

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into as of this ____ day of _____, 2020 (the “**Effective Date**”), by and between Peninsula Truck Lines, Inc. (“**Buyer**”), and the City of Salem, an Oregon municipal corporation (“**Seller**”). Buyer and Seller are each a “**Party**” and together the “**Parties**.”

RECITALS

A. Seller is the owner of that certain real property located in Marion County, Oregon, commonly known as Lot 4 of the Salem Business Park in Salem, as shown on Exhibit A and more particularly described on Exhibit B (the “**Property**”). The Property consists of approximately eight (8.2) acres.

B. Buyer desires to purchase the Property from Seller, and Seller wishes to sell the Property to Buyer, on the terms and conditions contained herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Seller and Buyer agree as follows:

1. Agreement of Purchase and Sale. Subject to and upon the terms and conditions herein, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property, together with all of Seller’s right, title and interest in and to any rights licenses, privileges, reversions and easements appurtenant to the Property.

2. Purchase Price. The purchase price for the Property (the “**Purchase Price**”) is TWO DOLLARS AND SEVENTY-SEVEN CENTS (\$2.77) per square foot, approximately NINE HUNDRED EIGHTY NINE THOUSAND FOUR HUNDRED TWENTY TWO Dollars (\$989,422) all cash to Seller at the close of escrow. The Final Purchase Price is subject to final cost estimate for Gaia Street SE cul-de-sac as described in Section 8(d).

3. Earnest Money. Within five (5) days of the Effective Date, Buyer shall deliver to the Title Company the amount of Fifty Thousand Dollars (\$50,000.00) (the “**Earnest Money**”) as earnest money. Earnest Money shall be deposited in a federally insured, interest-bearing account with interest accruing to Buyer. Should the transfer of property not occur for any reason, except those listed in Sections 5 and 6, the Earnest Money shall be fully due to Seller. Earnest Money shall be applied to the Final Purchase Price at Closing.

4. This section intentionally deleted.

5. Title Company and Title Report.

- (a) Title Company. On or before three (3) business days after the Effective Date, the Parties shall deposit an executed copy of this Agreement with _____, in Salem, Oregon 97301 (the “**Title Company**”).
- (b) Title Report. Seller will deliver to Buyer a current preliminary commitment for title insurance for the Property, issued by the Title Company, together with copies of the underlying documents (the “**Title Report**”) within three (3) business days after the Effective Date.

6. Buyer’s Investigation Period.

- (a) Seller agrees to furnish Buyer, within 10 days of the Effective Date, with any surveys, environmental studies, title reports, and any other reports or studies relating to the Property in its possession or control
- (b) Buyer shall have a period of one hundred twenty (120) days from receipt of Seller’s documents as described in Section 6(A) (the “**Investigation Period**”), in which to investigate the Property and to approve or disapprove, in its sole discretion, the survey, title, zoning/land use, infrastructure, ingress/egress, environmental condition, soil condition and economic feasibility of the project. Buyer shall have the right during the Investigation Period to conduct such testing as it deems necessary including, but not limited to, Phase I and Phase II environmental assessments and geotechnical studies.
- (c) In the event Buyer disapproves of the Property during the Investigation Period, this Agreement shall terminate and neither Party shall have any further obligation to the other except that Buyer shall be refunded the Earnest Money together with all interest accrued thereon.
- (d) In the Event Buyer and Seller cannot agree on the allocation of Overage Amounts on the Gaia Street SE cul-de-sac project in excess of \$50,000 as set forth in Section 8(d), this Agreement shall terminate and neither Party shall have any further obligation to the other except that Buyer shall be refunded the Earnest Money together with all interest accrued thereon.

7. Buyer’s Conditions to Close.

- (a) Seller shall have timely performed, in all material respects, all of the obligations required to be performed by Seller by the terms of this Agreement, including delivery of all of the items required to be delivered by Seller pursuant to this Agreement including, but not limited to: conveyance of marketable, fee simple and insurable title to the Property to Buyer by Warranty Deed; and
- (b) Seller shall cover the cost of standard owner’s ALTA title insurance policy.
- (c) Seller shall deliver the Property free and clear of any tenant or occupant or debris as a condition of closing.

(d) Seller shall deliver to Buyer an approved subdivision for the Property and design of Gaia Street SE cul-de-sac.

