

**CITY OF TIGARD, OREGON  
CITY CENTER DEVELOPMENT AGENCY  
RESOLUTION NO. 14-04**

**A RESOLUTION APPROVING THE PURCHASE OF THE PROPERTY AT 9110 SW BURNHAM STREET (TAXLOT ID 2S12AC-00202) AND AUTHORIZING THE EXECUTIVE DIRECTOR OF THE CITY CENTER DEVELOPMENT AGENCY TO TAKE ALL NECESSARY ACTION TO COMPLETE THE PROPERTY PURCHASE ON BEHALF OF THE AGENCY**

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WHEREAS, ORS 457.170(3) authorizes the City Center Development Agency (CCDA) to acquire real property pursuant to its approved urban renewal plan; *and*

WHEREAS, the City Center Urban Renewal Plan dated December 6, 2005 authorizes the acquisition and disposition of property with the Urban Renewal Area to support the development of retail, office, housing; and mixed use projects; *and*

WHEREAS, 9110 SW Burnham Street property (Taxlot ID 2S12AC-00202) is a future redevelopment opportunity located in the Urban Renewal Area; *and*

WHEREAS, the City Center Urban Renewal Plan has been amended to include the property acquisition as a project; *and*

WHEREAS, the agency and the property owner have reached a tentative agreement on the purchase/sale of the property. The Agreement is specifically conditioned on the approval of the Board of the City Center Development Agency.

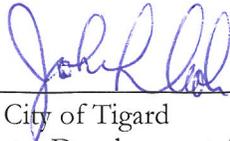
NOW, THEREFORE, BE IT RESOLVED, by the Board of the Tigard City Center Development Agency that:

SECTION 1:           The Board of City Center Development Agency agrees to the terms of the Purchase Agreement and Escrow Instructions, (Exhibit A), including the purchase price of \$1.3 million.

SECTION 2:           The Board of City Center Development Agency authorizes the Executive Director of the CCDA to take all necessary action to complete purchase of the property at 9110 SW Burnham Street on behalf of the agency. This includes, but is not limited to, execution of the Purchase Agreement and Escrow Instructions, including Amendments, and closing documents.

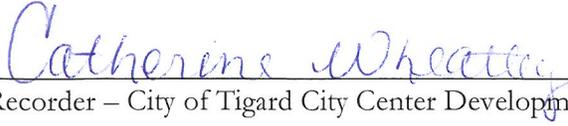
SECTION 3:           This resolution is effective immediately upon passage.

PASSED:            This 6<sup>th</sup> day of May, 2014.



Chair – City of Tigard  
City Center Development Agency

ATTEST:



Recorder – City of Tigard City Center Development Agency

Exhibit A  
to CCOA  
Resolution No.  
14-04

**PURCHASE AGREEMENT  
AND  
ESCROW INSTRUCTIONS**

**BETWEEN:** Prudence M. Miller Trust U/T/A dated (‘‘Seller’’)  
March 16, 2004

**And:** City of Tigard, (‘‘Purchaser’’)  
An Oregon Municipal corporation

**DATED:** Jan 10, 2014 (‘‘Effective Date’’)

**RECITALS**

**A.** Seller owns certain real property and the improvements thereon consisting of approximately 1.18 acres of land developed with an approximate 15,000 square foot warehouse/office building, with an address of 9110 SW Burnham Street, located in the city of Tigard, county of Washington, state of Oregon, which is more fully described on the attached and incorporated **Exhibit A**, together with Seller’s lessor interest in Leases of 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 described in this Purchase Agreement and Escrow Instructions (‘‘Agreement’’), the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as set forth below.

**ARTICLE 1  
DEFINED TERMS**

**1.1 Additional Earnest Money.** The term ‘‘Additional Earnest Money’’ means the cash payable to Seller pursuant to Section 2.2 of this Agreement after expiration of the Contingency Period in the amount of Fifty Thousand Dollars (\$50,000.00).

**1.2 Business Day.** The term ‘‘Business Day’’ means any Monday through Friday on which business is transacted by federal banks in Washington County, Oregon.

**1.3 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.

**1.4 Closing.** The process described in Article 10 of this Agreement.

**1.5 Closing Date.** Closing shall occur on the date that is thirty (30) days after the expiration of the Contingency Period, unless extended by the Purchaser pursuant to Section 4.6

or Seller pursuant to Section 10.2 of this Agreement, or on such other date as the parties may agree upon in writing.

1.6 **Contingency Period.** As defined in Section 4.

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

1.8 **Earnest Money.** The cash payable to Seller pursuant to Section 2.2 of this Agreement in the amount of Thirty Thousand and No/100 Dollars (\$30,000.00), plus all interest which accrues thereon.

1.9 **Effective Date.** The date last executed by the parties as shown on the signature page.

1.10 **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.

1.11 **Escrow Holder.** Lawyer's Title, located at 1120 NW Couch Street, Portland, Oregon, Phone: (503) 220-0015, Attn: Yvonne Inserra (e-mail: yvonne.inserra@ltic.com).

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

1.13 **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.

1.14 **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, and Seller's lessor's interest existing in leases of the Property, which will be transferred.

