

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6922

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A REPURCHASE AGREEMENT TO CONVEY 1.82 ACRES OF REAL PROPERTY ALONG THE EASTBANK ESPLANADE IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA TO THE OREGON MUSEUM OF SCIENCE AND INDUSTRY FOR \$425,000.

WHEREAS, the Portland Development Commission (“PDC”) is undertaking the Central Eastside Urban Renewal Plan, adopted August 27, 1986, and subsequently amended (the “Plan”);

WHEREAS, PDC is the owner of a 1.82 acre parcel adjacent to the Oregon Museum of Science and Industry (“OMSI”) and bounded by SE Market Street, the Willamette River, and the Marquam Bridge (the “Property”);

WHEREAS, PDC and OMSI entered into an Agreement for Acquisition of Real Estate dated May 5, 2000 (the “Condemnation Agreement”) pursuant to ORS 35.385 whereby PDC agreed to acquire the Property from OMSI through an exercise of PDC’s condemnation authority for the purpose of constructing a public riverfront park;

WHEREAS, PDC condemned the Property through a Multnomah County Circuit Court Stipulated Final Judgment dated September 22, 2000 (“Stipulated Judgment”) for the just compensation amount of \$250,000;

WHEREAS, under the Agreement, OMSI has a right to repurchase the Property if PDC does not use the Property for a public purpose within five (5) years of the date of the Stipulated Judgment;

WHEREAS, PDC, in cooperation with Portland Parks & Recreation (“Parks”), made efforts to develop a design and funding plan for a riverfront park on the Property;

WHEREAS, due to lack of funding, PDC has been unable to put the Property to the public use for which it was condemned;

WHEREAS, in early 2011, OMSI expressed interest in exercising its repurchase right;

WHEREAS, in January 2012, OMSI’s Board of Trustees approved repurchasing the Property for \$425,000; and

WHEREAS, PDC and OMSI have negotiated a Repurchase Agreement substantially in the form attached hereto as Exhibit A (the “Repurchase Agreement”) to convey the Property

back to OMSI for a purchase price of FOUR HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$425,000).

NOW, THEREFORE, BE IT RESOLVED that the PDC Board of Commissioners authorizes the Executive Director to execute the Repurchase Agreement;

BE IT FURTHER RESOLVED that the Executive Director may approve changes to the Repurchase Agreement, if such changes do not materially increase PDC's obligations or risks, as determined by the Executive Director in consultation with PDC's General Counsel; and

BE IT FURTHER RESOLVED that this resolution shall become effective 30 days after its adoption.

Adopted by Portland Development Commission on March 12, 2012.



Emily Swensen, Recording Secretary

REPURCHASE AGREEMENT

This REPURCHASE AGREEMENT (this “Agreement”) is made and entered this __ day of February, 2012 (the “Effective Date”), by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland (“Seller” or “PDC”) and OREGON MUSEUM OF SCIENCE AND INDUSTRY, an Oregon nonprofit public benefit corporation (“OMSI” or “Buyer”). Buyer and Seller may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the development and redevelopment of blighted areas in the City of Portland (the “City”) and in connection therewith prepared and approved an Urban Renewal Plan for the Central Eastside Urban Renewal Area, which was approved by the Portland City Council (“Council”) on August 27, 1986, by Ordinance No. 158940 (as amended from time to time, the “Urban Renewal Plan” or the “Plan”);

B. PDC is the owner of a 1.82 acre parcel adjacent to OMSI’s parcel and bounded by SE Market Street, the Willamette River, and the Marquam Bridge, as more particularly described in Section 2 (the “Property”);

C. PDC and OMSI entered into an Agreement for Acquisition of Real Estate dated May 5, 2000 (the “Condemnation Agreement”) pursuant to ORS 35.385 whereby PDC agreed to acquire the Property from OMSI through an exercise of PDC’s condemnation authority for the purpose of constructing a public riverfront park;

