

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6864

AUTHORIZING THE EXECUTIVE DIRECTOR TO ACQUIRE PROPERTY LOCATED AT 7104-7120 SE FOSTER ROAD, 7126-7130 SE FOSTER ROAD, AND 7238 SE FOSTER ROAD FOR A PURCHASE PRICE NOT TO EXCEED \$1,400,000 FOR THE PURPOSE OF REDEVELOPMENT IN ACCORDANCE WITH THE LENTS TOWN CENTER URBAN RENEWAL PLAN

WHEREAS, by virtue of the laws of the State of Oregon, the Portland Development Commission (“PDC”) is authorized and empowered to acquire by purchase real property for the purpose of carrying out a duly adopted urban renewal plan;

WHEREAS, it has been determined that portions of certain real property and the improvements thereon located at 7104-7120 SE Foster Road, 7126-7130 SE Foster Road, and 7238 SE Foster Road (collectively, the “Property”), in the Lents Town Center Urban Renewal Area (the “URA”), have the characteristics of blighted properties as described in ORS 457.010 and that the acquisition thereof is consistent with the objectives of the URA plan;

WHEREAS, the Property is a 1.68 acre site on SE Foster Road and is considered strategic for the future redevelopment of the URA;

WHEREAS, URA funds have been budgeted for the purchase of the Property;

WHEREAS, the Portland Housing Bureau will contribute thirty percent (30%) of the purchase price (approximately \$450,000) which will be moved from the Housing Budget to PDC’s Revitalization budget to fund the acquisition because it is anticipated that the Property will be redeveloped as a mixed-use project with affordable housing as one component; and

WHEREAS, PDC entered into a Purchase and Sale Agreement with Albina Community Bank agreeing to purchase the Property subject to satisfactory due diligence and subject to approval by the PDC Board of Commissioners (the “Board”), and has completed its due diligence investigation to acquire the Property.

NOW, THEREFORE, BE IT RESOLVED that that the Executive Director is hereby authorized to acquire the Property for an amount not to exceed \$1,400,000, substantially in accordance with the terms and conditions of the Purchase and Sale Agreement attached hereto as Exhibit A;

BE IT FURTHER RESOLVED that that the Executive Director is authorized to execute all documents required to effectuate the acquisition of the Property;

BE IT FURTHER RESOLVED that the Board finds that the acquisition of the Property is consistent with the objectives of the Plan; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission on April 13, 2011.



Recording Secretary

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered this 16th day of February, 2011 (the "Effective Date"), by and between ALBINA COMMUNITY BANK ("Seller") and 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 ("Buyer" or "PDC"). 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 Lents Town Center Urban Renewal Area (the "URA"), which was approved by the City Council of the City on September 9, 1998 (as amended from time to time, the "Urban Renewal Plan");
- B. Seller is the owner of the Property (as hereinafter defined) located in the URA;
- C. PDC has found it necessary and in the public interest to implement the Urban Renewal Plan by acquiring the Property in order to remediate and redevelop which will serve as a catalyst for further redevelopment in the URA;
- D. Therefore, PDC desires to purchase the Property from Seller and Seller desires to sell the Property to PDC;
- E. PDC finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the applicable state and federal laws and requirements under which the Urban Renewal Plan was adopted; and
- F. Accordingly, the Parties desire to enter into this Agreement setting forth the terms and conditions under which PDC will acquire the Property.

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 located at 7104-7120 SE Foster Road, 7126-7130 SE Foster Road, and 7238 SE Foster Road, Portland, Oregon 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, if any (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 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;
- (B) 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
- (C) 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 ONE MILLION FOUR HUNDRED THOUSAND AND NO /100 DOLLARS (\$1,400,000.00) (the "Purchase Price"), subject to adjustment as provided herein.