1.15 **Property Documents.** Any and all documents in Seller's possession or control relating to the Property, including without limitation, conditional use permits, land use approvals, land use applications, permits, licenses, leases and related documents, any agreements related to the Property that will survive Closing, maps, development agreements, surveys and studies relating to the Property prepared by third parties, but excluding (I) documents which are no longer in effect (II) tax documents, (III) documents subject to attorney client privilege, and (IV) documents relating to potential transactions which have not occurred and (V) appraisals.

1.16 **Purchase Price.** Cash in the amount of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00).

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 three (3) Business Days after the opening of Escrow as set forth in Section 3.1, Purchaser shall deposit the Earnest Money into Escrow. The Earnest Money shall be refundable to Buyer until the earlier of (1) the expiration of the Contingency Period or (II) the date the conditions precedent to Closing set forth in Section 4 of this Agreement are waived in writing by Purchaser; thereafter, the Earnest Money shall not be refundable except (i) in the event of a Seller default or (ii) if at Closing Seller shall have failed to cure a disapproved exception to title which Seller agreed to cure as provided in Section 4.6. Within three Business Days after expiration of the Contingency Period, Purchaser shall deposit the Additional Earnest Money into Escrow. The Additional Earnest Money shall not be refundable except (i) in the event of a Seller default or (ii) if at Closing Seller shall have failed to cure a disapproved exception to title as provided in Section 4.6 which Seller agreed to cure. Escrow Holder shall hold the Earnest Money and the Additional Earnest Money in an interest-bearing account that is FDIC insured, unless the parties approve holding the Earnest Money and the Additional Earnest Money in a non-interest bearing account. The Earnest Money and the Additional 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 and the Additional 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 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.** At or before Closing, Purchaser shall deposit into Escrow (i) the Earnest Money, (ii) the Additional Earnest Money, (iii) the balance of the

Purchase Price, (iii) an executed and acknowledged acceptance of the Deed, (iv) an executed counterpart of the Assignment and Assumption of the Lease in the form of Exhibit 3.2 (“Assignment and Assumption”), duly executed by Purchaser, 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 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 Assignment and Assumption; 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 to Purchaser. During the Contingency Period (as defined in Section 4.2 below), 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 sixty (60) days after the Effective Date (the “Contingency Period”), unless extended by Purchaser as set forth below.

4.2.1 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.

4.2.2 Purchaser shall have the right, at no cost, to extend the Contingency Period two (2) times for a period of thirty (30) days each, upon ten (10) days prior written notice to the Seller stating the reasonable need for the extension.

4.2.3 Purchaser shall have the right to enter onto the Property, upon forty-eight (48) hour prior notice to Seller, to conduct any and all tests, investigations, and inspections deemed necessary by Purchaser. Seller shall have the right to be present at the inspections(s).

4.2.4 Purchaser shall in its prior notification to Seller, state whether any invasive testing is to occur during Purchasers entry on the Property and if so, state the nature of such invasive activity. If there are invasive activities, Seller may, prior to the inspection date and time, provide Purchaser with reasonable conditions of approval of the invasive activities including immediate restoration of the Property or improvements thereon to substantially the condition the Property or improvements were in prior to Purchaser’s performance of any inspections or work that is invasive once the inspections and work has been completed. Seller may, if it determines that such invasive testing will negatively impact the nature of the existing Tenant’s business and/or is unable to reasonably coordinate Tenant’s cooperation, refuse to

allow such testing without liability and in such event Purchaser may terminate the Agreement by written notice and in such event the Earnest Money shall be promptly returned to Purchaser and neither party shall have any further obligation or liability to the other except as otherwise explicitly set forth in this Agreement.

4.2.5 Such investigations and/or studies shall be conducted by Purchaser at its sole expense.

4.2.6 Within the limits of the Oregon Tort Claims Act and the Oregon Constitution, 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. This agreement to indemnify, hold harmless and defend Seller shall survive Closing or other termination of this Agreement.

4.2.7 In the event Purchaser elects not to close on the Property, upon such determination and termination of the Agreement, Purchaser agrees it will provide to Seller copies of all written reports resulting from any and all investigations conducted by the Purchaser during the Contingency Period, within five (5) days of termination of this Agreement. This provision will survive the Closing or termination of the Agreement.

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, as it may be extended, 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 (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. Any notice of disapproval shall specify which title exceptions are unacceptable (the "Unacceptable Exceptions). The matters disclosed in the Preliminary Report to which Seller does not object, along with the standard printed exceptions on a form of title insurance policy, shall be the "Permitted Exceptions" and included as exceptions in the Title Policy, defined in Section 4.7, along with any Unacceptable Exceptions which, pursuant to Sections 4.5 and 4.6, become Permitted Exceptions.

