

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6654

AUTHORIZING THE EXECUTIVE DIRECTOR TO ACQUIRE PROPERTY LOCATED AT 9321 SE FOSTER ROAD IN AN AMOUNT NOT TO EXCEED \$1.2 MILLION IN ACCORDANCE WITH THE ADOPTED LENTS TOWN CENTER URBAN RENEWAL PLAN, FOR THE PURPOSE OF ACQUIRING LAND FOR REDEVELOPMENT.

WHEREAS, by the virtue of the laws of the State of Oregon, the Portland Development Commission ("PDC") is authorized and empowered to acquire by purchase real property or any interest therein for the purpose of carrying out the project designated in a duly adopted urban renewal plan;

WHEREAS, it has been determined that 9231 SE Foster Road (the "Site"), in the Lents Town Center Urban Renewal Area, has the characteristics of blighted properties as described in ORS 457.010;

WHEREAS, 9231 SE Foster was identified in the URA Plan Amendment #1 as a key parcel necessary for redevelopment and revitalization for the vitality of the Lents Town Center;

WHEREAS, 9231 SE Foster has direct access to the new Green Line MAX station between SE Ramona and SE Foster, and the property is considered strategic for future redevelopment near mass transit access;

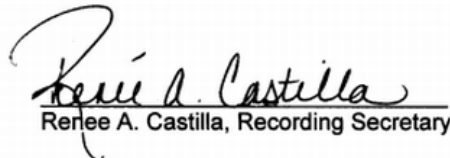
WHEREAS, the PDC approached the property owners regarding purchase of the .74 acre site in 2008, and PDC carried out an independent appraisal and conducted property negotiations in a satisfactory manner;

WHEREAS, PDC entered into a Purchase and Sale Agreement with the owners of 9231 SE Foster Road and has completed due diligence and is finalizing negotiations with the owners as a result of its due diligence investigation to acquire the property; and

WHEREAS, Lents Town Center Urban Renewal Area funds have been designated for the purchase of 9231 SE Foster Road.

NOW, THEREFORE, BE IT RESOLVED that that the Executive Director is hereby authorized to execute any documents necessary to acquire the real property located at 9231 SE Foster Road of Block 1 on Lots numbered 12 and 13 in the Lents Town Center Urban Renewal Area for an amount not to exceed \$1.2 million, substantially in accordance with the terms and conditions of the Purchase and Sale Agreement attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.


Renee A. Castilla, Recording Secretary

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made and entered into as of the last date of signature indicated below (the "**Effective Date**"), by and between Oleg Kovalenko and Lyudmila Kovalenko ("**Seller**") and the CITY OF PORTLAND, acting by and through THE PORTLAND DEVELOPMENT COMMISSION ("**Buyer**").

RECITALS

- A. Seller is the owner of real property and all improvements and rights appurtenant thereto, commonly known as 9231 SE Foster Road, Portland, Oregon and more particularly described as Tax Lots 6300 and 6400 in Section 16DB, Township 1 South, Range 2 East, W.M., as more particularly described in the attached Exhibit A, in the City of Portland, County of Multnomah and State of Oregon (the "**Property**").
- B. Buyer desires to purchase the Property for future development pursuant to the urban renewal plans and purposes of the City of Portland.
- C. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all right title and interest in the Property.

