

183601

270

Multnomah County Official Records
C Swick, Deputy Clerk

2010-085912



\$36.00

07/13/2010 10:52:28 AM

1R-W DEED
\$5.00 \$11.00 \$15.00 \$5.00

Cnt=1 Stn=29 ATAAH

RECORDING REQUESTED BY:
Fidelity National Title Company of Oregon

GRANTOR'S NAME:
Nicholas K Thorp
GRANTEE'S NAME:
City of Portland an Oregon Municipal Corporation
SEND TAX STATEMENTS TO:
City of Portland an Oregon Municipal Corporation
1120 SW 5th Room 1000
Portland, Or 97204 Attn: SHannah
AFTER RECORDING RETURN TO:
City of Portland
1120 SW 5th Room 1000
Portland, Or 97204
Attn: Shannah
Escrow No: 20090021288-FTPOR02

Fidelity National Title of Oregon

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Nicholas K Thorp, Grantor, conveys and warrants to

City of Portland an Oregon Municipal Corporation, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Multnomah, State of Oregon:

Lot 1 and the southwesterly 25 feet of Lot 4, Block 21, JAMES JOHN ADDITION TO ST. JOHNS in the City of Portland, County of Multnomah and State of Oregon

Subject to and excepting:

none

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS \$99,000.00. (See ORS 93.030)

DATED: 07-8-10

Nicholas K Thorp

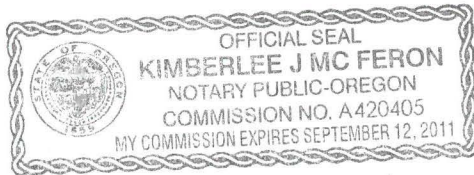
State of OREGON
COUNTY of Multnomah
This instrument was acknowledged before me on 7-8, 2010
by Nicholas K Thorp.

_____, Notary Public - State of Oregon
My commission expires:

Approved and accepted

by

City of Portland



APPROVED AS TO FORM

CITY ATTORNEY

20090021288-02

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between **Nicholas K. Thorp** (the "Seller) and the City of Portland, a municipal corporation (the "City").

RECITALS

A. The Seller is the owner of approximate 0.29 acres of real property, described as Tax Lot 03200 1N1W12BB, and further known as Lot 1 and the southwesterly 25 feet of Lot 4, Block 21, James John Addition to St. Johns, Multnomah County, OR, together with the improvements thereon, if any, and all rights appurtenant thereto owned by Seller, including but not limited to access rights, timber rights, water rights, grazing rights, development and mineral rights (hereinafter referred to as the "Property"), more particularly described in Exhibit A, attached hereto and incorporated herein.

B. The City desires to purchase from the Seller and the Seller desires to sell and convey to the City, all right, title and interest in the Property. The terms of this Agreement are as follows:

TERMS

1. **Purchase and Sale.** The Seller agrees to sell and convey to the City and City agrees to purchase from the Seller, the Property upon the terms and conditions set forth in this Agreement.

2. **Purchase Price and Other Consideration.** The Purchase Price for the Property shall be NINETY NINE THOUSAND DOLLARS (\$99,000.00).

3. **Payment of Purchase Price.** The Purchase Price shall be payable as follows:

a) Deposit. Within fifteen (15) business days after execution of this Agreement, City shall deposit into escrow the sum of One Thousand Dollars (\$1,000.00) ("Escrow Deposit"), to **Fidelity National Title Company of Oregon** ("Escrow Holder" and "Title Company"), **686 NW Eastman Parkway, Gresham OR 97030**. At Closing, the Escrow Deposit, together with interest on it, if any, shall be credited toward payment of the Purchase Price.

b) Cash Balance. On or before the closing date, City shall deposit into escrow the cash, a wire transfer of funds, a certified check, or a cashier's check, in the amount of \$98,000.00, the balance of the Purchase Price.

4. **Closing Date.** This transaction shall close on or before one hundred eighty (180) days from the Effective Date, or as soon thereafter as reasonably possible, unless otherwise extended as set forth herein (the "Closing Date" or "Closing").

