

AFTER RECORDING RETURN TO:

City of Tigard
City Hall
13125 SW Hall Blvd
Tigard OR 97223

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13125 SW Hall Blvd
Tigard OR 97223

UNTIL A CHANGE IS REQUESTED
SEND TAX STATEMENTS TO:
(NO CHANGE)

This space provided for recorder's use.

**CONTRACT OF SALE
AND ESCROW INSTRUCTIONS**

This Contract of Sale (this "Contract") is made as of _____, 2015 between William B. Kenny, an individual ("Seller") whose address is _____ and City of Tigard, an Oregon municipal corporation ("Purchaser") whose address is 13125 SW Hall Blvd, Tigard, OR 97223.

RECITALS

Seller owns the real property including land and improvements thereon located in Washington County, Oregon, and described in the attached and incorporated Exhibit A, subject to certain encumbrances (the "Real Property").

Purchaser agrees to purchase and Seller agrees to sell the Real Property excepting the Retained Property as defined below. The term "Subject Property" is used herein to describe the property the Purchaser is purchasing, which is comprised of the Real Property minus the Retained Property. Seller shall retain title to the manufactured dwelling currently owned by Seller and the improvements known as "Ranges 1 through 8" (described on the attached and incorporated Exhibit B ("Retained Property")) and all personal property subject to the terms of a lease (the "Lease") with Purchaser as lessor on the terms and conditions set forth below:

AGREEMENT

NOW THEREFORE the parties agree as follows:

ARTICLE 1
PURCHASE PRICE AND PAYMENT

1.1 Total Purchase Price. Purchaser promises to pay Seller as the total purchase price for the Subject Property the sum of One Million Four Hundred Thousand and No/100 (\$1,400,000 (US)), less any credits as provided for in this Agreement, which together with the terms and conditions set forth herein constitutes the true and actual consideration for the conveyance (“Purchase Price”).

1.2 Payment of Total Purchase Price. The total Purchase Price will be paid as follows:

1.2.1 Down Payment. On or before the Closing Date, as defined in Section 4.1, Purchaser will pay to Collection Escrow established pursuant to Section 1.5, \$500,000 as a Down Payment. The Down Payment will be credited against the total Purchase Price. The Down Payment shall be treated as a scheduled payment, applied as set forth in Section 4.4 and 4.5, and the remainder shall remain in Escrow and available for disbursement as provided in 4.5, until the Maturity Date.

1.2.2 Interest Rate and Scheduled Payment Dates. Interest on the remaining balance of \$ 900,000 (less credits, if any) will accrue at the rate of 2% per annum from the Closing Date.

Purchaser shall pay to the Collection Escrow provided for in Section 4.5 the unpaid balance of the Purchase Price as follows:

1.2.2.1 \$150,000 on or before the first anniversary of the Closing Date.

1.2.2.2 \$150,000 on or before the second anniversary of the Closing Date.

1.2.2.3 The entire remaining balance of the purchase price, including accrued but unpaid interest on or before the third anniversary of the Closing Date (hereafter Maturity Date.)

1.3 Prior Liens.

1.3.1. Seller is the borrower under one or more mortgages in favor of the United States Department of Agriculture (USDA), the most recent of which is dated November 9, 2011, Washington County, Oregon recording No. 2011-080410 and securing various promissory notes as provided for therein and listed in the Preliminary Title Report dated March 12, 2015 issued by First American Title (collectively the USDA Prior Liens). The USDA Prior Liens shall be paid in full at Closing as provided in Section 4.5.

1.3.2. Seller is the Grantor under that certain Deed of Trust and Fixture Filing dated May 15, 2003, in favor of Northwest Farm Credit Services and recorded May 16, 2003 as fee no 2003-078071 Washington County, Oregon, as modified on August 20, 2012, recorded August 23, 2012 as fee no. 2012-069468 (collectively the “NFCA Prior Lien”). Collection Escrow shall make payments to Northwest Farm Credit Services as such payments become due

as provided in Section 4.5 from the amounts deposited in the Collection Escrow by Purchaser. The USDA Prior Lien and NFCA Prior Lien are collectively referred to as "Prior Liens".

1.4 Prepayments. Purchaser may, at its sole discretion, prepay all or any portion of the unpaid principal without penalty. All prepayments will be applied as provided in Section 4.5. Prepayment of a partial amount will not excuse Purchaser from making the regular payments when due under this Contract until the remaining balance has been paid in full.