4.5 **Right to Cure Disapproval of Preliminary Report.** If Purchaser delivers notice of disapproval pursuant to Section 4.4 above, Seller shall notify Purchaser in writing (a

“Response Notice”) within five (5) days thereafter, whether Seller will agree to remove or otherwise cure, to Purchaser’s reasonable satisfaction, any Unacceptable Exception(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). If Seller fails to timely provide a Response Notice, Seller shall be deemed to have elected not to cure any Unacceptable Exceptions. If Seller fails to agree to remove an Unacceptable Exception, Purchaser shall elect, by notice to Seller within five (5) days after the Response Notice (or, if no Response Notice is provided, within five (5) days after the Response Notice was due to either (I) terminate this Agreement or (II) waive Purchaser’s objection and accept title subject to the Unacceptable Exceptions which Seller has not agreed to cure (in which event such Unacceptable Exceptions shall be Permitted Exceptions). Failure of Purchaser to timely so elect shall be deemed an election to waive such Unacceptable Exceptions, in which event such Unacceptable Exceptions shall become Permitted Exceptions.

**4.6 Failure to Cure Disapproval of Preliminary Report.** If Seller, in its Response Notice, agrees to cure an Unacceptable Exception and thereafter fails to cure such Unacceptable Exception prior to Closing, Purchaser shall have the right to (i) terminate this Agreement and receive a full refund of the Earnest Money and Additional Earnest Money, (ii) suspend performance of its obligations under this Agreement at no cost to Purchaser and extend the Closing Date until that removal of the Unacceptable Exception has occurred (but no more than 45 days) or (iii) waive in writing its prior disapproval of such exception and accept title subject to such previously disapproved item, by delivering written notice of Purchaser’s election to Seller prior to Closing in which case such Unacceptable Exceptions will be Permitted Exceptions.

**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 (I) that Purchaser pays any additional costs associated with issuance of such policy and pursuant to section 8.4 of this Agreement, and (II) Seller shall not be required to indemnify the title company to induce it to issue such extended coverage or endorsements.

**4.8 Council Approval.** This Agreement is specifically conditioned on approval by the Tigard City Council before the end of the Contingency Period. If the Tigard City Council has not approved this Agreement on or before the expiration of the Contingency Period, 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.

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

**4.9.1 Leases.** Within ten (10) days of the Effective Date, Seller will provide to Purchaser copies of all current leases affecting the Property, copies of any related documents other than leases which provide for or discuss any matters affecting the occupancy of the

Property by the tenants who have any right now or in the future with respect to the Premises, 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 Contingency Period if Purchaser shall determine in the exercise of its sole discretion that the documents described in Section 4.1 or the Lease Documents are not satisfactory.

4.10 **Contingency Failure.** If Purchaser fails to notify Seller in writing by the end of the Contingency Period that the conditions set forth in this Article 4 have been 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 provided that Purchaser may not terminate this Agreement pursuant to this Section 5.1 if Purchaser is the condemning government entity.

5.2 **Leases.** Effective the Closing Date, Seller will assign to Purchaser the Lease between Seller and Ferguson Enterprises, Inc. Any other leases will be terminated before Closing.

5.3 **Non-Remonstrance.** After Closing, and subject to Closing occurring, Seller agrees, for a period of ten (10) years after the date of expiration of the last term (including extensions) of any lease in effect as of the Closing Date, not to object to or remonstrate against any land use or other governmental application process or proceedings in which Purchaser or any of its agencies is the applicant or otherwise involved, as such process may relate to or be associated with any change, improvement or development of the Property. The provisions of this Section 5.3 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, the Preliminary Report, and the Property Documents. Seller agrees to transfer to Purchaser, via Statutory Special Warranty Deed in the form of Exhibit 'B', the Property, subject only to the Permitted Exceptions.

6.1.3 **Property Documents, Lease Documents; No Defaults.** To Seller's knowledge, except as disclosed in the Property Documents, including lease documents delivered by Seller to Purchaser are true, correct and complete copies and there are no other documents or instruments, in Seller's possession and control, that would constitute Property 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.

6.1.4 **Pending Transactions, Suits or Proceedings.** To Seller's knowledge, there are no suits, proceedings, litigation, 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 investigation or inquiry, except as disclosed in the Property Documents, there are no latent defects or conditions on or about the Property that would cause injury or damage to persons or property, or that would have a material adverse effect on lawful use 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 investigation or inquiry, except as disclosed in the Property Documents, 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 in violation of Environmental Laws. To Seller's knowledge, without investigation or inquiry, except as disclosed in the Property Documents, no other party or person has used, stored, transported, generated, disposed of or

release on, within, under, about or from the Property any Hazardous Materials in violation of Environmental Laws. Without limiting the foregoing, neither Seller nor, to Seller's knowledge, any other party, has installed, operated or maintained any underground storage tanks on or adjacent to the Property, and to Seller's knowledge, without investigation or inquiry, except as disclosed in the Property Documents, the Property is not now in violation of, and is not currently under investigation for the violation of, any Environmental Laws. To Seller's knowledge without investigation or inquiry, except as disclosed in the Property Documents, there is no asbestos or lead paint incorporated into the improvements 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.** To Seller's knowledge, the Property has legal and physical access to a publicly dedicated street or road. Except as reflected in the Property Documents, there are no leases or tenancies in effect on the Property and possession thereof can and will be delivered to Purchaser on Closing.

**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, which will remain unpaid at close of escrow or upon which a lien may be filed, excepting work, labor, or materials for which the tenant under the Lease Documents is responsible.

