

**RESOLUTION NO. 1898**

**A RESOLUTION AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY BETWEEN TROUTDALE PARTNERS, LLC, AN OREGON LIMITED LIABILITY COMPANY, AND THE CITY OF TROUTDALE.**

**THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. The City is interested in purchasing a portion of the area in the City's Old Town core known as the "Discovery Block" so that it can develop the property for provision of nineteen (19) parking spaces to be used by and for Old Town businesses and residents.
2. The owner of the property – Troutdale Partners, LLC - is willing to sell the property to the City.

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

Section 1. The Council, hereby authorizes the City Administrator to sign a Purchase and Sale Agreement (in a form substantially akin to that attached as Exhibit A) with Troutdale Partners, LLC for the purchase of approximately 8,600 square feet of land located between SE Dora Avenue and SE Harlow Avenue in the City of Troutdale for the sum of Ten Dollars (\$10.00).

Section 2. This resolution is and shall be effective from and after its passage by the Agency's governing body.

**YEAS: 7**

**NAYS: 0**

**ABSTAINED: 0**



**Paul Thalhofer**

**Mayor**

**Date** September 5, 2007

*Sarah Skroch*

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**Sarah Skroch,  
Deputy City Recorder**

**Adopted: August 28, 2007**

**PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST  
MONEY  
(Oregon-Commercial Form)**

Dated: August 3, 2007

BETWEEN: Troutdale Partners, LLC, an Oregon limited liability company ("Seller")  
AND: City of Troutdale, an Oregon municipal corporation ("Buyer")

Buyer agrees to buy and Seller agrees to sell, on the following terms, the real property and all improvements thereon (the "Property") of approximately 8,600 square feet of land depicted on the draft subdivision plat attached as Exhibit "A" commonly known as Tract A of the pending Discovery Block subdivision, located between SE Dora Avenue and SE Harlow Avenue in the City of Troutdale, County of Multnomah, Oregon, and legally described as follows: (Seller will provide a metes and bounds legal description prior to recording the pending subdivision.)

Seller has entered into an agreement with Linda and Tony Marino ("Marino") to purchase the real property known as assessor's tax lots 6100, 6200, 6400 and 6500 on map 1N3E-25CA, which is approximately 36,646 land square feet of real property (and all improvements thereon) further depicted on the tax map excerpt attached as Exhibit "B" (the "Overall Property"). The parties acknowledge and agree that Seller is in contract to purchase the Overall Property from its current owner. As provided in the Addendum, the parties hereby acknowledge and agree that Seller's and Buyer's obligations under this Agreement are expressly contingent upon Seller's purchase and closing of the Overall Property, including satisfaction of all contingencies contained in any agreement therefor. Prior to closing, Seller shall record a subdivision for the Overall Property to create Tract "A" of approximately 8,600 square feet (the "Land") as depicted on the attached Exhibit "A" heretofore described as "Property". The remaining real property ("Excess Property") shall be retained by Seller.

1. **PURCHASE PRICE.** The Purchase Price is ten dollars (\$10.00) payable as follows: cash at closing.

2. **EARNEST MONEY RECEIPT.** Upon execution of this Agreement, Buyer shall pay zero dollars (\$-0-) as earnest money (the "Earnest Money") in the form of a N/A.

3. **CONDITIONS OF PURCHASE.** Buyer's obligation to purchase the land will be conditioned on the Buyer's satisfaction, in its sole discretion, of the following, to be completed within sixty (60) days (the "Contingency Period") following execution of a purchase and sale agreement:

- a. Approval by Troutdale City Council,
- b. Property Inspection, as defined below, and
- c. Title review, as defined below.

If Buyer has not satisfied or waived the above Conditions within said 60-day period, Buyer, at its sole discretion, may either:

1. terminate this Agreement, in which case this Agreement shall be null and void, all plans and other documents provided in 4 below and all non-proprietary due diligence materials returned to Seller and neither party shall have further obligation to the other; OR
2. waive the Conditions of Purchase; OR
3. extend the Contingency Period (as defined below) for an additional period of thirty (30) days upon written notice to Seller.

If Buyer fails to waive the Conditions after said extension period, Buyer shall return all documents provided by Seller, plus all non-proprietary due diligence materials, this Agreement shall be null and void, and neither party shall have further obligation to the other.