1.5 Collection and Payment Escrow: The parties shall open a collection and payment escrow established by the parties within thirty (30) days of the execution of this Contract (the "Collection Escrow") by depositing with Collection Escrow a fully executed copy of this Contract for use as escrow instructions. Collection Escrow shall execute the Consent of Collection Escrow, attached as Exhibit 'C' or in substantially such form and deliver a copy to the parties. The parties hereby authorize Collection Escrow to take necessary steps for the Closing of this transaction as provided in this Contract. Seller or Purchaser may jointly or severally prepare additional escrow instructions. This Contract or any amendment hereto, shall control in the event of discrepancy in such instructions. Collection Escrow shall make payments as provided in Section 4.5. The Collection Escrow shall be: _____ Attn: _____.

ARTICLE 2 TAXES AND LIENS

2.1 Taxes and Assessments. Purchaser shall pay when due the ad valorem real property taxes and governmental or other assessments that are levied against the Real Property on or after the Closing date. The ad valorem real property taxes in excess of \$2000 each tax year shall be credited against the Purchase Price. Seller shall pay the personal property taxes and governmental or other assessments that are levied against the personal property when due.

2.2 Liens and Encumbrances. Seller will keep the Real Property free from all liens and encumbrances that may be imposed on the Real Property after the date this Contract is executed unless otherwise approved by Purchaser, which approval shall not unreasonably be withheld provided that the remaining balance of the Purchase Price is sufficient to pay such lien and any other prior liens.

2.3 Classification. The Real Property is classified 5515 Specially Assessed – Zoned Farmland – Improved. Seller will be responsible for continuing that classification, and will pay when due any additional taxes, penalties, or interest resulting from any disqualification of the Real Property from such classification and special assessment arising from or after the Closing Date and not attributable to Purchaser.

2.4 Tax Statements. Within 30 days of the date taxes are due, Purchaser will provide Seller with written evidence reasonably satisfactory to Seller that all ad valorem real property taxes and assessments on the Real Property have been paid. Within 30 days of the date taxes on personal property are due, Seller will provide Purchaser with written evidence reasonably satisfactory to Purchaser that all taxes and assessments on the personal property have been paid when due. Seller will submit this evidence after each required payment of taxes and assessments.

ARTICLE 3 CONTINGENCY PERIOD

3.1 Contingencies. Purchaser shall have 30 days from the date of execution of this Contract to determine whether, in Purchaser's sole, absolute, and arbitrary discretion the Subject Property, including but not limited to the condition of title, water availability and access to the Tualatin River is suitable ("Contingency Period"). If Purchaser is unable to satisfy itself as to any matter regarding the property within such 30 days, Purchaser shall be entitled to an additional 30 days upon written notice to Seller. If Purchaser concludes the Subject Property is not suitable for any reason, Purchaser may terminate this Contract by delivering written notice of termination to Seller prior to the expiration of the Contingency Period, including any extension thereof, and any Down Payment shall be returned to Purchaser by the Collection Escrow. Failure of Purchaser to provide such notice by the close of the Contingency Period shall constitute acceptance.

3.2 Right of Entry. Seller hereby grants to Purchaser, its agents and contractors, the right to enter onto the Real Property during the Contingency Period between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, except State holidays, to conduct reasonable inspections and testing, including environmental, geotechnical and other testing to evaluate whether the property is suitable for Purchaser's use. In consideration of such access, within the limits of the Oregon Tort Claims Act, Purchaser shall save, hold harmless and indemnify Seller against any claims arising from such access except to the extent such claims arise out of the gross negligence or willful misconduct of Seller; provided, further, that in no event shall Purchaser be required to indemnify Seller with respect to any pre-existing conditions of the Real Property. Purchaser shall reasonably repair or return any disturbed area to its original condition.

3.3 Seller's Records. Within 10 days of the date of execution of this Contract, Seller shall provide to Purchaser copies of any and all documents held or reasonably known to Seller that address the status of the Real Property, including but not limited to its physical condition, title or encumbrances, surveys, water rights, tenancies or access (the "Property Records").