4. **Representations, Warranties and Covenants**

To the maximum extent permitted by applicable law and except for Seller's representations, warranties and covenants in this Section 4, any other representations, warranties or covenants in this Agreement, and any covenants or warranties of title contained in the Deed delivered at the Closing ("Seller's Warranties"), this sale is made and will be made without representation, covenant, or warranty of any kind (whether express, implied, or, to the maximum extent permitted by applicable law, statutory or otherwise) by Seller. As a material part of the consideration for this Agreement, Buyer agrees to accept the Property on an "as is" and "where is" basis, with all faults, and without any representation or warranty, all of which Seller hereby disclaims, except for Seller's Warranties. Except for Seller's Warranties, no warranty or representation is made by Seller as to fitness for any particular purpose, merchantability, design, quality, condition, operation or income, compliance with drawings or specifications, absence of defects, absence of hazardous or toxic substances, absence of faults, flooding, or compliance with laws and regulations including, without limitation, those relating to health, safety, and the environment. Buyer acknowledges that Buyer has entered into this Agreement with the intention of making and relying upon its own investigation of the physical, environmental, economic use, compliance, and legal condition of the Property and that, other than the Seller's Warranties, Buyer is not now relying, and will not later rely, upon any representations and warranties made by Seller or anyone acting or claiming to act, by, through or under or on Seller's behalf concerning the Property. This provision of this Section 4 shall survive indefinitely any Closing or termination of this Agreement and shall not be merged into the Closing documents. The survival of Sections 4.1, 4.2 and 4.3 are set forth in Section 4.4.

4.1 **Sellers' Representations and Warranties.** Seller hereby warrants and represents to Buyer as of the Effective Date and as of the Closing Date (as hereinafter defined) the following and acknowledges that they are material inducements to Buyer to enter into this Agreement:

4.1.1 Seller 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.

4.1.2 All requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Seller 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.

4.1.3 The person executing this Agreement and the instruments referred to herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions of this Agreement.

4.1.4 This Agreement and all documents required to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

4.1.5 Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Seller is a party, or, affecting the Property.

4.1.6 Seller has not entered into any other contracts for the sale of the Property, and, to Seller's actual knowledge, there do not exist any rights of first refusal, options to purchase the Property, leases, mortgages, licenses, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affects or encumbers the Property or any portion thereof, with the exception of matters of record. Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, air rights, or any other development or other rights or restrictions relating to the Property, and to Seller's actual knowledge, no such rights encumber the Property, and will not, through Closing (as hereinafter defined).

4.1.7 To the best of Seller's actual knowledge, but without due inquiry, there are no actions, suits or proceedings (including arbitration proceedings) pending or, threatened against Seller which could have a material adverse effect on any portion of the Property, Seller's interest therein, or Seller's ability to perform its obligations hereunder.

4.1.8 To the best of Seller's actual knowledge, but without due inquiry, there are no condemnation actions pending against the Property or any portion thereof, nor has Seller received any notice of any being contemplated.

4.1.9 To the best of Seller's actual knowledge, but without due inquiry, there are no contracts or agreements related to the use, ownership or operation of the Property, except as disclosed by the public records.

4.1.10 Seller has not received any written notice that it is in default under any of the covenants, easements or restrictions shown in the public records which currently encumbers the Property or any constituent or portion thereof.

4.1.11 Seller is a bank that commenced a foreclosure of a trust deed against the Property and acquired title to the Property by deed in lieu of foreclosure. As a result, Seller has no knowledge of the environmental conditions of the Property, except as may be described in a Phase One Environmental Site Assessment dated November 29, 2007 ("Phase I") for Metro Auto Wholesale, Inc.