5. **Conditions Precedent to Closing.**

a) Conditions Precedent to City's Obligations. In addition to any other conditions prior to City's obligation to acquire the Property, these conditions are intended solely

for City's benefit and City shall 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, City shall have the right to terminate this Agreement and be refunded its Escrow Deposit, and to exercise any other remedy available:

- i) City Council Approval. This Agreement is expressly conditioned upon the formal approval by the City Council, in the form of a resolution or ordinance, of the terms and conditions set forth in this Agreement. If the City Council has not authorized and approved the Agreement by the Closing Date, then the Closing Date shall be automatically extended for a 45-day period so that City Council approval may be pursued.
- ii) Title. At Closing, the Seller shall convey fee simple title to the Property by statutory warranty deed. Title shall be good and marketable and shall be insurable as such at ordinary rates pursuant to an ALTA standard owner's title insurance policy issued at Closing by the Title Company free and clear of all liens and encumbrances except for the Permitted Exceptions (defined below).
- iii) Metro Approval. This agreement is subject to the formal approval, by Metro's Nature in Neighborhoods Capital Grant Program Grant Review Committee, of a grant for the Baltimore Woods Connectivity Corridor project. The Metro grant will be used to partially fund acquisition of the Property. This contingency will be removed no later than February 15, 2010.
- iv) Title Report. Within fifteen (15) days following the Effective Date of this Agreement, City shall order a preliminary Title Report covering the Property, together with legible copies of all plats and exceptions to title referenced in the Title Report. Within fifteen (15) days of receiving the Title Report and the Exceptions documents, or within twenty (20) days of the Effective Date, whichever is later, City shall give written notice to seller of the exceptions to title that City shall require Seller to remove of record at or before Closing (the "Unacceptable Exceptions"). Exceptions to title not objected to are referred to as "Permitted Exceptions". Seller shall thereafter have fifteen (15) days to use its best efforts to remove such exceptions at Seller's sole cost or inform City in writing that it is unable to remove any such exception. All new exceptions to title appearing on subsequent title reports shall be considered unacceptable, unless accepted in writing by City. If for any reason Seller cannot remove any of the Unacceptable Exceptions before Closing, then City may elect to either:
 - (a) accept title to the Property subject to such exceptions;
 - (b) 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;

- (c) refuse to accept the Property and terminate this Agreement, in which case the Escrow Deposit shall be refunded to City; or
- (d) extend the Closing date for a 45-day period so that Seller may have additional time to remove the unwanted exceptions, and, if at the end of the 45-day period, the exceptions have not been removed, City may elect either (iv)(a), (b), or (c) above.
- v) Environmental Review. Before Closing, City may, at its expenses, engage consultants, surveyors or engineers of City's choosing to conduct environmental studies, soil analyses survey and appraisals of the Property as City in its sole discretion deems necessary. Within ten (10) days after the Effective Date, Seller shall deliver to City a copy of all environmental studies or analyses relating to the Property within its possession or control. City or its agents shall 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 City may require, at City's sole discretion. Seller shall cooperate with City in making such tests and studies. Any area disturbed by such tests and studies shall be restored by City, at City's expense, to its pre-inspection condition. It shall be a condition to Closing that the results of such environmental studies, surveys or analyses be acceptable to City in its sole discretion. If City notifies Seller prior to Closing Date that City cannot accept the Property due to the results of its investigation under this section, the Closing Date shall be automatically extended for a 45-day period so that Seller and City may address the results of the investigation. If, at the end of the 45-day period, City and Seller have not reached an agreement regarding the items disclosed in the investigation, then City may, at its option and upon written notice to Seller, terminate this Agreement of Purchase and Sale, in which case the escrow money shall be refunded to City.
- vi) Representations, Warranties, and Covenants of Seller. The Seller shall have duly performed every act to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.
- vii) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property.
- viii) Seller's Deliveries. The Seller shall have timely delivered each item to be delivered by the Seller pursuant to this Agreement.
- ix) Title Insurance. As of the close of the escrow, the Escrow Holder shall have issued or committed to issue the title policy to City.
- x) 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, shall be satisfied of record by Seller. If Seller fails to do so, City 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 shall be prorated as of Closing.

