

**CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 12-12**

A RESOLUTION APPROVING THE PURCHASE OF THE PAULL PROPERTIES, COMMONLY REFERRED TO AS THE EAST BULL MOUNTAIN PROPERTIES, (TAX LOTS 2S104DC05800 AND 2S104DC05900), AND AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY ACTION TO COMPLETE THE PROPERTY PURCHASES ON BEHALF OF THE CITY

WHEREAS, in November 2010 Tigard voters passed a \$17 million park bond measure whereby 80 percent of bond proceeds were dedicated to acquiring park land such as the Paull properties; and

WHEREAS, the Park and Recreation Advisory Board (PRAB) was tasked with evaluating more than 60 potential park properties, and the Paull properties ranked near the top of the PRAB's acquisition list; and

WHEREAS, the city would like to acquire the properties to create publically-owned park land and open space; and

WHEREAS, together, the combined properties total approximately eight acres; and

WHEREAS, the properties are located on Bull Mountain in unincorporated Washington County at the northern terminus of Alpine Crest Way; and

WHEREAS, the properties abut City of Tigard boundaries and will be annexed into the city after the property purchase is finalized; and

WHEREAS, the city and the property owners have reached a tentative agreement on the purchase/sale of the properties. This agreement is contingent on the approval of the City Council.

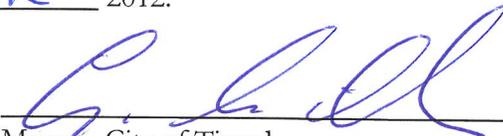
NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The City Council agrees to the terms of the Purchase Agreement and Escrow Instructions, (Exhibit A), including the purchase price of \$1,750,000 for the Paull properties.

SECTION 2: The City Council authorizes the city manager to take all necessary action to complete the Paull property purchases on behalf of the city. This includes, but is not limited to, execution of the Purchase Agreement and Escrow Instructions and closing documents.

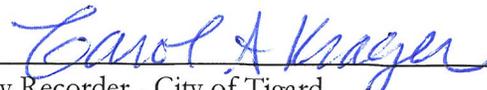
SECTION 3: This resolution is effective immediately upon passage.

PASSED: This 27th day of March 2012.



Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard

RESOLUTION NO. 12-12

PURCHASE AGREEMENT

AND

ESCROW INSTRUCTIONS

BETWEEN: David D. Paull and Jennifer E. Paull, Co- (‘‘Seller’’)
Successor Trustees of the Paull Family Trust
established April 14, 1994 and the Paull Family
Trust established under Article 9 of the Paull
Living Trust dated April 14, 1994, each as to
an undivided one-half interest

And: City of Tigard, an Oregon municipal (‘‘Purchaser’’)
corporation

DATED: March _____, 2012 (‘‘Effective Date’’)

RECITALS

A. Seller owns approximately 8 acres of certain real property in the city of Tigard, county of Washington, Oregon, commonly known as 13950 SW Alpine Crest Way, Tigard, OR 97224 (Tax Lot 5800) and Tax Lot 5900, (Assessor’s Map No. 2S104DC05900) both of which are more fully described on the attached and incorporated Exhibit A (collectively, the ‘‘Property’’).

B. Seller desires to sell the Property, and Purchaser desires to purchase the Property pursuant to the terms set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as set forth below.

ARTICLE 1

DEFINED TERMS

1.1 **Cash.** The term ‘‘Cash’’ means (i) United States currency, (ii) a check currently dated and payable to Escrow Holder, or (iii) U.S. funds credited by wire transfer into Escrow Holder’s bank account.

1.2 **Closing.** The process described in Article 9 of this Agreement.

1.3 **Closing Date.** Closing shall occur on the date that is thirty (30) days after the expiration of the Contingency Period, or on such other date as the parties may agree upon in writing.

1.4 **Contingency Period.** The period that ends on the date that the conditions precedent to Closing, set forth in Section 4 of this Agreement, are waived by Purchaser or satisfied.

1.5 **Deed.** A special warranty deed in the form of Exhibit B attached hereto which shall be used to convey the Property from Seller to Purchaser.

1.6 **Earnest Money.** The cash to be deposited into Escrow pursuant to Section 2.2 of this Agreement in the amount of Ten Thousand and No/100 Dollars (\$10,000), plus all interest, if any, which accrues thereon.

1.7 **Environmental Laws.** Any federal, state, or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority existing now or in the future that classify, regulate, list, or define Hazardous Materials.

1.8 **Escrow Holder.** First American Title, located at 9200 SE Sunnybrook Blvd, Suite 400, Clackamas, Oregon, 97015, Phone: (503) 659-0069.

1.9 **Escrow.** The escrow opened by Escrow Holder pursuant to this Agreement.

1.10 **Hazardous Materials.** Any toxic or hazardous substance, material, waste, pollutant, contaminant, or infectious or radioactive material, including but not limited to those substances, materials, waste, chemicals, or mixtures that are (or that contain any) substances, chemicals, compounds, or mixtures regulated, either now or in the future, under any Environmental Law.

