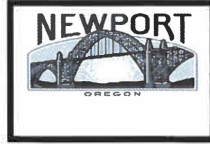


3468



AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: PURCHASE AGREEMENT WITH SALVATION ARMY Date: 4.10.23

Statement of Purpose: AGREEMENT SETS OUT STEPS TO ACQUIRE PROPERTY AT 641 SW COAST, 626-636 SW 9TH

Department Head Signature: [Signature]

Remarks, if any: _____

City Attorney Review and Signature: HEADLINE ACCEPTED (EMAIL ATTACHED) Date: _____

Other Signatures as Requested by the City Attorney: _____

					Name/Position
	Signature				Date:
Budget Confirmed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>		
Certificate of Insurance Attached:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>		
City Council Approval Needed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>		Date:	<u>3/6/23</u>

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 3/12/23

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of _____ (the "Effective Date") by and between the Newport Urban Renewal Agency, an urban renewal agency, organized and existing under ORS Chapter 457 ("Buyer") and The Salvation Army, a California corporation ("Seller").

A. Seller owns fee title to certain real property located in Lincoln County, Oregon, commonly known as 641 SW Coast Hwy, 626 SW 9th Street, and 636 SW 9th Street in Newport, Oregon and more particularly described in **Exhibit A** which is incorporated by reference herein (the "Property").

B. Subject to the terms and conditions contained in this Agreement, Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller.

C. Capitalized terms shall have the meanings ascribed to them herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller, together with all of Seller's right, title and interest in and to any improvements, buildings, structures or fixtures located on or comprising the Property, all rights, licenses, privileges, reversions and easements appurtenant to the Property, including, without limitation, all development rights, air rights, mineral and oil and gas rights, water rights, water and water stock relating to the Property and any other easements, rights of way or appurtenances used in connection with the beneficial use and enjoyment of the Property.

2. Purchase Price; Conveyance.

2.1 The purchase price for the Property is Four Hundred Ninety Thousand and No/100 Dollars (\$490,000) (the "Purchase Price"). The Purchase Price is payable as follows:

2.1.1 Within five (5) business days after the Effective Date, Buyer shall deposit Twenty Thousand and No/100 Dollars (\$20,000) as earnest money with Escrow Holder (as defined below). All earnest money deposited pursuant to this Section 2.1.1 shall be referred to herein as "Earnest Money." Upon closing of the transaction contemplated by this Agreement, all Earnest Money shall be credited towards the Purchase Price.

2.1.2 The remaining purchase price shall be paid at closing in cash or other immediately available funds.

2.1.3 Title to the Property shall be conveyed by Statutory Warranty Deed (the "Deed"), subject only to the Permitted Exceptions (defined in Section 3 below).

3. Title. Upon execution of this Agreement, Buyer shall obtain or cause the Escrow Holder (as defined below) to obtain a commitment for title insurance ("Title Report") covering the Property with instructions that the original Title Report together with copies of documents creating exceptions thereon be delivered to Buyer with copy to Seller. Buyer may also order, at its sole cost and expense, a survey of

the Property (the "Survey"), prepared by a surveyor selected by Buyer, and certified to Buyer (and/or its assignee). Buyer shall have twenty (20) days after receipt of the Title Report and copies of documents creating exceptions thereon or twenty (20) days after the Effective Date, whichever is later (the "Objection Deadline"), to review the condition of title set forth in the Title Report and to deliver notice to Seller in writing of any objections Buyer may have, with reasons specified, of anything contained in the Title Report ("Buyer's Title Objections"). Any such item which Buyer shall not object to within the time period set forth above shall be conclusively deemed as approved by Buyer as Permitted Exceptions. If Buyer objects to any item contained in the Title Report, Seller shall have the option, but not the obligation, to satisfy such objection prior to closing. In the event Seller is unable or unwilling to satisfy such objections, for any reason, Seller shall give Buyer notice of such inability or unwillingness ("Seller's Title Notice") within ten (10) days of receipt of the Buyer's Title Objections. Buyer may either waive such objections or terminate this Agreement by delivering written notice to Seller within ten (10) days after receipt of Seller's Title Notice. Failure of Buyer to deliver such notice to Seller within such ten (10) day period shall be conclusively deemed Buyer's termination of this Agreement, in which case the Earnest Money will be returned to Buyer and the parties will have no further obligations under this Agreement except for return of the Earnest Money and any obligations that expressly survive the termination of this Agreement.

