

RESOLUTION NO. 1726

A RESOLUTION APPROVING THE SALE OF REAL PROPERTY TO SKIDMORE, LP

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City jointly owns property located at 3601 NW Marine Drive, consisting of tax lots 200, 400, 500 and 600, also known as the RMAC property (the "Property").
2. The City acquired the Property with the State Department of Environmental Quality ("DEQ") through a joint credit bid at a judicial foreclosure proceeding. The foreclosure proceeding was initiated by the City and DEQ to preserve both entities ability to recover costs they had incurred for activities that benefited the Property. The DEQ incurred environmental clean-up costs. The City incurred local improvement district costs, acquisition costs and back property tax costs.
3. The local improvement district costs that the City is recovering, as a result of acquiring the Property through the judicial foreclosure, amount to approximately \$389,000. These costs represent the cost to the City for the construction of infrastructure (water and sewer) that serves the Property, as well as acquisition costs and back property tax costs.
4. The Property has not been used for a public purpose. There is not a public purpose that will be served in continuing to own the Property jointly with DEQ.
5. It is necessary and convenient to sell the Property so the City may: (a) recover the costs it incurred in making public improvements that serve the Property; (b) secure funds that are needed for other government functions; (c) place the Property on the tax rolls; and (d) provide additional jobs in Troutdale.
6. The City and DEQ have had the Property on the market for several years. During that time, there have been few offers to purchase the Property. Offers were made to purchase the property for significantly less than the appraised value and for less than that which Skidmore LP has offer to pay for the Property. None of the other offers materialized.
7. Based on information provided by the appraiser, the City's realtor, and the City's past experiences in trying to sell the Property, the terms of the proposed agreement to sell the Property are fair and reasonable.
8. Notice and a public hearing have been provided in accordance with ORS 221.725.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE


Section 1. The real property that the City owns jointly with DEQ, located at 3601 NW Marine Drive and described more specifically in Attachment A, shall be sold to Skidmore, LP in accordance with the terms set forth in Attachment A.

Section 2. Attachment A is hereby approved.

Section 3. The City Administrator is authorized to execute any documents that must be signed to carry out the sale of the property in accordance with the terms in Attachment A.

Section 4. This Resolution shall take effect immediately upon adoption.

**YEAS: 7
NAYS: 0
ABSTAINED: 0**



Paul Thalhofer, Mayor
November 10, 2004

Date



Debbie Stickney, City Recorder

Adopted: November 9, 2004

Nov 01 04 08:43a

P. 1

11/01/2004 10:42
OCT. 27. 2004 5:00PM

5038728918
Colliers International
FAX

FIRST COMMERCIAL

NO. 6528 P. 2

PAGE 01/01

TROUTDALE

DR



201 300 0000000000 0000 1000
Portland, Oregon 97204
Telephone 503.222.1000
Facsimile 503.222.1000
www.colliers.com

October 27, 2004

Dennis Randozza
First Commercial
1301 SE Tacoma, #210
Portland, OR 97202

**RE: Counter Offer to Purchase Agreement Dated October 14, 2004
By and Between Skidmore, LP, Buyer and City of Troutdale, Seller**

Dear Dennis:

After careful review of the aforementioned Purchase Agreement, the City of Troutdale hereby accepts all terms and conditions with the exception of the following:

- The Due Diligence period shall be ^{sixty (60)} ~~thirty (30)~~ days.
- Respective Preliminary Title Report review and response dates shall be seven (7) days.
- Paragraph 6: Nothing in Paragraph 6 shall be construed to obligate the Seller to approve applications for development in a manner inconsistent with the local or state laws.
- Paragraph 13: Buyer acknowledges that hazards or materials were stored on the site and that the site is subject to a DEQ No Further Action Letter.
- The sale of the Property is contingent upon the City of Troutdale Council's approval, following the normally required public hearing on November 2, 2004.

This Counter Offer shall expire and shall be deemed null and void unless Buyer accepts same in writing on or before 5:00pm on November 1, 2004.

Notwithstanding the aforementioned title limit for acceptance of this Counter Offer, Seller reserves right to accept any other offer prior to Buyer's written acceptance of this Counter Offer and Buyer's having advised Seller or Seller's agents in the manner hereinabove specified.