1.11 **Property.** The term “**Property**” as defined in this Agreement, includes land described in Exhibit A, together with all improvements, rights, privileges, servitudes and appurtenances thereunto belonging or appertaining, including all right, title, and interest of Seller, if any, in and to the streets, alleys, and rights-of-way adjacent to the land, which will be transferred to Purchaser at Closing.

1.12 **Property Documents.** The following documents relating to or affecting the Property to the extent they exist and are in Seller’s possession: conditional use permits, land use approvals, land use applications, permits, licenses, maps, development agreements, surveys and studies relating to the Property prepared by third parties.

1.13 **Purchase Price.** Cash in the amount of One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000).

ARTICLE 2

EARNEST MONEY AND PURCHASE PRICE

2.1 **Sale of Property.** Subject to the terms and conditions in this Agreement, Seller agrees to sell the Property to Purchaser, and Purchaser agrees to buy the Property from Seller.

2.2 **Earnest Money.** Within ten (10) days after the opening of Escrow as set forth in Section 3.1, Purchaser shall deposit the Earnest Money into Escrow. Escrow Holder shall hold the Earnest Money in an interest-bearing account that is FDIC insured, unless the parties approve holding the Earnest Money in a non-interest bearing account. The Earnest Money shall be refundable to Buyer until the Contingency Period expires or the conditions precedent to Closing set forth in Section 4 of this Agreement are waived in writing by Buyer; thereafter, the Earnest Money shall not be refundable except in the event of a Seller default. The Earnest Money shall be applicable to the Purchase Price at closing.

2.3 **Purchase Price.** The Purchase Price shall be paid by Purchaser in Cash to Seller at the Closing. The Earnest Money shall be applied to the Purchase Price.

ARTICLE 3

DELIVERIES TO ESCROW HOLDER

3.1 Opening of Escrow.

3.1.1 Within three (3) business days after the Effective Date, Purchaser and Seller shall open Escrow by depositing with Escrow Holder a fully executed photocopy of this Agreement for use as escrow instructions. Escrow Holder shall execute the Consent of Escrow Holder which appears at the end of this Agreement and deliver a fully executed consent to Purchaser and Seller.

3.1.2 Purchase and Seller hereby authorize Escrow Holder to take necessary steps for the Closing of this transaction pursuant to the terms of this Agreement.

3.1.3 Purchaser and Seller may jointly or separately prepare additional escrow instructions. Escrow Holder may also provide general instructions. If there is any inconsistency between the provisions of any of these instructions and this Agreement, the provisions of this Agreement shall control.

3.2 **Purchaser's Deliveries.** At or before Closing, Purchaser shall deposit into Escrow (i) the Earnest Money, (ii) the Purchase Price, (iii) an executed and acknowledged counterpart acceptance of the Deed, and (iv) all other documents and instruments reasonably requested by Escrow Holder for Closing.

3.3 **Seller's Deliveries.** At or before Closing, Seller shall deliver into Escrow (i) an executed and acknowledged counterpart of the Deed, (ii) an executed Certificate of Non-Foreign Status, pursuant to Section 1445(b)(2) of the Internal Revenue Code, certifying that Seller is a non-foreign person, and (iii) all other documents and instruments reasonably requested by

Escrow Holder for Closing. At Closing, Seller shall deliver possession of the Property to Purchaser.

ARTICLE 4

CONDITIONS PRECEDENT TO CLOSING

4.1 **Purchaser's Right to Analyze Property Documents.** Within ten (10) days after the Effective Date, Seller shall deliver all Property Documents within Seller's possession or control to Purchaser. During the Contingency Period, Purchaser shall have the right to analyze the Property Documents and determine, in Purchaser's sole, absolute and arbitrary discretion, whether the Property is suitable for Purchaser's intended use.

4.2 **Purchaser's Right to Analyze Property.** For a period of thirty (30) days after the Effective Date, Purchaser shall have the right to analyze the Property and determine, in Purchaser's sole, absolute and arbitrary discretion, whether the Property is suitable for Purchaser's intended use (the "**Study Period**"). Purchaser shall have the right to enter onto the Property to conduct any and all tests, investigations, and inspections deemed necessary by Purchaser, including without limitation a Level I environmental site assessment and a geotechnical assessment. Such investigations and/or studies shall be conducted by Purchaser at its sole expense. Purchaser shall defend, indemnify and hold Seller harmless for, from, and against any claim, loss, or liability, or any claim of lien or damage which arises in connection with any entry on the Property by Purchaser or any activities on the Property by Purchaser, its agents, employees, and independent contractors; provided, however, that Purchaser shall have no obligation to indemnify, defend, or hold harmless Seller from any condition of the Property discovered by Purchaser, or from any loss of marketability of the Property as a consequence of such discovery.