If Buyer does not terminate this Agreement following receipt of Seller's Title Notice, Seller agrees to preserve the condition of title to the Property so it can convey title to Buyer at Closing in the same condition existing at the time of Seller's Title Notice. The Property shall be sold and conveyed subject to only (i) the lien of taxes not yet due and payable and (ii) such encumbrances, liens and title defects as are approved by Buyer pursuant to this Section 3. Such acceptable matters affecting title shall be collectively referred to as the "Permitted Exceptions."

Notwithstanding anything herein to the contrary, if the Title Report is updated after the Buyer Objection Deadline, Buyer shall have the right to object (each, a "New Buyer Objection") to any additional matter disclosed or contained (each, a "New Title Document Matter") in any such update of the Title Report. If Seller is unable or unwilling to cure any such New Title Document Matter to the sole satisfaction of Buyer (in Buyer's sole and absolute discretion) within the lesser of seven (7) days following receipt by Seller of a New Buyer Objection or the Closing Date, Buyer shall have the right either to (i) waive such New Title Document Matter and proceed to Closing without any adjustment in the Purchase Price, or (ii) terminate this Agreement and receive a return of the Earnest Money (in addition to any other remedies that Buyer may have under this Agreement if the New Title Document Matter was caused by a breach of a covenant or representation of Seller under this Agreement).

On the Closing Date, Seller shall cause the Escrow Holder (as defined below) to issue to Buyer its ALTA Standard Form Owner's Policy of Title Insurance, or if the Buyer has elected to obtain a Survey, its ALTA Extended Form Owner's Policy of Title Insurance in the amount of the Purchase Price insuring fee simple title to the Property to be vested in Buyer (the "Title Policy"), which Title Policy shall show no exceptions or matters of record except the Permitted Exceptions as described herein.

4. Inspection. Within sixty (60) days after the Execution Date ("Inspection Period"), Buyer shall have approved in Buyer's sole discretion the physical condition of the Property and other matters affecting the suitability of the Property for Buyer's intended use. Within ten (10) days after the Execution Date, Seller shall provide Buyer with copies of all files, records, governmental permits, appraisals, plans, drawings, surveys and soil, engineering and environmental reports and all leases, maintenance contracts and other agreements relating to the Property that are in Seller's possession. At reasonable times and upon reasonable prior notice to Seller, Buyer and its representatives, agents, and contractors shall have the right to enter upon the Property, at Buyer's own cost and expense, with the right to conduct engineering studies, surveys, building inspections and other investigations, tests and studies in order to attempt to

satisfy the condition set forth in this Section 4; provided, however, Buyer shall not undertake any invasive testing of the building or soil without Seller's prior written consent, which shall not be unreasonably withheld so long as Buyer submits a written plan to Seller describing the testing to be done and provides adequate insurance covering the of personal injury or property damage in coverage amounts reasonably acceptable to Seller. In the event of any damage to the Property resulting from Buyer's entry and inspection, Buyer shall promptly repair such damage and restore the Property. Buyer shall indemnify, defend and hold harmless Seller, its officers, directors, shareholders, employees, partners, members, successors and assigns from and against all claims, liens, liabilities, damages, losses, costs or expenses (including, without limitation, attorneys' fees) arising from or relating to the entry on or inspection of the Property by Buyer, its representatives, agents, contractors or invitees. Buyer's obligation to restore the Property and to indemnify, defend and hold harmless shall survive the termination of this Agreement and/or Closing. If, during the Inspection Period, Buyer does not approve the condition of the Property and other matters affecting the suitability of the Property for Buyer's intended use, Buyer may terminate this Agreement by written notice to Seller given no later than the expiration of the Inspection Period, in which case the Deposit shall be refunded to Buyer. In the event Buyer does not provide such termination notice to Seller on or before the expiration of the Inspection Period, Buyer shall have been deemed to have waived this condition.

5. Warranties.

5.1 Representations and Warranties of Seller. Seller hereby represents and warrants as of the date hereof and as of the Closing:

5.1.1 *Contracts; Leases.* There are no contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion thereof, including without limitation options to purchase or rights of first refusal. Further, no leases or other contracts for use of Property will be in effect as of the Closing.