3.4 Condition of Title, Permitted Exceptions. In addition to the 30 day general Contingency Period provided for in Section 3.1, and any extension thereof, the parties shall have the following timeframe in which to resolve any title issues. Within 10 days of the execution of this Contract, Seller shall provide Purchaser with a preliminary title report issued by the Collection Escrow, describing title to the Real Property and including legible copies of all recorded documents described in the preliminary title report and plotted easements (collectively, the "Preliminary Report"). On or before expiration of the Contingency Period, or any extension thereof, or 30 days after actual receipt of the Preliminary Report or any supplement thereto ("Supplemental Report"), whichever is later, Purchaser shall deliver written notice of approval or disapproval of matters disclosed in the Preliminary Report or Supplemental Report, which approval or disapproval shall be in Purchaser's sole and absolute discretion. Failure of Purchaser to deliver notice of disapproval of any matters disclosed in the Preliminary Report or Supplemental Report within such thirty (30) day period shall be deemed rejection of all such matters. Unless waived, the approved matters disclosed in the Preliminary Report or any Supplemental Report along with the standard printed exceptions on a form of title insurance policy shall be the "Permitted Exceptions" included as exceptions in the Title Policy.

3.4.1 Right to Cure Disapproval of Preliminary Report or Supplemental Report. If Purchaser delivers notice of disapproval pursuant to Section 3.4 above, Seller may elect in writing, within ten (10) days thereafter, to agree to remove or otherwise cure, to Purchaser's reasonable satisfaction, any disapproved item(s) prior to Closing.

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

3.5 Post-Closing Contingency. Notwithstanding any other provision of this Contract, if Seller has failed to remove the Retained Property, and the manufactured dwelling owned by Seller's foreman as provided in Section 6.2, on or before the date that is 30 days prior to the Maturity Date provided for in Section 1.2.2, Purchaser may elect to:

3.5.1 Terminate this Contract and receive from Seller all amounts paid by Purchaser, including any amounts paid on any obligation of Seller. Purchaser may maintain an action against Seller for any such amounts not paid; or

3.5.2 Remove the Retained Property and the manufactured dwelling owned by Seller's foreman. Purchaser's cost of such removal shall be deducted from the amount of the Purchase Price. Purchaser may maintain an action against Seller for any costs remaining.

3.5.3 If Seller has removed the Retained Property and manufactured dwelling owned by Seller's foreman but any lien for the cost of removal has been imposed or an outstanding amount of the cost of removal remains due, Purchaser may direct the Collection Escrow to pay such obligation from the amount due Seller or Purchaser may pay the amount due and receive a credit against the final Purchase Price. Purchaser may maintain an action against Seller for any costs remaining.

ARTICLE 4 CLOSING and ESCROW

4.1 Closing Date. This transaction shall close no later than sixty (60) days after expiration of the Contingency Period unless first terminated as provided in Article 3, or shall

Close on a later date mutually agreed otherwise by the parties. As used in this Contract, the Closing Date means the date on which this Contract or a memorandum of this Contract is recorded. The closing will occur in the offices of the Collection Escrow.

4.2 Responsibility of Parties At Closing:

4.2.1 Purchaser shall deposit the Down Payment with the Collection Escrow specified in Section 1.2.1.

4.2.2 Seller shall deposit with the Collection Escrow a statutory warranty deed conveying the Subject Property to Purchaser free of encumbrances except those accepted by Purchaser as provided in Section 3.4 and the normal and customary exceptions, and shall have received a commitment for the issuance of a Purchaser's policy of title insurance as described in Article 9. Notwithstanding expiration of the Contingency Period, in the event that Seller has caused, permitted or suffered any additional encumbrances on the Subject Property, Purchaser may:

4.2.2.1 Delay Closing for such time as Purchaser deems reasonable and direct Seller to remove the encumbrance;

4.2.2.2 Accept the encumbrance, with or without a credit against the Purchase Price as agreed by the parties;

4.2.2.3 Terminate this Contract and receive from Seller any Down Payment paid.

4.2.3 Seller shall deposit with Collection Escrow, a signed assignment to Purchaser of the lease for the DEQ monitoring station and all right to payments thereunder in a form substantially conforming to Exhibit D).

4.2.4 The parties shall execute the Lease attached as Exhibit E.

4.2.5 Seller shall execute and deposit with Collection Escrow such documents as may reasonably be necessary to assign or transfer any water rights, well certificates or similar items.

4.2.6 Seller shall provide a Certificate of Non-Foreign Status, pursuant to Section 1445(b)(2) of the Internal Revenue Code, certifying that Seller is a non-foreign person.

4.2.7 Seller shall provide reasonable documentation that all tenancies, including those held by Oregon Azaleas, are terminated, as of the Closing Date.

4.2.8 The parties shall sign, acknowledge and deposit into Collection Escrow the Memorandum of Contract attached as Exhibit F.