Sincerely,

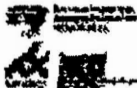
Jeffrey R. Brooks, CCIM, SDR
Vice President

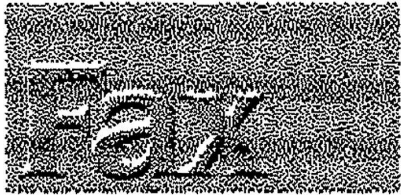
Seller: City of Troutdale

Buyer: Skidmore LP

John K. Anderson
City Administrator
Date: 10/27/04

By: D. Randozza
Date: 10/1/04





Date: 11/1/04

To: City of Troutdale
John Anderson
Phone: 503-674-7233
Fax: 503-665-7265

From: Colliers International
Jeffrey Brooks, CCIM, SIOR
Phone: 503-499-0080
Mobile: 503-704-8254
Fax: 503-227-2447
E-mail: jeff.brooks@colliers.com

Pages: 3

Subject: Troutdale / Skidmore

John - Signed counter proposal follows. Note the change in the due diligence period to 60 days.

Let me know if you need anything additional.

Thank you,



1331 SE Tacoma, #210, Portland, OR 97202 (503) 963-8460



Fax

To: JEFF BROOKS From: Dennis Randazzo

Fax: 503 227 2447 Pages: 2

Phone: _____ Date: 11/1/04

Re: _____ CC: _____

- Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

JEFF -
 SIGNED COUNTER FOR TROUDATE LAND -

Dennis



Date: 10/15/04

To: City of Troutdale
Kathy Leader
Phone: 503-674-7231
Fax: 503-667-0524

From: Colliers International
Jeffrey Brooks, CCIM, SIOR
Phone: 503-499-0080
Mobile: 503-704-8254
Fax: 503-227-2447
E-mail: jeff.brooks@colliers.com

Pages: 10

Subject: Offer on Troutdale Land

Please review the attached. I am told Buyer is well qualified, an industrial user who will be bringing a new business and jobs the site. I am not sure what the actual use or business is.

I will be on the run today so will call from the road to discuss further.

Thanks,



1331 SE Tacoma, #210, Portland, OR 97202 (503) 963-8460



Fax

To: JEFF BROOKS From: Dennis Randazzo c) 939-0635
 Fax: 227-2477 Pages: 9 v) 963-8460
 Phone: _____ Date: _____
 Re: _____ CC: _____

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

JEFF —
 HERE'S AN OFFER ON THE TROUTDALE
 LAND — CALL ME AND LET'S DISCUSS—

Dennis

Purchase and Sale Agreement

Seller: City of Troutdale, Oregon

Buyer: Skidmore Limited Partnership

Property: Approximately 14.31 acres located at 3601 NW Marine Drive, Troutdale, Oregon 97060

Date: October 14, 2004

Buyer agrees to buy and Seller agrees to sell, the real property and all improvements of the Property under all the following terms and conditions:

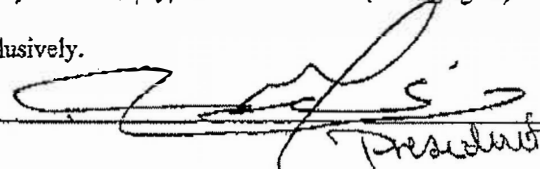
1. **Purchase Price:** Eight Hundred Thousand Dollars (\$800,000.00) all cash at closing.
2. **Earnest Money:** Upon execution of this Agreement, Buyer shall pay Twenty Five Thousand Dollars (\$25,000.00) as Earnest Money in the form of a Promissory Note. The Promissory Note shall be due and payable sixty ^{45 JKA 10/15/04} (60) days after mutual execution of this Agreement and shall be non-refundable, but shall apply to the Purchase Price. When redeemed, the earnest Money shall be deposited with a mutually acceptable title company (Title Company).
3. **Conditions of Purchase:** Buyer's obligation to purchase the Property is conditioned on the following:
 - (A) Confirmation of Zoning, (B) Satisfactory survey, identifying boundaries, easements, and improvements, (C) A Level I environmental assessment satisfactory to Buyer, (D) The property shall comply with all zoning laws and ordinances for its intended use, (E) Review and approval of any leases, contracts, agreements, easements or right of ways, (F) A preliminary commitment of financing satisfactory to Buyer, (G) All conditions shall be satisfied or waived ninety ^{45 JKA 10/15/04} (90) days (the Due Diligence period) after the Execution Date. Without all conditions waived or satisfied, this Agreement shall terminate and all refundable Earnest Money promptly refunded to Buyer
4. **Conditions to Sell:** Buyer acknowledges that Seller may seek to complete and IRC 1031 exchange; Seller's rights and obligations under this Agreement may be assigned to an Intermediary of Seller's choice for the purpose of completing this exchange. Buyer agrees to cooperate with Seller and Intermediary to complete the exchange, without cost or delay to Buyer.