4.3 **Notice of Termination; Failure to Notify.** If Purchaser determines, in Purchaser's sole, absolute, and arbitrary discretion, the Property is not suitable, Purchaser may terminate this Agreement and cancel Escrow by delivering written notice of termination to Seller prior to the expiration of the Contingency Period, in which case this Agreement shall immediately terminate and Escrow Holder shall immediately return the Earnest Money to Purchaser.

4.4 **Review of Preliminary Report.** Within ten (10) days after the Effective Date, Seller shall provide Purchaser with a preliminary title report issued by the Escrow Holder, describing title to the Property, and including legible copies of all recorded documents described in the preliminary report and plotted easements (collectively, the "**Preliminary Report**"). On or before ten (10) days after Purchaser's receipt of the Preliminary Report, Purchaser shall deliver written notice of approval or disapproval of matters disclosed in the Preliminary Report, which approval or disapproval shall be in Purchaser's sole and absolute discretion. Failure of Purchaser to deliver notice of disapproval of any matters disclosed in the Preliminary Report within such 10-day period shall be deemed an approval of such matter. Unless waived pursuant to Section 4.6, the approved matters disclosed in the Preliminary Report along with the standard printed exceptions on a form of title insurance policy, shall be the "**Permitted Exceptions**" included as exceptions in the Title Policy, defined in Section 4.7.

4.5 **Right to Cure Disapproval of Preliminary Report.** If Purchaser delivers notice of disapproval pursuant to Section 4.4 above, Seller may elect in writing, within five (5) days thereafter, to agree to remove or otherwise cure, to Purchaser's reasonable satisfaction, any disapproved item(s) prior to Closing. Notwithstanding any provision in this Agreement to the contrary, Seller shall be obligated to remove any deeds of trust and other monetary liens (other than liens created by Purchaser and liens for non-delinquent taxes and assessments) and any exceptions to title caused by Seller.

4.6 **Failure to Cure Disapproval of Preliminary Report.** If Seller gives Purchaser written notice within such 5-day period that Seller will remove or otherwise cure a disapproved item, but Seller is unable to remove any such disapproved item at or before the closing, Purchaser may elect to either: (i) terminate this Agreement and receive a full refund of the Earnest Money, or (ii) waive in writing its prior disapproval of such item and accept title subject to such previously disapproved item, by delivering written notice of Purchaser's election to Seller prior to Closing. If Seller either: (i) gives Purchaser timely notice within such five day period that Seller has elected not to attempt to remove or otherwise cure all of the disapproved item(s) or (ii) fails to notify Purchaser within such five day period whether or not Seller will remove or otherwise attempt to cure the disapproved item(s), Purchaser shall have 10 days after Purchaser's receipt of Seller's notice to notify Seller in writing of Purchaser's election to (a) waive in writing its prior disapproval of such item(s) and accept title subject to such previously disapproved item(s) or (b) terminate this Agreement, in which event the Earnest Money shall be refunded to Purchaser. If Purchaser shall fail to notify Seller timely of its election to proceed under clause (a) above, Purchaser shall be deemed to have elected to terminate this Agreement, in which event the Earnest Money shall be refunded to Purchaser.

4.7 **Title Policy.** Seller shall be unconditionally committed to procure from Escrow Holder upon the Closing, an ALTA standard coverage owner's policy of title insurance for the Property, with a liability limit in the amount of the Purchase Price, and insuring fee title vests in Purchaser subject only to the Permitted Exceptions (collectively, the "**Title Policy**"). At Purchaser's option, Purchaser may elect to have the Title Policy issued with endorsements and/or in an ALTA extended coverage form, provided that Purchaser obtains, and pays the cost of, any survey required for extended coverage and pays any additional costs associated with issuance of such policy pursuant to section 8.4 of this Agreement.

4.8 **Approval of Leases & Estoppel Certificates.**

4.8.1 **Leases.** Within ten (10) days of the Effective Date, Seller will provide to Purchaser copies of all current leases affecting the Property, and copies of any and all documents other than leases which provide for or discuss any matters affecting the occupancy of the Property by tenants, including but not limited to options to lease, relocation rights, termination rights, and/or expansion or contraction rights (collectively, the "**Lease Documents**"). Purchaser may terminate this Agreement at any time during the Study Period if Purchaser shall determine in the exercise of its sole discretion that the Property Documents or the Lease Documents are not satisfactory.

4.8.2 **No Tenancies.** At least five (5) days prior to the Closing Date, Seller shall have terminated any tenancy provided for in the Lease Documents and rendered the Property free of any occupants whatsoever.

4.9 **Contingency Failure.** In the event any of the contingencies set forth in Section 4 are not timely satisfied or waived, this Agreement and the rights and obligations of the Purchaser and the Seller shall automatically terminate, and the Escrow Agent shall immediately return the Earnest Money to Purchaser.

