

## REAL ESTATE AGREEMENT

BY THIS AGREEMENT, effective on the date last signed by both parties ("Effective Date"), Sustainable Fairview Associates, LLC, an Oregon limited liability company ("Seller") and the City of Salem, an Oregon municipal corporation ("Purchaser"), do hereby agree as follows:

1. **Premises.** Seller shall sell to Purchaser and Purchaser shall purchase from Seller, at the price and on the terms and conditions set forth herein, the real property, access and property rights, and all improvements thereto which are located in City of Salem, Marion County, Oregon, and are more particularly shown on Exhibit A, attached hereto and incorporated herein, ("Premises").

2. **Purchase Price.** Purchaser shall pay Seller a per-acre price of \$75,000 subject to final survey as stated in Section 4.7 ("Purchase Price") for the Premises.

2.1 **Payment of Purchase Price.**

At Closing, Purchaser shall pay the Purchase Price, less any Earnest Money paid, in cash by wire transfer of immediately available US funds to an account designated by Seller.

3. **Earnest Money.** Purchaser shall pay earnest money in the amount of twenty-five thousand dollars (\$25,000.00) to Seller within thirty (30) days of the Effective Date of this Agreement. The Earnest Money payment shall be refundable should the property transfer not occur for any reason.

4. **Purchaser's Conditions.**

4.1 **Environmental Contingency.** Purchaser may initiate a Phase I and a Phase II Environmental Assessment of the Premises upon satisfactory demolition of structures as described in Section 4.3. If either Phase I or Phase II results indicate environmental liability issues that are unacceptable to Purchaser, at Purchaser's sole discretion, then Purchaser may, on written notice to Seller, terminate this Agreement and it shall be null and void for all purposes. If such written notice to terminate is not given to Seller on or before Closing, this condition shall be deemed waived by Purchaser for all purposes.

4.2 **Inspection Contingencies.**

4.2.1 **Inspection Expenses.** All costs and expenses of all Purchaser's tests, inspections, and studies will be paid by Purchaser when due, regardless of whether this transaction closes. Purchaser shall not allow any materialmen's liens or other encumbrances on the Premises.

#### 4.3 **Site Work.**

4.3.1 With the exception of the LeBreton Building, Seller shall demolish all structures, including foundation and basement walls, on the Premises. Seller shall also back fill former building sites with clean fill and no less than three feet of topsoil and remove all debris from the Premises.

4.3.2 All caps and walls for existing steam/access tunnels on the Premises are to be demolished by Seller to a minimum depth of three feet below finish grade. All improvements within said tunnels (piping, duct work, etc.) shall be removed and tunnels filled with clean, structural fill material and capped with no less than three feet of topsoil.

4.4 **Vacation of Old Strong Road.** Purchaser desires to have Old Strong Road remain in place. Seller agrees suspend its application to vacate the Old Strong Road right-of-way through Closing.

4.5 **Road Construction.** Purchaser agrees to fund and construct the required half street improvements adjacent to the Premises for the street identified in Exhibit B, upon development of the Premises. Should Purchaser undertake its half street improvement prior to Seller completing the required half street improvement along the same right of way of Seller's adjacent property, Seller may, at its sole discretion, contribute funds to Purchaser to complete Seller's required half street improvement in lieu of completing the improvements itself. The cost of Seller's half street improvement shall be mutually agreed to by the parties in writing prior to construction.

4.6 **LeBreton Building.** Prior to Closing, Seller shall have the LeBreton Building secured to Purchaser's satisfaction and sealed against the weather. Work will include, but not be limited to, ensuring all window openings are sealed and water tight, the roof has no leaks or allows any water intrusion, and that all gutters and downspouts are working in satisfactory order. Purchaser shall assign a representative to work with Seller to devise a plan and scope of work for weatherization of the LeBreton Building. It is agreed that Seller's maximum obligation toward weatherization of the LeBreton Building is \$50,000.

4.7 **Final Determination of Premises Area.** At such time as Purchaser and Seller agree to a final layout of the Premises, Seller shall complete a survey, and updated legal description, and obtain final approval for a property line adjustment, including recording a survey with Marion County. The estimated size of the Premises is between 27 and 30 acres. If an agreement on the final layout is not reached within 90 days of the Effective Date, then the Agreement is terminated.

4.8 **Refinement Plan.** Prior to Closing, Seller shall obtain final approval, including exhaustion of any appeals, of a Refinement Plan, which is consistent with the Park Master Plan identified in section 5.1 of this Agreement. If

final approval of the Refinement Plan is not obtained prior to Closing, then Purchaser may, on written notice to Seller, terminate this Agreement and it shall be null and void for all purposes.

5. **Seller's Conditions**

5.1 **Park Master Plan.** Prior to Closing, Purchaser shall obtain final approval, including exhaustion of any appeals, of a park master plan for the Premises ("Park Master Plan"). The Park Master Plan shall identify the Premises as a "community park" as described in Purchaser's Parks System Master Plan, and set forth the approximate location and type of amenities to be included in the proposed park. The Refinement Plan is contingent upon completion of a Park Master Plan by Purchaser. If final approval of the Refinement Plan is not obtained prior to Closing, then Seller may, on written notice to Purchaser, terminate this Agreement and it shall be null and void for all purposes.

