

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 12-34

A RESOLUTION APPROVING THE PURCHASE OF THE SKELTON PROPERTY, (TAX LOT 2S1 02BB 00700) AND AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY ACTION TO COMPLETE THE PROPERTY PURCHASE ON BEHALF OF THE CITY

WHEREAS, the City of Tigard and Clean Water Services (CWS) share responsibility for the operation and maintenance of the city's sewer system; and

WHEREAS, CWS and the city have identified a problem at five locations where sanitary sewer lines are exposed as they cross Derry Dell Creek and Fanno Creek near Woodard Park; and

WHEREAS, a joint city/ CWS construction project is planned to repair the exposed sewer lines and make other improvements; and

WHEREAS, on January 24, 2011, the City Council approved an intergovernmental agreement (IGA) with CWS; the IGA outlines city and CWS responsibilities as they pertain to the project; and

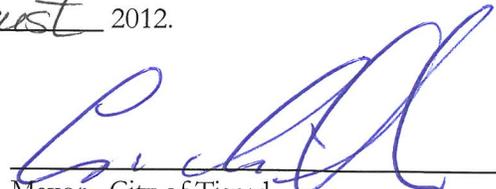
WHEREAS, this IGA obligates the city to acquire the Skelton property, as this property is required for the project; and

WHEREAS, the city and the property owner have reached an agreement on the purchase/sale of the property; this agreement is subject to City Council approval no later than August 31, 2012.

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

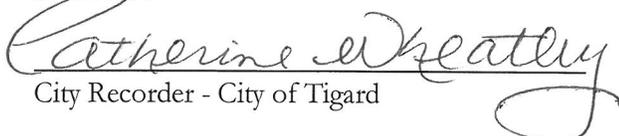
- SECTION 1: The City Council agrees to the terms of the Purchase Agreement and Escrow Instructions, (Attachment A), including the purchase price of \$420,000 for the Skelton property.
- SECTION 2: The City Council authorizes the city manager to take all necessary action to complete the Skelton property purchase on behalf of the city. This includes, but is not limited to, the execution of an occupancy agreement and closing documents.
- SECTION 3: This resolution is effective immediately upon passage.

PASSED: This 28th day of August 2012.



Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard

Attachment A

**PURCHASE AGREEMENT
AND
ESCROW INSTRUCTIONS**

BETWEEN: Mary Jane Skelton ("Seller")
And: City of Tigard, ("Purchaser")
a Municipal corporation
DATED: July 30, 2012 ("Effective Date")

RECITALS

A. Seller owns certain real property in the city of Tigard, county of Washington, Oregon, located at 10355 SW Walnut Street, Tigard, OR 97223, which is more fully described on the attached and incorporated Exhibit A (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.

C. In partial consideration for Purchaser's agreement to acquire the Property, Purchaser has agreed to allow Seller to continue to occupy the Property after the Closing in accordance with the terms of the agreement attached and incorporated as Exhibit B ("the Post-Closing Occupancy 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, payable to Escrow Holder in U.S. funds and delivered to Escrow Holder in sufficient time that the funds will be available for distribution to Seller on the Closing Date, 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 begins on the Effective Date of this Agreement or on such other date as the parties may agree upon in writing and ends on the date that is forty-five (45) days after the Effective Date.

1.5 **Deed.** A statutory bargain and sale deed in the form of **Exhibit C** attached hereto which shall be used to convey the Property from Seller to Purchaser.

1.6 **Earnest Money.** The cash payable to Seller pursuant to Section 2.2 of this Agreement in the amount of Ten Thousand and No/100 Dollars (\$10,000.00), plus all interest which accrues thereon, if any.

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 law, rule, regulation, code or ordinance.

1.11 **Post-Closing Occupancy Agreement.** The agreement identified in Exhibit B.

1.12 **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.

1.13 **Property Documents.** Any and all documents in Seller's possession or control relating to or affecting the Property's title or condition, including without limitation, conditional use permits, land use approvals, land use applications, permits, licenses, any agreements related to the Property that will survive Closing, maps, development agreements, surveys and studies relating to the Property prepared by third parties.

1.14 **Purchase Price.** Cash in the amount of Four Hundred Twenty Thousand and No/100 Dollars (\$420,000.00).