4. **PROPERTY INSPECTION.**

Within ten (10) days of the execution of a Purchase and Sale Agreement, Seller will deliver to Buyer copies of the following property documents:

- a. Environmental phase 1 and phase 2 assessments,

- b. Topographic survey,
- c. Geotechnical report, and
- d. Preliminary title report for the Overall Property.

Seller shall permit Buyer and its agents, at Buyer's sole expense, to enter the Property, at reasonable times to conduct inspections, tests, and surveys concerning hazardous materials, soils conditions, wetlands, and other matters affecting the suitability of the Property for Buyer's intended use and/or otherwise reasonably related to the purchase of the Property. If Buyer intends to conduct any tests that would disturb the Property, then Buyer shall give Seller advance written notice with sufficient description of such tests so that Seller may obtain advance written consent from Marino. Buyer shall, to the extent permitted by law, indemnify, hold harmless, and defend Seller from all liens, costs, and expenses arising from or relating to Buyer's entry on and inspection of the Property. This agreement to indemnify, hold harmless, and defend Seller shall survive closing or any termination of this Agreement.

**5. TITLE INSURANCE.** Within one (1) day of the Execution Date, Seller shall order and (as soon as possible thereafter) have delivered to Buyer a pro forma preliminary title report from First American Title Insurance Company of Oregon (the "Title Company"), 19719 Highway 213, Oregon City, OR 97045, Attention: Fran Miller, escrow officer (the "Pro forma Commitment"), together with complete and legible (to the extent possible) copies of all documents shown therein as exceptions to title, showing the status of Seller's title to the Property. Buyer acknowledges that Seller and Title Company cannot provide a preliminary title policy for the Property until after the subdivision is recorded, therefore this proforma preliminary title report will be provided in the interim. Buyer shall have twenty (20) days after receipt of a copy of the Proforma Commitment within which to give notice in writing to Seller of any objection to such title or to any liens or encumbrances affecting the Property. Within ten (10) days after the date of such notice from Buyer, Seller shall give Buyer written notice of whether it is willing and able to remove the objected-to exceptions. Within five (5) days after the date of such notice from Seller, Buyer shall elect whether to purchase the Property subject to the objected-to exceptions which Seller is not willing or able to remove or terminate this Agreement. On or before the Closing Date (defined below), Seller shall remove all exceptions to which Buyer objects and which Seller agrees Seller is willing and able to remove. All remaining exceptions set forth in the Proforma Commitment and agreed to by Buyer shall be "Permitted Exceptions." The title insurance policy to be delivered by Seller to Buyer at closing shall contain no exceptions other than the Permitted Exceptions and the usual preprinted exceptions in an owner's standard form title insurance policy.

In preparing the subdivision plat for recording, Seller shall draft easement(s) and conditions, covenants and restrictions ("CC&Rs"). Seller shall submit drafts of such to Buyer for Buyer's approval. Upon Buyer's approval, such easements and CC&Rs shall also become Permitted Exceptions.

After the subdivision is recorded, Seller shall immediately order and (as soon as possible thereafter) have delivered to Buyer a preliminary title report ("Title Report") from the Title Company. Buyer shall have ten (10) days after receipt of a copy of the Title Report within which to give written notice to Seller of any objection to any new lien(s) or encumbrance(s) affecting the Property not appearing on the Proforma Commitment. Within ten (10) days after the date of such notice from Buyer, Seller shall give Buyer written notice of whether it is willing and able to remove the objected-to exceptions. Within five (5) days after the date of such notice from Seller, Buyer shall elect whether to purchase the Property subject to the objected-to exceptions which Seller is not willing or able to remove or terminate this Agreement. On or before the Closing Date (defined below), Seller shall remove all exceptions to which Buyer objects and which Seller agrees Seller is willing and able to remove. All remaining exceptions set forth in the Preliminary Commitment and agreed to by Buyer shall be "Permitted Exceptions." The title insurance policy to be delivered by Seller to Buyer at closing shall contain no exceptions other than the Permitted Exceptions and the usual preprinted exceptions in an owner's standard form title insurance policy.

