

RESOLUTION NO. 1728

A RESOLUTION ACCEPTING THE DONATION OF REAL PROPERTY LEGALLY DESCRIBED AS LOT 33 IN THOMPSON VILLA TRACTS

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The Harold L. Nelson Trust (the "Trust") holds title to Lot 33 in Thompson Villa Tracts (the "Property") in the City of Troutdale. Margie S. Nelson, Trustee for the Trust, would like to donate the Property to the City of Troutdale. She has offered to convey the Property to the City for one dollar (\$1.00) plus escrow fees and the costs to obtain title insurance. She is interested in relieving the Trust of the obligations associated with owning the Property and would like the City to own it.
2. City staff have visited the Property, conducted a preliminary investigation, and determined that there are not any significant adverse conditions on the Property that suggest the City should not accept ownership of the Property.
3. It is in the City's interest to acquire the Property for future use or conveyance.

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

Section 1. The City Administrator, acting on behalf of the City of Troutdale, shall execute the Purchase and Sale Agreement and Statutory Warranty Deed, attached hereto as Attachment A. The City Administrator is authorized to execute any additional documents and take any additional actions that are necessary to effect the City's acquisition of the Property in accordance with the Purchase and Sale Agreement, including but not limited to, acquiring title insurance and paying the purchase price, escrow fees and the title insurance premium.

Section 2. This resolution is effective immediately upon adoption.

YEAS: 5
NAYS: 0
ABSTAINED: 0


Paul Thalhofer, Mayor
Dated: December 15, 2004


Sarah Greif, Office Support Specialist
Adopted: December 14, 2004

Attachment A

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement"), dated December 15, 2000 is made by and between THE HAROLD L. NELSON TRUST, with MRS. MARGIE S. NELSON as the trustee, **(the "Seller")**, and THE CITY OF TROUTDALE, an Oregon Municipal Corporation **(the "Buyer")** when fully executed.

RECITALS:

WHEREAS, Seller owns and holds good and marketable title to Lot 33 in Thompson Villa Tracts in the City of Troutdale, Oregon (the "Property");

WHEREAS, Seller desires to convey title to the Property to the Buyer for one dollar (\$1.00), subject to the conditions set forth below; and

WHEREAS, Buyer desires to acquire all of Seller's right, title and interest in and to the Property for Buyer's future use or conveyance.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Agreement to Sell and Buy.** This Agreement constitutes a binding agreement by Seller to sell and Buyer to buy Lot 33 in Thompson Villa Tracts, in Troutdale, Oregon, in accordance with the terms and conditions of this Agreement. This Agreement, and the Exhibits referenced herein and attached hereto, constitutes the entire agreement between the parties.

2. **Contract Consideration.** The consideration that Buyer is providing in exchange for ownership of the Property consists of: ONE DOLLAR (\$1.00), payment of escrow fees and the title insurance premium and assumption of the responsibilities associated with owning the Property. The parties have agreed upon this sum as adequate consideration for Seller's execution, delivery and performance of this Agreement and Buyer's right to acquire the Property.

3. **Purchase Price.** The "**Purchase Price**" for the Property shall be ONE DOLLAR (\$1), payable upon Seller's execution of the statutory warranty deed **(the "Deed")**, attached as Exhibit A.

4. **Title and Deed.** At closing, Seller shall convey to Buyer insurable, marketable and indefeasible title to the Property. Title shall be conveyed via the Deed, which Buyer shall prepare.

5. **Closing.** The sale shall be consummated through Fidelity Title, **(the "Escrow Agent")**. Escrow Agent shall: make arrangements with the Buyer and Seller to execute this Agreement, unless Buyer and Seller agree to an make other arrangements for signatures, transfer the funds that are necessary for closing, oversee the execution and recording of the Deed and issue the title insurance. Closing shall occur as soon as is reasonably possible but in any event no later than December 31, 2004.

5.1 Title Policy. Escrow Agent shall have the necessary documents signed and prepared to cause the title insurer to issue in favor of Buyer the Title Policy defined in paragraph 5.2 hereafter, insuring title to the Property in Buyer, subject only to (a) the usual fees, conditions and stipulations contained in the printed form of such a policy; and (b) those specific, special title exceptions which are listed in the Title Report (**the "Permitted Exceptions"**).