5.1.2 *Authority.* Seller is a California corporation duly organized, validly existing and in good standing under the laws of the state of California. Seller has made all filings necessary in the state in which the Property is located to own and operate the Property. Seller has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and consummate the transaction contemplated by this Agreement. All requisite action has been taken by Seller in connection with entering into this Agreement, and will be taken by Seller prior to the Closing in connection with the execution and delivery of the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons and entities signing this Agreement and the other documents contemplated by this Agreement on behalf of Seller has the legal right, power and authority to bind Seller.

5.1.3 *No Conflicts.* The execution, delivery and performance by Seller of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, federal, state or local laws, statutes, codes, regulations, rules, ordinances, orders, policy directives, judgments or decrees (including common law), including those of judicial and administrative bodies to which Seller or any portion of the Property is bound.

5.1.4 *Consents; Binding Obligations.* The effectiveness of this and any other agreement for the purchase and sale of the property known as 641 SW Coast Hwy, 626 SW 9th Street, and 636 SW 9th Street in Newport, Oregon is expressly conditioned on the approval of the Board of Directors of The Salvation Army, a California corporation. Buyer and Seller understand and agree that until such approval

is provided, in writing, there shall be no obligation on the party of either party.

5.1.5 *Condemnation.* There is no pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has received no written notice and has no knowledge that any such proceeding is contemplated;

5.1.6 *Mechanic's Liens.* There are no known claims for labor performed for or materials furnished to or with respect to the Property which could give rise to a mechanic's lien on the Property;

5.1.7 *Environmental.* Except as disclosed in writing to Buyer, (i) Seller has complied with all material federal, state and local environmental laws, rules and regulations applicable to the Property and the use of the Property has complied with all material federal, state and local environmental laws, rules and regulations applicable to the Property and Seller's use of the Property; (ii) Seller has obtained and complied with all necessary environmental permits; (iii) the Property has not been used to generate, use, store, transport or dispose of any hazardous materials, as defined by applicable laws, except in each case in compliance with all applicable environmental laws, rules and regulations; (iv) there has not occurred any material spills, releases or threatened releases of hazardous materials on the Property, including releases or threatened releases that affected any adjacent parcels of land; (v) all garbage, wastes, refuse, byproducts and other potential contaminants produced, used or stored on the Property have been disposed of by properly licensed waste removal companies, or other third parties or governmental authorities, in compliance with all requirements applicable to Seller under environmental laws, rules and regulations regulating such activities; (vi) to the knowledge of the Seller the Property (including the soil, subsoil and groundwater at or under the Property) does not contain any hazardous materials in amounts which could require any clean-up or remediation expenses or liabilities not covered by insurance; (vii) to the knowledge of the Seller there are no unregistered underground storage tanks located under the Property that are required to be registered under any applicable environmental laws, rules or regulations; (viii) no notice has been received by Seller identifying Seller as a "potentially responsible party" or requesting information under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) or any other environmental law, rule or regulation, with respect to any current investigation, suit, proceeding or other regulatory activity of any applicable federal, state or local environmental agency concerning the Property; (ix) there are no investigations, suits, administrative actions, demands, claims, hearings or proceedings concerning the Property alleging the violation of any environmental laws, rules or regulations; and (x) there are no consent decrees, orders, judgments or agreements with any federal, state or local environmental agencies in effect that materially restrict the use of the Property, except in each case for violations of or exceptions to the foregoing which in the aggregate do not or would not reasonably be expected to cause a material adverse effect on the Property.

5.1.8 *Title to Property.* Seller has good, marketable and insurable title to all of the Property free and clear of all mortgages, liens, pledges, encroachments, encumbrances, charges, agreements, claims, restrictions, and rights of parties in possession except the Permitted Exceptions (as defined in Section 3) and except as approved in writing by Buyer.

5.1.9 *Litigation.* There are no suits pending and there are no suits or proceedings threatened or contemplated with respect to the ownership, possession, use, development or condemnation of all or any part of the Property, and Seller knows of no pending, threatened, or contemplated governmental action which will adversely affect all or any part of the Property or the use of the Property.

5.1.10 *Access.* The Property has legal access to all streets adjoining the Property.