("Metro") prepared by Evergreen Environmental Management, LLC ("EEM") and a Site Characterization Soil Sampling (aka a Phase Two investigation), dated December 23, 2007 prepared by EEM (the "Phase II"). Copies of both the Phase I and the Phase II have, prior to the date of this Agreement, been delivered to the Buyer. Such Phase I and Phase II were delivered to Buyer "AS IS", without representation or warranty of any kind whatsoever by Seller. With respect to the Phase I and Phase II reports, Buyer acknowledges that (i) the Phase I and Phase II studies, and other information if any about the environmental condition of the Property were delivered to Buyer by Seller for information purposes only and only as an accommodation to Buyer and (ii) Seller or its agents will not make and has not made any representation, warranty, promise of any kind, whether oral or written, expressed or implied, concerning the accuracy or completeness of all or any part of the Phase I and Phase II reports. With respect to the environmental condition, Buyer will rely solely on its investigation with regard to the condition of the Property, including whether there are any Hazardous Materials in, on or under the Property and is being given an opportunity during the Inspection Period (defined below) to perform such investigations, tests and studies as Buyer may elect under the Permit of Entry, described in Section 5.1 of this Agreement. "Hazardous Materials" (as hereinafter defined) at or on the Property, and Seller has no actual knowledge of any previous or present generation, storage or disposal or existence thereof except as disclosed in the Phase I and Phase II reports referenced above. "Hazardous Materials" means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. ("CERCLA"), or any other environmental law.

4.1.12 All representations and warranties contained herein are material and may be relied upon by Buyer and shall survive the Closing for a period of one (1) year.

4.1.13 **Changed Conditions.** If, prior to Closing, 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 and it materially affects the Property, 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, Buyer may elect to either: 1) terminate this Agreement in which case Buyer shall have no obligation to purchase the Property and any payments toward the Purchase Price made by Buyer shall be refunded to Buyer; or 2) defer the Closing Date for a period not to exceed thirty (30) days or until such problem has been remedied, whichever occurs first and if not cured under number 2, Buyer or Seller may terminate this Agreement.

4.2 **Seller's Covenants.** Seller hereby covenants and agrees with Buyer that:

4.2.1 From and after the Effective Date through the Closing Date, Seller shall maintain the Property in its present state, with no alteration of the Property in any way except as may be required by law;

4.2.2 From and after the Effective Date through the Closing Date, Seller shall comply with all government regulations applicable to the Property;

4.2.3 From and after the Effective Date through the Closing Date, Seller shall not enter into any agreements with respect to the sale or lease of the Property or any portion thereof without the prior written consent of Buyer; provided that Seller may, without the consent of Buyer, enter into agreements which are back-up offers to purchase the Property so long as Seller discloses to a back-up purchaser that purchaser's agreement is a back-up offer to this Agreement;

4.2.4 From and after the Effective Date through the Closing Date, Seller shall not enter into any new contracts or agreements or place any encumbrance on the Property without the prior written consent of Buyer which may be granted or withheld in Buyer's sole discretion, except Seller may enter into agreements that are required by law and shall provide notice of any such agreements to Buyer;

4.2.5 Seller agrees to terminate as of the Closing Date, any property management, leasing brokerage and service contract or agreement relating to the Property unless Buyer requests otherwise, by written notice to Seller prior to the expiration of the Inspection Period (as hereinafter defined);

4.2.6 During the pendency of this Agreement, Seller shall promptly notify Buyer of the occurrence of any event or circumstance actually known to Seller that will make any representation or warranty of Seller to Buyer under this Agreement materially untrue or materially misleading as of the Closing Date or any covenant of Seller under this Agreement incapable of being performed; and

4.2.7 "Seller's knowledge" or "Seller's actual knowledge" or any such term as used in this Agreement means the current actual knowledge of Robert McKean, who has overall responsibility for the management of the Property, without any duty of inquiry or investigation. Seller's maximum aggregate liability for damages arising from all breaches of the foregoing representations, whether discovered before or after Closing, shall be limited to Buyer's actual damages (and specifically excluding consequential and punitive damages). In no event shall Robert McKean have any personal liability under this Agreement. The provisions of this Section 4.2.7 shall survive any Closing indefinitely and shall not be merged into any Closing documents.