ARTICLE 5

COVENANTS AND AGREEMENTS

5.1 **Damage or Destruction; Eminent Domain.** If, prior to the Closing, all or a material part of the Property is damaged or destroyed, or taken or appropriated by any public or quasi-public authority under the power of eminent domain or such an eminent domain action is threatened pursuant to a resolution of intention to condemn filed by any public entity, Purchaser may either (i) terminate this Agreement and receive a refund of the Earnest Money, or (ii) elect to receive an assignment from Seller in lieu of the part of the Property that has been so damaged or taken of all of Seller's rights to any award and/or proceeds attributable to said damaged or taken part of the Property, and the parties shall proceed to Closing pursuant to this Agreement.

5.2 **Appliance and Fixtures.** Prior to Closing, Seller may remove the stained-glass cupboard doors from the kitchen cabinets and the bookshelves in the living room.

5.3 **Demolition.** If Purchaser, at any time on or before January 1, 2017, decides to demolish the residential structure located on the Property, it agrees to provide at least thirty (30) days written notice to Seller of its intent to do so ("**Post-Closing Demolition Notice**"). Such notice shall be sufficient if it meets the requirements set forth in Section 13.8 of this Agreement and is sent to the addresses listed in Section 13.8 of this Agreement or any subsequently designated address provided to Purchaser pursuant to Section 13.8 of this Agreement. Seller shall then be entitled, but under no obligation, to arrange with Purchaser for a time to enter onto the Property during the thirty (30) day period following the date of the Post-Closing Demolition Notice to remove cupboards, dining room stained-glass windows and fireplace stone work located in the residential structure location on the Property ("**Post-Closing Demolition Notice Period**"). Seller's right to do so shall automatically expire at the end of the Post-Closing Demolition Notice Period. The provisions of this Section 5.3 shall survive Closing.

5.4 **Naming of Park.** The parties acknowledge that the City intends to create a city park on the Property ("**Park**"). The parties agree that a Park feature will be named after the Paull family ("**Paull Feature**"). Purchaser agrees to cooperate with Seller, both prior to and after Closing, to choose the type of feature to be named and the name to be given to the Paull Feature. The parties acknowledge that any decisions regarding the type of features to be included in the Park and the name of the Paull Feature must be approved by the Tigard City Council. The Provisions of Section 5.4 shall survive Closing.

ARTICLE 6

SELLER'S REPRESENTATIONS AND WARRANTIES

6.1 **Representations and Warranties of Seller.** Seller represents and warrants that, as of the Effective Date, the end of the Contingency Period, and the Closing, that all of the representations and warranties contained in this Agreement are and shall be true and correct, and shall survive Closing for a period of one (1) year. Each of Seller's representations and warranties is material to and is being relied upon by Purchaser and the continuing truth thereof shall constitute a condition precedent to Purchaser's obligations hereunder. Seller represents and warrants to Purchaser as follows:

6.1.1 **Proof of Authority.** Seller has authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and shall deliver 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 or bind the Seller, as may be reasonably required by the Escrow Holder and/or the Purchaser.

6.1.2 **Title to the Property.** Seller has sole legal and beneficial fee title to the Property, and has not granted any person or entity any right or interest in the Property except as set forth in this Agreement and in the Preliminary Report. Seller agrees to transfer to Purchaser, via Deed, the Property, subject only to the Permitted Exceptions.

6.1.3 **Property Documents, Lease Documents; No Defaults.** To Seller's knowledge, the Property Documents and Lease Documents delivered by Seller to Purchaser are true, correct and complete copies and there are no other documents or instruments that would constitute Property Documents or Lease Documents that have not been delivered by Seller or otherwise made available to Purchaser. Seller has no knowledge of any default by Seller under any Property Documents or Lease Documents. Seller warrants that the services associated with the Property Documents and Lease Documents, have been, or will be, paid for by Seller through the Closing Date, no later than Closing.

6.1.4 **Pending Transactions, Suits or Proceedings.** To Seller's knowledge, there are no transactions, suits, proceedings, litigation (including zoning or other land use regulation proceedings), condemnation, or investigations pending or threatened against or affecting the Property or Seller as the owner of the Property in any court at law or in equity, or before or by any governmental department, commission, board, agency or instrumentality.

6.1.5 **Defects.** To Seller's knowledge, without independent investigation, there are no latent or other defects or conditions on or about the Property which would cause injury or damage to persons or property, or which would have a material adverse effect on lawful uses of the Property.

6.1.6 **No Further Encumbrances.** As long as this Agreement remains in force, Seller will not lease, transfer, option, mortgage, pledge, or convey its interest in the Property or any portion thereof nor any right therein, nor shall Seller enter into any agreement granting to

any person or entity any option to purchase or rights superior to Purchaser with respect to the Property or any part thereof.