5.2 Title Report and Title Insurance. Upon receipt of this Agreement, Escrow Agent shall deliver a current preliminary title report (**the "Title Report"**) to Buyer disclosing all matters of record and all other matters affecting the Property known by Escrow Agent. The Title Report shall include a commitment from title insurer to issue to Buyer a standard Owner's Policy of Title Insurance in the amount of \$50,000 (**the "Title Policy"**). Unless Buyer notifies Seller and Escrow Agent that Buyer is exercising its rights to terminate this Agreement in accordance with Paragraph 6, exceptions in the Title Report are the Permitted Exceptions.

5.3 Closing Costs. The Buyer shall pay the escrow fees, the title insurance premium and the cost of recording the deed.

5.4 Prorations. Seller shall be responsible for paying real property taxes, general assessments, utilities and operating expenses relating to the Property through the Closing Date. Any special assessments against the Property in existence as of the closing date shall be paid in full by Seller. All expenses of the Property, including but not limited to, real property taxes, utility charges, amounts payable under Contracts, annual permits and other expenses normal to ownership, use, operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the Closing Date.

6. Termination. If Buyer determines that any of the exceptions in the Title Report are unacceptable, Buyer may terminate this Agreement by providing written notice to the Seller and Escrow Agent. If Buyer terminates this Agreement, Escrow Agent shall return any unencumbered funds that have been deposited in Escrow to the Buyer and this Agreement shall thereafter have no further force or effect.

7. Representations and Warranties. Seller represents, warrants and covenants to Buyer as follows:

(a) The Harold L. Nelson Trust (**the "Trust"**) holds title to the Property. Margie S. Nelson is the trustee for the Harold L. Nelson Trust and is vested with the legal authority to sign this Agreement and convey title and ownership of the Property that is held by the Trust.

(b) To the best of Seller's actual knowledge, the Property conforms in all material respects to all applicable federal, state and local codes, laws, ordinances, orders, decrees, rules and regulation, and there are presently no violations thereof. Seller has received no notice of, nor does Seller have any knowledge of, any pending or threatened legal action, which would adversely affect the Property or the uses or operation thereof.

(c) To the best of Seller's actual knowledge, there are no adverse geological, hydrological, seismic or soil conditions affecting the Property.

(d) To the best of Seller's actual knowledge, the Property is and has been free from any pesticides, underground storage tanks, toxic or hazardous waste, radiation, urea-formaldehyde, asbestos, petroleum hydrocarbons or other soil contaminants, or like substances or perils, and no contamination of any underground or surface water has occurred by reason of any of the substances or perils described in this paragraph being present on, in or below the Property.

(e) To the best of Seller's actual knowledge, the Property is in compliance with all federal, state and local environmental laws, codes, orders, decrees, rules, regulations and ordinances and no "**Environmental Pollutant**", as defined below, has been stored or exists in, on, under or around the Property. No environmental legal action exists nor is there a basis for such an action with respect to the Property. Without limiting the foregoing, for purposes for this Agreement, "**Environmental Pollutant**" shall mean any toxic or hazardous waste, substance or material referred to or defined in the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 U.S.C. § 9601 et seq.) as amended, the Toxic Substance Control Act (TSCA, 15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right to know Act of 1986 (EPCRTA, 42 U.S.C. § 11001 et seq.), the Hazardous Materials Transportation Table (49 CFR 172.101) and amendments thereto, any State of Oregon or County of Multnomah environmental law and/or any regulations promulgated pursuant to any of the above; and such other pollutants which are or become regulated or classified as hazardous, dangerous, or toxic under any applicable federal, state or local laws or regulations.

(f) To the best of Seller's actual knowledge, all taxes of any kind or nature which are or could become a lien against the Property, including, but not limited to, income, employment, construction contracting, transaction, privilege, sales, use and real or personal property taxes and all interest or penalties in connection therewith, have been and will be paid current through the Close of Escrow.

(g) Seller has full power, authority and legal capacity to execute, deliver, and perform this Agreement and all related documents or instruments. Except as otherwise expressly provided herein, no consent, approval or authorization of any other person or entity is required in connection with Seller's execution or performance of this Agreement.