**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, 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.

**6.1.11.2 No Alterations.** Seller will not make any material alterations to the Property prior to the Closing, provided nothing herein prohibits alterations made by a tenant permitted by such tenant's Lease.

**6.1.11.3 Condition of the Property Through Closing.** Seller shall, between the Effective Date and the Closing Date: (i) maintain the Property in substantially the same condition as it was on the Effective Date, with no tree cutting, timber harvesting or altering of the Property in any way, subject to casualty and to alterations made by a tenant permitted by such tenant's Lease, (ii) keep all existing insurance policies affecting the Property

in full force and effect, (iii) make all regular payments of interest and principal on any existing financing, (iv) pay all real property taxes and assessments against the Property prior to delinquency, (v) comply with all government regulations, and (vi) keep Purchaser timely advised of any repair or improvement which is known by Seller.

#### ARTICLE 7 AS-IS SALE

7.1 **AS-IS Sale.** The Property is being sold to, and accepted by, Purchaser at Closing in its then-present condition, AS-IS, WHERE IS, WITH ALL FAULTS, and without any warranty whatsoever, express or implied, except for the representations and warranties set forth in Section 6.1 and in the Deed to be delivered at Closing. Purchaser acknowledges that (a) it is purchasing the Property AS-IS, WHERE IS, WITH ALL FAULTS; (b) it will have made or performed any and all tests, surveys, or other examinations of the Property as Purchaser deems necessary prior to the end of the Contingency Period; and (c) it shall rely solely on its own inspection, examination, and evaluation of the Property in assessing and determining the condition of the Property. Seller and Seller's agents have not made, are not now making, and specifically hereby disclaim, any and all warranties and representations of any kind, express or implied, oral or written, with respect to the Property, except for any representation or warranty made in Section 6.1 or any warranty of title to be contained in the Deed to be delivered at Closing. The provisions of this Section 7.1 shall survive Closing.

#### ARTICLE 8 PURCHASER'S REPRESENTATIONS AND WARRANTIES

8.1 **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:

8.1.1 **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.

8.1.2 **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 9  
PRORATED FEES AND COSTS

9.1 **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, to the extent not the responsibility of the tenant under the Lease. 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.

9.2 **Seller's Fees and Costs.** Seller shall pay: (i) the costs for the Title Policy (but not extended coverage or endorsements requested by Purchaser; (ii) Seller's recording charges; (iii) one-half of Escrow Holder's escrow fee; and (iv) one-half of any transfer taxes.

9.3 **Purchaser's Fees and Costs.** Purchaser shall pay (i) one-half of the Escrow Holder's escrow fee, (ii) Purchaser's recording charges; (iii) if requested by Purchaser, any extended coverage and endorsements for the Title Policy; and (iv) one-half of any transfer taxes.

9.4 **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 10  
CLOSING

10.1 **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:

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

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

10.1.3 **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.

10.1.4 **Assignment and Assumption Document.** The parties shall have executed the Assignment and Assumption attached as Exhibit 3.2.

10.2 **Closing.** Closing shall occur on the date that is thirty (30) days after expiration of the Contingency Period except that, Seller may, at Seller's sole election, extend the Closing Date up to four (4) months in order to affect a tax deferred exchange pursuant to Section 14.17, by providing Purchaser with notice of election to extend the Closing Date at least ten (10) days prior to the Closing Date. The parties may also agree in writing to another Closing Date.

ARTICLE 11  
RECORDATION AND DISTRIBUTION OF FUNDS AND DOCUMENTS

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

11.2 **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.

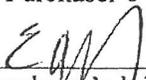
11.3 **Payment of Funds at Closing.** Escrow Holder shall deliver at Closing all amounts as set forth in the final, approved closing statement.

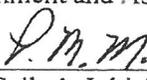
11.4 **Original Documents.** Escrow Holder shall at Closing deliver to Purchaser the Original Assignment and Assumption.

ARTICLE 12  
DEFAULT AND REMEDIES

12.1 **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.

12.2 **Seller's Remedies.** In the event of Purchaser's default under this Agreement, the Earnest Money, and Additional Earnest Money if Purchaser's default occurs after expiration of the Contingency Period, 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. Notwithstanding the foregoing, this Section 12.2 does not waive or limit Seller's right to recover damages for Purchaser's breach of the Assignment and Assumption.

  
\_\_\_\_\_  
Purchaser's Initials

  
\_\_\_\_\_  
Seller's Initials

14.7 **Real Estate Brokerage Commission.** Seller has engaged Don Drake of Melvin Mark Brokerage Company (MMBC) and Purchaser has engaged Neal Brown of Meadows Group, Inc. (MGI) Seller will pay a brokerage fee to MMBC and MGI shall share in the brokerage fee paid by Seller in accordance with their separate agreement. Except for MMBC and MGI, whose fees shall be paid by Seller, 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.