4.2.9 The parties shall sign, acknowledge and deposit into Collection Escrow the Memorandum of Lease.

4.3 Prorates and Closing Costs. Except as otherwise provided in this Contract, all items to be prorated, will be prorated as of the Closing date. Seller shall pay the title insurance

premium and Purchaser and Seller each shall each pay one-half of escrow fee, and recording fees for recording the documents provided for below. Seller will be responsible for and must pay at closing any transfer, excise, or sales tax assessed on the sale contemplated by this Contract.

4.4 Delivery and recording. Within 10 days of Closing, Collection Escrow shall:

4.4.1 Deliver duplicate originals of the executed Memorandum of Contract, Lease, Certificate of Non-Foreign Status, and Assignment of DEQ Lease to each party;

4.4.2 Pay the remaining balance of the USDA mortgage in its entirety, including any penalties, prepayment penalties or other costs, obtain, record a satisfaction of mortgage, and deliver a copy to each Party;

4.4.3 Deliver a copy of any documents assigning or transferring water rights, well certificates and other documents associated with Closing to each Party.

4.4.4 Cause the Memorandum of Contract, Memorandum of Lease, Assignment of DEQ Lease to be recorded in the property records for Washington County and the assignment or transfer of water rights and similar documents to be filed with the State.

4.5 Collection and Payment Escrow. In accordance with Section 1.5 above, all payments to Seller must be made to Collection Escrow. The costs of setting up and administering the Collection Escrow will be evenly divided between Purchaser and Seller. Collection Escrow shall accept the payments and apply them as follows:

- a. First to any unpaid amount due to the Collection Escrow;
 - b. Second, on Closing, payment directly to the USDA to fully satisfy the USDA Mortgage as provided in Section 4.4 ;
 - c. Third, payment directly to Northwest Farm Credit Services as payments become due;
 - d. Fourth to any credits due to Purchaser under this Contract;
 - e. Fifth to any other liens or encumbrances placed on or suffered by Seller, including any lien for unpaid personal property taxes or for the cost of removing the Retained Property and the manufactured dwelling owned by Seller's foreman, unless such lien arises from the action or inaction of Purchaser; and
 - f. Sixth, the remaining balance to Seller on the Maturity Date.
- Collection Escrow shall not less than annually provide the Parties with a statement showing the receipts from Purchaser and disbursements by Collection Escrow.

4.6 Maturity Date. On the date that is 60 days prior to the Maturity Date (or such earlier date as directed by the agreement of the parties), the Collection Escrow shall provide each

party with a statement indicating payments received in escrow, payments made by escrow, credits due Purchaser and the final payoff amount. Upon final payment by Purchaser of the Purchase Price, less any credits due Purchaser, Collection Escrow shall deliver to Purchaser the Warranty Deed executed by Seller conveying the Subject Property to Purchaser.

ARTICLE 5 POSSESSION AND EXISTING TENANCIES

5.1 Possession. Purchaser will be entitled to quiet possession of the Subject Property from and after _____, 20____, subject to the assigned and assumed DEQ lease, and the Lease entered into by the parties and attached as Exhibit _____. Seller shall maintain ownership and possession of the Retained Property.

5.2 Assignment and Assumption of Leases; Existing Tenancies. The DEQ Monitoring Station lease, and right to payment thereunder, shall be transferred or assigned to Purchaser at Closing. All other tenancies shall be terminated on or before the Closing Date. Seller may not assign or sublet any interest in the Real Property except as may be provided in the Ground Lease. Seller represents and warrants to Purchaser that, except as disclosed herein, all such leases and tenancy agreements have been terminated and there is no lease, tenancy or occupancy that would interfere with Purchaser's interest in, possession and use of the Subject Property.

ARTICLE 6 MAINTENANCE, ALTERATIONS AND REMOVAL OF RETAINED PROPERTY

6.1 No Purchaser Obligation. Except as may be provided in the Lease, Purchaser shall have no obligation to maintain or repair any of the Real Property. Purchaser shall not permit any waste nor make any substantial improvements or alterations without the prior written consent of Seller, which shall not be unreasonably withheld.

6.2 Removal of Retained Property. No later than the Maturity Date, Seller shall at its sole expense and risk remove from the Property all of the Retained Property, the manufactured dwelling owned by Seller's foreman; and all herbicides, pesticides, petroleum products or other hazardous materials and leave the Property free of debris. Seller shall cut and cap the irrigation lines serving ranges 1 through 8. No later than 90 days prior to the Maturity Date, Seller shall provide to Purchaser a plan demonstrating that such removal will be accomplished as provided for herein. The removal shall be done in compliance with all applicable laws, including but not limited to environmental laws, rules and regulations related to asbestos, pesticides or any hazardous substance.