8. Seller's Conditions to Close. The following are conditions precedent to Seller's obligations to consummate the transaction described herein:

- (a) Buyer shall have timely performed, in all material respects, all of the obligations required to be performed by Buyer by the terms of this Agreement, including delivery of all of the items required to be delivered by Buyer pursuant to this Agreement; and
- (b) Buyer shall bear the cost of all due diligence inspections and cost of any extended title insurance coverage and any special endorsements.
- (c) Buyer shall not begin environmental due diligence on the Property until the Effective Date.
- (d) The Purchase Price shall be the per square foot figure and final acreage as described in Section 2. Additionally, should the total cost of the Gaia Street SE cul-de-sac be greater than \$900,000 (the "**Maximum Cost**"), Buyer shall be responsible for any amount above the Maximum Cost (the "**Overage Amount**"), up to \$50,000. If the Overage Amount is greater than \$50,000, Buyer and Seller shall negotiate the allocation of payment of Overage Amounts above \$50,000. Buyer shall add any Overage Amount to the Purchase Price (the "**Final Purchase Price**") and remit the Final Purchase Price at closing. Buyer shall have no obligation to pay additional amounts towards the Gaia Street SE cul-de-sac or any other related project after closing.
- (e) Seller shall record final plat of Property.

9. Closing. So long as all conditions precedent to closing set forth herein have then been satisfied or waived in accordance herewith, the closing of the purchase and sale of the Property ("**Closing**") under this Agreement shall take place no later than thirty (30) days from the latter of: 1) Buyer's receipt of necessary permits, certificates and other approvals from the applicable city, county, and state authorities for construction of Buyer's new distribution center on the Property or 2) Seller receiving final design, construction estimates, and construction schedule for Gaia Street SE cul-de-sac, with construction starting in summer of 2021.

The date on which Closing occurs is the "**Closing Date**."

10. Conveyance of Property. At Closing, Seller shall convey the Property to Buyer by a warranty deed (the "**Deed**") conveying fee simple title in Buyer, subject only to the Permitted Encumbrances.

11. Closing Costs and Taxes. Seller shall pay transfer taxes and one-half of any closing fees, including escrow fees. Recording Fees, assessments, deed stamps and one-half of any closing fees, including escrow fees, shall be paid by Buyer. Any property taxes paid by Seller shall be prorated as of the Closing Date, and Buyer shall be responsible for any additional or deferred taxes that may result from this sale or Buyer's use of the Property. Each party shall pay its own attorney fees, consultant fees and costs, and other expenses solely incurred by that Party.

12. Buyer's Closing Deliveries. On or before the Closing Date, Buyer shall deliver the following:

- (a) to the Title Company:
 - (i) all documents required to be executed in connection with this Agreement; and
 - (ii) immediately available funds in the amount of the Final Purchase Price minus the Earnest Money, and the amount of all Closing costs and other expenses to be paid by Buyer at Closing pursuant to Section 11, above.

13. Seller's Closing Deliveries. On or before the Closing Date, Seller shall deliver the following:

- (a) to the Title Company:
 - (i) the executed and acknowledged Deed; and
 - (ii) immediately available funds in the amount of all Closing costs and expenses to be paid by Seller at Closing pursuant to Section 11, above.

14. Representations and Warranties.

(a) Parties' Representations and Warranties. Each Party makes the following representations and warranties which are true on the date hereof and shall be true on the Closing Date as if made on such date:

- (i) *Power and Authority.* The Party is duly organized and existing under the laws of Oregon, and has the requisite right, power and authority to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The Party has taken all action necessary to authorize the execution, delivery and performance of this Agreement. The performance by the Party of its obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, document or instrument to which the Party is a party or by which it is bound or affected. All proceedings required to be taken by or on behalf of the Party to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.

- (ii) *Validity of Agreement.* This Agreement and all other documents required by this Agreement to be executed by Party shall constitute, when so executed, the valid and binding obligation of the Party thereto, enforceable against it in accordance with their respective terms.

(b) Survival. All representations and warranties made by the Parties hereunder shall survive Closing.

15. Purchase AS-IS; No Representations by Seller.

(a) Buyer understands, acknowledges and agrees that Buyer is buying Property “AS-IS” and “WHERE-IS,” with all faults and without any representations or warranties, express, implied or statutory, of any kind whatsoever (including, without limitation, any representations or warranties regarding environmental matters), by Seller, its agents, brokers, consultants, counsel, employees, managers or any other person, except those expressly set forth in this Agreement.

