

RESOLUTION NO. 1978

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A SALE AGREEMENT FOR THE PURCHASE OF CERTAIN REAL PROPERTY LOCATED AT 436 E. HISTORIC COLUMBIA RIVER HIGHWAY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City, by and through the City Administrator, has engaged in negotiations with the heirs of Willa Sue Davis to purchase the property immediately adjacent to City Hall.
2. The City Administrator and the heirs have tentatively agreed to the terms of the sale.

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


Section 1. The Council hereby authorizes the City Administrator to sign, on behalf of the City, a Sale Agreement in a form substantially in accordance with Attachment "A".

Section 2. This resolution is and shall be effective from and after its passage by the City Council.

YEAS: 5

NAYS: 2 Councilor Canfield, Councilor Thomas

ABSTAINED: 0



Paul Thalhofer, Mayor
December 10, 2008

Date



Debbie Stickney, City Recorder

Adopted: December 9, 2008

Related Files:

09-16-9-4 – Original Deed to this property

09-6C-21-1 –Property Acquisition File

Note: Original Sale Agreement was given to the Escrow Agent/Title Company according to David Ross, City Attorney

**SALE AGREEMENT AND
RECEIPT FOR EARNEST MONEY**

DATE: December 9, 2008

SELLER: Penny E. Labberton, Teddy B. Peetz, Cathy L. Peetz, and Elaine F. Davis, as
Claiming Successors of the Estate of Willa Sue Davis

BUYER: City of Troutdale, an Oregon municipal corporation
140 SE Kibling Avenue
Troutdale, OR 97060

Recital

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property with all improvements located on it commonly known as 436 E. Historic Columbia River Highway, Troutdale, Multnomah County, Oregon, having the following legal description (the "Property"):

See Exhibit "A" attached

Agreement

Now, therefore, for valuable consideration, the parties agree as follows:

1. **Sale and Purchase.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$94,000.00 (the "Purchase Price").
2. **Earnest Money.** Seller hereby acknowledges receipt of the sum of \$1,000.00 paid by Buyer as earnest money. The earnest money will be applied to the Purchase Price on the Closing Date, as that term is defined below.
3. **Payment of Purchase Price.** The Purchase Price must be paid as follows:
 - 3.1 At closing, the earnest money will be credited to the Purchase Price.
 - 3.2 At closing, Buyer must pay the balance of the purchase price in cash.
4. **Closing.** Time is of the essence. Closing must take place on a mutually agreed on date, but in no event later than June 30, 2009 (the "Closing Date"), at the offices of Chicago Title Insurance Company of Oregon, 10135 SE Sunnyside Road, Suite 200, Clackamas, Oregon. The terms *closed*, *closing* or *closing date* mean when the deed or contract is recorded and funds are available to Seller. Each party must pay one-half of the escrow fee.
5. **Preliminary Title Report.** Within 20 days after full execution of this Agreement, Seller will furnish to Buyer a preliminary title report showing the condition of title to the

Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer will have 20 days from receipt of the Title Report to review the Title Report and to notify Seller, in writing, of Buyer's disapproval of any special exceptions shown in the Title Report. Those exceptions the Buyer does not object to are referred to below as the "Permitted Exceptions." Zoning ordinances, building restrictions, taxes that are not yet paid for the current tax year, and reservations in federal patents and state deeds will be deemed Permitted Exceptions. If Buyer notifies Seller in writing of disapproval of any exceptions, Seller will have 25 days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes (the "Seller Assurance Period"). If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within 25 days after expiration of the Seller Assurance Period, in which event the earnest money will be refunded to Buyer and, when applicable, this Agreement will be of no further binding effect.

6. Conditions

6.1 Buyer's obligation to purchase the Property is contingent on satisfaction of each of the following conditions:

6.1.1 Buyer's approval of its physical inspection of the Property, which may include, but will not be limited to, a land survey and structural and pest inspections. Buyer will have until January 31, 2009, to complete its physical inspection of the Property. However, if Buyer wishes to conduct any invasive testing on any portion of the Property, or any sampling of soils or other elements of the Property for any purposes, advance consent from the Seller will first be sought.

6.2 Buyer and its agents must have full access to the Property for the purpose of conducting Buyer's inspections. Buyer agrees, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, to indemnify and hold Seller harmless from all loss, damage, or liability caused as a result of Buyer or Buyer's agents' access to the Property under this section. If Buyer is not satisfied, in its sole discretion, with the result of Buyer's inspections, Buyer may terminate this Agreement by written notice to Seller given at any time before the applicable date set forth above, in which event the earnest money must be refunded to Buyer. If Buyer fails to give any such notices of termination within the applicable time period, this condition will be deemed to have been waived.

7. Marketable Title; Deed. On the Closing Date, unless agreed otherwise herein, Seller will convey marketable title to the Property by statutory warranty deed, free and clear of all liens of record, excepting property taxes that are not yet payable, zoning ordinances, building and use restrictions, reservations in federal patents, and the Permitted Exceptions.