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 Effective Date, Purchaser shall deposit the Earnest Money into Escrow. Escrow Holder shall hold the Earnest Money in a non-interest-bearing account that is FDIC insured, unless the parties, or any one of them, request that

the Escrow Holder hold the Earnest Money in an interest bearing account. Except as otherwise stated herein, the Earnest Money shall be refundable to Purchaser until the Contingency Period expires; thereafter, the Earnest Money shall not be refundable except in the event of a Seller default of the terms of this Agreement.

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) days after the Effective Date, Purchaser and Seller, or any one of them, 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 Purchaser 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.** Except as otherwise stated herein, 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, (iv) an executed counterpart of the Post-Closing Occupancy Agreement; and (v) 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, (iii) an executed counterpart of the Post-Closing Occupancy Agreement; and (iv) 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 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. During the Contingency Period, 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 restore the Property to its pre-analysis condition on or before the end of the Contingency Period. In addition, Purchaser shall defend, indemnify and hold Seller harmless for, from, and against any claim, loss, or liability, or any claim of lien, damage, or personal injury 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 provided that such condition is not the result of Purchaser's actions or omissions.

4.3 City Council Approval. This Agreement is contingent upon approval from the City Council of the City of Tigard. If such approval is not received by August 31, 2012, Purchaser shall have the right to terminate this Agreement and receive a full refund of the Earnest Money.

4.4 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 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.

4.5 Review of Preliminary Report. Within ten (10) days after the Effective Date, Seller shall cause the Escrow Holder to provide Purchaser with a preliminary title report issued by the Escrow Holder. The Escrow Holder shall cause such report to describe title to the Property, and include legible copies of all recorded documents described in the preliminary report, including plotted easements (collectively, the "Preliminary Report"). On or before ten (10) days after Purchaser's receipt of the Preliminary Report, Purchaser shall deliver to Seller 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. If Purchaser fails to timely deliver such written notice to Seller, Purchaser will be deemed to have rejected of all matters disclosed in the Preliminary Report, this Agreement will immediately terminate and Escrow Holder shall immediately return the earnest money to Purchaser.

4.6 Right to Cure Disapproval of Preliminary Report. If Purchaser delivers notice of disapproval pursuant to Section 4.4 above, Seller may have ten (10) days from such notice to notify Purchaser in writing that Seller will remove or otherwise cure, to Purchaser's reasonable satisfaction, any disapproved matter(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 for non-delinquent taxes and assessments) and any exceptions to title caused by Seller that are disapproved of by Purchaser pursuant to Section 4.5 above.

4.7 Failure to Cure Disapproval of Preliminary Report. If Seller fails to agree to cure a disapproved item, or agrees to cure and thereafter fails to cure a disapproved item prior to Closing, Purchaser shall have the right to (i) terminate this Agreement and receive a full refund of the Earnest Money, (ii) suspend performance of its obligations under this Agreement at no cost to Purchaser for a period of up to thirty (30) days to allow Seller to remove the disapproved exception(s); or (iii) 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.

4.8 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 pays any additional costs associated with issuance of such policy and pursuant to Section 8.4 of this Agreement.

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 Holder 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 Post-Closing Occupancy Agreement. At or before Closing, Purchaser and Seller shall sign the Post-Closing Occupancy Agreement, the form of which is attached and incorporated as Exhibit B. The provisions of the Post-Closing Occupancy Agreement executed by the parties shall survive Closing.

ARTICLE 6 SELLER'S REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of Seller. Seller represents and warrants that, to the best of Seller's actual knowledge the following statements are and shall be true and correct as of the Closing. Each of Seller's representations and warranties is material to and is being relied upon by Purchaser and the truth thereof shall constitute a condition precedent to Purchaser's obligations hereunder.

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, if any, 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.

6.1.3 Property Documents, No Defaults. The Property Documents delivered by Seller to Purchaser are true, correct and complete copies and there are no other documents or instruments in Seller's custody or control that would constitute Property Documents that have not been delivered or otherwise made available to Purchaser. Seller has no knowledge of any default by Seller under any Property Documents. Seller warrants that the services associated with the Property Documents, if any, have been, or will be, paid for by Seller no later than Closing. Seller does not warrant or represent that any information in the Property Documents is accurate, adequate or complete. To the extent that the Property Documents include documents prepared by Seller, Seller warrants and represents only that Seller completed such documents to the best of Seller's knowledge and ability. To the extent that Purchaser relies on the Property Documents with respect to the matters contemplated in this Agreement or otherwise, Purchaser does so at its own risk.

