

## PROPERTY DESCRIPTION

### PARCEL I:

LOT 36, HOLLYWOOD (PLAT BOOK 360, PAGE 0048), IN THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, TOGETHER WITH THAT PORTION OF VACATED S.E. HENDERSON STREET THAT INURED THERETO BY ORDINANCE NO. 145166, RECORDED MARCH 15, 1978, IN BOOK 1248, PAGE 1392.

EXCEPTING FROM SAID LOT 36 THE SOUTH 30 FEET THEREOF TAKEN FOR THE ESTABLISHMENT OF S.E. FLAVEL STREET (RD. NO. 1247)

### PARCEL II:

LOT 37, HOLLYWOOD (PLAT BOOK 360, PAGE 0048), IN THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, EXCEPT THE EAST 94 FEET THEREOF.

TOGETHER WITH THAT PORTIONS OF VACATED S.E. HENDERSON STREET THAT INURED TO THE PORTION OF SAID LOT 37 DESCRIBED ABOVE THAT INURED THERETO BY ORDINANCE NO. 145166, RECORDED MARCH 15, 1978, IN BOOK 1248, PAGE 1392.

EXCEPTING THE EASTERLY 94 FEET THEREOF.

ALSO EXCEPTING FROM SAID PORTION OF LOT 37 THE SOUTH 30 FEET THEREOF TAKEN FOR THE ESTABLISHMENT OF S.E. FLAVEL STREET (RD. NO. 1247)

### PARCEL III:

THE SOUTH HALF OF THAT PORTION OF VACATED S.E. HENDERSON STREET, VACATED BY ORDINANCE NO. 145166, RECORDED MARCH 15, 1978, IN BOOK 1248, PAGE 1392, LYING BETWEEN THE NORTHERLY EXTENSION OF THE EAST LINE OF LOT 37, HOLLYWOOD (PLAT BOOK 360, PAGE 0048), AND THE NORTHERLY EXTENSION OF THE WEST LINE OF THE EAST 94 FEET OF SAID LOT 37, IN THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON.

### PARCEL IV:

LOT 30, HOLLYWOOD (PLAT BOOK 360, PAGE 0048), IN THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, EXCEPT THE EAST 94 FEET THEREOF.

TOGETHER WITH THAT PORTION OF VACATED S.E. HENDERSON STREET THAT INURED TO THE PORTION OF SAID LOT 30 DESCRIBED ABOVE THAT INURED THERETO BY ORDINANCE NO. 145166, RECORDED MARCH 15, 1978, IN BOOK 1248, PAGE 1392.

### PARCEL V:

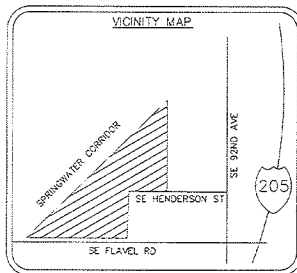
THE EAST 94 FEET OF LOT 30, HOLLYWOOD (PLAT BOOK 360, PAGE 0048), IN THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON.

TOGETHER WITH THAT PORTION OF VACATED S.E. HENDERSON STREET THAT INURED TO THE PORTION OF SAID LOT 30 DESCRIBED ABOVE THAT INURED THERETO BY ORDINANCE NO. 145166, RECORDED MARCH 15, 1978, IN BOOK 1248, PAGE 1392.

AND TOGETHER WITH THAT PORTION OF LOT 27, HOLLYWOOD (PLAT BOOK 360, PAGE 0048), DESCRIBED AS FOLLOWS:

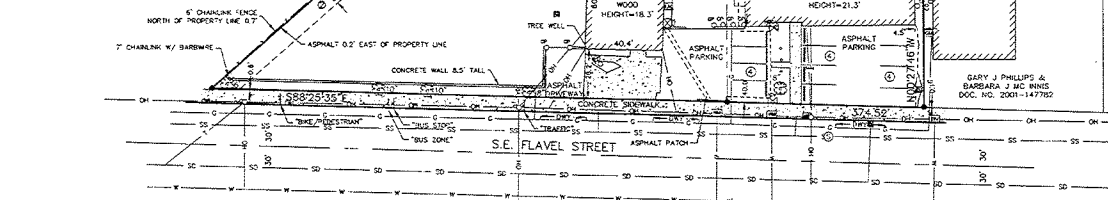
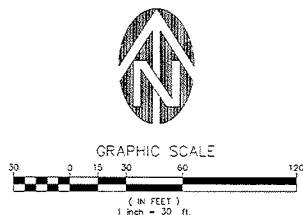
BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 27; THENCE EAST ALONG THE SOUTH LINE, 25.6 FEET TO THE NORTHEAST CORNER OF LOT 30, HOLLYWOOD (PLAT BOOK 360, PAGE 0048); THENCE NORTH AS IF FOLLOWING AN EXTENSION OF THE EAST LINE OF SAID LOT 30, A DISTANCE OF 23.04 FEET, MORE OR LESS, TO A POINT ON THE FORMER PORTLAND TRACTION CO. RIGHT-OF-WAY; THENCE SOUTHWEST ALONG SAID PORTLAND TRACTION CO. RIGHT-OF-WAY TO THE POINT OF BEGINNING.

THE LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 01, 2008.



## TOPOGRAPHY LEGEND:

- FOUND IRON ROD
- FOUND IRON PIPE
- ELECTRIC BOX
- ⊕ ELECTRIC METER
- ⊕ ELECTRIC RISER
- ⊕ ELECTRIC VAULT
- ⊕ POWER POLE
- ⊕ LIGHT POLE
- ⊕ GAS METER
- ⊕ GUY ANCHOR
- ⊕ POLE
- ⊕ UTILITY POLE
- ⊕ WATER VALVE
- ⊕ WATER METER
- ⊕ BOLLARD
- ⊕ MAIL BOX
- ⊕ SIGN
- ⊕ CLEANOUT
- ⊕ SANITARY SEWER MANHOLE
- ⊕ DATCH BASIN
- ⊕ IRRIGATION CONTROL VALVE
- ⊕ HOSE BIB
- ⊕ ROOF DRAIN
- ⊕ DATE POST
- W — UNDERGROUND WATER LINE
- OH — OVERHEAD LINE
- T — UNDERGROUND TILE-CON
- SD — UNDERGROUND STORMDRAIN LINE
- SS — UNDERGROUND SANITARY SEWER LINE
- E — UNDERGROUND POWER
- G — UNDERGROUND GAS LINE
- CONCRETE
- BUILDING FACADE AT FOOTPRINT
- RETAINING WALL
- CURB LINE
- FENCELINE AS NOTED
- EDGE OF PAVEMENT
- SETBACK LINE
- CENTER LINE ROW
- PROPERTY LINE
- INTERIOR LINE
- EASEMENT LINE
- ADJACENT PROPERTY LINE



## SURVEYORS CERTIFICATE

TO NORRIS, BEGGS & SIMPSON, THE HEIRS & DEVISEES OF HARRY G. THOMPSON, DECEASED, AND FIRST AMERICAN TITLE INSURANCE COMPANY, THIS IS TO CERTIFY THAT THIS MAP AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS," JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS IN 2005, AND INCLUDES ITEMS 2, 3, 4, 6, 7(c), (d) 1 AND 7 (c), 8, 9, 10, 11(c), 13, 14 OF TABLE A THEREOF PURSUANT TO THE ACCURACY STANDARDS AS ADOPTED BY ALTA, NSPS AND IN EFFECT ON THE DATE OF THIS CERTIFICATION. UNDESIGNED FURTHER CERTIFIED THAT IN MY PROFESSIONAL OPINION, AS A LAND SURVEYOR REGISTERED IN THE STATE OF OREGON, THE RELATIVE POSITIONAL ACCURACY OF THIS SURVEY DOES NOT EXCEED THAT WHICH IS SPECIFIED THEREIN.