4.3 **Buyer's Representations and Warranties.** Buyer hereby warrants and represents to Seller, to the best of Buyer's actual knowledge, as the Effective Date and as of the Closing Date the following:

4.3.1 Buyer is the duly authorized and acting urban renewal agency of the City of Portland, Oregon, validly exists under the laws of the state of Oregon and has all requisite power and authority to carry on its business as now conducted.

4.3.2 Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Buyer in connection with the execution of this Agreement and the transactions contemplated hereby.

4.3.3 This Agreement has been duly executed and delivered by Buyer and constitutes a valid, binding and enforceable obligation of Buyer.

4.4 **Survival.** The provisions of this Section 4 shall survive the Closing as specified herein or, if not specified, than for a period of one (1) year following Closing.

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

5.1 **Access and Inspection.** Seller agrees that Buyer and its authorized agents or representatives shall be entitled to enter upon the Property to make such investigations, studies and tests as Buyer deems necessary or advisable, as more specifically set forth in the Permit of Entry entered into by the Parties on December 8, 2010 and as amended by that certain First Amendment to Permit of Entry of even date herewith. With regard to any Phase II testing of the Property, Buyer's environmental consultant ("AMEC") shall, prior to commencement of any Phase II testing, deliver to Seller's Environmental Consultant, PBS Engineering + Environmental ("PBS"), Attn: Dulcy Berri, a copy of AMEC's work plan for the Phase II testing. The Parties and their respective environmental consultants, agree to cooperate with each other. PBS shall have the right to observe any and all Phase II testing by AMEC or its agents or contractors. AMEC shall provide 24-hour notice to PBS so that it may attend at Seller's election.

5.2 **Due Diligence Materials.** Seller shall (a) cause the Escrow Agent to deliver a Preliminary Title Report or Reports covering the Property, and exception documents referenced in the Preliminary Title Report or Reports (collectively, the "Preliminary Title Report") within ten (10) days of the Effective Date; (b) provide Buyer copies of all studies, reports, site analyses, engineers certificates, existing surveys, existing title insurance policies, contracts, leases, licenses and permits with respect to the Property that Seller has in its possession or that it has access to, including, without limitation, (i) any site analyses with respect to oil, asbestos, underground storage tanks, Hazardous Materials, lead paint, or lead plaster; or (ii) any reports regarding compliance with laws (including, but not limited to, ADA, zoning and all other land use matters) (collectively, the "Due Diligence Materials"). Unless otherwise indicated, during the Inspection Period (as hereinafter defined), Seller agrees to make such items available to Buyer and Buyer's agents, at reasonable times at the mutual convenience of Buyer and Seller.

5.2.1 Except as otherwise expressly provided herein, Seller makes no representations or warranties as to the accuracy or completeness of any Due Diligence Materials or any other document, writing, or instrument (“Miscellaneous Documents”) delivered to Buyer by Seller or its agents pursuant to this Agreement. Such Due Diligence Materials, and Miscellaneous Documents, are delivered to Buyer “AS IS”, and Buyer shall be solely responsible for evaluating such Due Diligence Materials or Miscellaneous Documents. This provision shall survive Closing.

5.2.2 Buyer may consult with the Oregon Department of Environmental Quality on the environmental condition of the Property and proposed remedies (if any) for future property cleanup and redevelopment. If Buyer does elect to consult with the DEQ, Buyer agrees to notify PBS to allow PBS, in the Seller’s discretion, the opportunity to participate in such conversations.