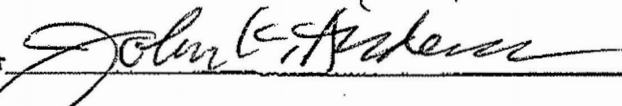
5. **Property Inspection:** Seller grants permission for Buyer and/or its authorized agent, at Buyer's sole expense and risk, to enter on the Property, at reasonable times subject to any tenant leases, to conduct inspections, tests, surveys, or studies necessary for the determination of suitability for Buyer's intended use. Buyer hereby indemnifies and holds Seller harmless from any liens, costs, responsibilities, injuries, accidents, arising from the Buyer's activities on the Property.
6. **Seller's Cooperation:** Seller agrees to join with Buyer in any proceeding and in the execution of any petition, local improvements districts, plats, or dedications for the development or improvement of the Property, without cost to Seller. Within five (5) days after the Execution date, Seller agrees to deliver to Buyer legible and complete copies of all documents relating to the ownership, maintenance, operation, or development of the Property.
7. **Lease, Existing Tenancies:** Seller represents except for leases and agreements (if any) reviewed and accepted by Buyer, that Seller has not entered into any other leases, contract of sale or agreement related to the Property, nor are there any rights of first refusal options to purchase the Properties.
8. **Title Insurance:** Within five (5) business days of the Execution Date, Seller shall deliver to Buyer a preliminary title report (Preliminary Commitment), from the Title Company, together with complete and legible copies of all documents shown therein as exception to title, showing the status of Seller's title to the Property. Buyer shall have fifteen (15) days from receipt of the Preliminary Commitment to review or reject title. If Buyer rejects in writing, within this fifteen (15) day period, this Agreement shall terminate. If Buyer accepts title with conditions, Seller shall have ten (10) days after receipt of written notice of such conditions to advise Buyer how Seller intends to satisfy Buyer's conditions. Buyer shall have ten (10) days after receipt of written notice of Seller's remedies, to accept or reject such remedies. If Buyer rejects in writing, Seller's remedies, this Agreement shall terminate. If Buyer gives no written notice regarding title to Seller during the fifteen (15) day period, titles shall be deemed acceptable. Seller shall deliver to Buyer an ALTA title policy for the face amount of the purchase price and shall insure Buyer's title, with all exceptions removed except those exceptions not objected to by Buyer, which shall be deemed, "Permitted Exceptions." If the title cannot be made insurable by the closing date, all earnest Money shall be promptly returned to Buyer and this Agreement shall terminate; however, Buyer shall have the right to waive defects and purchase as provided herein.