6.1.7 Hazardous Materials. To Seller's knowledge, without independent investigation, no Hazardous Materials have been generated, disposed of, deposited or released (or caused to be generated, disposed of or released) on, within, under, about or from the Property. To Seller's knowledge, without independent investigation, no other party or person has used, stored, transported, generated, disposed of or released on, within, under, about or from the Property any Hazardous Materials. Without limiting the foregoing, neither Seller nor, to Seller's knowledge, without independent investigation, any other party, has installed, operated or maintained any underground storage tanks on or adjacent to the Property, and the Property is not now, and has never been, in violation and is not currently under investigation for the violation of any Environmental Laws. To Seller's knowledge, without independent investigation, there is no asbestos or lead paint on the Property. Seller hereby assigns to Purchaser as of the Closing, to the extent assignable, all claims, counterclaims, defenses or actions, whether at common law or pursuant to any other applicable federal or state or other laws, if any, that Seller may have against third parties to the extent relating to the existence of Hazardous Materials in, at, on, under or about the Property.

6.1.8 Access; Possession. The Property has legal and physical access to a publicly-dedicated street or road. Except as reflected in the Lease Documents, there are no leases or tenancies in effect on the Property and possession thereof can and will be delivered to Purchaser upon Closing free of any tenants or occupants whatsoever.

6.1.9 Construction or Other Liens. Seller warrants that, at the time of Closing, no work, labor or materials have been expended, bestowed or placed upon the Property, adjacent thereto or within any existing or proposed assessment district which will remain unpaid at close of escrow or upon which a lien may be filed.

6.1.10 No Option or Right of First Refusal to Acquire Premises. Seller represents that no person or entity has any right of first refusal or option to acquire any interest in the Property or any part thereof.

6.1.11 Conduct Pending Full Payment; Covenants.

6.1.11.1 Conduct of Property. Seller hereby agrees that Seller will not modify, cancel, extend or otherwise change in any material manner any of the terms, covenants or conditions of the Property Documents or Lease Documents, nor enter into any additional leases as to the Property without Purchaser's written consent (which may be withheld in Purchaser's sole discretion), nor enter into any other agreements having a material effect on the Property without the prior written consent of Purchaser, (which Purchaser may withhold in its sole discretion).

6.1.11.2 No Alterations. Except as otherwise provided under Section 5.2 of this Agreement, Seller will not make any material alterations to the Property prior to the Closing.

6.1.11.3 **Maintain Physical Condition.** Seller, at its sole cost and expense, will maintain and keep the Property in approximately the same condition, reasonable wear and tear, damage by casualty, and condemnation excepted, between the Effective Date and the Closing Date, and will keep Purchaser timely advised any change to its physical condition prior to the Closing Date.

6.2 **AS IS.** Seller has granted Purchaser the right to inspect and make investigations in connection with the Property and shall continue to permit Purchaser to make its independent inspection and investigation of the Property prior to the Closing Date. Except as otherwise expressly stated in this Agreement, no warranties, guarantees or representations have been or are being made by Seller or any agent or representative of Seller concerning the condition of the Property's soils, any tests, inspections or examinations of the Property or its financial and operating records, any governmental permits or approvals obtained or to be obtained in connection with Purchaser's use of the Property, the suitability of the Property for Purchaser's intended use, the applicable zoning, building, and other ordinances, restrictions, laws, and regulations affecting the Property, the condition of the Property, or other matters. Except as otherwise specifically set forth in this Agreement, Purchaser accepts the Property in its present condition, AS IS, WHERE IS, without any representations or warranties by Seller or any agent or representative of Seller, expressed or implied. Purchaser acknowledges that Purchaser has ascertained for itself the value and condition of the Property and Purchaser is not relying on, nor has Purchaser been influenced by, any representation of Seller or any agent or representative of Seller regarding the value or condition of the Property.

ARTICLE 7

PURCHASER'S REPRESENTATIONS AND WARRANTIES

7.1 **Purchaser's Representation and Warranties.** Purchaser represents and warrants that, as of the Effective Date, the end of the Contingency Period, and Closing, all of the representations and warranties of Purchaser contained in this Agreement are and shall be true and correct, and shall survive Closing for a period of one (1) year. Each of Purchaser's representations and warranties is material to and is being relied upon by Seller and the continuing truth thereof shall constitute a condition precedent to Seller's obligations hereunder. Purchaser represents and warrants to Seller as follows:

7.1.1 **Authority.** The execution and delivery of this Agreement has been duly authorized and approved by all requisite action of Purchaser, and the consummation of the transactions contemplated hereby will be duly authorized and approved by all requisite action of Purchaser, and no other authorizations or approvals will be necessary in order to enable Purchaser to enter into or to comply with the terms of this Agreement.

7.1.2 **Binding Effect of Documents.** This Agreement and the other documents to be executed by Purchaser hereunder, upon execution and delivery thereof by Purchaser, will have been duly entered into by Purchaser, and will constitute legal, valid and binding obligations of Purchaser. To Purchaser's actual knowledge, neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Purchaser is a party or by which it is bound.