TOBY G. BOLDEN, OREGON PLS NO. 60377

DATE 06/04/09

## UTILITY STATEMENT

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

## NOTES

1. SURVEY WAS PREPARED FROM A LEGAL DESCRIPTION, TOGETHER WITH THE EXCEPTIONS CONTAINED IN FIRST AMERICAN TITLE INSURANCE COMPANY PRELIMINARY TITLE REPORT ORDER NO. NCS-391549-001, WITH AN EFFECTIVE DATE OF MARCH 03, 2008. THE DESCRIPTION SHOWN HEREON DOES CONFORM WITH THE DESCRIPTION CONTAINED THEREIN.
2. FIELD SURVEY WAS PERFORMED JUNE, 2009
3. THE BASIS OF BEARINGS IS NORTH 88° 28' 05" WEST ALONG THE NORTHERLY RIGHT OF WAY LINE OF SE HENDERSON STREET PER SURVEY NO. 53043 MULTNOMAH COUNTY RECORD OF SURVEY.
3. THE GROSS LAND AREA OF THE SUBJECT PROPERTY IS 83,833 SQUARE FEET, 1.924 ACRES, MORE OR LESS.
4. ACCORDING TO THE FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 4101830204E, PUBLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY WITH A REVISED DATE OF OCTOBER 19, 2004 SUBJECT SITE LIES WITHIN ZONE AE. AREAS WITHIN THE 1% ANNUAL CHANCE FLOOD, ALSO KNOWN AS THE "BASE FLOOD". BASE FLOOD ELEVATION FOR THIS AREA IS 202 FEET.
5. THE SUBJECT SITE HAS THE FOLLOWING MARKED PARKING STALLS ON SITE: 53. DUE TO THE POOR CONDITION OF THE ASPHALT, MORE PARKING SPACES MAY HAVE EXISTED BUT ARE NOW UNDETECTABLE.
7. THE SUBJECT SITE IS CURRENTLY ZONED: I62 (GENERAL INDUSTRIAL 2) FRONT SETBACK=25', MAXIMUM BUILDING HEIGHT = NO LIMIT.

## EASEMENTS AND ENCUMBRANCES

PLEASE REFER TO THE TITLE REPORT FOR ALL ITEMS CONCERNING AGREEMENTS, LIENS, WAIVERS, ASSESSMENTS, LEASES, TAXES AND OTHER MATTERS OF RECORD WHICH DO NOT REFLECT SURVEY MATTERS AND ARE LISTED BELOW. THE FOLLOWING ITEMS WERE LISTED IN THE COMMITMENT NOTED IN MY NOTES NUMBER ONE, AND ARE LISTED IN THE COMMITMENT NOTED IN MY NOTE NUMBER ONE, AND ARE LISTED HERE WITH MY COMMENT.

- ② EASEMENT AS TAKEN BY DECREE, MULTNOMAH COUNTY CIRCUIT COURT, CASE NO. 379-706, DATED 1/29/73, FOR STORM SEWER, IN FAVOR OF THE STATE OF OREGON, AFFECTS TEN FOOT WIDE STRIP ALONG NORTHWEST PROPERTY LINE.
- ③ RESERVATION OF UTILITIES IN VACATED STREET AREA PER ORDINANCE 145166, THAT AN EASEMENT OVER THE ENTIRE LENGTH AND FULL WIDTH OF THE STREET TO BE VACATED IS RESERVED FOR THE MAINTENANCE OR REPLACEMENT OF EXISTING SEWERS AND FOR CONSTRUCTION OF FUTURE SEWERS, RECORDED 3/15/78 BOOK 1248, PAGE 1392. AFFECTS 40 FOOT WIDE STRIP IN MIDDLE OF SITE.
- ④ RESERVATION OF EASEMENT CREATED BY DEED RECORDED 1/16/66 IN BOOK 1879, PAGE 568, IN FAVOR OF SOUTHEASTERN ADJOINER, FOR INGRESS AND EGRESS OVER THAT PORTION OF VACATED S.E. HENDERSON STREET ADJACENT TO THE EAST 94' OF LOT 37, HOLLYWOOD ADDITION.