6.3 Option to Purchase Seller's Manufactured Dwelling; Removal of Manufactured Dwelling. Prior to the Maturity Date, Purchaser may in its sole and absolute discretion purchase the manufactured dwelling owned by Seller for \$1.00, or provide Seller with 60 days notice and opportunity from the Maturity Date to remove the manufactured home at Seller's expense. If Seller fails or refuses to remove the manufactured home prior to the deadline, as consideration for the option to Purchase, Purchaser may deem the manufactured

dwelling abandoned and cause it to be used, sold, demolished or otherwise disposed of at Purchaser's sole expense. The parties shall in good faith execute such bills of sale, title transfers or other documents as may reasonably be necessary to effectuate and document disposition of the manufactured dwelling.

ARTICLE 7 INDEMNIFICATION

7.1 Seller's Indemnification of Purchaser. Seller will forever indemnify, reimburse, and hold Purchaser harmless and, at Purchaser's election, defend Purchaser for, from, and against any and all claims, costs, expenses (including attorney fees), losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with Seller's conduct with respect to the Property, any condition of the Property or third-party claims related to the Property to the extent that the same exists on the Closing Date and is not caused or contributed to by Purchaser, or Seller's breach of any warranty or representation made by Seller in this Contract. In the event of any litigation or proceeding brought against Purchaser and arising out of or in any way connected with any of the above events or claims, against which Seller agrees to defend Purchaser, Seller will, on notice from Purchaser, vigorously resist and defend such actions or proceedings in consultation with Purchaser through legal counsel reasonably satisfactory to Purchaser.

7.2 Purchaser's Indemnification of Seller. Within the limits of the Oregon Tort Claims Act, Purchaser shall hold harmless, indemnify and defend Seller for and against any negligent act of Purchaser arising from Purchaser's access to the Real Property or Purchaser's obligations under this Contract.

7.3 Indemnification Scope. Whenever this Contract obligates a party to indemnify, hold harmless, or defend the other party, the obligations will run to the invitees, agents, and employees/directors, officers, agents, partners and employees of such other party and will survive any termination or satisfaction of this Contract. Such obligations with respect to the acts or omissions of either party will include the acts or omissions of any director, officer, partner, agent, employee, contractor, tenant, invitee, or permittee of such party. The provisions of this Section 7 shall survive the deed.

ARTICLE 8 REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER

Seller represents and warrants to Purchaser as follows:

8.1 Covenants of Title. Seller is the owner of good, marketable and insurable fee title to the Subject Property free of all liens and encumbrances except those accepted by Purchaser and the normal and customary exceptions shown on the title report and will defend such title from the lawful claims of persons claiming superior title.

8.2 Authority. Seller has obtained all requisite authorizations for the execution and delivery by Seller of this Contract and the performance of the transactions contemplated by this

Contract, and the execution and delivery of this Contract are made pursuant to such authorizations. Seller is not a foreign person as defined in Internal Revenue Code Section 1445(f) (3).

8.3 No Brokers. Seller has not employed any broker or finder in connection with the transactions contemplated by this Contract and has taken no action, which action would give rise to a valid claim against Purchaser for a brokerage commission, finder's fee, or other like payment.

8.4 Litigation. Except as otherwise disclosed to Purchaser in writing, there are no pending claims or litigation or threats of claims or litigation or other matters of which Seller is aware or by the exercise of reasonable diligence of which Seller should be aware that could adversely affect Purchaser's title, use, or enjoyment of the Subject Property.

8.5 Hazardous Substances. Except as specifically and expressly disclosed herein or in the Property Records, Seller has no knowledge of any Hazardous Materials located on, in or under the Real Property. To Seller's knowledge, 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 Real Property. To Seller's knowledge, no other party or person has used, stored, transported, generated, disposed of or released on, within, under, about or from the Real Property any Hazardous Materials. 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 Real Property, and the Real Property is not now, and has never been, in violation and is not currently under investigation for the violation of any Environmental Laws. To Seller's knowledge, there is no lead paint on the Real 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 Real Property.

8.6 Compliance with Laws. The Real Property and every portion of it, and all activities conducted on the Real Property, are in compliance with all applicable federal, state, and local statutes, regulations, and ordinances. Seller is not aware of and has not received notice of any past violation of any applicable federal, state, or local statutes, regulations, or ordinances.