D. PDC condemned the Property through a Multnomah County Circuit Court Stipulated Final Judgment dated September 22, 2000 (“Stipulated Judgment”) for the just compensation amount of \$250,000;

E. Under the Condemnation Agreement, OMSI has the right to repurchase the Property if PDC does not use the Property for a public purpose within five (5) years from the date of the Stipulated Judgment;

F. PDC, in cooperation with Portland Parks & Recreation (“Parks”), made efforts to develop a design and funding plan for a public park on the Property;

G. However, due to lack of funding, PDC has been unable to put the Property to the public use for which it was condemned;

H. As a result, OMSI desires to exercise its repurchase right under the Condemnation Agreement to reacquire the Property; and

I. Accordingly, the Parties desire to enter into this Agreement setting forth the terms and conditions under which PDC will reconvey the Property to OMSI.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Agreement to Purchase and Sale.** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property upon the terms and conditions set forth in this Agreement

2. **Description of the Property.** The Property which is the subject of this Agreement consists of the following:

The land commonly known as the Crescent Site as more particularly described in Exhibit A attached hereto (the “Land”) together with (i) all rights, privileges and easements appurtenant to the Land owned by Seller, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively, the “Appurtenances”); (ii) all improvements and fixtures located on the Land (collectively, the “Improvements”), including, without limitation, all buildings and structures presently located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the Improvements; (iii) all Seller’s rights, if any, in all tangible personal property, including all apparatus, equipment and appliances used in connection with the operation or occupancy of the Improvements (the “Personal Property”); and (iv) all Seller’s rights, if any, in all the following intangible property now or hereafter existing with respect to the Property (the “Intangible Property”):

- (A) all leases, including that certain Site Lease between Seller and Fisher Broadcasting Inc. dated on or about August 5, 2003, as amended by that certain Amendment Number One to Site Lease dated on or about June 21, 2005, that certain Amendment Number Two to Site Lease dated June 30, 2006, that certain Amendment Number Three to Site Lease dated October 5, 2007, that certain Amendment Number Four to Site Lease dated July 1, 2008, that certain Amendment Number Five to Site Lease dated July 1, 2009, that certain Amendment Number Six to Site Lease dated July 8, 2010, and that certain Amendment Number Seven to Site Lease dated June 27, 2010 (collectively, the “KATU Lease”), licenses, and other agreements to occupy all or any part of the

Land or Improvements together with, and subject to the manner in which the same are to be prorated under this Agreement, all rents, charges, deposits, and other sums due, accrued, or to become due under such leases, licenses and other agreements, and all guaranties by third parties of any tenant's obligations under the leases, licenses, and other agreements;

- (B) all plans and specifications, all building permits and other permits pertaining to the construction of the Improvements, and all warranties, guaranties, and sureties now or hereafter received in connection with the construction of, or equipment located on, the Improvements;
- (C) all licenses, permits, approvals, certificates of occupancy, and franchises relating to the zoning, land use, ownership, operation, occupancy, construction, or maintenance of the Improvements; and
- (D) all service and maintenance contracts and equipment leases in connection with or used by Seller in the operation or maintenance of the Improvements.

(which Land, together with the Appurtenances, the Improvements, Personal Property and the Intangible Property is collectively referred to herein as the "Property").

3. **Purchase Price.** The purchase price for the Property shall be FOUR HUNDRED TWENTY FIVE THOUSAND AND NO /100 DOLLARS (\$425,000.00) (the "Purchase Price"), subject to adjustment as provided herein.

4. **Representations and Warranties**

4.1 **PDC Representations and Warranties.** PDC's representations and warranties under this Agreement are limited to the following. PDC hereby warrants and represents to Buyer as of the Effective Date and as of the Closing Date (as hereinafter defined) the following:

4.1.1 PDC has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein; and all requisite action has been taken by PDC in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein.