14.8 **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: Prudence M. Miller Trust U/T/A dated March 16, 2004  
4220 SW Greenleaf Drive  
Portland, OR 97221

With a copy to:

Mark Norby  
Stoel Rives LLP  
900 SW Fifth Ave.  
Suite 2600  
Portland, OR 97204  
Fax: (503) 220-2480

and a copy to:

Melvin Mark Brokerage Company  
Attn: Don Drake  
111 SW Columbia  
Suite 1380  
Portland, OR 97201  
Fax: (503) 546-4727

If to Purchaser: City of Tigard  
Attn: Marty Wine, City Manager  
City Hall  
13125 SW Hall Blvd

Tigard, OR 97223  
Fax: (503) 684-7297

with a copy to : Jordan Ramis PC  
Two Centerpointe Drive, 6th Floor  
Lake Oswego, OR 97035  
Fax: (503) 598-7373

**14.9 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.

**14.10 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.

**14.11 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.

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

**14.13 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.

**14.14 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.

14.15 **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.

14.16 **Calculation of Time.** Unless specified otherwise, 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.

14.17 **1031 Exchange.** Purchaser agrees to cooperate with Seller (with no extra cost to Purchaser) should Seller elect to sell the Property in connection with an exchange under Internal Revenue Code Section 1031. Seller's contemplated exchange shall not impose upon Purchaser any additional liability or financial obligation, and Purchaser shall not be obligated to execute any note, contract, deed, or other document providing for any personal liability which would survive the exchange, nor shall Purchaser be obligated to take title to any property other than the Property in connection with the exchange. Such exchange shall not release, reduce or diminish Seller's obligations or liabilities under this Agreement. Seller agrees to hold Purchaser harmless from any liability that might arise from such exchange. This Agreement and the Closing hereunder are not contingent upon Seller's ability to identify or acquire a suitable exchange property or effectuate an exchange and shall not delay the Closing except for Seller's right to extend closing as provided in Section 10.2. In the event any exchange contemplated by Seller should fail to occur for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.

14.18 **Confidentiality.** To the extent allowed under the law, including the Oregon Public Records Law, neither Seller nor Purchaser will disclose the terms and conditions of this Agreement to any person or entity other than as may be absolutely necessary to carry out the provisions and intent of this Agreement. Notwithstanding the foregoing, Purchaser or Seller may provide a copy of this Agreement on a confidential basis only to any of its partners, directors, shareholders, employees, accountants, attorneys, lenders, or to a third party in the event Purchaser or Seller is required by law to provide a copy to such party.

14.19 **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.

14.20 **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

Prudence M. Miller Trust U/T/A dated March 16, 2004

City of Tigard, an Oregon municipal corporation

By: Prudence M. Miller  
Name: Prudence M. Miller  
Its: Trustee

By: Elizabeth Newton  
Name: Elizabeth Newton  
Its: Assistant City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Exhibit A - Property  
Exhibit B - Deed  
Exhibit C - Assignment of Lease

**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: \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A



EXHIBIT A

Legal Description

A tract of land being a portion of Lot 3, BURNHAM TRACT, a duly recorded subdivision in Washington County plat records, said land being located in the Northeast quarter of Section 2, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington, State of Oregon, being further described as follows:

Beginning at the most Easterly corner of said Lot 3, BURNHAM TRACT, being a point on the centerline of S.W. Burnham Road; thence S45°06'43"W, along the Southeasterly line of said Lot 3, a distance of 30.00 feet to a point on the Southwesterly right-of-way line of said S.W. Burnham Road; thence S45°06'43"W, continuing on the Southeasterly line of said Lot 3, a distance of 314.41 feet to the Southwesterly line of a 30.00 foot easement recorded in Washington County Deed Book 890 Page 753; thence N44°28'10"W, 15.00 feet Southwesterly of, and parallel to, an existing sewer line, a distance of 190.74 feet to a point on the Northwesterly line of said Lot 3; thence N51°56'00"E, along the Northwesterly line of said Lot 3, a distance of 312.87 feet to a point on said Southwesterly right-of-way line of said S.W. Burnham Road; thence continuing N51°56'00"E, a distance of 30.27 feet to the most Northerly corner of said Lot 3, being a point on the centerline of said S.W. Burnham Road; thence S45°46'00"E, along said centerline, a distance of 150.00 feet to the point of beginning.

Excepting Therefrom that portion of said Lot dedicated to the public for street, road and utility purposes in document recorded October 13, 1978 in Book 1118, Page 567.

And Further Excepting Therefrom that portion of said Lot granted and dedicated to the City of Tigard for street and utility purposes in document recorded January 8, 1980, as Recorder's Number 80000717.

The foregoing property is the same property which is occasionally described as:

Lot 3, BURNHAM TRACT, in the City of Tigard, Washington County, Oregon.

Excepting Therefrom that portion of said Lot dedicated to the public for street, road and utility purposes in document recorded October 13, 1976, page 567.

And Further Excepting Therefrom that portion of said Lot granted and dedicated to the City of Tigard for street and utility purposes in document recorded January 8, 1980, Recorder's No. 80000717.

And Further Excepting Therefrom that portion of said Lot conveyed to the City of Tigard by deed recorded August 6, 1980, Recorder's No. 80026999.

And Further Excepting Therefrom that portion of said Lot conveyed to Gerald L. Cach and Joan L. Cach, husband and wife, by deed recorded August 11, 1980, Recorder's No. 80027467.