8.7 Permits and Licenses. Seller holds no permits, authorizations, licenses, or other documents relating to or required for the operation of the Subject Property, except as disclosed herein. Seller will cooperate with Purchaser in obtaining any permits, consents, authorizations, or licenses necessary to the operation or use of the Subject Property by Purchaser; however, Seller will not be required to incur any expense relating thereto unless Purchaser has first advanced funds sufficient to cover all Seller's reasonably anticipated out-of-pocket expenses; furthermore, Seller will promptly refund to Purchaser any excess funds so advanced, and Purchaser will reimburse Seller for any shortfall in funds so advanced.

8.8 No Further Contracts. There are no contracts, leases, or agreements relating to the Real Property, except as otherwise set forth in this Contract and Exhibit G that will be binding on the Real Property after the Closing Date.

8.9 No Wetlands or Fill. As of the Closing Date, the Real Property contains no wetlands or other water bodies or any fill currently subject to regulation under section 404 of the Clean Water Act (33 USC § 1344) or ORS 196.600 to 196.990 and will not be in violation of these laws or regulations.

8.10 No Claims. As of the Closing Date, Seller has not received any notice, and does not have actual knowledge, of any pending or threatened claim, action, demand, suit, proceeding, hearing, or governmental study or investigation against or involving the Real Property or Seller's business operations on the Real Property, including any related in any way to the fill or removal of the material in or from any wetland located on the Real Property.

8.11 Disclosure. Seller has fully disclosed in writing and provided to Purchaser all material information in Seller's possession or that Seller owns or controls that relates to the Subject Property, its condition, and the title to the Subject Property.

8.12 Survival. Each and every Seller's representation, whether in this Section or elsewhere in this Contract, shall survive Closing and the Deed, are material and relied on by Purchaser and are true as of the Closing Date.

ARTICLE 9 TITLE INSURANCE (PURCHASER'S POLICY)

Seller will cause to be furnished to Purchaser at Seller's expense a purchaser's title insurance policy in the amount of the full Purchase Price within 10 days after the Closing Date, insuring Purchaser against loss or damage sustained by Purchaser by reason of the unmarketability of Seller's title, or liens or encumbrances affecting the Property, excepting matters contained in the usual printed exceptions in such title insurance policies, those created or suffered by Purchaser, and the Permitted Exceptions.

ARTICLE 10 EXISTING ENCUMBRANCE

10.1 Obligation to Pay. The Real Property is currently subject to Prior Liens. Seller represents, warrants, and covenants to Purchaser that (1) Seller has obtained all consents and approvals, if any, required under the Prior Liens for placement of this Contract against the Property, (2) no default exists under the Prior Liens and to the best of Seller's knowledge no event has occurred or failed to occur and no condition exists or does not exist that, with or without notice and the passage of time, could ripen into such a default. Seller will obey and observe all the terms of such instrument, except for those matters that are to be performed by Purchaser under the terms of this Contract. If either Seller or Purchaser receives notice from or on behalf of the holder of the Prior Liens of breach of any of the terms of the Prior Lien or of any actual or pending arbitration, suit, acceleration, foreclosure, or realization against the Property by the holder of the Prior Lien, the party receiving the notice will immediately forward a copy of the notice to the other party.

10.2 Obligations of Purchaser. Purchaser will not cause or suffer any act or failure to act that if attributed to Seller might cause a default under any of the provisions of the Prior Lien.

ARTICLE 11 CONDEMNATION

If all or any portion of the Real Property is condemned or otherwise taken for public use after the Closing Date, the proceeds of the condemnation award or settlement will be paid to the Collection Escrow. Collection Escrow shall apply that portion of the proceeds attributable to the Subject Property as provided in Section 4.1, with any amount remaining after payment of the Purchase Price remitted to Purchaser. The proceeds attributable to the Retained Property will be held to guarantee any obligations of Seller, including removal of the Retained Property and other property. Seller shall be entitled to all remaining proceeds attributable to Retained Property and on the Maturity Date.

ARTICLE 12 DEED

On the Maturity Date and Purchaser's performance of all other terms, conditions, and provisions of this Contract, Seller shall cause Collection Escrow to record the Deed conveying the Subject Property free and clear of all liens and encumbrances except the "Permitted Exceptions", and excepting any liens or encumbrances placed on the Subject Property by Purchaser subsequent to Closing date.