9. **Default; Remedies:** If Buyer defaults through no fault of Seller, Seller's sole remedy shall be limited to retaining any and all earnest Money and any other money deposited into escrow, as liquidated damages. In the event Seller defaults through no fault of Buyer, Buyer shall be entitled to pursue and remedies available at law or equity, including the remedy of specific performance. Seller's return and Buyer's acceptance of Earnest Money shall not constitute waiver of any other legal remedies available to Buyer.
10. **Closing or Sale:** The sale shall close ten (10) days after the close of the Due Diligence Period (Section 3) in escrow, at the Title Company. The sale shall be "closed" when the document conveying title is recorded and funds disbursed to Seller. At closing, Buyer and Seller shall deposit with the Title Company all documents and funds required to close the transaction in accordance with this Agreement. The Property shall be vacant at time of closing except for lease agreements disclosed by Seller. At closing, Seller shall certify that Seller is not a "foreign entity/person" subject to FIRPTA as defined by the Internal Revenue Code. If this transaction is not otherwise exempt from the FIRPTA, the Title Company shall be instructed to withhold and pay the amount required by IRC. At closing, Seller shall convey for and deliver to Buyer an ALTA owner's policy of title insurance in the amount of the purchase price insuring title to the Property in Buyer subject only to the Permitted Exceptions.
11. **Closing Costs; Prorates:** Unless otherwise provided in a separate written agreement, the real estate commission is due on the Closing Date or upon Seller's breach, whichever occurs first. Seller shall pay the premium for the title insurance policy which Seller is required to provide to Buyer, and recordation fee for Seller's Warranty Deed. Seller and Buyer shall each pay one-half of the escrow fees, any excise tax, and any transfer tax. Real property taxes for the tax year in which transaction is closed, assessments (if a Permitted Exception), personal property taxes, rents on existing tenancies, interest on assumed obligations, and utilities shall be prorated as of the Closing Date. Prepaid rents, security deposits, and other unearned refundable deposits regarding any tenancies shall be assigned and delivered to Buyer at closing. Buyer shall pay for ALTA extended policy if required.
12. **Possession:** Buyer shall be entitled to possession of Property on the Closing Date, subject to existing tenancies as of the Closing Date. Seller shall deliver the Property to Buyer in "broom clean" condition, free of all debris, and free from any personal property not included in the sale.

13. **Condition of Property:** Seller represents that there are no pending or threatened notices of any liens, condemnation, or eminent domain actions or of violations or breaches of any laws, codes, rules, regulations, contracts or agreements applicable to the Property (Laws), and Seller is not aware of any such violations or any concealed material defects in the Property. Seller warrants the Property to be connected to public water and sewer. Seller warrants that Seller has no knowledge of any underground storage tanks or hazardous waste use nor improper use or storage of chemicals or other materials causing a negative impact on the Property, nor has the Property been used as a dump for waste materials. Should hazardous waste, dumping of waste materials, or improper use of chemicals be discovered on the Property, prior to closing, Buyer may terminate this Agreement and all Earnest Money shall be promptly returned to Buyer. All window and door glass shall be unbroken at the time Buyer is entitled to possession. Risk of loss or damage to the Property shall be Seller's until closing and Buyer's at and after closing. Seller agrees to indemnify, defend and hold Buyer harmless from any claim, cost, liability, damage, or attorneys fee, related to the Property or activities on the Property, caused by Seller, his agents, licensees, or invitees, prior to closing. The real estate licensees named in this Agreement have made no representation to any party regarding the condition of the Property, the operation on or income from the Property, the actual size or dimensions of the Property or its components, or whether the Property or use thereof complies with the Laws. Seller warrants that as of closing, the Property and title shall be in substantially the same condition as the date of the execution of this Agreement and will notify Buyer of any changes in the Property or title, prior to closing. Seller's warranties and representations are deemed to be true and correct as of closing and the representations and warranties shall survive closing. Buyer shall have the right to a final inspection of the Property prior to closing to accept or reject the condition of the Property.
14. **Personal Property:** This sale includes the following personal property: (Seller to provide a list, if any, prior to final execution of this Agreement). Buyer has the option to reject any personal property on the premises and require Seller remove the rejected personal property prior to closing.

15. **Agency Disclosure:** The following agency relationships in this transaction are hereby consented to and acknowledged: Dennis Randazzo (Selling agent) of First Commercial Real Estate Advisors, LLC is agent of the Buyer exclusively, and Jeff Brooks (Listing agent) of Colliers International is agent of the Seller exclusively.

Buyer  Date 10-14-04
President

Seller  Date 10/15/04

Seller _____ Date _____

16. **Notices:** Unless otherwise specified, any written notice required under this Agreement may be sent by facsimile transmission, US Mail or messenger delivery. Date of notice shall be date of postmark or messenger delivery or verification of facsimile receipt. If date of notice is a holiday or weekend, notice shall be extended to the next business day.

17. **Assignment:** Buyer may assign this Agreement with Seller's consent, which shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors, personal representatives, and assigns. Assignment of this Agreement includes assignment of the Agency Agreement and any fee agreement.

18. **Attorneys Fees:** In the event suit, action, arbitration, or other proceeding is instituted, or the services of an attorney are retained to interpret or enforce the terms of this Agreement the prevailing party shall be entitled to recover from the other party: Attorney, paralegal, accountant, and other expert fees, and expenses actually incurred and necessary. The amount shall be determined by court or arbitrator, at trial, or arbitration, and/or any review or appeal, and in addition to all other sums provided by law.