b) Conditions Precedent to Seller's Obligations. The close of escrow and the seller's obligations with respect to the transactions contemplated by this Agreement are subject to City'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(b).

c) Failure of Conditions to Closing. In the event any of the conditions set forth in Section 5(a) or (b) are not timely satisfied or waived, for a reason other than the default of City or the Seller under this Agreement:

- i) This Agreement, the escrow, and the rights and obligations of City and the Seller shall terminate, except as otherwise provided herein; and
- ii) The Escrow Holder is hereby instructed to promptly return to the Seller and City all funds and documents deposited by them, respectively, in escrow that are held by the Escrow Holder on the date of the termination.

d) Cancellation Fees and Expenses. In the event the escrow terminates because of the non-satisfaction of any condition for a reason other than the default of the Seller under this Agreement, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by City. In the event this escrow terminates because of the Seller's default, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by the Seller.

6. Deliveries to Escrow Holder.

a) By Seller. On or before the Closing Date, the Seller shall deliver the following in escrow to the Escrow Holder:

- i) Deed. A statutory warranty deed duly executed and acknowledge in recordable form by the Seller, conveying the Property to City subject only to the special exceptions acceptable to City as established under Section 5 of this Agreement, and any other matters that may be approved in writing by City.
- ii) Nonforeign Certification. The seller represents and warrants that it is not a "foreign person" as defined IRS § 1445. The Seller will give an affidavit to City to this effect in the form required by that statute and related to regulations.
- iii) 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 and bind the Seller, as may be reasonably required by the Escrow Holder and/or City.

- iv) Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Escrow Holder in order to issue the title policy.
- v) Other Documents. Such other fully executed documents and funds, including without limitation, escrow instructions, as are required of Seller to close the sale in accordance with this Agreement.

b) By City. On or before the Closing Date, City shall deliver the following in escrow to the Escrow Holder:

- i) Purchase Price. The Purchase Price in accordance with Section 3 above.
- ii) Proof of Authority. Such proof of City'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 City to act for and bind City, as may be reasonably required by the Escrow Holder and/or the Seller.

7. Deliveries to City at Closing. The Seller shall deliver exclusive possession of the Property to City at close of escrow.

8. Title Insurance. At Closing the Seller shall provide at the City's expense, a standard owner's ALTA title insurance policy in the full amount of the Purchase Price specified above, insuring fee simple title vested in City or its nominees, subject only to the Permitted Exceptions as established under Section 5 of this Agreement.

9. Costs. City shall pay closing costs, including escrow fee, recording fees, government service charges, title insurance policy and other customary expense incurred in escrow as a result of closing comparable real estate transactions. The City and Seller shall each pay its own legal and professional fees of the other consultant incurred by the City and Seller respectively.

10. Seller's Representations and Warranties. Seller hereby warrants and represents to City the following matters, and acknowledges that they are material inducements to City to enter into this Agreement. Seller agrees to indemnify, defend, and hold City harmless from all expense, loss, liability, damages and claims, including attorneys' fees, arising out of the breach or falsity of any of Seller's representations, warranties and covenants. These representations, warranties and covenants shall survive Closing. Seller warrants and represents to City that the following matters are true and correct, and shall remain true and correct through Closing.

- a) Authority. Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an

individual, have full power and authority to sign for seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

b) Legal Access. To the best of seller's knowledge, the Property has insurable vehicular access to a public road.

c) Hazardous Substances. For purposes of this Agreement, the phrase "Hazardous Substances" shall include but not be limited to the substances defined in ORS 465.200. Seller warrants, represents, and covenants as follows:

- i) 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 of the federal or state government;
- ii) Seller has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from or on the Property, any Hazardous Substances in violation of any environmental laws of the federal or state government;
- iii) To the knowledge of Seller, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Seller agrees not to cause or permit any such tanks to be installed in the Property before Closing;
- iv) To the best of Seller's knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it;
- v) The Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property;
- vi) The Seller has not transferred Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the Seller's knowledge, no other person has transferred Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and
- vii) There are no proceedings, administrative actions, or judicial proceedings pending or, to the best of Seller's knowledge contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

d) Contracts, Lease, Rights 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, easements, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affect or encumber the Property or any portion thereof. 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.