**WESTLAKE CONSULTANTS, INC.**  
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10000 N. BROADWAY, SUITE 100  
PORTLAND, OREGON 97224  
TEL: (503) 884-5552  
FAX: (503) 884-5557

ALTA/ACSM LAND TITLE SURVEY  
FOR: NORRIS, BEGGS & SIMPSON  
NW 1/4, SEC 21, T 1 S, R 2 W, WM  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

REVISIONS	DATE	DESCRIPTION
1	06/04/09	INITIAL RELEASE
2	06/04/09	INITIAL RELEASE
3	06/04/09	INITIAL RELEASE
4	06/04/09	INITIAL RELEASE
5	06/04/09	INITIAL RELEASE
6	06/04/09	INITIAL RELEASE
7	06/04/09	INITIAL RELEASE
8	06/04/09	INITIAL RELEASE
9	06/04/09	INITIAL RELEASE
10	06/04/09	INITIAL RELEASE
11	06/04/09	INITIAL RELEASE
12	06/04/09	INITIAL RELEASE
13	06/04/09	INITIAL RELEASE
14	06/04/09	INITIAL RELEASE
15	06/04/09	INITIAL RELEASE
16	06/04/09	INITIAL RELEASE
17	06/04/09	INITIAL RELEASE
18	06/04/09	INITIAL RELEASE
19	06/04/09	INITIAL RELEASE
20	06/04/09	INITIAL RELEASE

SHEET 1 OF 1  
JOB NO. 2198-01  
RENEWAL 12-31-09  
219807

160891

## 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 the estate of Harry G. Thompson (the "Seller"), by and through Margaret Thompson, its authorized representative, and the City of Portland, a municipal corporation ("City").

### RECITALS

A. The Seller is the owner of approximately 1.91 acres of real property (hereinafter referred to as the "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 located at *8925 and 8931 SE Flavel, Portland, Oregon 97206, and including Parcel Number R183195 HOLLYWOOD; TL 15701 Lot 27&30 Map 3739, Parcel Number R183198 HOLLYWOOD; INC PT VAC ST-EXC E 94' Lot 30 Map 3739, and Parcel Number R183234 HOLLYWOOD; TL 14900 Lot 37 Map 3739* 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 *one million and four hundred thousand and no/100 (\$1,400,000.00)*, subject to the appraisal condition set forth in Section 5.A.2) below.
3. **Payment of Purchase Price.** The Purchase Price shall be payable as follows:
  - A. **Earnest Money.** Within fifteen (15) business days after execution of this Agreement, City shall deposit into escrow a promissory note in the amount of \$25,000.00 ("Escrow Deposit") to **First American Title Company** ("Escrow Holder") at 200 SW Market Street, Suite 250, Portland, OR. 97201 (the "Escrow Holder" and "Title Company"). Within ten (10) days after satisfaction of all contingencies, provided for herein, including City Council approval, the promissory note shall be converted into cash. At Closing, the Escrow Deposit, together with interest on it, if any, shall be credited toward the down payment of the Purchase Price.
  - B. **Down Payment.** On or before the closing date, City shall deposit the difference between the Escrow Deposit and \$400,000 into escrow, with the total amount then in escrow to be a down payment on the total Purchase Price.
  - C. **Seller Financing.** The City's obligation to pay the remaining \$1 million of the Purchase Price will be evidenced by a promissory note and secured by a first priority trust deed encumbering the Property, the forms of which will be reasonably acceptable to the City Attorney and Seller's attorney. The key terms and conditions of financing are:

- 1) Interest Rate: Seven percent (7%)
- 2) Amortization Period: Thirty (30) years
- 3) Payments: Buyer's payments shall begin on March 1, 2011. The interest shall start accruing on the loan as of the closing date at a rate.
- 4) Balloon Payment: Buyer shall pay off the remaining loan amount balance ten (10) years from the closing date.
- 5) Prepayment: The Buyer may prepay the loan amount anytime without penalty.
4. **Probate Court Approval.** As provided for elsewhere herein, the City's obligations under this Agreement are, among other things, contingent upon Seller providing sufficient evidence of marketable title and Seller's authority to sell the Property. Accordingly, the City's deadlines provided for in this Agreement will be related to the date that the Title Company has notified the City in writing that said evidence has been provided, with that date referred to herein as the Commencement Date.
5. **Closing Date.** This transaction shall close on or before ninety (90) days from the Commencement 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.
6. **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 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. In the event that City determines that the Property is unacceptable, it shall provide Seller with copies of any studies, surveys, investigations or analyses which were relied on for said determination.
    - 1) City Council Approval. This Agreement is expressly conditioned upon the formal approval by the City Council 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) Valuation. The Purchase Price will be verified by an independent appraiser of the City's choosing, in accordance with the Uniform Standards of Professional Appraisal Practices and general appraisal standards.
    - 3) Title. At Closing, the Seller shall convey fee simple title to the Property by statutory bargain and sale 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).
    - 4) Title Report. Within fifteen (15) days following the Commencement 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 thirty (30) days of receiving the Title Report and the Exceptions documents, or within sixty (60) days of the Commencement 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.
- 5) 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 Commencement 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 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.
- 6) 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 1.91 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.

- 7) Building and Site 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 improvements 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 buildings 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 building, water, and sewer inspections, analyses or studies be acceptable to City in its sole discretion.
- 8) Contractor Indemnification. Contractors conducting inspections of the Property on behalf of the City shall defend, indemnify and hold Seller harmless from and against any death, personal injury or property damage resulting from said contractors inspection activities.
- 9) 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.
- 10) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property.
- 11) Seller's Deliveries. The Seller shall have timely delivered each item to be delivered by the Seller pursuant to this Agreement.
- 12) Title Insurance. As of the close of the escrow, the Escrow Holder shall have issued or committed to issue the title policy to City.
- 13) Taxes, Assessments and Encumbrances. Except for Case No. 0903-03187, which Title Company will insure against, Seller agrees that all taxes, assessments and encumbrances (except the amount claimed by City in Case No. 0903-03187) 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. Notwithstanding anything to the contrary herein, local district assessments that have been Bancroft-bonded will be prorated between the Parties at 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.
7. **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 bargain and sale 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.
  - 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. \$400,000 in cash, along with a promissory note and trust deed for \$1 million.
  - 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.

- 3) **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.
8. **Deliveries to City at Closing.** The Seller shall deliver exclusive possession of the Property to City at close of escrow.
9. **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.
10. **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.
11. **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.** Except for any probate court approval required, 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 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) 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;
  - 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. Except for Case No. 0903-03187, 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. 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.
12. **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.
13. **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.
14. **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;
  - 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.

15. **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.
16. **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.
17. **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: The Estate of Harry G. Thompson  
C/o Margaret Thompson  
Sidra, Inc.  
P.O. Box 66070  
Portland, OR. 97290

Copy to: Richard A. Canaday  
3400 US Bancorp Tower  
111 SW Fifth Avenue  
Portland, OR 97204-3699  
Email: Richard.Canaday@MillerNash.com

To City: City of Portland  
Office of City Attorney  
Portland, Oregon  
Fax No. (503) 823-4047  
Phone No. (503) 823-3089

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 823 - 279-2603

Phone No. (503) ~~797-1914~~ 823-5229

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.

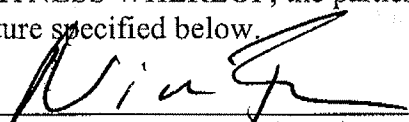
18. **Broker Commission.** Seller Recognizes Scott MacLean and Scott Pierce of NAI Norris, Beggs & Simpson as the sole brokers for the City of Portland. Upon closing, the Seller shall pay a commission equal to 2.75% of the purchase price or \$38,500.00 to NAI, Norris, Beggs & Simpson.
19. **Further Actions 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.
20. **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.
21. **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.
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. City will execute a quitclaim deed in favor of Seller at the same time and deposit that deed with the Escrow Holder. The quitclaim deed will be recorded without further instructions if the Agreement is terminated through the valid actions of the Seller and/or Buyer.
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:
- 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 bargain and sale 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.

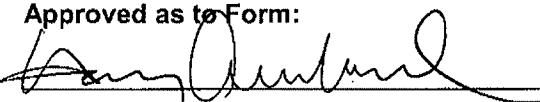
THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST 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 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND 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.