AGREEMENT

1. **Purchase and Sale.** The Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property upon the terms and conditions set forth in this Agreement. The Recitals are hereby incorporated into this Agreement by this reference.
2. **Purchase Price.** The Purchase price for the Property will be ONE MILLION TWO HUNDRED THOUSAND AND NO /100 DOLLARS (\$1,200,000.00).
3. **Payment of Purchase Price.** The Purchase Price will be payable as follows:
 - 3.1 **Escrow Deposit.** Within ten (10) business days after execution of this Agreement, Buyer will deposit into escrow the amount of SIXTY THOUSAND DOLLARS (\$60,000) ("**Escrow Deposit**") with FIRST AMERICAN TITLE INSURANCE COMPANY, located at 200 SW Market Street, Suite 250, Portland, Oregon ("**Escrow Holder**"). The Escrow Deposit will be refundable to Buyer, except as provided below. The Escrow Holder will invest the Escrow Deposit in a federally insured, interest-bearing account. The accrued interest will be treated as part of the Escrow Deposit at Closing. If Buyer retains the Escrow Deposit, Buyer will receive the interest. At Closing, the Escrow Deposit, together with interest on it, if any, will be credited toward payment of the Purchase Price.
 - 3.2 **Payment of Purchase Price.** The Purchase Price will be paid at Closing as follows:

3.2.1 The Escrow Deposit, together with interest earned will be credited to the Purchase Price and will be paid in immediately available funds to Seller.

4. **Closing.** This transaction will close on or before 30 days after the Inspection Period, as defined in Section 5.1.3, (the "**Closing Date**" or "**Closing**") unless otherwise extended in writing by the parties.

5. **Conditions Precedent to Closing.**

5.1 **Conditions Precedent to Buyer's Obligations.** In addition to any other conditions contained in this Agreement, the following conditions precedent must be satisfied prior to Buyer's obligation to acquire the Property. These conditions are intended solely for Buyer's benefit and Buyer will have the sole right and discretion to waive, by written notice, any of the conditions. In the event any condition is not satisfied or waived on or before Closing, or other date as set forth herein, Buyer shall have the right to terminate this Agreement and be refunded its Escrow Deposit:

5.1.1 **Title.** At Closing Seller will convey fee simple title to the Property by statutory warranty deed. Title will be good and marketable and will be insured by an Owner's Standard Form of Title Policy issued by Title Company in the full amount of the Purchase Price, insuring fee simple title vested in Buyer or its nominees. Title insured will be subject only to the standard exceptions of such policy, current taxes not yet delinquent, and the Permitted Exceptions, as hereinafter defined.

5.1.2 **Title Report.** Within fifteen (15) days of the Effective Date, Seller, at Seller's expense, will cause the Title Company to deliver to Buyer a Title Report covering the Property, together with legible copies of all documents, plats and exceptions to title referenced in the Title Report. Within fifteen (15) days of its receipt of the Title Report or at completion of the ALTA/ACSM Land Title Survey, Buyer will give written notice to Seller of the Exceptions that Buyer will require Seller to remove of record at or before Closing (the "**Unacceptable Exceptions**"). Exceptions to which Buyer makes no objection are deemed "**Permitted Exceptions.**" Seller will thereafter have fifteen (15) days to use its best efforts to remove such exceptions at Seller's sole cost or inform Buyer in writing that it is unable to remove any such exception. Upon Buyer's request, Seller shall provide an updated Title Report prior to Closing. All new exceptions appearing on subsequent title reports will be considered unacceptable, unless accepted in writing by Buyer. If for any reason Seller cannot remove any of the Unacceptable Exceptions before Closing, then Buyer may elect to either:

5.1.2.1 accept title to the Property subject to such exceptions;

5.1.2.2 waive its objection in writing to Seller and elect to have any monetary lien or encumbrance removed at Closing to the extent that it can be satisfied and removed by application of all or a portion of the Purchase Price payable to Seller at Closing; or

5.1.2.3 refuse to accept the Property and terminate this Agreement.