(b) The Parties acknowledge that the closing of the sale of the Property is conditioned upon Buyer’s inspection of the Property, to Buyer’s satisfaction, as provided in Section 6, above. Buyer shall have the opportunity, prior to closing, to fully inspect, investigate and complete all due diligence relating to the Property.

16. Attorneys’ Fees. In the event of any arbitration or litigation between the parties to declare or enforce any provision of this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties, in addition to any other recovery and costs, reasonable attorneys’ fees incurred in such action in arbitration, trial and all appellate courts.

17. Statutory 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 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.

18. Defaults and Failure to Close

(a) Default by the Seller. If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Seller, the Buyer shall be entitled

to all available legal and equitable remedies, including the remedy of specific performance and the right to recover all its out-of-pocket expenses incurred in connection with the transaction.

(b) **Default by the Buyer.** If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Buyer, the Seller shall be entitled to all available legal and equitable remedies, including the remedy of specific performance and the right to recover all its out-of-pocket expenses incurred in connection with the transaction.

(c) **Cancellation Charges.** If this Agreement is terminated because of the Seller's default, the Seller will bear any cancellation charges required to be paid to the Title Company. If this escrow terminates because of the Buyer's default, the Buyer will bear any cancellation charges required to be paid to the Title Company. Otherwise, the Parties shall each pay one-half of any required cancellation charges.

19. Notices.

(a) **Addresses.** An "**Address**" means the address set forth beneath a Party's signature on this Agreement. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 19(b) below to the other Party's Address, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 19(b) below.

(b) **Delivery.**

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Fax	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or fax shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

20. Miscellaneous.

(a) **Time is of the Essence; Calculation of Days.** Time is of the essence in relation to the Parties' performance of any and all of their obligations under this Agreement. Any reference in this Agreement to "days" shall mean calendar days, unless specified as "business days." A business day is any day that is not a Saturday, Sunday or a federal or state of Oregon holiday.

(b) Integration. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. The Parties have no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified herein.

(c) Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

(d) No Waiver of Performance. No waiver by a Party of performance of any provision of this Agreement by the other Party shall be deemed a waiver of nor prejudice the other Party's right to otherwise require performance of the same provision, or any other provision.

(e) Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

(f) Counterparts. This Agreement and any amendments hereto may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

(g) Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim between Seller and Buyer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

(h) No Presumption against Drafter. No inference, presumption or conclusion shall be drawn against either Party by virtue of that Party having drafted this Agreement or any portion thereof.

(i) Brokers. Seller and Buyer warrant to each other that Seller is not represented by a broker and Buyer is represented by Burr & Temkin South, Inc. (Broker) and that Buyer is solely responsible for a commission of five percent (5%) of the Final Purchase Price, excluding any Overage Amount as stated in Section 8(d), due Broker related to this Agreement.

(j) Assignment. Buyer may assign this Agreement or Buyer's rights under this Agreement without Seller's prior written consent so long as the assignee is an entity owned and controlled by Buyer.

(j) Exhibits. The Exhibit listed below is incorporated as part of this Agreement:

Exhibit A: Site Map
Exhibit B: Legal Description

[remainder of page intentionally left blank]

Each person signing this Agreement below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

BUYER:

Peninsula Truck Lines, Inc.

By: _____
Its: _____
Date: _____

SELLER:

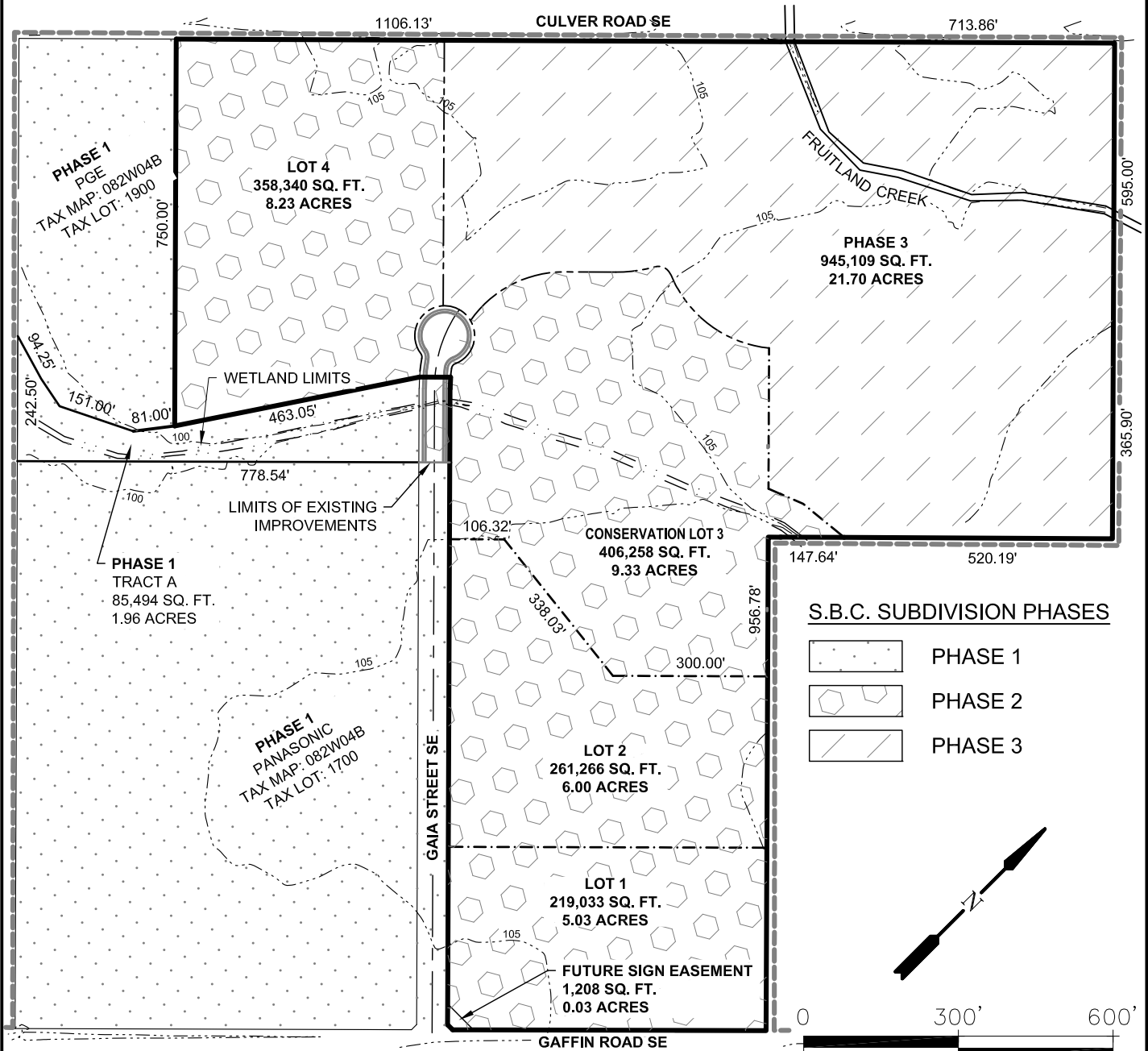
The City of Salem, an Oregon municipal corporation

By: _____
Its: _____
Date: _____

EXHIBIT A

TENTATIVE SUBDIVISION PLAN - SUBDIVISION MODIFICATION OF THE SALEM BUSINESS CAMPUS

A PORTION OF THE REPLAT RECORDED UNDER VOL. H47, PG. 18, MARION COUNTY B.O.T.P.
TOWNSHIP 8 SOUTH, RANGE 2 WEST, SECTION 4



S.B.C. SUBDIVISION PHASES

- PHASE 1
- PHASE 2
- PHASE 3

OWNER INFORMATION

CITY OF SALEM
555 LIBERTY ST SE
SALEM, OR 97301

- CITY OF SALEM/ UGB LIMITS
- GAIA ST CENTERLINE
- PROPOSED RIGHT-OF-WAY
- PROPOSED INTERIOR LOT LINES

NOTE:

THIS EXHIBIT IS FOR CONCEPTUAL PURPOSES ONLY AND IS NOT BASED OFF OF ORIGINAL SURVEY DATA.



PUBLIC WORKS DEPARTMENT

ENGINEERING DIVISION
555 Liberty Street SE, Room 325
Salem, OR 97301-3513
Phone 503-588-6211
www.cityofsalem.net

**SALEM BUSINESS
CAMPUS CONCEPTUAL
DRAWING**

PN 649210

08-18-20

EXHIBIT B
Legal Description

TBD