ARTICLE 8

PRORATED FEES AND COSTS

8.1 **Prorations.** Escrow Holder will prorate between the parties, based on the latest information available to Escrow Holder, all taxes, bonds and assessments (“**Taxes**”) for the Property, except as provided in Section 8.2 below. If, after the Closing, either party receives a bill for any Taxes, the parties agree that the Taxes shall be prorated between the parties to the Closing Date. The party receiving the bill for the Taxes shall notify the other party in writing of the amount of such Taxes and the party receiving that notice shall pay its prorated share of such Taxes within thirty (30) days of demand therefore, but not later than ten (10) days prior to delinquency. The parties’ obligations under this Section shall survive Closing.

8.2 **Penalties.** Any penalties that would be due as a result of removal of the Property from any tax deferral program shall be charged to Seller as though the Property were removed from such program on the Closing Date. Seller’s obligations under this Section shall survive Closing.

8.3 **Seller’s Fees and Costs.** Except where otherwise provided for in this Agreement Seller shall not be obligated to pay for any fees and costs.

8.4 **Purchaser’s Fees and Costs.** Purchaser shall pay (i) the costs for the Title Policy, including any extended coverage or endorsements for the Title Policy; ii) all the Escrow Holder’s escrow fee, (iii) all recording charges; and (iv) all transfer taxes.

8.5 **Other Costs.** Except as otherwise provided in this Agreement, each party shall bear and pay the expense of its own attorneys, accountants and other professionals incurred in negotiating and closing this Agreement.

ARTICLE 9

CLOSING

9.1 **Closing.** Escrow Holder shall close Escrow by (i) recording the Deed; (ii) confirming execution of all documents necessary for Closing and (iii) delivering funds and documents as set forth herein, when and only when all terms and conditions of this Agreement have been met and each of the conditions set forth below have been satisfied:

9.1.1 **Funds and Instruments.** All funds and instruments required pursuant to this Agreement have been delivered to Escrow Holder.

9.1.2 **Satisfaction of Conditions Precedent.** Each of the conditions precedent set forth in the Agreement have been either satisfied or waived.

9.1.3 **Liens and Encumbrances.** All liens and encumbrances required to be paid by Seller have been paid and satisfied at Seller’s sole expense, including without limitation any trust deed or mortgage affecting the Property. The Property shall be conveyed free of

encumbrances, except for the Permitted Exceptions and those expressly accepted or waived in writing by Purchaser pursuant to the terms of this Agreement.

9.1.4 **Assignment of Lease Documents.** If applicable, Seller shall have executed the Assignment of Leases attached to this Agreement as Exhibit C (“**Assignment of Leases**”).

ARTICLE 10

RECORDATION AND DISTRIBUTION OF FUNDS AND DOCUMENTS

10.1 **Recorded Documents.** Escrow Holder shall cause the County Recorder of Washington County to mail the Deed to Purchaser.

10.2 **Conformed Copies.** Escrow Holder shall at Closing deliver to Seller and Purchaser (i) a copy of the Deed, conformed to show recording date, and conformed copies of each document recorded to place title in the condition required by this Agreement, (ii) a copy of each non-recorded document received hereunder by Escrow Holder, and (iii) copies of all documents deposited into Escrow to the parties herein.

10.3 **Payment of Funds at Closing.** Escrow Holder shall deliver at Closing all amounts as set forth in the final, approved closing statement.

10.4 **Original Documents.** If applicable, Escrow Holder shall at Closing deliver to Purchaser the Original Assignment of Leases.

ARTICLE 11

DEFAULT AND REMEDIES

11.1 **Purchaser’s Default.** If Purchaser breaches this Agreement, which breach Purchaser fails to cure within thirty (30) days after receipt of written notice thereof from Seller, Purchaser shall be in default hereunder and Seller is entitled, as Seller’s sole and exclusive remedy, to liquidated damages pursuant to this Article. If Escrow fails to close due to Purchaser’s default, Purchaser shall pay all Escrow cancellation charges.

11.2 **Seller’s Remedies.** In the event of Purchaser’s default under this Agreement, the Earnest Money shall be forfeited by Purchaser and retained by Seller as liquidated damages. Such amount has been agreed by the parties to be reasonable compensation and the exclusive remedy for Purchaser’s default, since the precise amount of such compensation would be difficult to determine. Seller shall have no right to any other damages, claims or actions against Purchaser. By initialing this provision in the spaces below, Seller and Purchaser each specifically affirm their respective agreement to this liquidated damages provision as Seller’s sole and exclusive remedy for Purchaser’s default, and agreement that the sum is a reasonable sum.

Purchaser’s Initials _____

Seller’s Initials _____

11.3 **Seller's Default.** If Seller breaches this Agreement, which breach Seller fails to cure within thirty (30) days after receipt of written notice thereof from Purchaser, Seller shall be in default of this Agreement. If Escrow fails to close due to Seller's default, Seller shall pay all Escrow cancellation charges.

11.4 **Purchaser's Remedies.** In the event of Seller's default under this Agreement, Purchaser shall have the right to either (i) terminate this Agreement, and upon such event the Earnest Money shall be immediately refunded to Purchaser, or (ii) seek an action for specific performance in order to enforce Purchaser's rights hereunder. No provision of this Agreement shall be construed as waiving any of Purchaser's rights regarding eminent domain.

