmental Laws with respect to the Property.
- 9.3 **Contracts, Leases, Options Affecting Property.** Seller has not entered into, and will not enter into, any other contracts for the sale of the Property, nor do there exist, nor will there be, any rights of first refusal, options to purchase the Property, leases, mortgages, licenses, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affects or encumbers the Property or any portion thereof, with the exception of matters of record and existing rental agreements referred to in Section 5. The Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions relating to the Property, and to Seller's knowledge, no such rights encumber the Property, and will not, through Closing.
- 9.4 **Liens, Notices.** There are no:
- 9.4.1 Intended public improvements or private rights, which will result in the creation of any liens upon the Property or any portion thereof.
- 9.4.2 Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof;
- 9.4.3 Actual or impending mechanic's liens against the Property or any portion thereof.
- 9.5 **Possession.** Except for lessees specifically approved by Buyer and existing rental agreements referred to in Section 5, and occupants, if any, by right arising out of encumbrances of record, no one other than Seller will be in possession of any portion of the Property at the close of escrow.
- 9.6 **Changed Conditions.** If Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller will

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immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties ceases to be true before the close of escrow, Seller will work with the Buyer; use its commercially reasonable efforts to remedy the problem, before the close of escrow. If the problem is not remedied before close of escrow, Buyer may elect to either 1) terminate this Agreement in which case Buyer will have no obligation to purchase the Property and all escrow payments will be refunded to Buyer, or 2) defer the Closing Date for a period not to exceed thirty (30) days or until such problem has been remedied, whichever occurs first.

- 9.7 **Indemnification.** Seller warrants that it will be responsible for and will pay, indemnify and hold Buyer harmless from any and all obligations and claims that Seller may have incurred with respect to the Property prior to Closing including without limitation, attorney fees that may be incurred by Buyer to defend any actions brought by third parties with respect to any such claims, except those obligations that are specifically assumed by Buyer.
10. **Condition of Property.** Buyer acknowledges and agrees that Buyer will be concluding the purchase of the Property based upon Buyer's own inspection and investigation of the Property, and is purchasing the Property subject to the representations and warranties set forth in Sections 8, 9, 11 and 12, herein. Buyer specifically acknowledges that, with the exception of the representations and warranties set forth above in Subsection 9.2, Seller makes no representations or warranties regarding environmental matters. No part of this Section 10 will be deemed to invalidate or waive any claim or rights of contribution that may arise under Environmental Laws.
11. **Seller's Representations, Warranties and Covenants Regarding the Property through the Close of Escrow.** The Seller further represents, warrants, and covenants that, until this transaction is closed or escrow is terminated, whichever comes earlier, it shall:
- 11.1 Maintain the Property in its present state, with no alteration of the Property in any way;
- 11.2 Maintain all existing insurance policies affecting the Property in full force and effect; and
- 11.2 Comply with all government regulations.
12. **General Representation.** The Seller's representations and warranties contained in Sections 9 and 11 herein are true and accurate, and are not misleading. The Seller's representations and warranties contained in Sections 9 and 11 herein shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by Seller in a separate certificate at the time. The Seller's representations and warranties contained in Sections 9 and 11 herein shall survive the close of escrow for a period of ten (10) years following the Closing Date and shall not merge into the deed and the recordation of the deed in the official records.

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13. **Buyer's Representations and Warranties.** Buyer hereby represents, warrants and covenants with Seller that:
- 13.1 Subject to 5.1.7, Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated herein;
 - 13.2 All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated herein; and
 - 13.3 The persons executing this Agreement and the instruments referred to herein on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms and conditions of this Agreement.
 - 13.4 Buyer has sufficient funds available to close this transaction, as authorized by the Portland Development Commission, in accordance with this Agreement.
 - 13.5 Buyer shall comply with its Relocation Policies and Procedures and any legal requirements related to relocation.
14. **Risk of Loss.** Seller will bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, all or part of the Property is damaged by fire or by any other cause of any nature, Seller will give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by Buyer of written notice from Seller of such casualty and Escrow Holder will return to Buyer the Escrow Deposit with all accrued interest.
15. **Notices.** All notices in connection with this Agreement will be deemed given at the time of delivery if made by personal delivery, by facsimile, or by delivery by private express courier service; if mailed, three days after deposit by certified or registered mail, postage prepaid.

