

183819

EA

Fidelity National Title of Oregon

20100020665-02

RECORDING REQUESTED BY:
Fidelity National Title Company of Oregon

GRANTOR'S NAME:
William S. MacDonald

GRANTEE'S NAME:
City of Portland a municipal corporation

SEND TAX STATEMENTS TO:
City of Portland a municipal corporation
1120 SW 5th, room #1000
Portland, OR 97204

AFTER RECORDING RETURN TO:
City of Portland
1120 SW 5th Ave Room 1000
Portland, Oregon 97204

Escrow No: 20100020665-FTPOR02

Multnomah County Official Records
C Swick, Deputy Clerk

2011-012288



\$41.00

00786874201100122880020028

01/26/2011 02:10:58 PM

1R-W DEED
\$10.00 \$11.00 \$15.00 \$5.00

Cnt=1 Stn=28 ATMWB

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

William S. MacDonald, Grantor, conveys and warrants to

City of Portland a 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:

See exhibit "One" attached hereto

Subject to and excepting:

Items of record as recorded.

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 \$375,000.00. (See ORS 93.030)

DATED: 1/24/11

approved an accepted

by Dean Mau
City of Portland *KUC MAS*

William S. MacDonald
William S. MacDonald

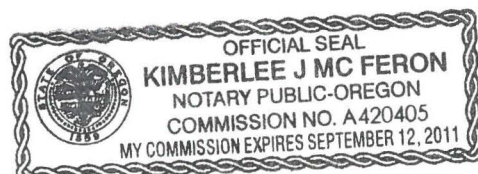
State of OREGON
COUNTY of Multnomah

This instrument was acknowledged before me on 1-25, 20 11
by William S. MacDonald.

Kimberlee J McFeron, Notary Public - State of Oregon
My commission expires:

APPROVED AS TO FORM

Paula Meyer
CITY ATTORNEY



2

PRELIMINARY REPORT
(Continued)

Order No.: 20100020665-FTPOR02

EXHIBIT "ONE"

Parcel I:

A Tract of land being a portion of Parcel 1 of that Tract of land described in that Deed recorded as Document No. 2002-105758, Multnomah County Deed Records, located in the Northwest one-quarter of Section 19, Township 1 South, Range 3 East, of the Willamette Meridian, Multnomah County, Oregon, being more particularly described as follows:

Commencing at a 1 inch iron pipe set in concrete found at the West one-quarter corner of said Section 19; thence North 00° 29' 57" East, along the West line of said Section 19, a distance of 544.50 feet to a point; thence North 89° 43' 46" East, parallel with the North line of said Section 19, a distance of 20.00 feet to a point on the East right-of-way line of Southeast 162nd Avenue and the true point of beginning of the Tract of land herein described; thence North 00° 29' 57" East, along said East right-of-way line, a distance of 112.00 feet to a point; thence North 89° 43' 46" East, parallel with said North line of said Section 19, a distance of 280.00 feet to a point; thence North 00° 29' 57" East, parallel with said West line of said Section 19, a distance of 14.00 feet to a point; thence North 89° 43' 46" East, parallel with said North line of said Section 19, a distance of 164.03 feet to a point on the East line of said Document No. 2002-105758 Tract; thence South 00° 29' 57" West, along said East line, a distance of 126.00 feet to a point; thence South 89° 43' 46" West, parallel with said North line of said Section 19, a distance of 444.03 feet to the true point of beginning of the Tract of land herein described.

Parcel II:

A Tract of land being a portion of Parcel 1 of that Tract of land described in that Deed recorded as Document No. 2002-105758, Multnomah County Deed Records, located in the Northwest one-quarter of Section 19, Township 1 South, Range 3 East, of the Willamette Meridian, Multnomah County, Oregon, being more particularly described as follows:

Commencing at a 1 inch iron pipe set in concrete found at the West one-quarter corner of said Section 19; thence North 00° 29' 57" East, along the West line of said Section 19, a distance of 656.50 feet to a point; thence North 89° 43' 46" East, parallel with the North line of said Section 19, a distance of 20.00 feet to a point on the East right-of-way line of Southeast 162nd Avenue and the true point of beginning of the Tract of land herein described; thence North 00° 29' 57" East, along said East right-of-way line, a distance of 61.93 feet to the Southwest corner of that Tract of land described in that Deed recorded as Document No. 2005-198761, Multnomah County Deed Records; thence North 89° 43' 46" East, along the South line of said Document No. 2005-198761 Tract, a distance of 150.00 feet to the Southeast corner thereof; thence North 00° 29' 57" East, along the East line of said Document No. 2005-198761 Tract, a distance of 275.65 feet to a point on the South line of that Tract of land described in that Deed recorded as Document No. 2007-170804, Multnomah County Deed Records; thence North 89° 43' 46" East, along said South line, a distance of 294.03 feet to the Northeast corner of said Document No. 2002-105758 Tract; thence South 00° 29' 57" West, along the East line of said Document No. 2002-105758 Tract, a distance of 323.58 feet to a point; thence South 89° 43' 46" West, parallel with said North line of said Section 19, a distance of 164.03 feet to a point; thence South 00° 29' 57" West, parallel with said West line of said Section 19, a distance of 14.00 feet to a point; thence South 89° 43' 46" West, parallel with said North line of said Section 19, a distance of 280.00 feet to the true point of beginning of the Tract of land herein described.