ARTICLE 13 DEFAULT

13.1 Time. Time is of the essence of this Contract.

13.2 Events of Default by Purchaser. A default will occur under any of the following circumstances:

- (1) Purchaser's failure to make any payment, including taxes, when due.
- (2) Any default under the NFCA Prior Lien attributable to Purchaser.
- (3) Purchaser's failure to perform any other obligations contained in this Contract

when due.

13.3 Seller's Remedies on Default. In the event of a default, Seller shall first provide Purchaser with written notice and 30 days opportunity to cure the default or take reasonably satisfactory steps toward cure. Upon Purchaser's failure to cure, Seller may take any one or more of the following steps:

- (1) Declare the entire balance of the Purchase Price and interest immediately due and payable.

(2) Specifically enforce the terms of this Contract.

13.4 Events of Default by Seller.

(1) Seller's failure to remove the Retained Property, the manufactured dwelling owned by Seller's foreman, and other items at its sole expense as provided for in this Contract.

(2) Causing or suffering any lien or assessment to be placed on the Real Property unless first approved by Purchaser.

(3) Any material violation of the Lease.

(4) Seller's failure to perform any other obligations contained in this Contract when due.

13.5 Purchaser's Remedies on Default. In the event of a default, Purchaser shall first provide Seller with written notice and 30 days opportunity to cure the default or take reasonably satisfactory steps toward cure. Upon Seller's failure to cure, Purchaser may take any one or more of the following steps:

(1) Terminate this Contract and receive full reimbursement for any amounts paid by Purchaser, including but not limited to: property taxes, amounts applied to the prior loans or to any liens or assessments not the responsibility of Purchaser. Collection Escrow shall deliver the remaining funds in the escrow to Purchaser. Purchaser may bring an action against Seller for any amount previously released by Collection Escrow or otherwise not reimbursed to Purchaser. Purchaser shall assign or otherwise transfer back to Seller the water rights and the Assignment.

(2) Cause the Retained Property and manufactured dwelling owned by Seller's foreman to be removed and the cost thereof deducted from the Purchase Price otherwise due Seller. Any amount not satisfied from the Purchase Price shall be a debt owing to Purchaser.

(3) Pay or direct the Collection Escrow to pay any past due amount that is the obligation of Seller, including purchasing insurance as provide in the Lease. Any such payments shall be first deducted from the remaining Purchase Price due, and if not satisfied, shall be a debt owing to Purchaser.

(4) Specifically enforce the terms of this Contract.

13.6 Remedies Not Exclusive. The remedies provided above are nonexclusive and in addition to any other remedies provided by law.

Seller's Initials

Buyer's Initials

**ARTICLE 14
WAIVER**

The failure of either party at any time to require performance of any provision of this Contract will not limit the party's right to enforce the provision, nor will any waiver of any

breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

**ARTICLE 15
PRIOR AGREEMENTS**

This Contract and the Lease are the entire, final, and complete agreements of the parties pertaining to the Real Property, and supersede and replace all prior or existing written and oral agreements between the parties or their representatives relating to the Real Property.

**ARTICLE 16
NOTICE**

Any notice under this Contract must be in writing and will be effective when actually delivered in person or deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other:

For Seller: _____

For Purchaser: Marty Wine, City Manager
City of Tigard
13125 SW Hall Blvd.
Tigard, Oregon 97223

With a Copy to: Jordan Ramis, PC
Two Centerpointe Drive, 6th Floor
Lake Oswego, OR 97035

**ARTICLE 17
APPLICABLE LAW**

This Contract will be governed by, and construed in accordance with, the laws of the state of Oregon. Venue for any action arising out of this Contract shall be the Circuit Court for Washington County or the US District Court for the State of Oregon.

**ARTICLE 18
COSTS AND ATTORNEY FEES**

If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Contract, or if suit or action

is instituted in a bankruptcy court for a United States District Court to enforce or interpret any of the terms of this Contract, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert Seller's interest in a bankruptcy proceeding, including any appeal, the party not prevailing must pay the prevailing party's attorney fees, costs and disbursements, including but not limited to consultants, expert witnesses, title related and any other sums that the court or arbitrator may determine to be reasonable.

ARTICLE 19 INTERPRETATION

As used in this Contract, the singular includes the plural, and the plural the singular. The masculine and neuter each include the masculine, feminine, and neuter, as the context requires. All captions used in this Contract are intended solely for convenience of reference and in no way limit any of the provisions of this Contract. Each party has been represented by counsel or been advised to retain counsel, accordingly this Contract shall not be construed against in favor or against any party, including the party drafting the provision(s) at issue.

