

EXHIBIT B

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 Sharon Garner, Living Trust (the "Seller"), and The City of Portland, a municipal corporation ("City").

RECITALS

A. The Seller is the owner of approximately .42 acres of real property, 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 rights and mineral rights (hereinafter referred to as the "Property") located 1951 SE 135th Avenue in the County of Multnomah, State of Oregon, and 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 City, and City agrees to purchase from the Seller, the Property upon the terms and conditions set forth in this Agreement.
2. **Purchase Price.** The Purchase Price for the Property shall be TWO HUNDRED and EIGHTY THOUSAND DOLLARS (\$280,000.00).
3. **Payment of Purchase Price.** The Purchase Price shall be payable as follows:
 - A. **Deposit.** Within fourteen (14) days after execution of this Agreement, City shall deposit into escrow the sum of \$3,000.00 ("Escrow Deposit") to **Fidelity National Title Company of Oregon** ("Escrow Holder") at 500 SW 5th Avenue, Portland, OR. 97204 (the "Escrow Holder" and "Title Company"). 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 \$277,000.00, 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"). Unless otherwise agreed, closing will occur at the Title Company.
5. **Conditions Precedent to Closing.**
 - A. **Conditions Precedent to City's Obligations.** In addition to any other conditions contained in this Agreement, the following conditions precedent must be satisfied 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

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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:

- 1) 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.
- 2) 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).
- 3) 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 forty-five (45) days of receiving the Title Report and the Exceptions documents, or within sixty (60) 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.
- 4) Environmental Review. Before Closing, City may, at its expense, engage consultants, surveyors or engineers of City's choosing to conduct environmental studies, soil analyses, surveys, 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

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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 the 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.

- 5) 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; (2) there are no encroachments or prescriptive or adverse rights on or affecting the Property or any portion thereof; (3) the Property has insurable vehicular access; and (4) the Property contains at least .42 acres. If City notifies Seller prior to the Closing Date that any of the requirements are not satisfied, the Closing Date shall be automatically extended for a 45-day period so that Seller and City may address the issue(s). 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. Within ten (10) days after execution of this Agreement, Seller shall deliver to City a copy of all surveys made of the Property and in the possession of Seller, as well as any environmental or other reports, test data or studies relating specifically to the Property and in Seller's possession or control. If Seller knows of any such surveys, studies or reports that are not in Seller's possession, Seller shall notify City of the existence of such reports.
- 6) House, Water and Sewer System Inspection. Before Closing, City may, at its expense, engage consultants, surveyors or engineers of City's choosing to conduct inspections, environmental studies, or other investigations of the house on the Property, including ceiling and floor samples, and of the well and septic system, as City in its sole discretion deems necessary. City or its agents shall provide forty-eight (48) hours notice prior to entering the house to conduct such inspections, tests, or studies, and City or its agent shall have the right to enter the remainder of the Property at reasonable times before Closing to make such tests, inspections, studies, and other investigations as City may require, at City's sole discretion. It shall be a condition to Closing that the results of such house, water, and sewer inspections, analyses or studies be acceptable to City in its sole discretion.
- 7) 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.
- 8) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property.
- 9) Seller's Deliveries. The Seller shall have timely delivered each item to be delivered by the Seller pursuant to this Agreement.

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- 10) Title Insurance. As of the close of the escrow, the Escrow Holder shall have issued or committed to issue the title policy to City.
 - 11) Taxes, Assessments and Encumbrances. 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 shall fail 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 Section 6.B.
 - C. Failure of Conditions to Closing. In the event any of the conditions set forth in Section 5.A. or 5.B. are not timely satisfied or waived, for a reason other than the default of City or the Seller under this Agreement:
 - 1) This Agreement, the escrow, and the rights and obligations of City and the Seller shall terminate, except as otherwise provided herein; and
 - 2) 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 nonsatisfaction 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:
 - 1) Deed. A statutory warranty deed duly executed and acknowledged 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.
 - 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 City to this effect in the form required by that statute and related regulations.
 - 3) 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.
 - 4) 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.

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- 5) 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.
- 1) Purchase Price. The Purchase Price in accordance with Section 2 above.
 - 2) 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 its 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 the cost of recording the deed and the memorandum of purchase and sale; 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, and for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. City and Seller shall each pay one-half of all escrow fees and costs. City and the Seller shall each pay its own legal and professional fees of other consultants incurred by City and the Seller, respectively. 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. 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:
 - 1) 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

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- from the Property in violation of any environmental laws of the federal or state government;
- 2) 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;
 - 3) Seller acknowledges the presence of an underground storage tank on the Property, and agrees to decommission said tank to the full satisfaction of City before Closing;
 - 4) To the best of the Seller's knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it;
 - 5) 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;
 - 6) 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
 - 7) 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, Leases, 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.