5.1.3 **Environmental and Structural Review.** Within ten (10) days after the Effective Date of this Agreement, Seller will deliver to Buyer copies of all environmental studies, analyses, and reports relating to the Property within its possession or control ("Environmental Reports"). Buyer may, at its own expense, engage consultants, surveyors or engineers of Buyer's choosing to conduct further environmental studies, soil analyses, surveys, and appraisals of the Property, and structural, mechanical and electrical inspections of the Property as Buyer in its sole discretion deems necessary (the "Inspection Period"). The Inspection Period shall be for a period of ninety (90) days, beginning upon Buyer's receipt of the Environmental Reports. Buyer or its agents will have the right to enter the Property at reasonable times before Closing to make such tests, inspections, soil analyses, studies, surveys, appraisals and other investigations as Buyer may require, at Buyer's sole discretion and Seller will cooperate with Buyer in making such tests and studies. Any area disturbed by such tests and studies will be restored by Buyer, at Buyer's expense, to its pre-inspection condition. It will be a condition to Closing that the results of such environmental studies, appraisals, surveys or analyses be acceptable to Buyer in its sole discretion. If prior to the Closing Date Buyer and Seller have not reached an agreement regarding the scope of work or the results of the environmental and structural investigations, then Buyer may elect to either:

5.1.3.1 accept title to the Property subject to such results;

5.1.3.2 waive its objection to such results in writing to Seller; or

5.1.3.3 refuse to accept the Property and terminate this Agreement.

5.1.4 **Boundaries/Access; Delivery of Surveys and Reports.** It is a condition to closing that: (1) there are no discrepancies in the boundaries of the Property; and (2) there are no encroachments or prescriptive or adverse rights on or affecting the Property or any portion thereof. If Buyer notifies Seller prior to the Closing Date that any of the requirements are not satisfied, Buyer may elect to either:

5.1.4.1 accept title to the Property subject to such items;

5.1.4.2 waive its objection to such items in writing to Seller; or

5.1.4.3 refuse to accept the Property and terminate this Agreement.

5.1.5 Investigation and Review. It will be a condition to closing that the documents described herein (the "Investigation Documents") be delivered to the Buyer and approved as provided below. Within 10 days after executing this Agreement, unless otherwise specified, Seller will deliver or cause to be delivered to the Buyer the Investigation Documents. The Buyer will have the right to review and approve each and every Investigation Document to its sole satisfaction within 30 days after the Buyer receives it. The Buyer's failure to respond timely will constitute the Buyer's approval of the Investigation Document provided. In the event the Buyer disapproves any Investigation Document, the Buyer will timely notify Seller in writing, and Seller will have 5 days in which to cure. If a cure acceptable to the Buyer is not timely achieved, the Buyer may waive the requirement in writing, or elect to terminate this Agreement for failure to satisfy a condition precedent to the Buyer's obligation to close. The Investigation Documents shall include:

5.1.5.1 Records and Plans. Copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, records pertaining to repairs and restoration of the Property in connection with fire damage, environmental studies, inspection reports, and all topographical surveys and soil tests for or relating to the Property in Seller's possession or reasonably available to Seller.

5.1.5.2 Rent Roll. A rent roll, accurate as of the date of this Agreement, setting forth in respect of each leasable premises, if more than one, the name of the tenant(s), if any, the date of the lease or rental agreement(s), if any, and the dates of any amendments or modifications thereof, and the term of tenancy, the monthly rent and any other charges payable to the tenant(s) under the lease(s) or rental agreement(s), the amount of any existing security deposit, whether any prepaid rent has been received and, if so, the amount thereof, any assigned parking spaces and parking allowances, and known delinquencies or default by the tenant, defenses, setoffs or counterclaims which have been asserted by the tenant, if any have been made, any free rent or other concession to the tenant, and any other special terms and conditions in any such lease.

5.1.5.3 Leases. A copy of each tenant's lease or rental agreement, together with all amendments to it.

5.1.5.4 Permits and Leases. Copies of all certificates of occupancy, permits, leases, orders, letters, and other documents available to Seller relating to the operation, zoning and permitted uses of the Property.

- 5.1.5.5 Tax Notices. Copies of all tax and assessment notices and bills for the Property for the most recent two property tax years.
- 5.1.5.6 Past Uses. Any information in Seller's possession or available to Seller relating to the past uses of the Property.
- 5.1.5.7 Management, Service, and/or Maintenance Contracts. Copies of all management, service, and/or maintenance contracts with respect to the Property.