ARTICLE 20 SURVIVAL OF COVENANTS

Any covenant the full performance of which is not required before the Closing or final payment of the Purchase Price and delivery of the Deed will survive the Closing and the final payment of the Purchase Price and the delivery of the Deed and be fully enforceable thereafter in accordance with their terms.

ARTICLE 21 CONDITION OF PROPERTY

Except as provided otherwise in this Contract or the Lease, Purchaser accepts the Subject Property in its present condition, AS IS, WHERE IS, including latent defects, without any representations or warranties from Seller or any agent or representative of Seller, expressed or implied, except for such warranties that may arise by law under the Deed and except as otherwise specifically set forth in this Contract. Purchaser agrees that Purchaser has ascertained, from sources other than Seller or any agent or representative of Seller, the condition of the Subject Property its suitability for Purchaser's purposes, and the applicable zoning, building, housing, and other regulatory ordinances and laws affecting the Subject Property. Purchaser accepts the Subject Property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the Subject Property. Except for such warranties that may arise by law under the Deed and except as otherwise specifically stated in this Contract, including the Property Records or other written material provided to Purchaser, Seller has made no representations with respect to such condition or suitability of the Subject Property or such

laws or ordinances.

ARTICLE 22
ASSIGNMENT AND BENEFICIARIES

This Contract may not be assigned or transferred except with the written authorization of the other party, which shall not be unreasonably refused. This Contract is for the sole benefit of the parties and there are no third party beneficiaries. It is binding on the heirs, successors and assigns of the parties and nothing herein shall prohibit or preclude assignment or transfer of Seller's interest to either or both of Seller's daughters in the event of Seller's incapacity or death.

ARTICLE 23
MEMORANDUM OF CONTRACT

On the Closing Date, the parties will cause a memorandum of this Contract in substantially similar form to the one attached as Exhibit ____, to be recorded in the real property records of Washington County, Oregon.

ARTICLE 24
STATUTORY DISCLAIMER

The following disclaimer is made pursuant to ORS 93.040(2):

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, ORS 195.301 AND ORS 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 ORS 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, ORS 195.301 AND ORS 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.

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

Seller:

Purchaser:

/s/ _____

/s/ _____

[seller's name]

[purchaser's name]

ACKNOWLEDGMENTS

(INDIVIDUAL)

STATE OF _____)
) ss.

County of _____)

This record was acknowledged before me on _____, 20__ by
_____.

[STAMP, IF REQUIRED]

/s/ _____

Notary Public for Oregon

My commission expires: _____

(REPRESENTATIVE CAPACITY)

STATE OF _____)
) ss.

County of _____)

This record was acknowledged before me on _____, 20__, by _____ as
[*type of authority, e.g., officer, trustee*] of _____ [*name of party on behalf of
whom instrument was executed*].

[STAMP, IF REQUIRED]

/s/ _____

Notary Public for Oregon

My commission expires: _____

After recording return to:

Until a change is requested, all tax statements must be sent to the following address:

MEMORANDUM OF CONTRACT OF SALE

This Memorandum of Contract of Sale (this “Memorandum”) is made as of _____, 20__ between _____ [if an entity, state type and jurisdiction of organization of entity] (“Seller”) whose address is _____ and _____ [if an entity, state type and jurisdiction of organization of entity] (“Purchaser”) whose address is _____.

Pursuant to a Contract of Sale dated [_____, 20__ / this same date] (“Contract”), Seller sold to Purchaser Seller’s interest in that certain property in _____ County, Oregon, more particularly described in the attached Exhibit A. The terms upon which Seller has sold the Property to Purchaser are set forth in the Contract, to which reference is made for all purposes. The true and actual consideration for this conveyance is \$_____. Purchaser will pay such amount, with interest, according to the terms of the Contract, under which the final payment of principal and interest is due on _____, _____. [comply with ORS 93.030, ORS 93.640, and ORS 93.710(3)].

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, ORS 195.301 AND ORS 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 ORS 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, ORS 195.301 AND ORS 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.

Property Tax Account No. _____

This Memorandum must be recorded in the Official Records of _____ County, Oregon in order to give notice of the existence of the Contract. This Memorandum will not be deemed or construed to define, limit, or modify the Contract, or any provision thereof, in any manner.

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

Seller:

Purchaser:

/s/ _____

/s/ _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 2014, by

_____ as _____ of _____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 2014, by

_____ as _____ of _____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____