4.1.2 To PDC's knowledge, PDC has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, released or produced Hazardous Substances on the Property, and no underground storage tanks exist on the Property, except in compliance with Environmental Laws currently in effect, and PDC has not received notice of the Release of any Hazardous Substances on the Property. PDC has enrolled the Property in the Oregon Department of Environmental Quality ("DEQ") Voluntary Cleanup Program ECSI#5547 and initiated a site investigation for "Upland Source Control." The site investigation report has been submitted to DEQ and PDC anticipates issuance of a DEQ "No Further Action" letter. Prior to Closing, DEQ intends to provide to the Parties a status update letter. PDC is not a "foreign

person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

4.1.3 To PDC's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, or PDC's ability to perform its obligations under this Agreement.

4.1.4 To PDC's knowledge, and except as otherwise disclosed in writing to Buyer before the Effective Date, the Property has been operated in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements (“Laws”).

4.1.5 To PDC’s knowledge, PDC has not received any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements.

4.1.6 No representation, warranty or statement of PDC in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.

4.1.7 PDC enters into this Agreement without reliance on verbal representations by Buyer, its employees, agents or consultants, regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation.

4.1.8 As of the Effective Date, PDC is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of PDC under this Agreement.

4.2 **Buyer Representations and Warranties.** Buyer’s representations and warranties under this Agreement are limited to the following. Buyer hereby warrants and represents to PDC as of the Effective Date and as of the Closing Date the following:

4.2.1 Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by OMSI in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required. The representations and warranties of Buyer in this Agreement shall survive the Closing.

4.2.2 Buyer enters into this Agreement without reliance on verbal representations by PDC, its employees, agents or consultants, regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation.

4.3 **Changed Conditions.** If Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing warranties and

representations ceases to be true before Closing (as hereinafter defined), Seller shall work with the Buyer using commercially reasonable efforts to remedy the problem prior to Closing. If the problem is not remedied before Closing or appears unable to be remedied before Closing, Buyer may elect to either: 1) terminate this Agreement in which case Buyer shall have no obligation to purchase the Property and any payments shall be refunded to Buyer; or 2) defer the Closing Date to a date certain determined by Buyer or until such problem has been remedied, whichever occurs first.

4.4 **As Is.** Except for the representations and warranties set forth herein, the Property is sold “AS IS”. Seller makes no other warranties, expressed or implied, as to the condition of the Property other than those warranties set forth herein.

5. **Access, Inspection, and Due Diligence Materials**

5.1 **Access and Inspection.** Buyer acknowledges that it has access to the Property pursuant to that certain Agreement for Acquisition of Real Estate by and between the Parties dated May 5, 2000 (the “2000 Agreement”) whereby the Parties agreed that OMSI lease back the Property pursuant to the terms set forth in Section 3.4 of the 2000 Agreement. Accordingly, OMSI has access to the Property to make such investigations, studies and tests as it deems necessary or advisable.

5.2 **Due Diligence Materials.** PDC agrees to provide a copy to Buyer of the following (a) the Title Report described in Section 6.1; (b) the KATU Lease; and (c) copies of all the reports listed on Schedule 5.2 attached hereto on or before the Effective Date (collectively, the “Due Diligence Materials”).

5.3 **Inspection Period.** Buyer shall notify PDC no later than twenty (20) days after the Effective Date (the “Inspection Period”) of the results of its due diligence. In the event that Buyer’s due diligence shall reveal any matters which are not acceptable to Buyer, in Buyer’s sole discretion, Buyer may elect, by written notice to PDC, on or before 5:00 p.m. on the expiration of the Inspection Period, not to proceed with the transaction contemplated herein, in which event this Agreement shall be null and void without recourse to either Party hereto.