5.1.6 Representations, Warranties, and Covenants of Seller. The Seller will have duly performed every agreement to be performed by Seller hereunder and Seller's representations, warranties, and covenants set forth in this Agreement will be true and correct as of the Closing Date.

5.1.6.1 No Material Changes. At the Closing Date, there will have been no material adverse changes related to or connected with the Property.

5.1.6.2 Seller's Deliveries. The Seller will have timely delivered each item to be delivered by Seller pursuant to this Agreement. If Seller fails to provide the Environmental Reports or Inspection Documents as provided in sections 5.1.3 and 5.1.5 and after Buyer provides written notice, Buyer shall receive a credit of \$200 per day against the Purchase Price for each day those documents are late.

5.1.6.3 Title Insurance. As of the close of the escrow, the Escrow Holder will have issued or committed to issue the title policy to Buyer.

5.1.6.4 Taxes. Seller agrees that all taxes, assessments and encumbrances that will be a lien against the Property at Closing, whether or not those charges would constitute a lien against the Property at settlement, will be satisfied of record by Seller. If Seller will fail to do so, Buyer may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real property taxes payable during the year in which closing occurs and any rents or income applicable to the Property will be prorated as of Closing.

5.1.7 Commission Approval. Buyer's Board of Commissioners will have approved this transaction at a public meeting.

5.2 Conditions Precedent to Seller's Obligations.

5.2.1 The close of escrow and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to Buyer's delivery to the Escrow Holder on or before the Closing Date, for disbursement as provided herein, of the Purchase Price and the documents and materials described in Paragraph 6.

5.3 Failure of Conditions to Closing. In the event any of the conditions set forth in Sections 5.1 or 5.2 are not timely satisfied or waived, for a reason other than the default of Buyer or Seller under this Agreement:

5.3.1 This Agreement, the escrow, and the rights and obligations of Buyer and Seller will terminate, except as otherwise provided herein; and

5.3.2 The Escrow Holder is hereby instructed to promptly return to Seller and Buyer all funds and documents deposited by them, respectively, in escrow that are held by the Escrow Holder on the date of the termination.

5.4 Cancellation Fees and Expenses. In the event this escrow terminates because of the nonsatisfaction of any condition for a reason other than the default of either Buyer or Seller under this agreement, the cancellation charges required to be paid by and to the Escrow Holder will be borne equally by the Buyer and Seller. In the event this escrow terminates because of default by either party, the cancellation charges required to be paid by and to the Escrow holder will be borne by the defaulting party.

5.5 Prorates. Except as otherwise provided herein, all items to be prorated, including rents, operating expenses, revenues, and other income, if any, will be prorated as of the Closing Date, in Escrow. For the purpose of calculating prorations, the Buyer will be deemed to be in title to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date. Unpaid rents will be prorated.

6. Deliveries to Escrow Holder.

6.1 By Seller. On or before the Closing Date, Seller will deliver the following to the Escrow Holder.

6.1.1 Deed. A statutory warranty deed (satisfactory in form and substance to Buyer) duly executed and acknowledged in recordable form by Seller, conveying the Property to Buyer subject only to Permitted Exceptions as established under Section 5.1.2 of this Agreement, and subject to any other matters that may be approved in writing by Buyer.

6.1.2 Nonforeign Certification. The Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. The Seller will give an affidavit to Buyer to this effect in the form required by that statute and related regulations.

6.1.3 **Documents.** Such other fully executed documents (satisfactory in form and substance to Buyer) and funds, including without limitation, escrow instructions, as are required to close the sale in accordance with this Agreement.

6.2 **By Buyer.** On or before the Closing Date, Buyer will deliver the balance due for the Purchase Price to the Escrow Holder in accordance with Sections 2 and 3 above, less any adjustments allowed by this Agreement.