ARTICLE 12

ASSIGNMENT

12.1 **Assignment by Purchaser.** Purchaser may not assign or otherwise transfer any of its rights or obligations under this Agreement.

ARTICLE 13

GENERAL PROVISIONS

13.1 **Attorneys Fees.** If any action is instituted between Seller and Purchaser in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including, without limitation, attorneys' fees and costs as fixed by the court therein, at trial and on any appeal.

13.2 **Construction of Agreement.** The agreements contained herein shall not be construed in favor of or against either party, but shall be construed as if both parties prepared this Agreement.

13.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. The foregoing sentence shall in no way affect the validity of any instruments executed by the parties in the form of the exhibits attached to this Agreement.

13.4 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Oregon.

13.5 **Joint and Several Liability.** If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

13.6 **Modification.** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by all signatories hereto.

13.7 Real Estate Brokerage Commission. Purchaser represents and warrants that no real estate agent or broker representing Purchaser was involved in negotiating the transaction contemplated herein. Seller is represented by Mollie Cleveland and Jane Galluzzo of Knipe Realty, NW. Seller agrees to be responsible for payment of any compensation, commission or fee to Seller's broker in accordance with the terms and conditions of the agreement between them. In the event any claims for real estate commissions, fees or compensation arise in connection with this transaction, the party so incurring or causing such claims shall indemnify, defend and hold harmless the other party from any loss or damage, including attorneys' fees, that said other party suffers because of said claims. The obligations of the parties in the prior sentence shall survive Closing or the termination of this Agreement.

13.8 Notice and Payments. Any notice or document to be given pursuant to this Agreement must be delivered either in person, deposited in the United States mail duly certified or registered, return receipt requested with postage prepaid, by electronic mail, or by Federal Express or other similar overnight delivery service marked for next business day delivery. Notices shall be effective upon receipt if delivered personally, upon confirmation of receipt if sent by electronic mail, on the next day if sent by overnight courier, or two (2) days after deposit in the mail if mailed. Any party listed below may designate a different address, which shall be substituted for the one specified below, by written notice to the others.

If to Seller: Jennifer Paull
80309 Quincy Mayger Rd.
Clatskanie, OR 97016
[E-mail: jennypaull@earthlink.net](mailto:jennypaull@earthlink.net)

Dave Paull
6347 SW Corbett Ave
Portland, OR 97239
E-mail: paulldave@yahoo.com

With a copy to: Mollie Cleveland
(Via e-mail): MClev30@aol.com

If to Purchaser: City of Tigard
Attn: Parks Manager
City Hall
13125 SW Hall Blvd
Tigard OR 97223
E-mail: steve@tigard-or.gov

with a copy to : Jeff Bennett
Jordan Ramis PC
Two Centerpointe Drive, 6th Floor
Lake Oswego, OR 97035
E-mail: jeff.bennett@jordanramis.com

13.9 **Remedies Cumulative.** Except as specifically set forth herein, all rights and remedies of Purchaser and Seller contained in this Agreement shall be construed and held to be cumulative.

13.10 **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

13.11 **Successors and Assigns.** Subject to limitations expressed in this Agreement, each and all of the covenants and conditions of this Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest, assigns, and representatives of the parties hereto. As used in the foregoing, "successors" shall refer to the parties' interest in the Property and to the successors to all or substantially all of their assets and to their successors by merger or consolidation.

13.12 **Time of the Essence.** Time is of the essence of each and every provision of this Agreement.

13.13 **Legal Representation.** Seller acknowledges that this is a legal document and that Seller has been advised to obtain the advice of legal counsel in connection with its review and execution of this Agreement. Seller covenants that it will not deny the enforceability of this Agreement on the basis that Seller elects not to obtain legal counsel to review and approve this Agreement.

13.14 **Waiver.** No waiver by Purchaser or Seller of a breach of any of the terms, covenants or conditions of this Agreement by the other party shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default by Purchaser or Seller hereunder shall be implied from any omission by the other party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect a default other than as specified in such waiver. The consent or approval by Purchaser or Seller to or of any act by the other party requiring the consent or approval of the first party shall not be deemed to waive or render unnecessary such party's consent or approval to or of any subsequent similar acts by the other party.

13.15 **Negation of Agency and Partnership.** Any agreement by either party to cooperate with the other in connection with any provision of this Agreement shall not be construed as making either party an agent or partner of the other party.

13.16 **Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or such holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or such holiday.

13.17 **Statutory Disclaimer.** 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

13.18 **Counterparts.** This Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

David D. Paull and Jennifer E. Paull, Co-Successor Trustees of the Paull Family Trust established April 14, 1994 and the Paull Family Trust established under Article 9 of the Paull Living Trust dated April 14, 1994, each as to an undivided one-half interest

By: _____

By: _____

PURCHASER:

City of Tigard, an Oregon municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

By: _____

City Attorney

Exhibit A - Property
Exhibit B - Deed

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be the Escrow Holder under said Agreement, and (iii) be bound by said Agreement in the performance of its duties as Escrow Holder; provided, however, the undersigned shall have no obligations, liability or responsibility under this Consent or otherwise unless and until said Agreement, fully signed by the parties, has been delivered to the undersigned.