To Seller: Tanasiy & Domnika Molofiy
 20375 NE Lakeside Drive
 Portland, Oregon 97024
 Phone No. (503) 720-4730

With Copy: Terry W. Wilson
 Compass Commercial Real Estate Services
 7000 SW Hampton Street, Suite 202
 Portland, Oregon 97223
 Phone No. (503) 431-2424, ext 12
 Fax No. (503) 431-2233

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To Buyer: Portland Development Commission
Justin Douglas
Project Manager
222 NW Fifth Avenue
Portland, Oregon 97209-3859
Phone No. (503) 823-4579
Fax No. (503) 865-3609

With Copy: General Counsel
222 NW Fifth Avenue
Portland, Oregon 97209-3859
Phone No. (503) 823-3200
Fax No. (503) 865-3870

The foregoing addresses may be changed by written notice, given in the same manner.

16. **Brokerage Commissions.** Buyer represents that it has retained no real estate broker in connection with this transaction. Seller represents that it has retained Terry W. Wilson, Compass Commercial Real Estate Services as real estate broker in connection with this transaction and in accordance with a signed listing agreement. Seller will compensate Seller's broker according to the terms of their agreement. In the event any person asserts a claim for a broker's commission or finder's fee against Seller, then Seller will hold Buyer harmless and defend from said claim.
17. **Further Actions of Buyer and Seller.** Buyer and Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and will use their best efforts to accomplish the close of escrow in accordance with the provisions herein.
18. **Legal and Equitable Enforcement of This Agreement.**
 - 18.1 **Default by Seller.** In the event the close of escrow and the consummation of the transaction herein contemplated do not occur by reason of any default by Seller, Buyer will be entitled to the refund of its Escrow Deposit, and will be entitled to seek specific performance of Seller's obligations.
 - 18.2 **Default by Buyer.** In the event the close of escrow and the consummation of the transactions herein contemplated do not occur by reason of any default by Buyer, Buyer and Seller agree that it would be impractical and extremely difficult to estimate the damages that Seller may suffer. Accordingly, Buyer and Seller agree that a reasonable estimate of the total net detriment that Seller would suffer in the event of any such default by Buyer and under this Agreement is and will be, and Seller's sole and exclusive remedy (whether at law or in equity), is and will be an amount equal to the sum of the Escrow Deposit. The payment of such amounts as liquidated damages is not intended as a forfeiture or penalty, but is intended to represent liquidated damages to Seller. Upon such default by Buyer, this Agreement will be terminated and neither party will have any further rights or

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obligations hereunder, each to the other, except for the right of Seller to collect such liquidated damages from Buyer and the Escrow Holder.

19. Miscellaneous.

- 19.1 **Partial Invalidity.** If any term or provision of this Agreement or the application to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected thereby, and each such term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.
- 19.2 **Waivers.** No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.
- 19.3 **Successors and Assigns.** This Agreement will be binding on and will inure to the benefit of the successors and assigns of the parties to it. Buyer may assign its interest in this Agreement and the Property to any other person or entity. In the event that an assignee assumes the obligations of Buyer hereunder, then Buyer will have no further liability with respect to this Agreement.
- 19.4 **Entire Agreement.** This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted here.
- 19.5 **Time of Essence.** The Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision.
- 19.6 **Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement will be governed by and interpreted in accordance with the laws of the state of Oregon.

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,

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IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER SECTIONS 2, 3 AND 5 TO 22 OF 2007 ENROLLED HOUSE BILL 3540 (HB 3540-C) (MEASURE 49). 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

THE PERSON ACQUIRING FEE TITLE TO THIS PROPERTY SHOULD BE AWARE THAT A VALID LIEN MAY BE PLACED ON THIS PROPERTY FOR CLAIMS FOR UNPAID CONSTRUCTION RELATED TRANSACTIONS OR ACTIVITIES ON THE PROPERTY EVEN IF THE CIRCUMSTANCES THAT GIVE RISE TO THAT CLAIM OCCURRED PRIOR TO PURCHASE. SUCH CIRCUMSTANCE MAY INCLUDE, WITHOUT LIMITATION, CLAIMS FOR LABOR, MATERIAL, EQUIPMENT OR SERVICES CONTRACTED BY THE OWNER FOR THE PROPERTY THAT WERE UNPAID.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature specified below.