7. Deliveries to Buyer at Closing.

7.1 **Possession.** The Seller will deliver exclusive possession of the Property to Buyer at close of escrow except for any tenancies accepted by Buyer.

7.2 **Keys.** Keys (and security codes if applicable) to all entrance and other doors and keys to all personal property used in connection with the operation of the Property, which keys shall be tagged for identification

7.3 **Records and Plans.** To the extent not already delivered to Buyer, copies of all architectural drawings, construction plans and specifications, "as-built" records of the improvements, environmental studies, inspection reports and all topographical surveys and soil tests for or relating to the Property that are in Seller's possession or reasonably available to Seller.

7.4 **Deposits.** All prepaid rents and all other sums paid by tenants of the Property to Seller as deposits or fees (both refundable and nonrefundable), including, but not limited to, security deposits, pet fees and cleaning fees, will be transferred to Buyer by Seller at Closing.

7.5 **Tenant Estoppel Statements.** At Buyer's request, Seller will deliver to Buyer an estoppel statement from each of the commercial tenants, if any, of the Property stating (1) the lease delivered to Buyer by Seller is in full force and effect without modification, (2) rent through the date of the estoppel letter has been paid to the landlord, (3) no rent has been prepaid, (4) the landlord is not in default in the performance of any of its obligations under the lease nor has any event occurred which with the giving of notice or passage of time or both would constitute such a default, (5) the tenant is not entitled to any free rent, concessions, rebates or refunds, and (6) landlord is not obligated to construct any improvements in the premises in addition to any already constructed and accepted by the tenant. Estoppel statements for residential tenants are not required.

8. **Costs.** Buyer will pay the cost of recording the deed; Seller will pay all other recording charges, if any. Seller will pay the premium for the standard title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Buyer will pay any and all costs associated with its request for the title policy to be issued as an ALTA extended coverage policy. Seller shall execute any required documents and cooperate with Buyer to obtain extended coverage. Buyer and Seller will each pay one-half of all escrow fees

and costs. Buyer and Seller will each pay its own legal and professional fees of other consultants incurred by Buyer and Seller, respectively. All other costs and expenses will be allocated between Buyer and Seller in accordance with the customary practice in Multnomah County, Oregon.

9. **Seller's Representations and Warranties.** Seller hereby represents and warrants to Buyer the following matters, and acknowledges that they are material inducements to Buyer to enter into this Agreement. Seller agrees to indemnify, defend, and hold Buyer harmless from all expense, loss, liability, damages and claims, including attorney fees, arising out of any breach of the following representations, warranties and covenants. Seller represents, warrants and covenants:

9.1 **Seller's Authority.**

- 9.1.1 Seller is the legal and beneficial fee simple titleholder of the Property and has good, marketable and insurable title to the Property, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments or other matters, except as disclosed to Buyer by the preliminary title report.
- 9.1.2 Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.
- 9.1.3 All requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
- 9.1.4 The persons executing this Agreement and the instruments referred to herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions of this Agreement.
- 9.1.5 This Agreement and all documents required to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.
- 9.1.6 Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Seller is a party, or, affecting the Property.