**6. DEFAULT: REMEDIES.** If the Conditions of Purchase specified in Section 3 to Buyer's obligation to close this transaction are satisfied or waived by Buyer and Buyer nevertheless fails, through no fault of Seller, to close the purchase of the Property, Seller shall be entitled to pursue any remedies available at law or in equity, including without limitation, the remedy of specific performance. If the Conditions Precedent specified in the Addendum are satisfied and Seller nevertheless fails, through no fault of Buyer, to close the sale of the Property, Buyer shall be entitled to pursue any remedies available at law or in equity, including without limitation, the remedy of specific performance. Seller and Buyer, in the pursuit of any remedy available to either of them, shall each be responsible for bearing all their own costs, including attorneys and other professional fees.

7. **CLOSING OF SALE.** The sale shall be closed, within fourteen (14) days after Seller completes the Conditions Precedent described in the Addendum, in escrow at the Title Company. The sale shall be "closed" when the document conveying title is recorded and funds are 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 the terms of this Agreement. At closing, Seller shall deliver a certification in a form approved by Buyer that Seller is not a "foreign person" as such term is defined in the Internal Revenue Code and the Treasury Regulations promulgated under the Internal Revenue Code. At closing, Seller shall convey fee simple title to the Property to Buyer by statutory warranty deed (the "Deed"). At closing, Seller shall pay for and deliver to Buyer a standard form of owner's policy of title insurance in the amount of the purchase price insuring fee simple title to the Property in Buyer's name subject only to the Permitted Exceptions and the standard preprinted exceptions in a standard form policy.

8. **CLOSING COSTS; PRORATES.** Seller shall pay the premium for the title insurance policy which Seller is required to deliver pursuant to the above paragraph. Seller and Buyer shall each pay one-half of the escrow fees charged by the Title Company, any excise tax, and any transfer tax. Real property taxes for the tax year in which the transaction is closed, assessments (if a Permitted Exception), personal property taxes, rents on existing tenancies paid for the month of closing, interest on assumed obligations, and utilities shall be prorated as of the Closing Date. The Property does \_\_\_\_\_ does not X (check one) qualify for a special tax assessment or deferral program. Seller shall be responsible for all costs associated with any such special tax assessment or deferral program.

9. **POSSESSION.** Buyer shall be entitled to exclusive possession of the Property on the Closing Date.

10. **CONDITION OF PROPERTY.** Seller represents that, to the best of Seller's knowledge, there are no pending or threatened notices of violation of any laws, codes, rules, or regulations applicable to the Property ("Laws"), and Seller is not aware of any such violations or any concealed material defects, including hazardous or toxic waste, in the Property. Risk of loss or damage to the Property shall be Seller's until closing and Buyer's at end of closing. No agent or Seller nor any agent of Buyer has made any representations regarding this Property. The real estate licensees named in this Agreement have made no representations to any party regarding the condition of the Property, the operations on or income from the Property, or whether the Property or the use thereof complies with Laws. Except for Seller's representations set forth in this Section 10, Buyer shall acquire the Property "AS IS" with all faults and Buyer shall rely on the results of its own inspection and investigation in Buyer's acquisition of the Property. Seller shall deliver the Property free and clear of any encumbrances; i.e., LID assessments, leases, and similar economic or use-restrictive items.

11. **PERSONAL PROPERTY.** None.

12. **AGENCY DISCLOSURE.**

There are no agency relationships in this contemplated transaction. As required by law, Seller discloses that a related entity of Seller in the person of John Kohnstamm is a licensed real estate broker.

13. **NOTICES.** Unless otherwise specified, any notice required or permitted in, or related to, this Agreement must be in writing and signed by an authorized agent of the party to be bound. Any time limit in or applicable to a notice shall commence on the day following mailing of the notice in the U.S. mails, postage prepaid, by the applicable party the address of the other party shown in this Agreement, unless that day is a Saturday, Sunday, or legal holiday, in which event it will commence on the next business day.

14. **ASSIGNMENT.** Buyer may not assign this Agreement or Buyer's rights under this Agreement without Seller's prior written consent.