5.3 **Inspection Period.** Buyer shall notify Seller no later than sixty (60) days after the Effective Date (the “Inspection Period”) of the results of its due diligence. As they become available, Buyer shall provide to Seller copies of all tests, reports, studies and investigations of the Property that Buyer or its agents or contractors may conduct during the Inspection Period. 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 Seller, 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. In the event that Buyer’s due diligence shall reveal that environmental cleanup of the Property is deemed necessary, as determined by Buyer in its sole discretion, the Parties shall commence negotiations on a reduction in the Purchase Price to reflect the anticipated cost of the environmental cleanup. Copies of the Buyer’s environmental reports shall be delivered to Seller within five (5) days of delivery to Buyer by its consultants. If the Parties reach an agreement on a reduction in the Purchase Price before the end of the Inspection Period, as evidenced by a written amendment to this Agreement executed by both Parties, the Purchase Price shall be adjusted in accordance with that amendment and the Parties shall proceed as otherwise provided herein. If the Parties do not reach agreement on a reduction in the Purchase Price before the end of the Inspection Period, Buyer or Seller may elect not to proceed with the transaction contemplated herein, as otherwise provided in this Section 5.3. Either Party, in its sole discretion, may, at any time, end negotiations on a Purchase Price reduction by written notice to the other Party. If a Party elects to end negotiations by written notice to the other Party, then this Agreement shall be deemed terminated and neither Party shall have any further liability under this Agreement.

6. Title Insurance

- 6.1 **Preliminary Title Report.** Buyer shall have until thirty (30) days following its receipt of the Preliminary Title Report to give notice to Seller of any objection(s) to title or to any liens, encumbrances or the exceptions affecting title to the Property (“Title Objections”). In the event Buyer fails to raise any such Title Objections within thirty (30) days following its receipt of the Preliminary Title Report, all conditions and exceptions to title set forth in the Preliminary Title Report shall be deemed “Permitted Exceptions.” In the event Buyer presents Title Objections to an exception to title within the thirty (30) days following its receipt of the Preliminary Title Report, Seller shall be obligated to notify Buyer within ten (10) business days after receipt of notice of Buyer’s Title Objections whether Seller is willing and able to remove such Title Objection(s). If Seller is willing and able to remove such Title Objection(s), the Seller shall do so at or prior to Closing, and all remaining exceptions set forth in the Preliminary Title Report and not objected to by Buyer shall be deemed “Permitted Exceptions.” In all events, Seller shall be obligated to remove all monetary liens, monetary encumbrances (except that zoning designations and restrictions and Conditions, Covenants and Restrictions affecting the Property shall not be considered a lien or encumbrance), and assessments, and other monetary obligations affecting the Property at or prior to Closing. If Seller is not willing or able to remove the Title Objection(s), Buyer may: (i) terminate this Agreement; (ii) elect to acquire the Property subject to such Title Objection(s); or (iii) proceed to Closing with a reduction in the Purchase Price satisfactory to Buyer and Seller for any Title Objections uncured by Seller in which case such Title Objection(s) and all remaining exceptions set forth in the Preliminary Title Report and not removed or agreed to be removed pursuant to this Section 6.1 shall be “Permitted Exceptions.” All new exceptions appearing on any subsequent title reports shall be considered unacceptable, unless accepted in writing by Buyer within ten (10) business days of Buyer’s receipt of the subsequent report including such new exceptions. Buyer shall have the right to a dollar-for-dollar adjustment to the Purchase Price in the amount of any monetary liens or encumbrances which are unsatisfied on the Closing Date.
- 6.2 **Title and Escrow Agent.** On the Closing Date, Seller shall convey by special statutory warranty deed or statutory warranty deeds substantially in the form attached hereto as Exhibit B (the “Deed” or “Deeds”) to Buyer 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 Fidelity National Title Insurance Company, whose address is Attn: Lori Medak, 900 SW Fifth Avenue, Portland, OR 97204 (“Escrow Agent”), in the full amount of the Purchase Price without adjustment (unless agreed to by the Parties), insuring fee simple title vested in Buyer or its nominees (the “Title Policy”). The cost of the Title Policy shall be at Seller’s expense. Title insurance shall be subject only to the standard exceptions of such policy, current taxes not yet delinquent and the Permitted Exceptions. Buyer shall have the right, if Buyer so elects, to cause the Title Policy to be issued as an ALTA extended coverage policy, provided Buyer pays the additional premiums and survey costs associated therewith.