(h) Seller has good and marketable fee simple absolute title to the Property, subject only to the encumbrances listed on the Title Report. Seller has not granted to any person or entity any right, title or interest in or to the Property or any part thereof or interest therein other than as set forth in the Permitted Exceptions to the Title Report, and Seller shall not hereafter create or allow any such rights in any third person or entity so long as this Agreement is in effect. At the Close of Escrow, ownership of and title to all of the Property shall vest in Buyer free and clear of all liens, encumbrances and third party rights of any kind.

All of the Seller's warranties, representations or covenants in this Agreement (i) constitute a material part of the consideration hereunder; (ii) are true and complete as of the date hereof; (iii) shall be true and complete as of the Close of Escrow; and (iv) shall survive the Close of Escrow. None of the statements, representations or warranties of Seller shall misstate or omit any facts that would make such statements, representations or warranties incomplete, misleading

or incorrect. Seller shall notify Buyer if any statement, representation or warranty of Seller herein becomes incorrect, misleading or incomplete subsequent to the date hereof.

8. **Remedies.** If Buyer fails to perform its obligations under this Agreement, Seller shall be entitled to keep the Purchase Price. This is Seller's exclusive and sole remedy. If Seller fails to convey title as required under this Agreement, or breaches one of the warranties and representations that are being made in this Agreement, Buyer shall be entitled to its actual out-of-pocket damages it incurred as a result of the breach, and Buyer shall be entitled to seek such damages. A suit for damages is Buyers sole and exclusive remedy.

9. **Property is Being Sold "AS IS".** Other than Seller's representations and warranties contained in this Agreement, Buyer acknowledges that Buyer is purchasing the property AS IS, and notwithstanding anything to the contrary in this Agreement, Seller shall not be required to indemnify, defend, reimburse or hold Buyer harmless for, from or against any costs, damages, claims, losses or liabilities arising directly or indirectly from Seller's conveyance of the Property to Buyer, except for such costs, damages, claims, losses or liabilities arising directly from a breach, by Seller, of Seller's warranties and representations set forth in this Agreement.

10. **Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal and on any petition for review or other proceeding, including, without limitation, costs associated with mediation or arbitration (without implying any right to require mediation or arbitration), in addition to all other sums provided by law.

11. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed invalid or prohibited thereunder, such provision shall be ineffective only to the extent of such prohibition or invalidity and the remainder of such provision or the remaining provisions of this Agreement shall not be affected.

12. **Successors and Assigns.** Except as otherwise provided herein, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the parties to this Agreement and their respective heirs, executors, administrators, personal representatives, successors and assigns.

13. **Applicable Laws.** This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Oregon, without regard to the applicable choice-of-laws rules.

14. **Possession.** Upon the Close of Escrow, exclusive possession of the Property will be transferred to Buyer.

15. **Survival.** Except as expressly set forth herein to the contrary, all covenants, warranties, representations and obligations shall survive the Close of Escrow.

Executed the day and year set forth below.

SELLER:

HAROLD L. NELSON TRUST

By: _____
Margie S. Nelson, Trustee

Dated: _____

BUYER:

CITY OF TROUTDALE

By: _____
John K. Anderson, City Administrator

Dated: _____

Exhibit A
TO THE PURCHASE AND SALE AGREEMENT

Recording requested by and
when recorded, return to:

City Recorder
City of Troutdale
104 SE Kibling Avenue
Troutdale, Oregon 97060

Until a change is requested, all tax
statements shall be sent to:

Finance Director
City of Troutdale, an Oregon Municipal Corporation
104 SE Kibling Avenue
Troutdale, OR 97060

STATUTORY WARRANTY DEED

THE HAROLD L. NELSON TRUST, by and through Margie S. Nelson, Trustee, ("**Grantor**"), conveys and warrants to the CITY OF TROUTDALE, an Oregon Municipal Corporation, ("**Grantee**"), the real property situated in the City of Troutdale, County of Multnomah, State of Oregon, more particularly described as Lot 33 in Thompson Villa Tracts, free of encumbrances created or suffered by Grantor except as shown in the Title Report that was provided in accordance with the Purchase and Sale Agreement that was executed by Grantor and Grantee.

The true consideration for this conveyance is ONE DOLLAR (\$1.00) and other good and valuable consideration in addition to the cash, the payment and receipt of which is hereby acknowledged by Grantor and Grantee.

THIS INSTRUMENT WILL 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 APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Executed the day and year written below.

GRANTOR:

HAROLD L. NELSON TRUST

By: _____
Margie S. Nelson, Trustee

Dated: _____