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 **William S. MacDonald** (the "Seller") and the **City of Portland**, a municipal corporation (the "City").

RECITALS

A. This Agreement is authorized by the Portland City Council as part of the City's Bureau of Environmental Services' Grey to Green Land Acquisition and Johnson Creek Willing Seller Programs pursuant to Ordinance number 183819, passed by the Council on May 26, 2010.

B. The Seller is the owner of approximately **3.16** acres of real property, described as **Tax Lots 1300, 1301 & 1400 1S3E19BC, Map 3747**, Multnomah County, Oregon, 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" and more particularly described in Exhibit A, attached hereto and incorporated herein).

C. 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 **Three Hundred Fifteen Thousand and no/100 Dollars (\$315,000)**.
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 **Two Thousand and no/100 Dollars (\$2,000)** ("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 any interest, shall be credited toward the Purchase Price.
 - b) Cash Balance. On or before the closing date, City shall deposit into escrow cash, a wire transfer of funds, a certified check, or a cashier's check in the amount of \$313,000, the balance of the Purchase Price.
4. **Closing Date.** This transaction shall close on or before **ninety (90)** 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. 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, be refunded entirely its Escrow Deposit, and exercise any other remedy available.

- i) 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).
- ii) 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 (ii)(a), (b), or (c) above.
- iii) Environmental Review. Before Closing, City may, at its expense and in its sole discretion, engage consultants, surveyors, or engineers to conduct environmental studies, soil analyses, surveys, and appraisals. Within ten

(10) days after the Effective Date, Seller shall deliver to City copies of all relevant environmental studies or analyses within Seller's control. City and 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 (collectively, "investigations"), and Seller shall cooperate therewith. Any areas disturbed by such investigations shall be restored by City, at City's expense, to their pre-inspection condition. It shall be a condition to Closing that the results of such investigations be acceptable to City in its sole discretion. If City notifies Seller prior to Closing that City cannot accept the Property due to the results of its investigations under this section, the Closing Date shall be automatically postponed for 45 days so that Seller and City may address the results of the investigations. If, at the end of the 45-day period, City and Seller have not reached an agreement regarding the items disclosed by the investigations, then City may, at its option and upon written notice to Seller, terminate this Agreement of Purchase and Sale, upon which the escrow money shall be entirely refunded to City.

- iv) 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.
- v) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property.
- vi) Seller's Deliveries. The Seller shall have timely delivered each item to be delivered by the Seller pursuant to this Agreement.
- vii) Title Insurance. As of the close of the escrow, the Escrow Holder shall have issued or committed to issue the title policy to City.
- viii) 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 transaction 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) Non-foreign Certification. An affidavit to City representing and warranting that the Seller is not a "foreign person" as defined by Internal Revenue Code § 1445 (26 U.S.C. § 1445), in the form required by that statute and related 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 6 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, subject to Paragraph 20(a) herein, "Seller's Use for Pasture."

8. Title Insurance. At Closing the Seller shall provide 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 cost of recording the deed; Seller shall pay all other recording charges, if any. Seller shall pay the premium for the title insurance policy that Seller is obligated to provide to City. City and Seller shall each pay one-half of all escrow fees and costs. The City and Seller shall each pay its own legal and professional fees. All other costs and expenses shall be allocated between City and the Seller in accordance with the customary practice in Multnomah County, Oregon.

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. The property has access from SE 162nd Avenue.