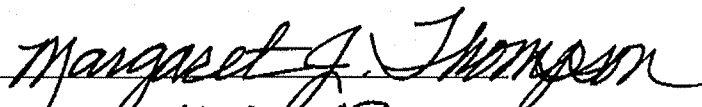
IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature specified below.



Date: 4/21/09

Approved as to Form:

  
Senior Deputy City Attorney  
Chub



Date: 4-15-09

Margaret J. Thompson, Personal Representative  
of the Estate of Harry G. Thompson

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

Attachments:

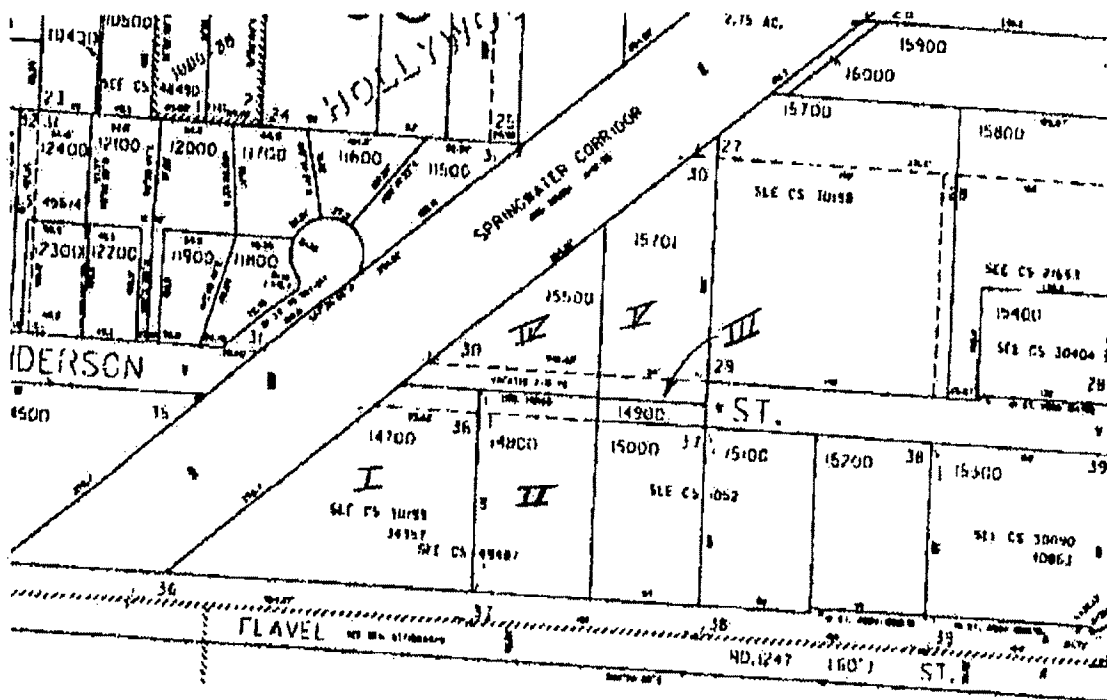
Exhibit A - Property Description

Exhibit B - Form of Memoranda

## Exhibit A

An assumed business name of TITLE INSURANCE COMPANY OF OREGON

Map 1S 2E 21BD



546 MAP IS 2E JICA



When recorded, mail to:  
 City of Portland  
 Office of City Attorney

Portland, OR 97232-2736

Exhibit B

MEMORANDUM OF PURCHASE AND SALE AGREEMENT

This is a memorandum of a certain Agreement of Purchase and Sale ("Agreement") between ***The Estate of Harry G. Thompson*** ("Seller"), and The City of Portland, an Oregon municipal corporation ("City"), signed by Seller on \_\_\_\_\_, 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 90 days after the Commencement 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 ***\$1,400,000.00***.

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

SELLER:

\_\_\_\_\_

State of Oregon                    )  
   ss.  
 County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

My commission expires: \_\_\_\_\_

State of Oregon                    )  
   ss.  
 County of \_\_\_\_\_ )

\_\_\_\_\_