DATED: _____, 2012.

FIRST AMERICAN TITLE

By: _____
Name: _____
Title: _____

EXHIBIT A

Tax Lot 5800

Real property in the County of Washington, State of Oregon, described as follows:

PARCEL I:

The South 10 acres of the Southwest one-quarter of the Southeast one-quarter of Section 4, Township 2 South, Range 1 West, of the Willamette Meridian, in the County of Washington and State of Oregon.

EXCEPTING the West 462 feet thereof. PARCEL II:

Also a non-exclusive, perpetual easement for road and utility purposes on, over, under and across the East 50 feet of the following described tract:

Beginning at a stone marking the quarter section corner of the North line of Section 9, Township 2 South, Range 1 West, of the Willamette Meridian; and running thence South 0°35' East along the quarter section line 1238.5 feet to an iron in the center of County Road; thence along County Road South 61°27' East 707.7 feet to an iron pipe in the center of County Road, which iron marks the Southwest corner of the Moler tract; thence North 0°35' West along the West line of the Moler tract, 1581 feet to an iron on North line of said Section 9; thence on section line South 89°36' West 618.1 feet to the place of beginning.

NOTE: This Legal Description was created prior to January 01, 2008.

Tax Lot 5900

Real property in the County of Washington, State of Oregon, described as follows:

A TRACT OF LAND IN SECTION 4, TOWNSHIP 2 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE ONE-QUARTER CORNER OF THE SOUTH LINE OF SAID SECTION 4; THENCE NORTH 0° 14' 40" WEST, 330.0 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF THE SOUTH 10.0 ACRES OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 4; THENCE NORTH 80° 45' 40" EAST ALONG THE NORTH LINE OF SAID 10.0 ACRE TRACT, A DISTANCE OF 462.0 FEET TO A POINT; THENCE SOUTH 0° 14' 40" EAST, PARALLEL WITH THE WEST LINE OF SAID 10.0 ACRE TRACT, 330.0 FEET, MORE OR LESS, TO THE SOUTH LINE OF SAID SECTION 4; THENCE SOUTH 89° 45' 40" WEST, 462.0 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING:

THE WESTERLY 2 ACRES OF THE FOLLOWING TRACT OF LAND IN SECTION 4, TOWNSHIP 2 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE ONE-QUARTER CORNER OF THE SOUTH LINE OF SAID SECTION 4; THENCE NORTH 0° 14' 40" WEST, 330.0 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF THE SOUTH 10.0 ACRES OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 4; THENCE NORTH 80° 45' 40" EAST ALONG THE NORTH LINE OF SAID 10.0 ACRE TRACT, A DISTANCE OF 462.0 FEET TO A POINT; THENCE SOUTH 0° 14' 40" EAST, PARALLEL WITH THE WEST LINE OF SAID 10.0 ACRE TRACT, 330.0 FEET, MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 4; THENCE SOUTH 89° 45' 40" WEST, 462.0 FEET TO THE PLACE OF BEGINNING.

NOTE: This Legal Description was created prior to January 01, 2008.

EXHIBIT B

AFTER RECORDING RETURN TO:

Grantor: Paull Family Trust
Attn: Dave Paull
6347 SW Corbett Ave.
Portland, OR 97239

Grantee: City of Tigard
Attn: City Manager City Hall
13125 SW Hall Blvd Tigard OR 97223

This space is reserved for recorder's use.

SPECIAL WARRANTY DEED

David D. Paull and Jennifer E. Paull, Co-Successor Trustees of the Paull Family Trust established April 14, 1994 and the Paull Family Trust established under Article 9 of the Paull Living Trust dated April 14, 1994, whose address is _____, each as to an undivided one-half interest, Grantor, conveys and specially warrants to CITY OF TIGARD, an Oregon municipal corporation, whose address is _____ Grantee, the following described real property free of encumbrances created or suffered by the Grantor except as specifically set forth herein:

See Exhibit A attached hereto.

The true consideration for this conveyance is One Million Seven Hundred Fifty Thousand and No/100 (\$1,750,000.00). This conveyance is made subject to the matters set forth on Exhibit B attached hereto.

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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this _____ day of _____, 20____.

By: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by
_____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

ACCEPTED:

GRANTEE

CITY OF TIGARD, an Oregon municipal corporation

By: _____
Name: _____
Its: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by
_____ as _____ of the City of Tigard, an Oregon municipal
corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

Exhibit A

Tax Lot 5800

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EXCEPTING the West 462 feet thereof. PARCEL II:

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NOTE: This Legal Description was created prior to January 01, 2008.

EXHIBIT B

Exceptions

EXHIBIT C
Assignment of Leases