9.2 Environmental Matters.

- 9.2.1 For purposes of this Agreement, the phrase "Environmental Laws" includes all state and federal law, rules, regulations, standards and permit requirements regulating the generation, storage, transport, disposal, discharge or release of Hazardous Substances, as hereafter defined.
- 9.2.2 For purposes of this Agreement, "**Hazardous Substances**" means and includes: (i) all substances subject to regulation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and any other applicable federal, state or local laws and regulations now in force or hereafter enacted relating to the use, storage and disposal of hazardous substances; (ii) all substances listed in the United States Department of Transportation Table (49 C.F.R. §§ 172.101 and amendments thereto) or by the Environmental Protection Agency, or any successor agency thereto, as hazardous substances (40 C.F.R. §§ 302 and amendments thereto).
- 9.2.3 "**Toxic Substance**" means and includes any material that has been shown to have significant adverse effects on human health or the environment, or that is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §§ 2610 et seq., or any other applicable federal, state or local laws and regulations now in force or hereafter enacted relating to toxic substances, including, without limitation, asbestos, polychlorinated biphenyls (PCBs), petroleum products, and lead-based paint.
- 9.2.4 For purposes of this Section 9, the phrase "Knowledge" means: (1) the knowledge Seller would have, had it exercised reasonable diligence and was reasonably familiar with any information contained in Seller's electronic or paper files.
- 9.2.5 Information. Seller has provided Buyer with all studies, reports and analysis in Seller's possession referred to in Section 5.1.3 with respect to the presence of Hazardous Substances on or below the surface of the Property.
- 9.2.6 Remaining Contamination. To the Knowledge of Seller, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or released from the Property in violation of any Environmental Laws.
- 9.2.7 Migration. To the Knowledge of Seller, no Hazardous Substances have migrated from or through the Property onto or below the surface of the surrounding real property, in violation of any Environmental Laws.

- 9.2.8 Transportation. To the Knowledge of Seller, Seller has not transported Hazardous Substances from the Property in violation of Environmental Laws. To the Knowledge of Seller, Seller has not transferred Hazardous Substances from the Property to another location in violation of Environmental Laws. To the Knowledge of Seller, no other entity or person has transported Hazardous Substances from the Property in violation of Environmental Laws. To the Knowledge of Seller, no other entity or person has transferred Hazardous Substances from the Property to another location in violation of Environmental Laws.
- 9.2.9 No Pending Government Action. To the Knowledge of Seller, there are no proceedings, administrative actions, or judicial proceedings pending or, to Seller's Knowledge, contemplated under any Environmental Laws, related to the Property, and Seller has received no notice of violation or advisory action by state or federal regulatory agencies regarding compliance with Environmental Laws with respect to the Property.
- 9.3 Contracts, Leases, Options Affecting Property. Seller has not entered into, and will not enter into, any other contracts for the sale of the Property, nor do there exist, nor will there be, any rights of first refusal, options to purchase the Property, leases, mortgages, licenses, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affects or encumbers the Property or any portion thereof, with the exception of matters of record and existing rental agreements referred to in Section 5. The Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions relating to the Property, and to Seller's knowledge, no such rights encumber the Property, and will not, through Closing.
- 9.4 Liens, Notices. There are no:
- 9.4.1 Intended public improvements or private rights, which will result in the creation of any liens upon the Property or any portion thereof.
- 9.4.2 Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof;
- 9.4.3 Actual or impending mechanic's liens against the Property or any portion thereof.
- 9.5 Possession. Except for lessees specifically approved by Buyer and existing rental agreements referred to in Section 5, and occupants, if any, by right arising out of encumbrances of record, no one other than Seller will be in possession of any portion of the Property at the close of escrow.
- 9.6 Changed Conditions. If Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller will

immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties ceases to be true before the close of escrow, Seller will work with the Buyer; use its commercially reasonable efforts to remedy the problem, before the close of escrow. If the problem is not remedied before close of escrow, Buyer may elect to either 1) terminate this Agreement in which case Buyer will have no obligation to purchase the Property and all escrow payments will be refunded to Buyer, or 2) defer the Closing Date for a period not to exceed thirty (30) days or until such problem has been remedied, whichever occurs first.

9.7 **Indemnification.** Seller warrants that it will be responsible for and will pay, indemnify and hold Buyer harmless from any and all obligations and claims that Seller may have incurred with respect to the Property prior to Closing including without limitation, attorney fees that may be incurred by Buyer to defend any actions brought by third parties with respect to any such claims, except those obligations that are specifically assumed by Buyer.