5.1.11 *No Adverse Claimants.* There are no claims, defects or boundary disputes

affecting the Property; and no person claims any right to possession of the Property or any portion thereof adverse to Seller.

5.1.12 *Accuracy of Statements.* Neither this Agreement nor any of the exhibits, schedules, written statements, documents, certificates or other items furnished to Buyer by or on behalf of Seller with respect to this Agreement and the transactions contemplated hereby contains any untrue statement of a material fact or omits a material fact necessary to make each statement contained herein or therein not misleading.

6.2 Representations and Warranties of Buyer. Buyer hereby represents and warrants as of the date hereof and as of the Closing:

6.2.1 *Authority.* Buyer is an urban renewal agency duly organized, validly existing and in good standing under the laws of the state of Oregon. Buyer has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and consummate the transaction contemplated by this Agreement. All requisite action has been taken by Buyer in connection with entering into this Agreement, and will be taken by Buyer prior to the Closing in connection with the execution and delivery of the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons and entities signing this Agreement and the other documents contemplated by this Agreement on behalf of Buyer has the legal right, power and authority to bind Buyer.

6.2.2 *No Conflicts.* The execution, delivery and performance by Buyer of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement, operating agreement, indenture, deed of trust, mortgage, contract, agreement (oral or written), judicial or administrative order, federal, state or local laws, statutes, codes, regulations, rules, ordinances, orders, policy directives, judgments or decrees (including common law), including those of judicial and administrative bodies to which Buyer is bound.

6.2.3 *Consents; Binding Obligations.* No approval or consent from any person (including any partners, shareholder, member, creditor, investor or governmental body) is required for Buyer to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Buyer to consummate the transaction at Closing contemplated hereby. This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms.

7. Conditions to Closing.

7.1 Buyer's Conditions. Buyer's obligation to consummate the transaction contemplated in this Agreement shall be subject to the satisfaction of the following conditions precedent on and as of the Closing Date, or as otherwise specified below, to the reasonable satisfaction of Buyer or the waiver thereof by Buyer, which waiver shall be binding upon Buyer only to the extent made in writing:

7.1.1 Possession of all of Seller's right, title, and interest in and to the Property free and clear of any and all liens, encumbrances, claims, easements, restrictions, covenants, and conditions other than the Permitted Exceptions.

7.1.2 Seller shall execute, acknowledge (if necessary), and deliver in escrow to the Escrow Holder (as defined below), for delivery to Buyer at the Closing, the documents set forth in

Section 8.2.

7.1.3 Buyer shall receive the Title Policy, from the Escrow Holder (as defined below) in form satisfactory to Buyer and showing no liens on title, other than the Permitted Exceptions.

7.1.4 The representations and warranties of Seller contained in this Agreement shall be true and complete in all material respects as of the Closing Date and Seller shall comply in all material respects with the terms and provisions of this Agreement, in each case subject only to exceptions permitted by this Agreement.

7.1.5 Seller shall have performed all of its obligations which are required to be performed by Seller under this Agreement prior to the Closing Date.

7.2 Seller's Conditions. Seller's obligation to consummate the transactions contemplated in this Agreement and deliver or cause to be delivered title to the Property shall be subject to the satisfaction of the following conditions precedent on and as of the Closing Date, or as otherwise specified below, to the reasonable satisfaction of Seller or the waiver thereof by Seller, which waiver shall be binding upon Seller only to the extent made in writing:

7.2.1 Buyer shall deliver to Escrow Holder (as defined below) the Purchase Price due pursuant to Section 2.1 hereof.

7.2.2 Buyer shall deliver to Seller or, if applicable, to Escrow Holder (as defined below) to be held in Escrow in accordance with the terms of this Agreement, on or before the Closing Date the documents set forth in Section 8.3.

7.2.3 The representations and warranties of Buyer contained in this Agreement shall be true and complete in all material respects as of the Closing Date and Buyer shall comply in all material respects with the terms and provisions of this Agreement, in each case subject only to exceptions permitted by this Agreement.

7.2.4 Buyer shall have performed all of its obligations which are required to be performed by Buyer under this Agreement prior to the Closing Date.

7.3 Conditions Generally. The foregoing conditions are for the benefit only of the party for whom they are specified to be conditions precedent and such party may, in its sole discretion, waive any or all of such conditions and proceed with the Closing under this Agreement without any increase in, abatement of or credit against the Purchase Price.