6.1.4 Pending Transactions, Suits or Proceedings. Other than has transpired between the parties, there are no transactions, suits, proceedings, litigation (including zoning or other land use regulation proceedings), condemnation, or investigations pending, threatened against, or affecting the Property or title thereto 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 the best of Seller's knowledge, 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. Seller does not warrant or represent that latent defects are absent from the Property and except to the extent of the representation and warranty contained in the first sentence of this Section 6.1.5, Purchaser shall rely on its own investigation with respect to any such defects. Purchaser acknowledges that the terms of Paragraph 4.2 apply to any claims, counterclaims, defenses or actions that arise during the pendency of this Agreement and thereafter due, in whole or in part, to any latent defect.

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. Seller hereby discloses that the house located on the Property may have lead paint and asbestos and there is an oil tank on the Property. Seller

further discloses that Seller is aware that surface water, wind and other natural phenomena cause drainage from neighboring properties, whether or not such properties are adjacent to the Property, into the water bodies on, within, under, about, through or from the Property and that such drainage includes materials which may be Hazardous Materials as that term is defined herein. Except as specifically disclosed herein and except for Seller's use of common household cleaners, to the best of Seller's knowledge: (1) 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; (2) 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 the Property is now, or has ever been, in violation of or under investigation for the violation of any Environmental Laws. 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 applicable federal, state or local laws, if any, that Seller may have against third parties relating to the existence of Hazardous Materials in, at, on, under or about the Property.

6.1.8 Access; No Leases or Tenancies. The Property has legal and physical access to a publicly-dedicated street or road. There are no leases or tenancies in effect on the Property and possession thereof can and will be delivered to Purchaser upon Closing.

6.1.9 Construction or Other Liens. At the time of Closing, no work, labor or materials have been expended, bestowed or placed upon the Property, which will remain unpaid at close of escrow upon which a lien against the Property may be filed.

6.1.10 No Option of 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 will not modify, cancel, extend or otherwise change in any material manner any of the terms, covenants or conditions of the Property Documents, nor enter into any leases as to the Property without Purchaser's written consent, nor enter into any other agreements having a material effect on the Property without the prior written consent of Purchaser, which Purchaser shall not unreasonably withhold or delay.

6.1.11.2 No Alterations. 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 during the pendency of this Agreement in approximately the same condition, reasonable wear and tear excepted, as the Property was in on the Effective Date.

ARTICLE 7
PURCHASER'S REPRESENTATIONS AND WARRANTIES

7.1. Purchaser's Representation and Warranties. Purchaser represents and warrants that the following representations and warranties of Purchaser are and shall be true and correct as of the Closing. 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.

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 as of the Closing Date, 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 as of 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. 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 Purchaser's Fees and Costs. Purchaser shall pay (i) all of the Escrow Holder's escrow fee, (ii) all recording charges; (iii) all applicable transfer taxes; and (iv) the cost for the Title Policy and any extended coverage and endorsements for the Title Policy.

8.4 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 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 to close the transaction contemplated herein 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 by Purchaser pursuant to the terms of this Agreement.

**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 deliver to Seller and Purchaser as soon after Closing as is practical (i) a copy of the Deed, conformed to show recording date, and conformed copies of each document recorded to place title to the Property in the condition required by this Agreement, (ii) a copy of each non-recorded document received hereunder by Escrow Holder.

**ARTICLE 11
DEFAULT AND REMEDIES**

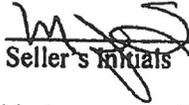
11.1 Purchaser's Default. If Purchaser breaches this Agreement, , Purchaser shall be in default hereunder and Seller is entitled, as Seller's sole and exclusive remedy, to liquidated damages pursuant to this Article. If Escrow fails to close due to Purchaser's default, Purchaser shall pay all Escrow 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, 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.

13.2 Construction of Agreement. This Agreement 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 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.

13.6 Real Estate Brokerage Commission. Seller and Purchaser represent and warrant that no real estate agent or broker was involved in negotiating the transaction

contemplated herein. 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.