PortInId1-2140012.1 00999999-00001

Title Data, Inc. FA POR10411 WN 2004028753.003

EXHIBIT B

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 SPECIAL WARRANTY DEED

Prudence M. Miller Trust U/T/A dated March 16, 2004, Grantor, whose address is 4220 SW Green Leaf Drive, Portland, OR 97221, conveys and warrants to City of Tigard, an Oregon municipal corporation, Grantee, whose address is 13125 SW Hall Blvd, Tigard, OR 97223 the following described real property free of encumbrances created or suffered by Grantor except as specifically set forth herein:

See Exhibit A attached hereto.

The true consideration for this conveyance is One Million Three Hundred Thousand and No/100 Dollars. 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 \_\_\_\_\_, 2014.

GRANTOR  
Prudence M. Miller Trust U/T/A dated  
March 16, 2004

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON        )  
                                  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2014 by \_\_\_\_\_ as \_\_\_\_\_ of the Prudence M. Miller Trust U/T/A dated March 16, 2004.

\_\_\_\_\_  
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 \_\_\_\_\_, 2014, by \_\_\_\_\_ as \_\_\_\_\_ of the City of Tigard, an Oregon municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

Exhibit A  
[to be provided by Escrow Holder]

Exhibit B  
[to be provided after review of preliminary report]

Exhibit 3.2  
**ASSIGNMENT OF LEASE**

THIS Assignment and Assumption of Lease ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2014, between Prudence M. Miller Trust U/T/A dated March 16, 2004 ("Assignor") and the City of Tigard, an Oregon municipal corporation ("Assignee").

**RECITALS**

- A. Assignor owns the fee interest in those certain premises described on Exhibit A attached and incorporated hereto (the "Premises").
- B. A portion of the Premises are leased pursuant to the lease attached and incorporated as Exhibit B (the "Lease"). Assignor holds all right, title and interest in and to the lessor's interest under the Lease.
- C. Pursuant to that certain Purchase Agreement and Escrow Instructions dated \_\_\_\_\_, 2014, between Assignor and Assignee (the "Agreement"), Assignor has agreed to sell the Premises to Assignee and in connection with the sale has agreed to assign the Lease to Assignee and Assignee has agreed to assume the Lease.

**AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**1. Assignment.**

Effective as of the Effective Date of this Assignment, Assignor hereby transfers, sets over and assigns to Assignee all right, title and interest of Assignor in and to the Lease, TO HAVE AND TO HOLD the same to Assignee, its successors and assigns forever; SUBJECT, HOWEVER, to each and every provision of the Lease and as hereinafter provided.

**2. Acceptance of Assignment.**

Effective as of the Effective Date, Assignee accepts the within assignment and agrees to perform and discharge all of the covenants, terms, conditions and provisions to be kept, observed and performed by Assignor as lessor under the Lease.

**3. Assignor's Indemnity of Assignee.**

Assignor hereby agrees to defend and indemnify Assignee, its directors, officers, employees, agents, representatives, successors and assigns, and each of them, from and against any and all claims, suits, demands, causes of action, actions, liabilities, losses, damages, costs

and expenses (including reasonable attorney's fees) arising out of or resulting from any breach or default committed or alleged to have been committed by Assignor as lessor under the Lease prior to the Effective Date.

**4. Assignee's Indemnity of Assignor.**

Within the limits of the Oregon Tort Claims Act and Oregon Constitution, Assignee hereby agrees to defend and indemnify Assignor, and its respective directors, officers, employees, agents, representatives, successors and assigns, and each of them, from and against any and all claims, suits, demands, causes of action, actions, liabilities, losses, damages, costs and expenses (including reasonable attorney's fees) arising out of or resulting from any breach or default committed or alleged to have been committed by Assignee, its successors or assigns, as the lessor under the Lease from and after the Effective Date.

**5. Effective Date.**

This Assignment shall be effective as of the date of recording of the deed conveying title to the Premises to Assignee (the "Effective Date").

**6. Counterparts.**

This Assignment may be executed in one or more counterparts by the parties hereto. All Counterparts shall be construed together and shall constitute one agreement.

**7. Binding Effect.**

This Assignment shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed on behalf of each of them respectively, by their respective officers thereunto duly authorized, in multiple originals, all as of the day and year first above written.