6. **Title Matters**

6.1 **Title Review.** On or before the Effective Date, PDC will deliver to Buyer a preliminary title report on the Property and copies of all exception documents (the “Title Report”). Buyer shall, during the Inspection Period, review the Title Report. On or before 5:00 p.m. on the expiration of the Inspection Period, Buyer will make such written objections (“Title Objections”) to the form of and/or contents of the Title Report as Buyer may wish. Any matter shown on the Title Report and not objected to by Buyer shall be a “Permitted Exception” hereunder. At or before Closing, Seller shall: (i) with respect to liens and encumbrances that can be satisfied and released by the payment of money, eliminate such exceptions to title at Closing, and (ii) with respect to all other encumbrances (excluding only Permitted Exceptions), Seller shall have the election of whether or not to attempt to cure Title Objections raised by Buyer. PDC shall respond to Buyer’s Title Objections within ten (10) days and state whether Buyer has

elected to cure the Title Objections. If PDC elects not to cure such Title Objections, Buyer shall have three (3) days to terminate this Agreement by written notice to PDC, effective upon delivery. In the event additional exceptions to title are disclosed by supplemental reports (including supplemental reports reflecting matters disclosed by a survey that Buyer in its sole discretion may obtain) to the Title Report, Buyer and Seller shall proceed to review and address such new title exceptions in accordance with the provisions of this Section 5.3. Buyer in its sole discretion may elect to terminate this Agreement if any matter other than a Permitted Exception would appear as an exception in the Policy. If Buyer terminates this Agreement under this section, no remedies shall accrue to either Party and all rights and obligations of the Parties under this Agreement shall terminate other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County. If this Agreement is not so terminated, the Title Objections that PDC refused to remove or failed to respond to will be included as Permitted Exceptions hereunder.

6.2 Required State of Title. At Closing, Seller shall convey by Bargain and Sale Deed, substantially in the form attached hereto as Exhibit B (the “Deed”) fee simple title to the Property. Fee simple title to the Property shall be good and marketable and shall be insured by an Owner's Standard Form of Title Policy issued by First American Title Company (the “Escrow Agent”) in the full amount of the Purchase Price without adjustment, insuring fee simple title vested in Buyer or its nominees (the “Title Policy”).

7. Conditions Precedent to Seller’s and Buyer's Performance

7.1 Conditions Precedent to Seller’s Performance. The obligations of Seller to consummate the transaction contemplated by this Agreement are, in addition to the other terms and conditions of this Agreement subject to the following conditions (any one or more of which may be waived in whole or in part by Seller at its discretion). In the event any condition is not satisfied or waived on or before Closing, or other date as set forth herein, Seller shall have the right to terminate this Agreement, in which event this Agreement shall be null and void without recourse to either Party hereto.

7.1.1 The representations and warranties made by Buyer in this Agreement being true and correct in all material respects on and as of the Closing Date;

7.1.2 PDC’s Board of Commissioners (the “PDC Board”) has authorized the transaction contemplated by this Agreement; and

7.1.3 Payment of the Purchase Price by Buyer, as adjusted and prorated hereunder.

7.2 Conditions Precedent to Buyer's Performance. The obligations of Buyer to consummate the transaction contemplated by this Agreement are, in addition to the other terms and conditions of this Agreement subject to the following conditions (any one or more of which may be waived in whole or in part by Buyer at its discretion). In the event any condition is not satisfied or waived on or before Closing, or other date as set forth herein, Buyer shall have the

right to terminate this Agreement, in which event this Agreement shall be null and void without recourse to either Party hereto.

7.2.1 The representations and warranties made by Seller in this Agreement being true and correct in all material respects on and as of the Closing Date;

7.2.2 Between the expiration of the Inspection Period and the Closing Date there shall have been no material adverse change in (i) the condition of the Property (including, but not limited to, the physical or environmental conditions thereof); or (ii) title, such as the appearance of title matters not previously disclosed in the Title Report;

7.2.3 Buyer receiving, at Closing, the Title Policy insuring good, clear, marketable and fee simple title to the Property subject only to the Permitted Exceptions; and

7.2.4 Buyer shall have agreed to the final form of the Deed

7.3 **Elections upon Non-Satisfaction of Conditions.** If any condition in this Section 7 is not fulfilled to the satisfaction of the benefited Party or Parties on the date scheduled for Closing, then such benefited Party or Parties may elect, by written notice given to the other Party, to:

7.3.1 Terminate this Agreement by and effective upon written notice to the other Party;

7.3.2 Waive in writing the benefit of that condition precedent to Closing and proceed in accordance with the terms hereof; or

7.3.3 Designate in writing a later date for Closing, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date.

8. **Closing**

8.1 **Manner of Closing.**

8.1.1 The consummation of the transaction contemplated in this Agreement (the “Closing”) shall occur through an escrow closing arrangement (“Escrow”) administered by the Escrow Agent on the Closing Date.