13.7 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, 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, 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 other.

If to Seller:	Mary Jane Skelton 10355 SW Walnut St. Tigard, OR 97223
with a copy to:	Kathryn Brooke Brooke Law Office LLC 10260 SW Greenburg Rd, Suite 1180 Portland, OR 97223
If to Purchaser:	City of Tigard Attn: City Manager City Hall 13125 SW Hall Blvd Tigard, OR 97223
with a copy to :	Jeff Bennett Jordan Ramis PC Two Centerpointe Drive, 6th Floor Lake Oswego, OR 97035 Fax: (503) 598-7373

13.8 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.

13.9 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.

13.10 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.

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

13.12 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.

13.13 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.

13.14 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.

13.15 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.

13.16 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.

13.17 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

PURCHASER

City of Tigard, an Oregon municipal corporation

By: 
Mary Jane Skelton

By: 
Name: Martha L. Wine
Its: City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
Kathryn Brooke

By: 
City Attorney

Exhibit A - Property
Exhibit B - Post-Closing Occupancy Agreement
Exhibit C - 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: _____, 20__.

By: _____

Name: _____

Title: _____

EXHIBIT A

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

LOT 1, NORTH TIGARVILLE ADDITION, AMENDED PLAT, EXCEPTING THAT PORTION CONVEYED TO JOSEPH YOCUM, ET UX. BY DEED RECORDED JUNE 23, 1945, IN BOOK 245 PAGE 227, DEED RECORDS, WASHINGTON COUNTY, OREGON. DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, NORTH TIGARVILLE ADDITION; THENCE NORTH 89 08' EAST, 289.5 FEET ALONG THE NORTH LINE OF LOT 1 TO A PIPE; THENCE SOUTH 0 10' EAST, 612.5 FEET TO A PIPE; THENCE SOUTH 19 53' WEST, 443.55 FEET TO A PIPE IN THE SOUTHERLY LINE OF SAID LOT 1; THENCE NORTH 57 40' WEST, 183.1 FEET ALONG THE SAID SOUTHERLY LINE OF THE SOUTHWEST CORNER OF LOT 1; THENCE NORTH 0 15' WEST, 931.92 FEET TO THE BEGINNING.

NOTE: This legal description was created prior to January 1, 2008.

EXHIBIT B

POST-CLOSING OCCUPANCY AGREEMENT

THIS POST-CLOSING OCCUPANCY AGREEMENT (this "Agreement") is made as of _____, 2012 (the "Effective Date") by and between Mary Jane Skelton ("Occupant") and the City of Tigard, a Municipal corporation ("Provider").

WHEREAS:

(A) Occupant is the seller and Provider is the purchaser of the real property described as 10355 SW Walnut Street, Tigard, OR 97223 which is more fully described on the attached and incorporated Exhibit A (the "Property");

(B) As a part of the consideration for Occupant's sale and Provider's purchase of the Property, Provider has agreed to allow Occupant to continue occupying a portion of the Property on an exclusive basis for up to twelve (12) months after the closing the purchase and sale of the Property (the "Closing Date"); and

(C) Occupant desires to continue to occupy and use the Property after the Closing Date;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Provider hereby grants to Occupant exclusive use of the residence, related outbuildings, and a privacy area as shown on Exhibit A (the "Exclusive Area") which shall be used exclusively by Occupant.
2. Occupant will, at its own expense, pay for all reasonable and common household expenses related to Occupant's use of the Exclusive Area; except that, Occupant shall not be obligated to pay any taxes, bonds or assessments which arise on or after the Closing Date, other than personal income taxes.
3. Occupant will maintain insurance covering Occupant's personal property located on the Exclusive Area and Provider shall not be responsible for any loss of Occupant's property, regardless of cause. Occupant will also provide liability insurance with a combined single limit of not less than \$1,000,000 per occurrence with a \$1,000,000 aggregate limit. Such insurance shall name Provider as an additional insured. Upon Provider's request, Occupant shall provide Provider with a certificate of insurance evidencing Occupant's compliance with this Section 3. In the event any buildings located on the Exclusive Area are damaged or destroyed by any cause during the term of this Occupancy Agreement, this Occupancy Agreement shall automatically terminate as of the date the damage or destruction occurs; provided, however, in such a case, Occupant shall have access to the Exclusive Area for a period of one hundred twenty (120) days after such date to remove her personal property therefrom, such access to be at various times and dates as mutually agreed between the parties.
4. Except to the extent of damage to or destruction of the Property improvements located on the Exclusive Area and of damage resulting from the negligence or willful misconduct of Provider, Occupant

will indemnify and hold the Provider harmless from and against all liabilities, damages, claims, losses, judgments, charges and expenses arising out of or relating to Occupant's use of the Exclusive Area.