8. Title Insurance. Within 15 days after closing, Seller must furnish Buyer with an American Land Title Association owner's policy of title insurance in the amount of the purchase price, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions. Buyer has the right, if the Buyer so elects, to cause the title policy to be issued as an extended coverage policy, provided the Buyer pays the additional premiums and all survey costs associated with that coverage.

9. **Taxes; Prorates.** Real property taxes for the current tax year, insurance premiums (if Buyer assumes the existing policy), and other usual items must be prorated as of the Closing Date.

10. **Possession.** Buyer will be entitled to possession immediately on closing.

11. **Property Included.** All built-in appliances, floor coverings, window and door screens, storm doors and windows, irrigation, plumbing, ventilation, cooling and heating fixtures and equipment, water heaters, attached electric light fixtures, window coverings, awnings, attached television antenna, planted shrubs, plants, and trees, and all fixtures are part of the Property and must be left on the Property by Seller.

12. **Personal Property.** The following personal property is included as part of the Property being sold to Buyer: none.

13. **Seller's Representations.** Seller represents and warrants to Buyer that to the best of Seller's knowledge, information, and belief:

(1) Seller knows of no material structural defects with respect to the Property.
(2) All electrical wiring, heating, cooling, and plumbing systems are in good working order and the balance of the Property, including the yard, will be in substantially its present condition on the Closing Date.

(3) Seller has received no written notice of any liens to be assessed against the Property.

(4) Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Property.

(5) Seller is not a *foreign person* as that term is defined in IRC §1445(f)(3). On the Closing Date, Seller will execute and deliver to Buyer a certification of nonforeign status on a form required by the IRS.

(6) The Property has never been used for the storage or disposal of any hazardous material or waste. No environmentally hazardous materials or wastes are contained on or under the Property and the Property has not been identified by any governmental agency as a site on which environmentally hazardous materials or wastes have been or may have been located or deposited.

(7) **No Seller Contamination.** To Seller's knowledge, Seller has not caused any hazardous substance, waste, or material to be used, generated, stored, or disposed of on or transported to or from the Land or Improvements in violation of any applicable law before or during the period in which the Seller has owned the Property. For the purposes of this paragraph, "hazardous substance, waste, or material" means all petroleum-based products, radon, asbestos, PCBs, and all substances, wastes, and materials that are so defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC §§9601-9675; the Resource Conservation and Recovery Act, 42 USC §§6901-6992k; and the Hazardous Materials Transportation Act, 49 USC §§5101-5128.

(8) **Authority of Seller.** Seller's execution of, delivery of, and performance under this Agreement are undertaken according to authority validly and duly conferred on Seller and the signatories hereto.

All representations and warranties contained in this Agreement will survive closing and the conveyance of the Property to Buyer.

14. Binding Effect/Assignment Restricted. This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns. Nevertheless, Buyer will not assign its rights under this Agreement without Seller's prior written consent, which may not be unreasonably withheld by Seller).

15. Remedies

TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT. If the conditions described in Section 6 above are satisfied or waived by Buyer and Buyer fails or refuses to close this transaction, through no fault of Seller, Seller will be entitled to retain or collect all earnest money paid or agreed to be paid, as liquidated damages, and this Agreement will be of no further effect, it being the intention of the parties that Buyer may forfeit the earnest money and be free of any further obligations under this Agreement. If Seller fails to deliver the deed described in Section 7 above on the Closing Date or otherwise fails or refuses to close this transaction, through no fault of Buyer, all earnest money will be refunded to Buyer. Acceptance by Buyer of the refund will not constitute a waiver of other remedies available to Buyer, it being the intention of the parties that Buyer will retain all available remedies for breach of contract, including but not limited to the right of specific performance.

16. Attorney Fees. If an action is instituted to enforce or interpret any term of this Agreement, the prevailing party will recover from the losing party reasonable attorney fees incurred in the action as set by the trial court or arbitrators, as the case may be, and, in the event of appeal, as set by the appellate courts.

17. Notices. All notices and communications in connection with this Agreement must be given in writing and will be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted will be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

18. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

19. Applicable Law. This Agreement will be construed, applied, and enforced in accordance with the laws of the state of Oregon.

20. **Acceptance.** This Agreement will be null and void unless accepted by Seller, by Seller's execution of it, on or before December 31, 2008.

21. **Statutory Warning.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. 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 ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

SELLER:

/s/ Penny E. Labberton
/s/ Teddy B. Peetz
/s/ Cathy L. Peetz
/s/ Elaina F. Davis

Dated: December , 2008

BUYER:

CITY OF TROUTDALE

By: David K. Nelson
Title: City Administrator

Dated: December 17th, 2008

EXHIBIT A

Order No.: 460598

LEGAL DESCRIPTION

Lot 3, Block 4, TROUTDALE, recorded in Plat Book 140, Page 91, in the County of Multnomah and State of Oregon.

EXCEPTING THEREFROM that portion as disclosed by Warranty Deed to the State of Oregon for highway purposes recorded November 9, 1931 in Book 150, Page 263.

TOGETHER WITH the North 10 feet of Lots 5 and 6, Block 4, TROUTDALE, recorded in Plat Book 140, Page 91, in the County of Multnomah and State of Oregon.