6. **Title Insurance.**

6.1 **Title Report.** Within thirty (30) days after the Effective Date, Seller will order a preliminary title report from the Escrow Agent with respect to the Premises (the "**Title Report**"). The Title Report will be accompanied by the most legible copies available of all special exceptions listed therein. Purchaser will have thirty (30) days after its receipt of the Title Report and copies in which to notify Seller in writing of Purchaser's disapproval of any exceptions shown in the Title Report. Any special assessments shown on the Title Report that are objected to by Purchaser will be included in Purchaser's notice. In the event of any disapproval, Seller will notify Purchaser in writing within fifteen (15) business days after Purchaser's notification as to whether Seller agrees to remove any of the exceptions so disapproved, and upon delivering the notice, Seller will have until the Closing Date described in Section 14 to cause the exceptions that Seller has agreed to remove to be removed of record and from the Title Report. Purchaser will be deemed to have accepted all title exceptions to which it has not timely objected.

6.2 **Rescission of Agreement—Title Defects.** If Seller elects not to eliminate any title exception disapproved by Purchaser, Purchaser may elect to cancel this Agreement by written notice to Seller given on or before thirty (30) business days after Seller's notification of the election. In this event, the Deposit, if any, will be forfeited by Purchaser and this Agreement will terminate. If Purchaser does not elect to cancel this Agreement, Purchaser's objections to the disapproved exceptions that Seller elected not to eliminate are deemed waived and the Premises will be conveyed to the Purchaser with such defects without credit against the purchase price. The foregoing notwithstanding, Seller agrees that it will cause all trust deed liens or monetary encumbrances against the Premises that are not accepted by Purchaser to be released of record by the Closing Date. If Purchaser fails to give timely notice to Seller of termination under this paragraph, then Purchaser's right of termination will be deemed waived.

Said title insurance policy shall be in the amount of the Purchase Price. Seller shall bear the cost of the title insurance. Any extended title coverage shall be paid by Purchaser.

7. **Risk of Loss.** All risk of loss, injury, damage or condemnation of the Premises shall be transferred from Seller to Purchaser at the time of Closing. If the Premises are partially destroyed or partially condemned at any time prior to Closing and that portion of the Premises destroyed or condemned constitutes a material part of this transaction, or if the Premises are totally destroyed or condemned, either party may terminate this Agreement without liability or obligation to the other party. All insurance proceeds and condemnation awards, received by or accruing to Seller by reason of such loss, injury, damage, or taking, shall be for the account of Seller, and the Purchase price shall not be reduced thereby unless agreed between the parties prior to Closing. If the Premises are partially destroyed or condemned and the loss or condemnation is immaterial, the transaction shall be closed without reduction or adjustment in the Purchase Price, and the proceeds of all insurance and all condemnation proceeds shall accrue to Purchaser.

8. **Taxes and Assessments: Closing Costs.** Real estate and personal property taxes, if any and all utilities shall be prorated between the parties as of the date of Closing. Seller shall pay one-half of any closing fees, including escrow fees. Recording Fees, transfer taxes and assessments, deed stamps and one-half of any closing fees, including escrow fees, shall be paid by Purchaser. Each party shall pay its own attorney fees and other expenses incurred.

9. **Title Documents.**

9.1 **Deed.** Seller agrees to execute and deliver to Purchaser a statutory warranty deed conveying title to the Premises, subject to the accepted title exceptions of record.

10. **Possession.** Purchaser shall be entitled to possession of the Premises at Closing.

11. **Closing.** The term "Closing" as used in this Agreement means the payment by the Purchaser to Seller of that portion of the Purchase Price due at Closing and the delivery by Seller to Purchaser of the warranty deed and title insurance policy. Unless otherwise agreed by the parties, or the Agreement is terminated pursuant to Sections 4, 5 and 6, Closing shall take place at the earliest possible date, but no later than May 1, 2016. This transaction shall be closed through an escrow that is to be held by a title company mutually agreed upon by Purchaser and Seller. Each party shall execute and deliver on a timely basis all escrow instructions, deeds, declaration of restrictive covenants, and other documents reasonable necessary to close this transaction.

12. **Statutory Warning (ORS 93.040(2))**. 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

13. **Brokers**. Seller and Purchaser warrant to each other that no person or entity of any sort is entitled to any commission, broker fees, finder fees, or other payment.

14. **Default**. In the event that either party fails to close this transaction when and as required hereby, the other party's sole remedy is to terminate this Agreement, in which case this Agreement shall be null and void.

15. **Assignment**.

15.1 Neither this Agreement nor any rights arising under it may be assigned or mortgaged by Purchaser without the prior written consent of Seller, and any attempt to transfer this Agreement or any rights or interests arising hereunder, by operation of law or otherwise, without such consent shall be void and of no force and effect.

15.2 The rights and obligations arising under this Agreement shall run with the land, and shall be binding on the parties' successors and assigns. In the event Seller sells, conveys, or otherwise transfers fee title to the Premises, or interest therein, to a third party, Seller shall assign its rights and obligations

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year indicated below.

SUSTAINABLE FAIRVIEW ASSOCIATES, LLC

By *Scott Hall*  
Title *Managing Member*

Date *11 August 2015*

CITY OF SALEM

By *Karey Duncan*  
Title *Interim City Manager*

Date *21 August 2015*

EXHIBIT A  
LEGAL DESCRIPTION

TBD

EXHIBIT B