10. **Condition of Property.** Buyer acknowledges and agrees that Buyer will be concluding the purchase of the Property based upon Buyer's inspection and investigation of the Property, and is purchasing the Property subject to the representations and warranties set forth in Sections 8, 9, 11 and 12, herein. Buyer specifically acknowledges that, with the exception of the representations and warranties set forth above in Subsection 9.2, Seller makes no representations or warranties regarding environmental matters. No part of this Section 10 will be deemed to invalidate or waive any claim or rights of contribution that may arise under Environmental Laws.

11. **Seller's Representations, Warranties and Covenants Regarding the Property through the Close of Escrow.** The Seller further represents, warrants, and covenants that, until this transaction is closed or escrow is terminated, whichever comes earlier, it shall:

11.1 Maintain the Property in its present state, with no alteration of the Property in any way;

11.2 Maintain all existing insurance policies affecting the Property in full force and effect; and

11.2 Comply with all government regulations.

12. **General Representation.** The Seller's representations and warranties contained in Sections 9 and 11 herein are true and accurate, and are not misleading. The Seller's representations and warranties contained in Sections 9 and 11 herein shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by Seller in a separate certificate at the time. The Seller's representations and warranties contained in Sections 9 and 11 herein shall survive the close of escrow for a period of ten (10) years following the Closing Date and shall not merge into the deed and the recordation of the deed in the official records.

13. **Buyer's Representations and Warranties.** Buyer hereby represents, warrants and covenants with Seller that:
- 13.1 Subject to 5.1.7, Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated herein;
 - 13.2 All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated herein; and
 - 13.3 The persons executing this Agreement and the instruments referred to herein on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms and conditions of this Agreement.
 - 13.4 Buyer has sufficient funds available to close this transaction, as authorized by the Portland Development Commission, in accordance with this Agreement.
 - 13.5 Buyer shall comply with its Relocation Policies and Procedures and any legal requirements related to relocation.
14. **Risk of Loss.** Seller will bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, all or part of the Property is damaged by fire or by any other cause of any nature, Seller will give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by Buyer of written notice from Seller of such casualty and Escrow Holder will return to Buyer the Escrow Deposit with all accrued interest.
15. **Notices.** All notices in connection with this Agreement will be deemed given at the time of delivery if made by personal delivery, by facsimile, or by delivery by private express courier service; if mailed, three days after deposit by certified or registered mail, postage prepaid.

To Seller: Mr. and Mrs. Oleg Kovalenko
C/O Dmitri Yudin, Broker
Citywide Realty
8456 SE Stark Street
Portland, Oregon 97216

To Buyer: Portland Development Commission
Amy Miller Dowell, Development Manager
222 NW Fifth Avenue
Portland, Oregon 97209-3859
Phone No. (503) 823-3305
Fax: (503)-865-3605

With Copy: General Counsel

222 NW Fifth Avenue
Portland, Oregon 97209-3859
Phone No. (503) 823-3200
Fax: (503) 865-3735

The foregoing addresses may be changed by written notice, given in the same manner.

16. **Brokerage Commissions.** Buyer represents that it has retained no real estate broker in connection with this transaction. Seller has retained Dmitri Yudin of Citywide Realty as a real estate broker to represent Seller in connection with the sale of the property and to represent Seller in this transaction. Seller will compensate Seller's broker according to the terms of their agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then the party against whom the claim is asserted will hold the other party harmless and defend from said claim.
17. **Further Actions of Buyer and Seller.** Buyer and Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and will use their best efforts to accomplish the close of escrow in accordance with the provisions herein.
18. **Legal and Equitable Enforcement of This Agreement.**
 - 18.1 Default by Seller. In the event the close of escrow and the consummation of the transaction herein contemplated do not occur by reason of any default by Seller, Buyer will be entitled to the refund of its Escrow Deposit, and will be entitled to seek specific performance of Seller's obligations.
 - 18.2 Default by Buyer. In the event the close of escrow and the consummation of the transactions herein contemplated do not occur by reason of any default by Buyer, Buyer and Seller agree that it would be impractical and extremely difficult to estimate the damages that Seller may suffer. Accordingly, Buyer and Seller agree that a reasonable estimate of the total net detriment that Seller would suffer in the event of any such default by Buyer and under this Agreement is and will be, and Seller's sole and exclusive remedy (whether at law or in equity), is and will be an amount equal to the sum of the Escrow Deposit. The payment of such amounts as liquidated damages is not intended as a forfeiture or penalty, but is intended to represent liquidated damages to Seller. Upon such default by Buyer, this Agreement will be terminated and neither party will have any further rights or obligations hereunder, each to the other, except for the right of Seller to collect such liquidated damages from Buyer and the Escrow Holder.
19. **Miscellaneous.**
 - 19.1 Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance will, to any extent, be invalid or unenforceable, the

remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected thereby, and each such term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

- 19.2 **Waivers.** No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.
- 19.3 **Successors and Assigns.** This Agreement will be binding on and will inure to the benefit of the successors and assigns of the parties to it. Buyer may assign its interest in this Agreement and the Property to any other person or entity. In the event that an assignee assumes the obligations of Buyer hereunder, then Buyer will have no further liability with respect to this Agreement.
- 19.4 **Entire Agreement.** This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted here.
- 19.5 **Time of Essence.** The Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision.
- 19.6 **Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement will be governed by and interpreted in accordance with the laws of the state of Oregon.

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 SECTIONS 2, 3 AND 5 TO 22 OF 2007 ENROLLED HOUSE BILL 3540 (HB 3540-C) (MEASURE 49). 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 SECTIONS 2, 3 AND 5 TO 22 OF 2007 ENROLLED HOUSE BILL 3540 (HB 3540-C) (MEASURE 49).

THE PERSON ACQUIRING FEE TITLE TO THIS PROPERTY SHOULD BE AWARE THAT A VALID LIEN MAY BE PLACED ON THIS PROPERTY FOR CLAIMS FOR UNPAID CONSTRUCTION RELATED TRANSACTIONS OR ACTIVITIES ON THE PROPERTY EVEN IF THE CIRCUMSTANCES THAT GIVE RISE TO THAT CLAIM OCCURRED PRIOR TO PURCHASE. SUCH CIRCUMSTANCE MAY INCLUDE, WITHOUT LIMITATION, CLAIMS FOR LABOR, MATERIAL, EQUIPMENT OR SERVICES CONTRACTED BY THE OWNER FOR THE PROPERTY THAT WERE UNPAID.

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

BUYER:

The City of Portland acting by and through the
Portland Development Commission

[Redacted signature box]

Bruce Warner, Executive Director

Date:
Approved as to Form:

[Redacted signature box]

PDC Legal Counsel

[Redacted signature box]

Owner

[name/title]

Date: 8.13.2008

Attachments:

Exhibit A – Legal Description

Exhibit A

PARCEL I:

Lot 12, Block 1, BERNHARDT PARK, in the City of Portland, County of Multnomah and State of Oregon.

PARCEL II:

Lot 13, Block 1, BERNHARDT PARK, in the City of Portland, County of Multnomah and State of Oregon, EXCEPT the Southwesterly 4 feet conveyed to the State of Oregon, by and through its State Highway Commission by Deed recorded August 8, 1972 in Book 874, Page 749, Deed Records.

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6654

TITLE: AUTHORIZING THE EXECUTIVE DIRECTOR TO ACQUIRE PROPERTY LOCATED AT 9321 SE FOSTER ROAD IN AN AMOUNT NOT TO EXCEED \$1.2 MILLION IN ACCORDANCE WITH THE ADOPTED LENTS TOWN CENTER URBAN RENEWAL PLAN, FOR THE PURPOSE OF ACQUIRING LAND FOR REDEVELOPMENT.

Adopted by the Portland Development Commission on December 10, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.


Renee A. Castilla, Recording Secretary

Date: December 12, 2008