5. Occupant may reside on the Exclusive Area for a period up to twelve (12) months. Occupant's residency commences on the date the parties close the purchase and sale agreement for the Property.

6. This Agreement shall not be construed or interpreted as a lease or sublease of the Exclusive Area. Both Occupant and Provider each expressly and knowingly waive any rights either may have under the Landlord Tenant laws of the State of Oregon.

7. Occupant may not assign Occupant's interest in the Exclusive Area or lease or sublease any portion of the Exclusive Area to any third party under any circumstances.

8. If Occupant abandons the Exclusive Area at any time during the term of this Agreement such that Occupant is absent from the Exclusive Area for more than 30 consecutive days without written notice to Provider, this Agreement will automatically terminate and the Provider may enter and take possession of the Exclusive Area. If Occupant abandons the Exclusive Area, any of Occupant's personal property remaining on the Exclusive Area will be deemed to belong to the Provider and Provider may dispose of the personal property as Provider chooses in its sole discretion.

9. Occupant may terminate this Agreement at will. Except as otherwise stated herein, on or before the expiration or earlier termination of this Agreement, Occupant will remove Occupant's personal property from within the Exclusive Area. If any of Occupant's personal property remains on the Exclusive Area at the expiration or earlier termination of this Agreement, such personal property shall be deemed abandoned by Occupant and Provider may dispose of the personal property as Provider chooses in its sole discretion. Occupant has no obligation to remove personal property from areas of the Property outside the Exclusive Area.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first written above.

Occupant: _____
Mary Skelton

Provider: _____
City of Tigard, Oregon

EXHIBIT C

AFTER RECORDING RETURN TO:

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

UNTIL A CHANGE IS REQUESTED

SEND TAX STATEMENTS TO:

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

This space is reserved for recorder's use.

STATUTORY BARGAIN AND SALE DEED

Mary Jane Skelton, Grantor, grants to CITY OF TIGARD, an Oregon municipal corporation, Grantee, the following described real property:

See Exhibit A attached hereto.

The true consideration for this conveyance is \$420,000.00.

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 _____, 2012.

Mary Jane Skelton

STATE OF OREGON)
) ss.
County of _____)