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; and

7.1.2 Payment of the Purchase Price by Buyer, as adjusted and prorated herein.

7.1.3 Buyer has provided to the Title Company documentation satisfactory to the Title Company that (a) Buyer has full power and authority to enter into and perform its obligations under this Agreement; and (b) this Agreement has been executed and delivered, for and on behalf of Buyer, by an authorized individual.

7.1.4 Buyer having performed in all material respects all covenants and obligations required by this Agreement to be performed by Buyer on or prior to the Closing Date.

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 Seller shall have executed the First Amendment to Permit of Entry on or about the Effective Date;

7.2.2 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;

7.2.3 Seller having performed in all material respects all covenants and obligations required by this Agreement to be performed by Seller on or prior to the Closing Date;

7.2.4 Buyer being satisfied with the environmental condition of the Property, and, to the extent that environmental cleanup is deemed necessary, in Buyer's

sole discretion, there is a reduction in the Purchase Price to cover the costs associated with such environmental cleanup;

7.2.5 Seller has provided to Buyer and the Title Company documentation satisfactory to Buyer and the Title Company that (a) Seller has full power and authority to enter into and perform its obligations under this Agreement; and (b) this Agreement has been executed and delivered, for and on behalf of Seller, by an authorized individual;

7.2.6 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 Preliminary Title Report;

7.2.7 Buyer receiving, ten (10) days prior to Closing, a pro forma Title Policy insuring good, clear, marketable and fee simple title to the Property subject only to the standard exceptions of such policy, current taxes not yet delinquent and the Permitted Exceptions; and

7.2.8 PDC's Board of Commissioners (the "PDC Board") has authorized the transaction contemplated by this Agreement.

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 or before the date set forth in Section 8.2, then such benefited Party or Parties may elect, by written notice given to the other Party no later than the Closing Date set forth in Section 8.2, 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, in its sole discretion, agrees in writing to the later date.

8. Closing.

8.1 **Manner of Closing.** The Closing of the purchase and sale of the Property will occur in an escrow to be administered by the Escrow Agent ("Escrow"). The Parties agree to provide the Escrow Agent with escrow instructions consistent with the terms of this Agreement (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 **Closing Date.** The Closing shall occur on or before April 29, 2011 unless otherwise agreed to in writing by the Parties. For purposes of this Agreement, "Closing" means the recordation of Seller's Deed or Deeds conveying fee simple title to the Property to Buyer and "Closing Date" means the date on which the Closing occurs.
- 8.3 **Payment of the Purchase Price.** On the Closing Date the Purchase Price, subject to the adjustments specified herein, shall be paid in immediately available funds to Seller.
- 8.4 **Documents to Be Deposited Into Escrow by Seller.** On or before the Closing Date, Seller shall deposit into Escrow all of the following:
- 8.4.1 A duly executed and acknowledged Deed or Deeds;
- 8.4.2 An original certificate of non-foreign person duly executed by each of the Sellers and notarized.
- 8.4.3 Keys to all entrance doors to the Improvements and any available keys to Personal Property located on the Property, which keys shall be properly tagged for identification.
- 8.4.4 Such documents as the Escrow Agent may require in order to establish the authority of Seller or to complete the sale of the Property as contemplated by this Agreement.
- 8.5 **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 3 of this Agreement and to pay Buyer's portion of the Closing costs. Buyer shall also deposit into Escrow the following:
- 8.5.1 Such documents as the Escrow Agent may require in order to complete the sale of the Property as contemplated by this Agreement.
- 8.6 **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.
- 8.7 **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). Seller agrees that any taxes, assessments and encumbrances that will be a lien against the Property at Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied by Seller. If Seller 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 Closing occurs and any rents or income applicable to the Property shall be prorated as of Closing Date.