8. Closing.

8.1 Time and Place of Closing; Escrow Holder. Subject to the satisfaction or waiver by Buyer or Seller, as applicable, in the exercise of their sole discretion, of the closing conditions set forth in Section 7 above, the closing of the transaction contemplated hereby (the "Closing") shall take place on or before June 1, 2023. The date on which the Closing occurs shall be referred to herein as the "Closing Date." Within five (5) business days of the Effective Date, Buyer shall open escrow with Western Title and Escrow, whose address is 255 SW Coast Hwy, Suite 100, Newport, Oregon ("Escrow Holder").

8.2 Seller's Deliveries. On or before the Closing Date, Seller shall deposit with Escrow Holder the following:

8.2.1 the Deed conveying the Property to Buyer duly executed by Seller and acknowledged;

8.2.2 a certificate, in form and substance reasonably acceptable to Buyer, of Seller to the effect that the representations and warranties of Seller set forth in this Agreement are true and complete in all material respects on and as of the Closing Date and that Seller has complied in all material respects with all covenants of Seller set forth herein, which have not been waived by Buyer, as applicable;

8.2.3 such agreements or statements as may be reasonably required by the Escrow Holder in order to issue the Title Policy as described in Section 3, including as may be required by the Escrow Holder in order to issue a gap endorsement and, if Buyer elected to obtain the Survey and receive an ALTA Extended Form Owner's Policy of Title Insurance, delete all standard exceptions to the Title Policy, including, without limitation, the exceptions related to the parties in possession and mechanic's lien, provided that Seller shall not be required to execute and deliver to the Escrow Holder any agreements or statements to facilitate the issuance of any other endorsements unless Seller specifically agrees to provide such endorsements.

8.2.4 such proof of authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any documents or certificates on behalf of Seller as may be reasonably required by Escrow Holder.

8.2.5 an affidavit of non-foreign status pursuant to Section 1445 of the Internal Revenue Code;

8.2.6 funds to pay all closing costs and expenses to be paid by Seller; and

8.2.7 such other instruments and documents reasonably required to close the transaction and consummate the purchase and sale of the Property.

8.3 Buyer's Deliveries. On or before the Closing Date, Buyer shall deposit with Escrow Holder the following:

8.3.1 the Purchase Price;

8.3.2 a certificate, in form and substance reasonably acceptable to Seller, of Buyer to the effect that the representations and warranties of Buyer set forth in this Agreement are true and complete in all material respects on and as of the Closing Date and that Buyer has complied in all material respects with all covenants of Buyer set forth herein, which have not been waived by Seller, as applicable;

8.3.3 such proof of authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any documents or certificates on behalf of Buyer as may be reasonably required by Escrow Holder;

8.3.4 funds to pay all closing costs and expenses to be paid by Buyer; and

8.3.5 such other instruments and documents reasonably required to close the transaction and consummate the purchase and sale of the Property.

9. Closing Costs and Prorations.

9.1 Closing Costs. Each party shall pay its own costs and expenses arising in connection with the Closing (including its own attorneys' and advisors' fees, charges and disbursements), except the costs set forth in this paragraph which shall be allocated between the parties as set forth herein. Seller shall pay (i) the premium for the Title Policy (excluding any extended coverage premium and any endorsements to such Title Policy), (ii) any documentary, transfer, stamp, sales, use, gross receipts or similar taxes related to the transfer of the Property and the recording costs for the Deed, (iii) all costs associated with obtaining releases of any debt and any other liens encumbering the Property (including without limitation any prepayment premiums or penalties) and removing any and all title exceptions, which are not Permitted Exceptions, and (iv) one-half of the customary closing costs and escrow fees of the Escrow Holder related to the transfer of the Property. Buyer shall pay for the extended coverage portion of the Title Policy, if any, and one-half of the customary closing costs and escrow fees of the Escrow Holder related to the transfer of the Property.

9.2 Prorations. Taxes, assessments, and utilities shall be prorated as of the Closing Date.

10. Attorneys' Fees. If it shall be necessary for either Seller or Buyer to employ an attorney to enforce their rights pursuant to this Agreement because of the default of the other party, the defaulting party shall reimburse the non-defaulting party for reasonable attorneys' fees and expenses. This Section 10 shall survive the Closing or termination of this Agreement.