19. **Confidentiality:** The existence and contents of this Agreement and the matters disclosed by due diligence shall not be revealed by Seller or Buyer to outside parties other than to lenders, consultants, principals, affiliates, advisors, the Title Company, or as otherwise required by law or for a valid business purpose. No advertisement or other publicity concerning the transactions contemplated under this Agreement will be made or disseminated by any party prior to Closing without the consent of the other party. Buyer agrees to return all documents received from Seller immediately upon any termination of this

Agreement. The obligations under this section shall survive Closing or termination of this Agreement.

20. Statutory Land Use 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 REGULATION, WHICH, IN FARM AND FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED USES AND THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

21. Miscellaneous: Time is of the essence of this Agreement. The facsimile transmission of any signed document including this Agreement shall be the same as delivery of an original. At the request of either party, the party delivering a document by facsimile will confirm facsimile transmission by signing and delivering a duplicate original document. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements. This Agreement cannot be altered, amended, changed, waived, or modified in any respect or particular unless in writing and signed by all parties. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provisions, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision. If any provision of this Agreement shall be deemed to be null and void or unenforceable by action of a court of law, such provision shall not affect the other provisions of this Agreement, which shall remain in full force and effect. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon and the original venue for any dispute shall be held in Clackamas County, Oregon. If due date is a holiday or weekend, the due date shall be extended to the next business day. The person (s) signing this Agreement on behalf of the Buyer and the person (s) signing on behalf of Seller represents, covenants and warrants that such person (s) has full right and authority to enter

into this Agreement. Buyer and Seller represents, covenants, and warrants that Buyer and Seller respectively has the ability to consummate this transaction under the terms of this Agreement. The obligations of this Agreement will not merge with the transfer or conveyance of title to any party of the Property but will remain in effect until fulfilled.

22. Addendums; Exhibits: The following named addendums and exhibits are attached and hereby incorporated into this Agreement: None at the execution of this Agreement.

23. Time for Acceptance: Seller has until 5:00pm Pacific Time on October 20, 2004 to accept this offer. Acceptance is not effective until a Seller signed, dated, copy of this Agreement is received by Buyer. If this offer is not so accepted, the offer shall expire and all Earnest Money promptly refunded to Buyer.

24. Broker Commission: Per a separate agreement with listing Broker.

25. Execution Date: The Execution Date is the later of the two dates and time signed by Buyer or Seller below and acceptance is effective when received by Buyer.

26. Acknowledgment: By signing this Agreement, Buyer and Seller acknowledge receipt of a copy of this Agreement.

27. Sellers Acceptance: Seller agrees to sell the Property on the terms and conditions in this Agreement. CONSULT YOUR ATTORNEY/ADVISORS. THIS DOCUMENT HAS BEEN PREPARED FOR APPROVAL OF YOUR ATTORNEY FOR REVIEW AND APPROVAL PRIOR TO SIGNING. NO REPRESENTATION IS MADE BY PRIME PROPERTIES REALTY INC./KEITH NAKAYAMA AS TO THE LEGAL SUFFICIENCY OR TAX CONSEQUENCE OF THIS AGREEMENT.

Buyer [Signature] Date 10-14-04 Time _____
Buyer _____ Date _____ Time _____
Mailing Address _____ City _____ Zip _____
Phone _____ Fax _____

Seller [Signature] Date 10/15/04 Time 4:45 pm
Seller _____ Date _____ Time _____
Mailing Address _____ City _____ Zip _____

Phone _____ Fax _____

REJECTION/COUNTER OFFER:

SELLER ONE: A. Seller does not accept the above offer, but makes the attached counter offer

B. Seller rejects Buyer's offer without a counter offer.

Seller Signature _____ Date _____ Time _____

Deed for Mineral Rights

and

Release of State Mineral Rights

for the

RMAC Property

Can be found in File #05-16-9-1

Real Property Transaction File # is:

04-6C-21-1

Note: This file can be destroyed after 10 years from the date of the property transaction is completed, which was Feb. 25, 2005.

Note: Finance Director and City Administrator also have separate files on the RMAC Property