e) No Legal Proceedings. There is no suit, action arbitration, judgment, legal, administrative, or other proceeding, claim, lien or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's right or title to the Property, or any portion thereof, affect the value of the Property or any portion thereof, or subject an owner of the Property, or any portion thereof, to liability.

f) Mechanic's and Other Liens. No work on the Property has been done or will be done or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other liens, against the Property or any portion thereof.

g) Public Improvements or Governmental Notices. To the best of Seller's knowledge, there are no intended public improvements which will result in the creation of any liens upon the Property or any portion thereof, nor have any notices or other information 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.

h) Breach of Agreements. The execution of this Agreement will not constitute a breach or default under any agreement to which Seller is bound or to which the Property is subject.

i) Possession. Seller will be able to deliver immediate and exclusive possession of the entire Property to City at the close of escrow, and no one other than Seller will be in possession of any portion of the Property immediately prior to close of escrow.

j) Bankruptcy Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by Seller.

k) Reforestation. The Property is not subject to any pending or delinquent reforestation requirements/Seller has complied with all reforestation requirements.

l) Recitals. The statements and information set forth in the Recitals are true and correct.

m) Changed Conditions. If Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to City of those facts and information. If any of the foregoing warranties and representations ceases to be true before the close of escrow, Seller shall be obligated to use its best efforts to remedy the problem, at its sole expense, before the close of escrow. If the problem is not remedied before close of escrow, City may elect to either: (a)

terminate this Agreement in which case City shall have no obligation to purchase the Property and all escrow payments shall be refunded to City, or (b) defer the Closing Date for a period not to exceed thirty (30) days or until such problem has been remedied, whichever occurs first. If the problem is not remedied within that timeframe, City may elect to terminate this Agreement and receive a refund of its escrow deposit. City's election in this regard shall not constitute a waiver of City's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

11. **Seller's Representation, 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 occurs first, it shall:

- a) Maintain the Property in its present state, with no tree cutting, timber harvesting, or alteration of the Property in anyway;
- b) Keep all existing insurance policies affecting the Property in full force and effect;
- c) Make all regular payments of interest and principal on any existing financing;
- d) Comply with all government regulations; and
- e) Keep City timely advised of any repair or improvement required to keep the Property in substantially the same condition as when inspected by City.

12. **Deferred Taxes.** If the Property is subject to farm or forest deferred taxes, Seller shall have no obligation or responsibility for said deferred taxes, unless the Property becomes disqualified for or loses its deferred tax status as a result of Seller's actions prior to Closing in which case such taxes shall be Seller's responsibility.

13. **City's Representations and Warranties.** In addition to any express agreements of City contained here, the following constitute representations and warranties of City to the Seller:

- a) Subject to City Council approval and the conditions stated herein, City has the legal power, rights, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated here;
- b) Subject to City Council approval and the conditions stated herein, all requisite action has been taken by City in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated here; and
- c) Subject to City Council approval and the conditions stated herein, the persons executing this Agreement and the instruments referred to herein on behalf of City have the legal power, rights, and actual authority to bind City to the terms and conditions of this Agreement.

14. **Seller's Promise to Remove Personal Property and Debris.** Prior to the close of escrow, Seller promises to remove or cause to be removed from the Property at Seller's expense any and all personal property and/or trash, rubbish, debris, or any other unsightly or offensive materials unless otherwise agreed to in writing by City. Satisfaction of the promises contained

herein shall be subject to City's inspection and approval of the physical condition of the Property by City prior to Closing.

15. **Risk of Loss, Condemnation.** Seller shall 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 or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Seller shall give City written notice of such event. City may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by City of written notice from seller of such casualty or condemnation and Escrow Holder will return to City the Escrow Deposit and accrued interest.