**ASSIGNOR**

Prudence M. Miller Trust U/T/A dated March 16, 2004

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE**

City of Tigard, an Oregon municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A

Premises

EXHIBIT B

The Lease

**First Addendum Dated February 13, 2014 to Purchase Agreement  
And Escrow Instructions (the "Agreement")**

**Dated January 10, 2014**

**By & Between**

**Prudence M. Miller Trust U/T/A March 16, 2004 (Seller)**

**And**

**City of Tigard an Oregon Municipal Corporation (Purchaser)**

Purchaser and Seller by their signature below agree to replace the Legal Description in Exhibit A and the Legal Description to be attached as Exhibit A to the Special Warranty Deed in Exhibit B of the Agreement and any other such documents relating to the sale of the property located at 9110 SW Burnham St. in the City of Tigard, Washington County, Oregon, so that such documents conform to the Legal Description provided in the Preliminary Title Report dated January 13, 2014 by Lawyers Title File No. 32f0003803. Said Legal Description being as follows:

**"EXHIBIT A"**

A tract of land being a portion of Lot 3, BURNHAM TRACT, a duly recorded subdivision in Washington County Plat Records, said land being located in the Northeast quarter of Section 2, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, being further described as follows:

Beginning at the most Easterly corner of said Lot 3, BURNHAM TRACT, being a point on the centerline of SW Burnham Road; thence South 45°06'43" West, along the Southeasterly line of said Lot 3, a distance of 30.00 feet to a point on the Southwesterly right-of-way line of said SW Burnham Road; thence South 45°06'43" West, continuing on the Southeasterly line of said Lot 3, a distance of 314.41 feet to the Southwesterly line of a 30.00 foot easement recorded in Washington County Deed Book 890, Page 753; thence North 44°28'10" West, 15.00 feet Southwesterly of, and parallel to, an existing sewer line, a distance of 190.74 feet to a point on the Northwesterly line of said Lot 3; thence North 51°56'00" East, along the Northwesterly line of said Lot 3, a distance of 312.87 feet to a point on said Southwesterly right-of-way line of said SW Burnham Road; thence continuing North 51°56'00" East, a distance of 30.27 feet to the most Northerly corner of said Lot 3, being a point on the centerline of said SW Burnham Road; thence South 45°46'00" East, along said centerline, a distance of 150.00 feet to the point of beginning.

**SELLER**

Prudence M. Miller Trust U/T/A dated March 16, 2004

By: Prudence M. Miller

Name: Prudence M. Miller

Its: Trustee

**PURCHASER**

City of Tigard, an Oregon municipal corporation

By: Elizabeth Newton

Name: Elizabeth Newton

Its: asst. city Manager

## SECOND AMENDMENT TO PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

This Second Amendment to Purchase Agreement and Escrow Instructions (“**Amendment**”) is made effective \_\_\_\_\_, 2014 (“**Effective Date**”) by and among the City Center Development Agency, the Urban Renewal Agency of the City of Tigard (“**Agency**”), City of Tigard, an Oregon municipal corporation (“**Original Purchaser**”), and the Prudence M. Miller Trust (U/T/A dated March 16, 2004) (“**Seller**”).

### RECITALS

**A.** By Ordinance No. 80-05 (1989) the City of Tigard established the Agency as a separate entity authorized to exercise all of the powers available to an Agency under ORS chapter 457, and designated the Tigard City Council as the governing body for the Agency.

**B.** Original Purchaser and Seller entered into a Purchase Agreement and Escrow Instructions dated January 10, 2014, and the Exhibits thereto (the “**Original Agreement**”), as amended by the First Addendum to Purchase Agreement and Escrow Instructions dated February 13, 2014 (collectively, the “**Agreement**”).

**C.** In order to better effectuate the City Center Development Plan, Original Purchaser and Agency have determined that the property that is the subject of the Agreement must be acquired by the Agency rather than the Original Purchaser, and Seller is willing to sell to Agency on the terms and conditions set forth therein.

### AGREEMENT

**NOW, THEREFORE**, the parties agree as follows:

1. Original Purchaser hereby assigns its interest in the Agreement, and in the Earnest Money deposited thereunder, to Agency.

2. The undersigned hereby amend the Agreement to replace the City of Tigard as Purchaser with the “City Center Development Agency, the Urban Renewal Agency of the City of Tigard”, and more particularly as follows:

(a) On the first page, in the third line, delete the words “City of Tigard” and insert “City Center Development Agency, the Urban Renewal Agency of the City of Tigard, an ORS Chapter 457 urban renewal agency” (Agency) as the Purchaser.

(b) In Section 4.8, replace the term “Tigard City Council” with “Board of the City Center Development Agency” throughout the Section.

(c) In Section 14.8, delete the reference to “City Manager” and insert “Executive Director”.

(d) In the signature block, delete the phrase, “City of Tigard, an Oregon municipal corporation” and insert, “City Center Development Agency, the Urban Renewal Agency of the City of Tigard, an ORS chapter 457 urban renewal agency.”

(e) Replace Exhibit ‘B’, the Statutory Warranty Deed, with the attached revised Exhibit ‘B’, Statutory Warranty Deed naming Agency as the Grantee.

(f) Replace Exhibit 3.3, Assignment of Lease, with the attached revised Exhibit 3.3, Assignment of Lease naming Agency as the Grantee.

3. Agency acknowledges that Original Purchaser previously approved the Schedule B title exceptions appearing in Title Report No. 32F0003803 dated as of January 8, 2014 issued by Lawyer’s Title, and that Agency is bound by such approval.

4. Except as modified by this Amendment, all covenants, agreements, terms, and conditions of the Agreement remain in full force and effect. Agency hereby ratifies each and every act and notification of Original Purchaser to-date under the Agreement and Seller acknowledges such acts and notifications as those of Agency.