BUYER:

The City of Portland acting by and through the
Portland Development Commission



Bruce Warner, Executive Director

Date: 9/25/08
Approved as to Form:



PDC Legal Counsel

SELLERS:

TANASIY MOLOFIY



Tanasiy Molofiy, Individually

Date:
DOMNIKA MOLOFIY



Domnika Molofiy, Individually

Attachments:

Exhibit A – Legal Description

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Exhibit A

PARCEL I:

A tract of land in the Northwest one-quarter of Section 34, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at the Section corner common to Sections 27,28,33 and 34, Township 1 North, Range 2 East of the Willamette Meridian; thence South 89° 35' 30" East 770 feet along the Section line between Sections 27 and 34; thence South 0° 35' 00" West 40 feet to an iron pipe on the South line of NE Halsey Street and the true point of beginning; thence South 89° 35' 30" East along the South line of NE Halsey Street, 20 feet; thence South 250 feet to a point on the South line of the tract described in Deed to Richard N. Travis and wife, recorded June 9, 1966 in Book 506 page 153, Deed Records, which is 105.2 feet East, when measured on said South line, from the most Southerly Southwest corner of said Travis tract; thence West on said South tract line, 105.2 feet; thence North 0° 31' 00" East along the East line of NE 104th Avenue, 45 feet to an iron pipe; thence South 89° 35' 30" East 85.20 feet to an iron pipe; thence North 0° 35' 00" East 205 feet to an iron pipe and the true point of beginning.

PARCEL II:

A tract of land in the Northwest one-quarter of Section 34, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at the Section corner common to Sections 27,28,33 and 34, said Township 1 North, Range 2 East of the Willamette Meridian; thence from said point South 89° 35' 30" East along the Section line between Sections 27 and 34 and the center line of NE Halsey Street a distance of 770 feet to a point; thence South 0° 35' 00" West a distance of 40 feet to an iron pipe on the South line of NE Halsey Street; thence South 89° 35' 30" East along the South line of NE Halsey Street, 362.24 feet to an iron pipe at the Northeast corner of Lot 1, IDA ADDITION, said point being on the West line of NE 106th Avenue; thence South 0° 32' 54" West a distance of 139.84 feet along the West line of NE 106th Avenue to an iron pipe; thence along the arc of a curve to the right (whose radius is 223 feet; 10° 27' 36", SEMI TANGENT 20.41 feet) a distance of 40.71 feet to an iron pipe; thence South 11° 00' 30" West a distance of 67.90 feet along the West line of NE 106th Avenue to an iron pipe and the true point of beginning; thence continuing along the West line of NE 106th Avenue South 11° 00' 30" West a distance of 218.54 feet to an iron pipe; thence along the arc of a curve to the right (whose radius is 10 feet, 79° 19' 30", SEMI TANGENT 8.30 feet) a distance of 13.85 feet to an iron pipe; thence North 89° 40' 00" West a distance of 381.61 feet along the North property line of NE Wasco Street to an iron pipe on the East line of NE 104th Avenue; thence North 0° 31' 00" East a distance of 220.15 feet along the East property line of NE 104th Avenue to an iron pipe; thence North 89° 58' 15" East a distance of 431.40 feet to an iron pipe on the West side of NE 106th Avenue and the true point of beginning.

TOGETHER WITH a perpetual non-exclusive easement for ingress and egress over and across the following described real property:

Beginning at the intersection of the South line of NE Halsey Street with the West line of NE 106th Avenue; thence South 0° 32' 54" West along said West road line 139.84 feet to an iron pipe; thence southerly along said West road line along the arc of a 223 foot radius curve to the right 40.71 feet to an iron pipe; thence South 11° 00' 30" West along said West road line 67.90 feet to an iron pipe for the true point of beginning of the herein described property; thence South 89° 58' 15" West a distance of 431.40 feet to an iron pipe on the East line of NE 104th Avenue; thence North 0° 31' 00" East along said East

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road line 29 feet; thence North $89^{\circ} 58' 15''$ East 433 feet, more or less, to the West line of NE 10th Avenue; thence South $11^{\circ} 00' 30''$ West along said West road line 29 feet to the true point of beginning.