- 8.8 Utilities.** Seller shall cause all meters for electricity, gas, water, sewer or other utility usage at the Property, if any to be read on the Closing Date and Seller shall pay all charges for such utility charges which have accrued on or prior to the Closing Date. If the utility companies are unable or refuse to read the meters on the Closing Date, all charges for such utility charges to the extent unpaid shall be prorated and adjusted as of the Closing Date based on the most recent bills therefor.
- 8.9 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. Buyer shall pay the cost of recording the Deed or Deeds, and all other recording charges, if any. Seller shall pay the premium for the title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Buyer and the Seller shall each pay their own legal and professional fees of other consultants incurred by Buyer and Seller, respectively. Buyer and Seller shall equally share the fees of the Escrow Agent.
- 8.10 Survival.** The provisions of this Section 8 shall survive the Closing for a period of one (1) year.
- 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: Albina Community Bank
 Attn: Robert McKean
 2002 NE Martin Luther King Jr. Blvd.
 Portland, Oregon 97212

With Copy: Michael G. Magnus, Esq.

Michael G. Magnus, P.C.
10700 SW Beaverton-Hillsdale Hwy #450
Beaverton, Oregon 97005

To Buyer: Portland Development Commission
Amy Miller-Dowell, 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

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

11. **Brokerage Commissions.** Seller agrees to pay a real estate broker's commission to Brad Carnese at Cushman Wakefield and Gilbert Brothers (collectively "Broker") under the terms of a separate written listing agreement between Seller and Broker. Each Party represents to the other Party that, except for the Broker, no broker or agent was consulted or engaged in connection with this transaction, and each Party will indemnify, defend, and hold harmless the other Party from and against all claims, losses, and liabilities made or imposed for any commission or finder's fee to any broker or agent (other than Broker pursuant to the listing agreement) and arising out of the actions of such party.
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 select as its sole remedy either (i) to seek Buyer's actual damages for Seller's breach but not Buyer's consequential, punitive, indirect or incidental or special damages or (ii) to seek the remedy of 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 the event that all of the conditions set forth in Section 7 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.

13.2 **Default by Buyer.** In the event Closing and the consummation of the transactions herein contemplated do not occur by reason of any default by Buyer, Buyer and Seller agree that it would be impractical and extremely difficult to estimate the damages that the Seller may suffer. Accordingly, Buyer and Seller agree that a reasonable estimate of the total net detriment that Seller would suffer in the event of any such default by Buyer and under this Agreement is and shall be, and Seller's sole and exclusive remedy (whether at law or in equity), is and shall be an amount equal to the sum of Five Thousand Dollars (\$5,000.00). The payment of such amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to represent liquidated damages to Seller. Upon such default by Buyer, this Agreement shall be terminated and neither Party shall have any further rights or obligations hereunder.

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 **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.

14.3 **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.

14.4 **Successors and Assigns.** Buyer may not assign this Agreement without the express written consent of Seller, which consent shall not be unreasonably withheld. In the event that the Seller approves an assignee to assume 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.

- 14.5 **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.
- 14.6 **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.
- 14.7 **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.
- 14.8 **Amendments and Modifications.** Any modifications to this Agreement shall be made in writing and executed by the Parties.
- 14.9 **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. Facsimile or other electronically transmitted signatures shall be deemed original signatures of the Parties
- 14.10 **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.
- 14.11 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state of Oregon.
- 14.12 **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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

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

BUYER:

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



Bruce A. Warner, Executive Director

Eric F. Iverson - Acting Executive Director

Approved as to Form:



Lisa Gramp

Assistant General Counsel

SELLER:

ALBINA COMMUNITY BANK

By:



Robert L. McKean, President and CEO

Chair, Board Loan Committee

EXHIBIT A

Legal Description

PARCEL I:

Lots 6, 7, 8, 9, 10, 29, 30 and 31, ANNA MARIE PARK, in the City of Portland, County of Multnomah and State of Oregon;

TOGETHER WITH those portions of the vacated alley which inured to said lots by reason of vacation proceedings, City Ordinance No. 133764, recorded January 1, 1972, in Book 837, Page 646.

EXCEPTING THEREFROM those portions of said lots 6, 7, 30 and 31 taken for the widening of S.E. Foster Road, as described in City Ordinance No. 56639.