11. Default. Time is of the essence of this Agreement. Upon the expiration of ten (10) days' written notice from either party stating the other party has failed to perform their obligations hereunder, such party shall be deemed to be in default. Upon a default occurring, the non-defaulting party may at its/their election:

11.1 Default by Seller. If the Seller is the defaulting party, Buyer may terminate this Agreement and seek return of the Earnest Money; as its sole and exclusive remedy;

11.2 Default by Buyer. If the Buyer is the defaulting party, Seller may terminate this Agreement and retain all Earnest Money deposited hereunder as liquidated damages as its sole and exclusive remedy. **Buyer and Seller have considered carefully the loss to Seller occasioned by taking the Property off the market as a consequence of the negotiation and execution of this Agreement, the expenses of Seller incurred in connection with the preparation of this Agreement and Seller's performance hereunder, and the other damages, general and special, which Buyer and Seller realize and recognize Seller will sustain but which Buyer and Seller agree would be impracticable or extremely difficult to calculate at this time if Buyer so defaults. Based on all those considerations, Buyer and Seller agree that the Earnest Money represents a reasonable estimate of Seller's damages. Seller agrees to accept the Earnest Money as Seller's total damages and relief hereunder if Buyer defaults in its obligations to close hereunder, Seller waiving all other rights and remedies.**

INITIALS Buyer: DPN Seller: _____

12. Notices. All notices, consents, reports, demands, requests and other communications required or permitted hereunder ("Notices") shall be in writing, and shall be: (a) personally delivered with a written receipt of delivery; (b) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; or (c) sent by PDF or email with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) or (b). All Notices shall be deemed effective when actually delivered as documented in a

delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery; and provided further, however, that Notices given by PDF or email shall be deemed given when received. Each party shall be entitled to change its address for Notices from time to time by delivering to the other party Notice thereof in the manner herein provided for the delivery of Notices. All Notices shall be sent to the addressee at its address set forth below:

To Buyer: Derrick Tokos, Director
Community Development Department
City of Newport
169 SW Coast Hwy
Newport, OR 97365
Email: d.tokos@newportoregon.gov

With copy to: Erik Glover, City Recorder

169 SW Coast Hwy
Newport, OR 97365
Email: e.glover@newportoregon.gov

To Seller: The Salvation Army
140 NE 4th Street
169 SW Coast Hwy
Newport, OR 97365
Attn: Major Raymond Erickson-King
Email: Raymond.Erickson-King@usw.salvationarmy.org

With copy to: The Salvation Army, Western Territorial Headquarters
30840 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275
Attn: David Bentley, Territorial Property Secretary

13. Commission. Buyer and Seller represent and warrant that neither employed nor associated with any broker or agent in connection with this transaction, and have not agreed to pay any commissions or finders fees to any other broker. Buyer and Seller each hereby agrees to indemnify and defend the other against any and all commissions, finder's fees or other fee or any claim therefore by any broker in connection with this transaction claiming through the indemnifying party. The provisions of this Section 13 shall survive the Closing or termination of this Agreement.

14. Condemnation or Casualty. If, prior to the Closing Date, all or a part of the Property is taken by eminent domain, or if Seller receives notice that proceedings for such a taking have been threatened or commenced by a governmental authority with power to condemn, or if prior to the Closing Date, all or a part of the Property is damaged by fire or other casualty, then within ten (10) days of the Seller learning of such occurrence, the Seller shall give written notice thereof to the Buyer and to any broker(s) in this transaction ("Damage Notice").

The Damage Notice shall describe such occurrence and whether such occurrence has been reasonably

determined by the Seller to be Substantial or Insubstantial. The term "Substantial" means an occurrence with a dollar value, as reasonably determined by Seller, which is equal to or greater than one percent (1%) of the Purchase Price. The term "Insubstantial" means an occurrence with a dollar value, as reasonably determined by Seller, which is less than one percent (1%) of the Purchase Price.

If the occurrence described in the Damage Notice has been reasonably determined and described by Seller as Insubstantial, then neither Party shall have the right to terminate this Agreement due to such occurrence.