15. **DISPUTES; ARBITRATION REQUIRED.** Seller, Buyer each agree that every claim, controversy, or dispute (including those based upon or created by statute) or to the interpretation or breach thereof, shall be resolved in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc., and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The obligations of this paragraph shall survive the closing of this transaction. This paragraph shall not apply to the following matters: (a) judicial or non-judicial foreclosure or any other action or proceeding to enforce a trust deed, mortgage, or land sale contract; (b) forcible entry and detainer action; and (c) any action for specific performance.

**16. 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 REGULATIONS, 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.

**17. MISCELLANEOUS.** Time is of the essence of this Agreement. The facsimile or email 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 or email will confirm facsimile or email 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 between them with respect thereto. Without limiting Section 15 of this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Each person signing this Agreement represents, covenants and warrants that such person has the full right and authority to enter into this Agreement and to bind the party for whom such person signs this Agreement to its terms and provisions. This Agreement shall not be recorded.

**18. ADDENDUMS; EXHIBITS.** The following named addendums and exhibits are attached to this Agreement and incorporated within this Agreement:  
Addendum, Exhibit "A"- Property, and Exhibit "B" – Overall Property

**19. SPECIAL PROVISIONS.**  
None

**20. TIME FOR ACCEPTANCE.** Not Applicable

**21. SELLER'S ACCEPTANCE AND BROKERAGE AGREEMENT.** Not Applicable.

**22. EXECUTION DATE.** The Execution Date is the later of the dates shown beneath the parties' signatures below.

CONSULT YOUR ATTORNEY. THIS DOCUMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR REVIEW AND APPROVAL PRIOR TO SIGNING. NO REPRESENTATION IS MADE BY THE REAL ESTATE LICENSEE(S) NAMED IN THIS AGREEMENT AS TO THE LEGAL SUFFICIENCY OR TAX CONSEQUENCES OF THIS AGREEMENT.

All parties represent they have actual authority to enter into this Agreement and to bind each of the entities for which they are signing.

**Buyer:**

City of Troutdale, a municipal corporation of the State of Oregon

By: John K. Audeen

Title: City Administrator

Date: 9/7/07

**Seller:**

Troutdale Partners, LLC, an Oregon limited liability company

By: B. Parry Investments, LLC, an Oregon limited liability company, Member

By: Brent L. Parry

Brent L. Parry, Sole Member

Date: 8/2/07

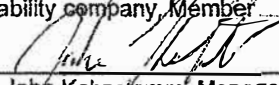
By: Greenslade Acquisitions, LLC, an Oregon limited liability company, Member

By: Michael S. Greenslade

Michael S. Greenslade, Sole Member

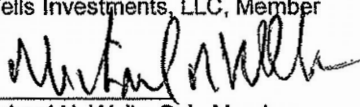
Date: 8-3-2007

By: Pacific Coldstream, LLC, an Oregon  
limited liability company, Member

By:   
John Kohnstamm, Manager

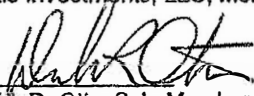
Date: 8.4.07

By: M. Wells Investments, LLC, Member

By:   
Michael N. Wells, Sole Member

Date: 8/3/07

By: D. Otis Investments, LLC, Member

By:   
Dirk R. Otis, Sole Member

Date: 8/3/07

Phone: (503) 665-5175

Fax: (503) 665-7265

Email: janderson@c.i.troutdale.or.us

Address: 104 E Kibling Ave  
Troutdale, OR 97060

Phone: (503) 665-2086

Fax: (503) 665-2836

Email: bp@bremik.com

Address: 321 E Columbia River Hwy  
Troutdale, OR 97060

Addendum  
To The  
Purchase and Sale Agreement And Receipt For Earnest Money  
Dated  
8/3, 2007

**CONDITIONS PRECEDENT.** A Condition Precedent to Seller's obligations under this Agreement is Seller's purchase and closing of the Overall Property, including satisfaction of all contingencies contained in said purchase and sale agreement.

As Conditions Precedent to Buyer's obligation to close on purchase of the Property, Seller shall:

- a. Comply with the conditions of approval for the Notice of Decision dated May 25, 2007 for Case File 07-033, and
- b. Complete construction of the improvements on Tract A in conformance with the Notice of Decision dated May 25, 2007 for Case File 07-033.

Exhibit "A"  
Property