5. In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall control.

6. This Amendment may be executed in counterparts, by exchange of facsimile or electronic copies of executed signature pages, or both, with the same effect as if they were a single original instrument bearing original signatures.

**City of Tigard**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Agency**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Seller**

**Prudence M. Miller Trust U/T/A  
dated May 16, 2014**

By: \_\_\_\_\_  
Prudence M. Miller, Trustee

EXHIBIT B

AFTER RECORDING RETURN TO:  
City Center Development Agency  
13125 SW Hall Blvd  
Tigard OR 97223

UNTIL A CHANGE IS REQUESTED  
SEND TAX STATEMENTS TO:  
City Center Development Agency  
13125 SW Hall Blvd  
Tigard OR 97223

*This space is reserved for recorder's use.*

STATUTORY SPECIAL WARRANTY DEED

Prudence M. Miller Trust U/T/A dated March 16, 2004, Grantor, whose address is 4220 SW Green Leaf Drive, Portland, OR 97221, conveys and warrants to the City Center Development Agency, the Urban Renewal Agency of the City of Tigard, Grantee, whose address is 13125 SW Hall Blvd, Tigard, OR 97223 the following described real property free of encumbrances created or suffered by Grantor except as specifically set forth herein:

See Exhibit A attached hereto.

The true consideration for this conveyance is One Million Three Hundred Thousand and No/100 Dollars. 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 \_\_\_\_\_, 2014.

GRANTOR  
Prudence M. Miller Trust U/T/A dated  
March 16, 2004

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2014 by  
\_\_\_\_\_ as \_\_\_\_\_ of the Prudence M. Miller Trust U/T/A dated March 16, 2004.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

ACCEPTED:

GRANTEE

City Center Development Agency

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2014, by  
\_\_\_\_\_ as \_\_\_\_\_ of the City Center Development Agency.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

Exhibit A  
[to be provided by Escrow Holder]

Exhibit B  
[to be provided after review of preliminary report]

Exhibit 3.2  
**ASSIGNMENT OF LEASE**

THIS Assignment and Assumption of Lease (“Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, 2014, between Prudence M. Miller Trust U/T/A dated March 16, 2004 (“Assignor”) and the City Center Development Agency, the Urban Renewal Agency of the City of Tigard (“Assignee”).

**RECITALS**

A. Assignor owns the fee interest in those certain premises described on Exhibit A attached and incorporated hereto (the “Premises”).

B. A portion of the Premises are leased pursuant to the lease attached and incorporated as Exhibit B (the “Lease”). Assignor holds all right, title and interest in and to the lessor’s interest under the Lease.

C. Pursuant to that certain Purchase Agreement and Escrow Instructions dated January 10, 2014, between Assignor and Assignee (the “Agreement”), Assignor has agreed to sell the Premises to Assignee and in connection with the sale has agreed to assign the Lease to Assignee and Assignee has agreed to assume the Lease.

**AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**1. Assignment.**

Effective as of the Effective Date of this Assignment, Assignor hereby transfers, sets over and assigns to Assignee all right, title and interest of Assignor in and to the Lease, TO HAVE AND TO HOLD the same to Assignee, its successors and assigns forever; SUBJECT , HOWEVER, to each and every provision of the Lease and as hereinafter provided.

**2. Acceptance of Assignment.**

Effective as of the Effective Date, Assignee accepts the within assignment and agrees to perform and discharge all of the covenants, terms, conditions and provisions to be kept, observed and performed by Assignor as lessor under the Lease.

**3. Assignor’s Indemnity of Assignee.**

Assignor hereby agrees to defend and indemnify Assignee, its directors, officers, employees, agents, representatives, successors and assigns, and each of them, from and against any and all claims, suits, demands, causes of action, actions, liabilities, losses, damages, costs and expenses (including reasonable attorney’s fees) arising out of or resulting from any breach or default committed or alleged to have been committed by Assignor as lessor under the Lease prior to the Effective Date.

**4. Assignee's Indemnity of Assignor.**

Within the limits of the Oregon Tort Claims Act and Oregon Constitution, Assignee hereby agrees to defend and indemnify Assignor, and its respective directors, officers, employees, agents, representatives, successors and assigns, and each of them, from and against any and all claims, suits, demands, causes of action, actions, liabilities, losses, damages, costs and expenses (including reasonable attorney's fees) arising out of or resulting from any breach or default committed or alleged to have been committed by Assignee, its successors or assigns, as the lessor under the Lease from and after the Effective Date.

**5. Effective Date.**

This Assignment shall be effective as of the date of recording of the deed conveying title to the Premises to Assignee (the "Effective Date").

**6. Counterparts.**

This Assignment may be executed in one or more counterparts by the parties hereto. All Counterparts shall be construed together and shall constitute one agreement.

**7. Binding Effect.**

This Assignment shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed on behalf of each of them respectively, by their respective officers thereunto duly authorized, in multiple originals, all as of the day and year first above written.

**ASSIGNOR**

**ASSIGNEE**

Prudence M. Miller Trust U/T/A dated March 16, 2004

City Center Development Agency

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A

Premises

EXHIBIT B

The Lease



9110 SW Burnham St. (Miller property)

Feet  
0 250