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- 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. The Seller shall deliver possession of the Property to the Buyer at time of recording of deed.
- 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 cease 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 ninety (90) 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 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 occurs first, it shall:
- 1) Maintain the Property in its present state, with no tree cutting, timber harvesting, or alteration of the Property in any way;
 - 2) Keep all existing insurance policies affecting the Property in full force and effect;
 - 3) Make all regular payments of interest and principal on any existing financing;
 - 4) Comply with all government regulations; and
 - 5) 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, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated here;

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- 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, right, and actual authority to bind City to the terms and conditions of this Agreement.

14. Seller's Promise to Remove Personal Property and Debris, Authority to Use Escrow Funds and Authority to Lien.

- A. Prior to the close of escrow, Seller promises to remove or cause to be removed from the Property at Seller's expense any, personal property and/or trash, rubbish, debris, or any other unsightly or offensive materials unless otherwise agreed to in writing by City. Furthermore, Seller promises to decommission the underground oil tank located on the Property in compliance with law and to the full satisfaction of City. Satisfaction of the promises contained herein shall be subject to City's inspection and approval of the physical and environmental condition of the Property by City prior to Closing.
- B. Seller may utilize up to \$1,500.00 of the funds placed in escrow by City to complete tank decommission requirements of this Agreement, with the understanding that if the sale does not close said funds will be repaid to the City within thirty (30) days of the escrow terminating, with this provision of the Agreement serving as a lien against the Property until such funds are repaid, along with interest at the then prevailing rate of interest charged by the City for debts of this nature.

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: Sharon Garner Living Trust
C/o Steven and Kim Garner
PO Box 20323.
Portland, OR. 97294

To City: City of Portland
Office of City Attorney
Portland, Oregon
Fax No. (503) 797-1792
Phone No. (503) 797-1511

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Copy to:

City of Portland
Portland Parks and Recreation,
Attention Property Manager
1120 SW 5th Avenue Room #1302
Portland, Oregon
Fax No. (503) 797-1588
Phone No. (503) 797-1914

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. Telephone and fax numbers are for information only.

17. **No Broker or Commission.** Each party represents and warrants to the other 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 or finder's fee 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 the 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 estimate of the 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.

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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 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 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-providing 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, obligation, and provision.
21. **Rental Agreement**. Subject to an agreement to be entered into between Seller and Buyer, any additional days that Seller remains on the Property after Closing shall be on a rental basis at a rental rate of \$100.00 per month, with the term of the rental agreement not to exceed ninety (90) days. Pursuant to the rental agreement, Seller shall be responsible all operating costs associated with the rental use of the Property, with said costs to include, but not be limited to telephone, water, sewer, gas, electricity, waste disposal and recycling. The Seller shall execute a rental agreement at close of the transaction, a copy of which will be provided by Buyer to Seller for review prior to closing.
22. **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.
23. **Recording of Memorandum**. At the Effective Date the parties will execute a Memorandum of this Agreement, which City may cause to be recorded against the Property.
24. **Accommodating a 1031 Exchange**. If Seller desires to transfer the Property through an exchange transaction under Section 1031 of the Internal Revenue Code, City agrees to cooperate with such transaction so long as the terms of this Agreement and the following requirements are met, and any escrow instructions or 1031 documents presented at Closing are agreeable to City and include the following provisions:

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- A. Such cooperation is at the expense of Seller;
- B. City assumes no additional risk or liability nor loses any remedies or rights against Seller due to the exchange transaction;
- C. The Closing on the Property is not altered or delayed as a result of the exchange;
- D. Seller executes and delivers a statutory warranty deed directly to City;
- E. Seller agrees that should any dispute arise out of the exchange transaction with regard to the condition of the Property or title thereto or any other terms or conditions of the purchase and sale agreement or any escrow instructions or any other documents relating thereto, such dispute shall be resolved as if Seller had directly transferred the Property to City;
- F. City is not obligated to hold title to any additional property; and
- G. Seller agrees to indemnify, hold harmless and defend City from and against any and all claims, damages, costs, liabilities, losses, and expenses (including reasonable attorney's fees) arising out of or related to the exchange transaction or its qualification under any tax, law, code, rule or regulation. City understands that Seller may assign its rights under this Agreement to an intermediary for the purpose of accomplishing this transaction and that the intermediary will have no continuing obligations to City other than to complete the transfer of title to the Property under the terms hereof. City will at all times look to Seller for performance of all continuing obligations under this Agreement.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

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

Nancy J. Garner

Date: 11-06-08

Don Saltzman
Date: 11/24/08

Approved as to Form:

APPROVED AS TO FORM

Paula Nguyen
Senior Deputy City Attorney
Attachments: ATTORNEY

Date: _____

- Exhibit A - Property Description
- Exhibit B - Form of Memoranda

EXHIBIT B

Exhibit A Property Description

1951 SE 135th Avenue, Portland, Oregon
Multnomah County tax account # R 283956 Taylors Subdivision; Excepting the East 10 feet in
road South 123 feet of East 160 feet of lot 11