If the occurrence described in the Damage Notice has been reasonably determined and described by Seller as Substantial, then on or prior to the Closing Date, either Seller or Buyer may terminate this Agreement, by written notice given by the terminating Party to the other Party and to any Broker(s) in this transaction ("Substantial Damage Termination Notice"), in which case this Agreement shall immediately terminate without obligation or liability of Seller or Buyer to each other or to any such Broker(s); provided, however, that Buyer shall have the right to elect, within ten (10) days of its initial receipt of a Damage Notice from Seller, to proceed to Closing ("Buyer's Election to Proceed") notwithstanding such occurrence. A timely Buyer's Election to Proceed shall override any Substantial Damage Termination Notice issued by the Seller.

In the event that Buyer proceeds to Closing because the Damage Notice describes an occurrence which is Insubstantial, or if Buyer elects to proceed to Closing notwithstanding that the Damage Notice describes a Substantial occurrence, then the Purchase Price payable by Buyer at Closing shall remain the same without any reduction or adjustment, and the Seller shall have no liability whatsoever to the Buyer in respect to the taking, threatened taking or casualty damage, but the Seller shall deliver to the Buyer, on the Closing Date, the amount of any applicable condemnation or insurance proceeds received by Seller before Closing (except for insurance proceeds, if any, already expended on repairs to the Property), and Seller shall also deliver at Closing such other documents as the Buyer may reasonably request to substitute itself for the Seller in any pending eminent domain proceedings or as claimant for any applicable casualty insurance coverage, if any. The Buyer shall bear all risk of loss from any inadequately compensated taking or threatened taking, or from any uninsured or under-insured casualty loss, including, without limitation, any applicable insurance limits or exclusions, and/or any applicable insurance deductibles or self-insured retentions.

In the event that the scheduled Closing Date does not allow sufficient time for the Seller or Buyer to exchange the Notices contemplated by this Section in the event of a condemnation or casualty occurrence as described herein, the Closing Date will be extended by a sufficient number of days to allow such time.

15. Assignment. Buyer shall have the right to assign this Agreement and all of its rights hereunder with prior approval of Seller, which approval shall not be unreasonably withheld. Upon such an assignment, Buyer shall be relieved of all obligations under this Agreement from and after the date of such assignment and upon the assignee thereunder assuming all of Buyer's obligations hereunder.

16. Entire Agreement. This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof, and no representations or agreements have been made by either of such parties that are not embodied herein.

17. Successors and Assigns. The provisions of this Agreement shall apply to and bind the executors, administrators, and successors and permitted assigns of the respective parties hereto

18. Survival. All representations, warranties and covenants of any party hereto contained in this Agreement shall survive the Closing.

19. Governing Law; Venue. The laws of the state of Oregon shall govern the validity, enforcement, and interpretation of this Agreement, without regard to conflict of law principles. Any dispute or cause of action under this Agreement shall be resolved in a court of competent jurisdiction in Lincoln County, Oregon.

20. Integration; Modification; Waiver. This Agreement constitutes the complete and final expression of the agreement of the parties relating to the Property, and supersedes all previous Agreements, agreements and understandings of the parties, either oral or written, relating to the Property. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) executed by the party against whom enforcement of the modification or waiver is sought.

21. Time. Time is of the essence of this Agreement.

22. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event on which the designated period of time begins to run shall not be included and the last day of the period so computed shall be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the next day which is not a Saturday, Sunday or a legal holiday. Further, unless otherwise specified, any reference to a specified number of days shall be deemed to refer to calendar days. This obligation shall survive the termination of this Agreement.

23. Facsimile/Email Transmission. Signatures delivered by facsimile transmission or scanned email attachment shall be as valid and binding as original signatures personally delivered to the parties themselves. At the request of either party, the parties will confirm facsimile transmitted signatures by signing an original document.

24. Statutory Disclaimer ORS 93.040(2). THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

25. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

BUYER:

Newport Urban Renewal Agency, an urban
renewal agency, organized and existing under
ORS Chapter 457



By: Spencer Nebel
Its: Executive Director

SELLER:

The Salvation Army, a California corporation

By:
Its:

**EXHIBIT A
LEGAL DESCRIPTION**

Lots 2, 3, 10 and 11, Block 74, Bayley and Case's Third Addition to the City of Newport, in Lincoln County, Oregon together with a portion of vacated Sixth Street, as described in Book 364, at Page 0255 of the Lincoln County Microfilm Records.