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 best of Seller's knowledge, 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 governments;
- 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 governments;
- iii) To the best of Seller's knowledge, 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 on 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;
- 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 any 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 agreements, 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. To the best of Seller's knowledge, the Property is not subject to any pending or delinquent 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 with respect 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 herein, the following constitute representations and warranties of City to the Seller, subject to the conditions stated herein:

- a) 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) 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) 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, and subject to Paragraph 20(a) herein, "Seller's Use for Pasture," Seller promises to remove or cause to be removed from the Property at Seller's expense any and all personal property, trash, rubbish, debris, and 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 any 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 repaid, return receipt requested, and addressed as follows:

To Seller: William S. MacDonald
c/o Dennis MacDonald
Oregon Realty Co.
12901 SE 97th Avenue, Suite 220
Clackamas OR 97015

To Buyer: City of Portland
Bureau of Environmental Services
Shannah Anderson
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.** Both City and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet and the Final Agency Acknowledgement, attached as Exhibit B hereto. Seller shall be responsible for broker commission associated with this transaction and shall indemnify, hold harmless, and defend City from and against any claim for broker commission based on any action, agreement, or representation made by Seller. Seller and City acknowledge that the Property is listed for sale under RMLS® Listing Number 10019311 and the broker commission payable at close of this transaction will be shared between Seller's and City's brokers under the terms thereof.

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, and the Seller's sole and exclusive remedy (whether at law or in equity), is and shall be 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 for damage or other remedies are 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) Seller's Use for Pasture. City will allow Seller reasonable access to the Property for the purpose of pasturing the two goats currently pasturing in the existing 10-foot by 20-foot pen on Tax Lot 1400. Upon the demise of said goats, Seller's right to pasture on Tax Lot 1400 will expire.
- b) 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.
- c) Waivers. No waiver of any breach of any covenant or provision contained herein shall 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 of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.
- d) 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.
- e) 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.
- f) 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.
- g) Time of Essence. The Seller and City hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision.
- h) 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.

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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

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: *Dean Mauer*

Title: DIRECTOR

Date: 11/9/10

Seller: William S. MacDonald

W.S. MacDonald

Date: 10-27-10

Approved as to **APPROVED AS TO FORM**

Senior Deputy City Attorney *Benjamin Walters*
CHIEF DEPUTY CITY ATTORNEY
11/5/10

Attachments:

- Exhibit A – Property Description
- Exhibit B – Final Agency Acknowledgement

EXHIBIT A

PROPERTY DESCRIPTION

Metes and Bounds description to be provided by Fidelity National Title with preliminary title report.

Tax Lots 1300, 1301 and 1400, 2S3E19BC, Map 3747, as described in lot line adjustment recorded June 13, 2002, Fee No. 2002-105758, pursuant to City of Portland File No. 08-108442-PR.

EXHIBIT B

FINAL AGENCY ACKNOWLEDGMENT

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction:

(1) Suzanne O'Halloran & Corinne O'Halloran (Name of Selling Licensees) of Kohler Meyers O'Halloran, Inc. (Name of Real Estate Firm) is the agent of (check one): Buyer exclusively ("Buyer Agency"), Seller exclusively ("Seller Agency"), Both Buyer and Seller ("Disclosed Limited Agency").

(2) Dennis MacDonald (Name of Listing Licensee) of Oregon Realty (Name of Real Estate Firm) is the agent of (check one): Seller exclusively ("Seller Agency"), Both Buyer and Seller ("Disclosed Limited Agency").

(3) If both parties are each represented by one or more Licensees in the same Real Estate Firm, and Licensees are supervised by the same principal broker in that Real Estate Firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s).

Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of this Agreement or any terms therein.

Buyer: **City of Portland, an Oregon Municipal Corporation**
By: *Dean M... [Signature]*
Title: DIRECTOR
Date: 11/9/10

Seller: **William S. MacDonald**
W.S. MacDonald [Signature]
Date: 10-27-10

APPROVED AS TO FORM
Benjamin Walters [Signature]
CHIEF DEPUTY CITY ATTORNEY
11/5/10

AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

An Agreement of Purchase and Sale was made, by and between **William S. MacDonald**, as Seller, and the **City of Portland**, a municipal corporation, as Buyer, for the purchase and sale of real property known as **Tax Lots 1300, 1301 & 1400 1S3E19BC, Map 3747, Multnomah County, OR.**

Seller and Buyer hereby agree to the following Amendment to the Agreement of Purchase and Sale:

RECITALS: B. Tax Lot 1401 shall be included in the purchase price.

TERMS: 2. Purchase Price: Purchase price shall be \$375,000.00

4. Closing Date: This transaction shall close on or before ninety (90) days from the date of last signature affixed to this amendment.

Buyer:

**City of Portland
An Oregon Municipal Corporation**

By: _____

Dean Mauer
MWA
KW

Title: _____

Director

Date: _____

1/4/11

Seller:

William S. MacDonald

W.S. MacDonald

Date: _____

12-21-10

APPROVED AS TO FORM

Linda Menger DA
CITY ATTORNEY