8.1.2 The Parties agree to provide the Escrow Agent with escrow instructions (the “Escrow Instructions”) consistent with the terms of this Agreement.

8.1.3 On the Closing Date, the Escrow Agent shall deliver or cause to be delivered the sums and documents pursuant to the Escrow Instructions. In the event that the Escrow Agent cannot, or refuses to, handle this transaction, the Parties shall appoint an escrow company mutually satisfactory to the Parties, which is licensed in the State of Oregon.

8.2 Timing of Closing.

8.2.1 The Closing shall occur on or before May 16, 2012 (the “Closing Date”).

8.2.2 The Closing Date may not be extended without the consent of both Parties, unless extended pursuant to Section 4.3 or 7.3.

8.3 Payment of Purchase Price. Subject to satisfaction of the Conditions Precedent to Closing set forth above, and subject to the adjustments specified herein, at the Closing Buyer shall pay the Purchase Price in immediately available funds

8.4 Conveyance by Deed. Subject to satisfaction of the Conditions Precedent to Closing set forth above and upon Buyer’s payment to PDC of the Purchase Price, at the Closing PDC will convey the Property to Buyer by the Deed.

8.5 Documents to Be Deposited Into Escrow by PDC. On or before the Closing Date, PDC shall deposit into Escrow all of the following:

8.5.1 A duly executed and acknowledged Deed;

8.5.2 An original certificate of non-foreign person duly executed by PDC and notarized.

8.5.3 Such documents as the Escrow Agent may require to establish the authority of PDC to complete the sale of the Property as contemplated by this Agreement.

8.6 Documents and Sums to Be Deposited Into Escrow by Buyer. On or before the Closing Date, Buyer shall deposit into Escrow such funds (by wire transfer) as are necessary to complete payment of the Purchase Price in accordance with Section 8.3 of this Agreement and to pay Buyer’s portion of the closing costs. Buyer shall also deposit into Escrow such documents as the Escrow Agent may require to complete the sale of the Property as contemplated by this Agreement.

8.7 Prorations and Costs.

8.7.1 **Closing Costs.** The costs for recording the Deed and any other documents required by Buyer to be recorded will be paid by Buyer. Each Party shall pay one-half (1/2) of any escrow fees charged by Escrow Agent. All other closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.

8.7.2 **Title Insurance.** PDC shall pay the costs of the standard coverage Owner’s Policy of Title Insurance. Title insurance shall be subject only to the standard exceptions of such policy, current taxes not yet delinquent and the Permitted Exceptions. Buyer, at its option and its expense, may elect to obtain extended coverage under such policy of title insurance and PDC agrees to execute any affidavits or other documents reasonably required by the Escrow Agent to enable Buyer to obtain such coverage.

8.7.3 **Prorations of Taxes.** All property taxes attributable to the year in which the Closing occurs shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing (regardless of whether such taxes and special assessments are then due and payable or delinquent). PDC agrees that any taxes, assessments and encumbrances that will be a lien against the Property at the Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied by PDC. If PDC shall fail to do so, Buyer may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real property taxes payable during the year in which the Closing occurs and any rents or income applicable to the Property shall be prorated as of the Closing Date. Buyer shall pay any property taxes accruing to the Property as a result of the transfer of the Property from public ownership, and therefore the change of the Property's status from tax exempt to taxable. In addition, the Buyer shall pay property taxes on the Property from and after the Closing.