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

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: _____

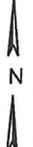
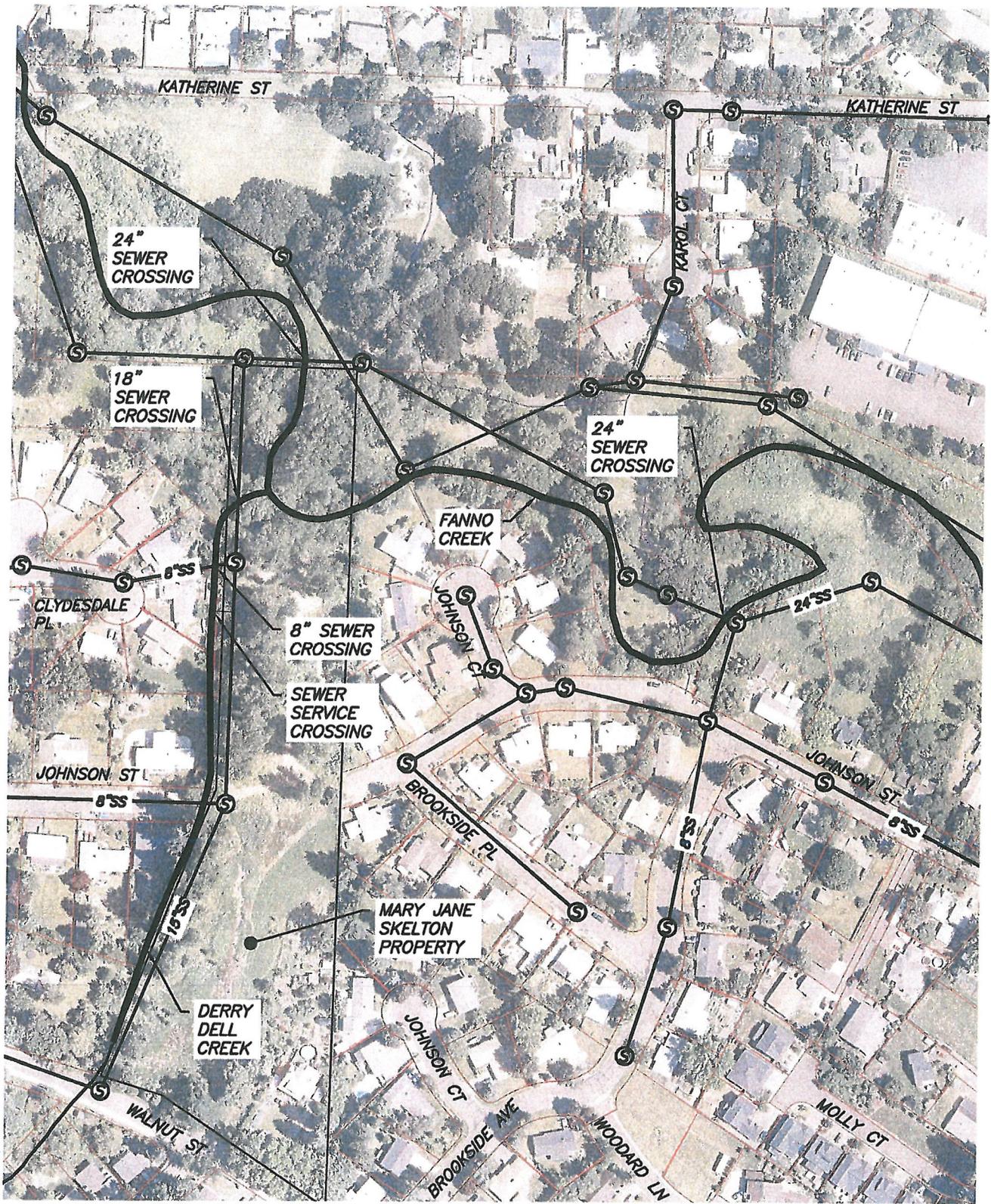
Exhibit A

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

LOT 1, NORTH TIGARDVILLE ADDITION, AMENDED PLAT, EXCEPTING THAT PORTION CONVEYED TO JOSEPH YOCUM, ET UX, BY DEED RECORDED JUNE 23, 1945, IN BOOK 245 PAGE 227, DEED RECORDS, WASHINGTON COUNTY, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, NORTH TIGARDVILLE ADDITION; THENCE NORTH 89 08' EAST, 289.5 FEET ALONG THE NORTH LINE OF LOT 1 TO A PIPE; THENCE SOUTH 0 10' EAST, 612.5 FEET TO A PIPE; THENCE SOUTH 19 53' WEST, 443.55 FEET TO A PIPE IN THE SOUTHERLY LINE OF SAID LOT 1; THENCE NORTH 57 40' WEST, 183.1 FEET ALONG THE SAID SOUTHERLY LINE OF THE SOUTHWEST CORNER OF LOT 1; THENCE NORTH 0 15' WEST, 931.92 FEET TO THE BEGINNING.

NOTE: This legal description was created prior to January 1, 2008.



SCALE: 1"=200 FT

Plotted by: JEFF PECK on Thursday, November 04, 2010 at 9:59:10 AM from the 11x16.5 EXIST CONDITIONS layout tab
 File Name: Path:\1\ENG\PROJECTS\2010-2011_FY_CIP\PROJECTS\DERRY DELL CRK & SS\BASE.DWG



ENGINEERING DIVISION
PUBLIC WORKS DEPARTMENT
 13125 S.W. HALL BLVD.
 TIGARD, OREGON 97223
 VOICE: 503-639-4171
 FAX: 503-624-0752
 WWW.TIGARD-OR.GOV

DERRY DELL CREEK SANITARY SEWER CROSSING EXISTING CONDITIONS (FIGURE 1)

FIGURE
 FIG-1
FILE NO