16. **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller: Nicholas Thorp
15025 NW Springville Road
Portland OR 97229

To Buyer: City of Portland
Bureau of Environmental Services
Shannah Anderson or Property Manager
1120 SW 5th Avenue, Room #1000
Portland OR 97204

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

17. **Broker Relationship/Fee.** Seller represents and warrants to the City that it has not used or engaged 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 against one of the parties to this Agreement, then Seller shall indemnify, hold harmless and defend City from and against any such claim if based on any action, agreement, or representations made by Seller; and City shall indemnify, hold harmless, and defend Seller from and against any such claim if based on any action, agreement, or representations made by City.

18. **Further Actions of City and Seller.** City 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 shall use their best efforts to accomplish the close of escrow in accordance with the provisions hereof.

19. **Legal and Equitable Enforcement of This Agreement.**

a) Default by the 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 the Seller, City shall be entitled to all its out-of-pocket expenses incurred in connection with the transaction, including the deposit, and shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement

b) Default by City. In the event the close of escrow and the consummation of the transaction herein contemplated do not occur by reason of any default by City, City and the Seller agree that it would be impractical and extremely difficult to estimate the damages that the Seller may suffer. Therefore, City and the Seller agree that a reasonable total net detriment that the Seller would suffer in the event that City defaults and fails to complete the purchase of the Property is and shall be, and the Seller's sole and exclusive remedy (whether at law or in equity), an amount equal to the escrow deposit. This amount shall be the full, agreed, and liquidated damages for the breach of this Agreement by City, all other claims to damage or other remedies being herein expressly waived by the Seller. The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to the Seller. Upon default by City, this Agreement shall be terminated and neither party shall have any further rights or obligations under it, each to the other, except for the right of the Seller to collect such liquidated damages from City and the Escrow Holder.

20. **Miscellaneous.**

a) Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, 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, shall not be affected thereby and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

b) Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any proceeding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

c) Survival of Representations. The covenants, agreements, representations, and warranties made herein shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.

d) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties to it. City may assign its interest in this Agreement to a park entity without the consent of Seller. In the event that an assignee assumes the obligations of City hereunder, then City shall have no further liability with respect to this Agreement.

e) 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 herein.

f) Time of Essence. The Seller and City hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligations, and provision.

g) 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 shall be governed by and interpreted in accordance with the laws of the state of Oregon.

h) Recording Memorandum. At the Effective Date the parties will execute a Memorandum of this Agreement, which City may cause to be recorded against the Property.

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 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. 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 214.010, 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.

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

Buyer:
City of Portland
an Oregon Municipal Corporation
By: Debra Maul

Seller:
Nicholas K. Thorp
Date: 11-20-09

Title: Dwight, BES
Date: 1/13/10

Approved as to Form:
Debra Maul, Senior Deputy City Attorney
Attachments:

Exhibit A – Property Description
Exhibit B – Form of Memoranda

EXHIBIT A
Property Description

Lot 1 and the southwesterly 25 feet of Lot 4, Block 21, JAMES JOHN ADDITION TO ST. JOHNS in the City of Portland, County of Multnomah and the State of Oregon.

When recorded, mail to:
City of Portland
Shannah Anderson
1120 SW 5th Avenue, Room #1000
Portland OR 97204

MEMORANDUM OF PURCHASE AND SALE AGREEMENT

This is a memorandum of a certain Agreement of Purchase and Sale ("Agreement") between Nicholas K. Thorp ("Seller"), and the City of Portland, an Oregon municipal corporation ("City") signed by Seller on November 20, 2009. By said Agreement, Seller has agreed to sell to City Seller's interest in that certain real property in Multnomah County, described in Exhibit A attached hereto and incorporated herein by this reference. If not earlier paid, all amounts owed under the Agreement shall be due and payable 180 days after the Effective Date as set forth in the Agreement, if Closing is not otherwise extended as provided for therein. The actual and true consideration for the conveyance at Closing will be \$99,000.00.

IN WITNESS WHEREOF, the parties have caused this memorandum to be executed as of the day and year first above written.


SELLER:



State of Oregon)

County of MULTNOMAH^{SS.}

On this 20th day of NOV, 2009, before me Reena Parekh
The undersigned Notary Public, personally appeared Nicholas Thorp personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.


My Commission Expires: JUNE 1, 2013