PARCEL II:

All of Blocks 13 and 14 and Lot 1, Block 15, according to the duly filed plat of FIRLAND, in the City of Portland, filed April 14, 1903, in Plat Book 308, Page 10, Records of the County of Multnomah and State of Oregon,

TOGETHER WITH the following described property: BEGINNING at the intersection of the Southerly line of SE Foster Road with the East line of SE 71st Avenue; thence South along the East line of SE 71st Avenue to the most Northerly corner of Block 13, FIRLAND; thence Southeasterly along the Northeasterly line of said Block 13, the Easterly terminus of SE Raymond Court and the Easterly line of Block 15, FIRLAND, to the West line of SE 72nd Avenue; thence North along said West line to the Southerly corner of Block 14, FIRLAND; thence Northwesterly along the Southwesterly line of Block 14 to the Southerly line of SE Foster Road; thence Northwesterly along the Southerly line of SE Foster Road to the point of beginning.

EXCEPTING THEREFROM a Southerly portion more particularly described as follows: Part of Lot 1, Block 15, FIRLAND, and part of "Old Car Line" all being more particularly described as follows:

BEGINNING at the Northwest corner of Lot 17, Block 15, FIRLAND; thence North 0.5 feet; thence East parallel with the South line of said lot a distance of 65 feet, more or less, to the West line of SE 72nd Avenue; thence South along said West line to its intersection with the East line of said Lot 17; thence North along said East lot line to the Northeast corner of said lot; thence West along the North line thereof 51 feet, more or less, to the point of beginning.

EXHIBIT B

Form of Deed

After recording return to:
The Portland Development Commission
222 NW Fifth Avenue
Portland, OR 97209
Attention: General Counsel

SPECIAL STATUTORY WARRANTY DEED

Albina Community Bank ("Grantor"), conveys and specially warrants to the CITY OF PORTLAND, acting by and through the PORTLAND DEVELOPMENT COMMISSION, as the duly designated Urban Renewal Agency of the City of Portland, Oregon ("Grantee"), the following described real property (collectively, the "Real Property"), free of encumbrances created or suffered by the Grantor except as specifically set forth herein:

See **Exhibit A** attached hereto and incorporated by reference

The true and actual consideration for this conveyance is ONE MILLION FOUR HUNDRED THOUSAND AND NO /100 DOLLARS (\$1,400,000.00).

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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

DATED: _____, 2011.

By:

State of OREGON

County of MULTNOMAH

This instrument was acknowledged before me on __ ____, 2011 by

_____, as _____ of
_____.

Notary Public – State of Oregon

The CITY OF PORTLAND, acting by and through the PORTLAND DEVELOPMENT COMMISSION, as the duly designated Urban Renewal Agency of the City of Portland approves the attached conveyance and accepts the title and interest transferred by the conveyance.

GRANTEE:

The CITY OF PORTLAND, acting by and through the PORTLAND DEVELOPMENT COMMISSION, as the duly designated Urban Renewal Agency of the City of Portland.

Bruce A. Warner, Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 2011 by Bruce A. Warner, as the Executive Director of the Portland Development Commission.

Notary Public of Oregon
My Commission Expires: _____

Exhibit A

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PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6864

Title:

AUTHORIZING THE EXECUTIVE DIRECTOR TO ACQUIRE PROPERTY LOCATED AT 7104-7120 SE FOSTER ROAD, 7126-7130 SE FOSTER ROAD, AND 7238 SE FOSTER ROAD FOR A PURCHASE PRICE NOT TO EXCEED \$1,400,000 FOR THE PURPOSE OF REDEVELOPMENT IN ACCORDANCE WITH THE LENTS TOWN CENTER URBAN RENEWAL PLAN

Adopted by the Portland Development Commission on April 13, 2011.

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 checked="" type="checkbox"/>	Commissioner Charles Wilhoite	<input checked="" 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 duly recorded in the official minutes of the meeting.



Recording Secretary

Date: April 18, 2011