8.7.4 **Utilities.** Currently, all utilities in connection with the Property are in the name of the Buyer and Buyer shall continue to be responsible for the payment of such utilities.

8.7.5 **Other Prorations and Costs.** Except as otherwise provided herein, all other items to be prorated, including rents, operating expenses, revenues, and other income, if any, shall be prorated as of the Closing Date. For the purpose of calculating prorations, the Buyer shall be deemed to be entitled to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date. PDC shall pay only the annual payments due through the Closing date for the Property's pro rata share of any special assessments that have been paid in annual installments. Buyer shall assume liability for payment of any annual payments due after the Closing Date for any special assessments that have been paid in annual installments. Buyer and the PDC shall each pay their own legal and professional fees of other consultants incurred by Buyer and PDC, respectively.

8.8 **Close of Escrow.** On the Closing Date, the Escrow Agent shall deliver or cause to be delivered the sums and documents pursuant to the Escrow Instructions.

9. **Risk of Loss.** Seller shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, all or part of the Property is damaged by fire or by any other cause of any nature, Seller shall give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by Buyer of written notice from Seller of such casualty.

10. **Notices.** All notices in connection with this Agreement will be deemed given at the time of delivery if made by personal delivery, by facsimile, or by delivery by private express courier service; if mailed, three days after deposit by certified or registered mail, postage prepaid.

To Seller: Portland Development Commission
Eric Jacobson, Project Manager
222 NW Fifth Avenue
Portland, Oregon 97209-3859

With Copy: Portland Development Commission
Office of the General Counsel
222 NW Fifth Avenue
Portland, Oregon 97209-3859

To Buyer: Oregon Museum of Science and Industry
Attn: Mr. Paul E. Carlson
1945 SE Water Ave.
Portland, OR 97214

With Copy: Lane Powell PC
Attn: Jill R. Long
601 SW Second Ave., Suite 2100
Portland, OR 97204

The foregoing addresses may be changed by written notice, given in the same manner.

11. **Brokerage Commissions.** Buyer represents that it has retained no real estate broker in connection with this transaction. Seller represents that it has retained no real estate broker in connection with this transaction. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then the Party against whom the claim is asserted will hold the other Party harmless and defend from said claim.

12. **Further Actions of Buyer and Seller.** Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the transaction contemplated herein and shall use their best efforts to accomplish the Closing in accordance with the provisions herein.

13. **Default, Termination and Remedies**

13.1 **Default by Seller.** In the event that Seller breaches or shall have failed in any material respect on the Closing Date to have performed any of the covenants and agreements contained in this Agreement which are to be performed by Seller on or before the Closing Date, any representation or warranty of Seller herein was untrue when made, or Seller shall have caused any representation or warranty to become untrue between the Effective Date and the Closing Date, then Buyer shall have the right to (i) seek damages for Seller's breach and/or (ii) take any and all legal actions necessary to compel Seller's specific performance hereunder (it being acknowledged that damages at law would be an inadequate remedy), and to consummate the transaction contemplated by this Agreement in accordance with the provisions of this Agreement. In the event that all of the conditions set forth in Section 7.2 have not been satisfied

or waived, Buyer may elect to terminate this Agreement in which event this Agreement shall be null and void without further recourse to either Party hereto.

14. **Miscellaneous.**

14.1 **Partial Invalidity.** If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

14.2 **Mediation.** If any dispute should arise between the parties concerning the Parties' obligations or activities under this Agreement, the dispute shall be submitted to mediation before a mediator agreed to and compensated equally by the Parties, prior to commencement of arbitration or litigation.

14.3 **Attorneys' Fees.** In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding in the state or federal courts, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

14.4 **Waivers.** No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

14.5 **Successors and Assigns.** Buyer may not assign its interest in this Agreement to any other person or entity without the express, written consent of Seller, which shall not be unreasonably withheld. In the event that an assignee assumes the obligations of Buyer hereunder, then Buyer shall have no further liability with respect to this Agreement, and this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

14.6 **Interpretation of Agreement.** This Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.

