

REAL ESTATE AGREEMENT

BY THIS AGREEMENT, effective on the date last signed by both parties ("Effective Date"), Brandon Fahlman ("Purchaser") and the City of Salem, an Oregon municipal corporation ("Seller"), 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 \$50,000 ("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 five thousand dollars (\$5,000.00) 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 within 60 days of the Effective Date of this Agreement. After 60 days from the Effective Date of this Agreement, the Earnest Money payment will not be refundable for any reason.

4. **Purchaser's Conditions.** Seller may terminate this Agreement within 14 days of its Planned Unit Development pre-application conference should it determine the project not feasible for any reason in its sole discretion.

5. **Seller's Conditions**

None.

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 returned to 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 December 31, 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 arising under this Agreement to that party contemporaneously with that sale, conveyance, or transfer.

16. **Modification.** No part of this Agreement may be modified without the express written consent of both parties.

17. **Notices.** Any notice or demand required or permitted to be given under the terms of this Agreement shall be deemed duly given or made if given by any of the following methods:

a. Deposited in the US mail in a sealed envelop, postage prepaid, by registered or certified mail, return receipt requested, respectfully addressed as follows:

To Purchaser: Brandon Fahlman
560 Market St. NE
Salem, OR 97301
503-930-2786

To Seller: City of Salem
Attn: Real Property Services Manager
350 Commercial St. NE
Salem, OR 97301
503.540.2404

With a Copy to: City of Salem, City Attorney's Office
555 Liberty St, SE Rm. 205
Salem, OR 97301
503-588-6003

b. Sent to the above addresses via an established national overnight delivery service (such as Federal express), charges prepaid, or

c. Sent via any electronic communications method, provided the sender obtains written confirmation of receipt of the communication by the electronic communication equipment at the office of the addressee listed above.

18. **Enforcement and Attorney Fees.** In the event a suit or other action is instituted to enforce any of the terms or obligations under this Agreement, each party shall bear the costs of its respective attorney's fees.

19. **Integration.** This Agreement contains the entire agreement between the parties concerning the subject hereof, including all oral understandings and agreements, and there are no collateral understandings or agreements or representations or warranties not expressly included herein.

20. **Recording.** Neither this Agreement nor any copy hereof shall be recorded without the express written consent of Seller.

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

Brandon Fahlman

By _____

Date _____

Title _____

CITY OF SALEM

By _____

Date _____

Title _____

EXHIBIT A
LEGAL DESCRIPTION

Lot 2, Sunnyslope Acres No. 2, Marion County, Oregon

DRAFT