14.7 **Entire Agreement.** This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the Party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted here.

14.8 **Time of Essence.** Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision.

14.9 **Amendments and Modifications.** Any modifications to this Agreement shall be made in writing and executed by the Parties.

14.10 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same instrument.

14.11 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

14.12 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state of Oregon.

14.13 **Statutory Notice.** 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 OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22. 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 OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SELLER:

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**

Patrick Quinton, Executive Director

BUYER

OREGON MUSEUM OF SCIENCE AND INDUSTRY, an Oregon nonprofit public benefit corporation

By: _____
Title: _____

Approved as to Form:

Lisa Gramp
Assistant General Counsel

EXHIBIT A

Legal Description

A tract of land situated in the Southeast one-quarter of Section 3, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon, and more particularly described as follows:

Commencing at the Southwest corner of Block 19, STEPHENS ADDITION TO EAST PORTLAND; and proceeding thence South, along the Southerly extension of the West line of said Block 19, a distance of 30.00 feet to the South line of SE Market Street; thence West, along said South line of SE Market Street, a distance of 326.98 feet to a point on the Northerly projection of the West line of the existing Production building and the point of beginning for the following described tract; thence South 0°02'40" East, along the Westerly line of said Production building, a distance of 102.59 feet to the Southwest corner thereof; thence North 89°57'20" East, along the South line of said building, a distance of 49.82 feet to the Northerly projection of the West edge of an existing sidewalk; thence South, along said West edge of said sidewalk and its projected line, a distance of 417.45 feet to the North line of the Bull Run pipeline right of way as established by Book 209, Page 133, February 14, 1894; thence West, along said line of the Bull Run right of way, a distance of 85.61 feet to the Ordinary Low Water line of the East bank of the Willamette River at elevation +6.1 feet, City of Portland Datum, as said Ordinary Low Water line was established in 1988; thence Northerly, along said Ordinary Low Water Line of 1988, the following courses: North 24°20'00" West a distance of 51.39 feet; thence North 05°10'00" West a distance of 45.00 feet; thence North 17°10'00" West a distance of 118.00 feet; thence North 20°30'00" West a distance of 55.00 feet; thence North 06°50'00" West a distance of 66.00 feet; thence North 26°40'00" West a distance of 54.00 feet; thence North 11°40'00" West a distance of 30.00 feet; thence North 23°50'00" West a distance of 37.00 feet; thence North 2°50'00" East a distance of 20.00 feet; thence North 24°00'00" West a distance of 73.46 feet to said South line of SE Market Street; thence East a distance of 197.02 feet to the point of beginning.

Schedule 5.2

Phase I Environmental Site Assessment, GeoEngineers, June 15, 2010.

Preliminary Title Report, Chicago Title Insurance Company of Oregon, October 4, 2011.

Phase II Environmental Site Assessment and Source Control Evaluation Report, Integral Consulting, Inc., October 14, 2011.

American Land Title Association (ALTA) and Topographic Surveys, Westlake Consultants, Inc., October 31, 2011.

Record of Survey, Westlake Consultants, Inc., November 17, 2011.

Restricted Use Appraisal, Romanaggi Valuation Services, LLC, November 18, 2011.

Update Letter – Crescent Site, Oregon Department of Environmental Quality, January 24, 2012.

RESOLUTION NO. 6922

RESOLUTION TITLE:

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A REPURCHASE AGREEMENT TO CONVEY 1.82 ACRES OF REAL PROPERTY ALONG THE EASTBANK ESPLANADE IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA TO THE OREGON MUSEUM OF SCIENCE AND INDUSTRY FOR \$425,000.

Adopted by the Portland Development Commission on March 12, 2012

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Steven Straus	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Charles Wilhoite	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

CERTIFICATION

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and as duly recorded in the official minutes of the meeting.

	Date: June 13, 2012
Emily Swensen, Recording Secretary	