



### **AGENDA and Notice of Urban Renewal Agency**

The City of Newport Urban Renewal Agency meeting will be held on Monday, April 20, 2015, at 5:45 P.M. The meeting will be held in City Council Chambers of the Newport City Hall, located at 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder 541.574.0613.

The City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session and/or meeting.

### **URBAN RENEWAL AGENCY MEETING Monday, April 20, 2015 - 5:45 P.M. City Council Chambers**

#### **I. Call to Order and Roll Call**

#### **II. Public Comment**

*This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the Agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.*

#### **III. Consent Calendar**

*The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.*

- A. Approval of the Urban Renewal Agency Minutes from March 16, 2015 (Hawker)

**IV. Executive Director Report**

*All matters requiring approval of the Urban Renewal Agency originating from the city manager and departments will be included in this section. This section will also include any status reports for the Urban Renewal Agency information.*

A. Approval of Lease Agreement with South Beach Church

**V. Adjournment**

March 16, 2015  
6:08 P.M.  
Newport, Oregon

The Urban Renewal Agency of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Swanson, Sawyer, Engler, Saelens, and Busby were present. Roumagoux was excused.

Staff present was City Manager Nebel, City Recorder Hawker, Community Development Director Tokos, Finance Director Murzynsky, Public Works Director Gross, and Police Chief Miranda.

### CONSENT CALENDAR

The consent calendar consisted of the following item:

A. Approval of minutes from the March 2, 2015 meeting.

MOTION was made by Busby, seconded by Engler, to approve the consent calendar as presented. The motion carried unanimously in a voice vote.

### EXECUTIVE DIRECTOR REPORT

**Consideration and Possible Adoption of Resolution No. 3707 Initiating the Process to Create a New Urban Renewal Plan.** Nebel reported that the City of Newport established an Urban Renewal Agency pursuant to ORS Chapter 457 with Resolution No. 1647, effective June 5, 1972. He added that the Agency originally consisted of members of the community appointed by the City Council. He stated that changed in 2007, when the Newport City Council elected to take over the Agency's responsibilities (Ordinance No. 1910).

Nebel reported that since its inception, the Urban Renewal Agency has been responsible for the preparation and implementation of two Urban Renewal Plans, the first was the "Newport Urban Renewal Plan," created by Council Resolution No. 1685, and adopted on May 7, 1973. He stated that the second was the "South Beach Urban Renewal Plan," established by Ordinance No. 1341, adopted September 12, 1983. He noted that the Newport Urban Renewal Plan ceased collecting a tax increment in Fiscal Year 2010/2011 and was closed in 2013.

Nebel reported that in 2012, the City of Newport performed an Economic Opportunity Analysis, engaging a wide range of stakeholders to assess the economic condition of the city; develop a cohesive economic strategy and vision for the community; and to identify steps the city could take to help the community achieve its economic development aspirations. He stated that one of the recommendations that followed called for the city to evaluate the feasibility of creating a new urban renewal plan area north of the Yaquina Bay Bridge to address issues of underutilized commercial and industrial properties and infrastructure deficiencies. He noted that a feasibility study was completed by the consulting

firm ECONorthwest in 2014, under the direction of the Newport Planning Commission. He added that the study evaluated three potential boundaries for the district with conceptual project lists for each. He noted that it was focused on the US 20 and US 101 highway corridors and Agate Beach areas that, with the exception of City Center, have not benefitted from urban renewal investments in the past. He stated that the feasibility study demonstrated that all three options were potentially viable.

Nebel reported that representatives of the affected taxing districts have had an opportunity to review the feasibility study, meet with city staff, and provide testimony to the Urban Renewal Agency. He stated that the city also hired ECONorthwest to prepare detailed fiscal impact analysis for each of the taxing districts and that analysis has been shared with the districts.

Nebel reported that ORS Chapter 457.085, which is included in the packet, lists a number of components that must be included in an urban renewal plan. He added that Resolution No. 3707 may be utilized to kick start the process for preparing the plan, and it provides additional guidance for how it is to be prepared, building upon the feasibility study and the January 12, 2015 joint City Council/Planning Commission work session that was held to discuss how to best move the process forward.

Nebel reported that in addition to spelling out the components that must be included in an urban renewal plan, ORS 475.085 encourages the Urban Renewal Agency to involve the public in all stages of a plan's development. He added that to that end, Resolution No. 3708 has been prepared creating an advisory committee to help develop the plan. He noted that it includes representatives from the affected taxing districts, the Chamber of Commerce, City Center Newport Association, Central Lincoln PUD, Yaquina Bay Economic Foundation, Planning Commission, and City Council. He stated that the County would be afforded two representatives because it is the only entity with more than one taxing district that will be impacted. He stated that two of the city's seven Planning Commission members live in the portion of Agate Beach that is being considered for urban renewal investment, and that one of them would serve on the committee as a representative of the area since there are no neighborhood or business associations to fill that role.

Nebel reported that once the plan is developed, it must be submitted to the Newport Planning Commission for a recommendation, and after that, it would have to be adopted by ordinance of the Newport City Council.

Nebel reported that if the Agency wishes to move forward with the initiation of a new urban renewal plan, and establishing a committee to work on plan development, it is recommended that Resolution Nos. 3707 and 3708 be adopted by the following motions:

Allen asked whether Tokos had additional comments. Tokos reported that the city pulled together a broad group of stakeholders for the economic opportunity analysis in 2012, and that group made a recommendation for a new urban renewal district on the north side. He added that the rest builds on that feasibility study and provides that an advisory group be formed and delineates parameters in how to proceed.

Sawyer reported that he owns property in the Agate Beach area that would be affected.

Busby reported while the city will get a dollar or two for each dollar it contributes, it will still have to contribute funding to the district. He noted that when the city contributes money, sacrifices will have to be made in other areas, i.e., unable to buy a firetruck, lose a position, or unable to rehabilitate a building. He added that when voting on this issue, a conscious decision has to be made as to whether the trade-off is worth the sacrifice.

Engler reported that she has seen urban renewal districts work well and not so well. She cited Nye Beach as a success, and the City Center as less than a success. She added that if it moves forward, there has to be a commitment to make it work.

Allen reported that the Infrastructure Task Force, which met during 2013, recommended that the city look at another urban renewal district. He noted that the city center was a part of the original northside district, but that the focus of those projects was on public facilities such as the City Hall and Recreation Center. He recommended that, if a new district is formed, that the improvements relate to commercial development rather than public facilities.

MOTION was made by Engler, seconded by Sawyer, to adopt Resolution No. 3707, a resolution initiating the process of creating a new urban renewal plan in the City of Newport. The motion carried unanimously in a voice vote.

Allen noted that the next item is consideration of Resolution No. 3708 which would establish an Urban Renewal Advisory Committee. Nebel reviewed proposed Committee composition, noting that the Committee would exist during the plan development. Allen stated that he believed it would be advantageous to include a Budget Committee member as a member of the Advisory Committee. He noted that the preliminary Budget Committee was scheduled for Wednesday, and that the group might select one of its members to participate in this Committee at that time. It was the consensus of Council that two citizens at-large be added to the composition of the Committee. Allen also suggested changing Section 3 to read as follows: "The Urban Renewal Advisory Committee will provide oversight and guidance to city staff and the city's consultant in the preparation of the urban renewal plan, and will provide a recommendation to the Newport Urban Renewal Agency that will then be presented to the Planning Commission and City Council relating to its adoption."

MOTION was made by Swanson, seconded by Sawyer, to adopt Resolution No. 3708, as amended, a resolution establishing an advisory committee to assist in the preparation of the new urban renewal plan. The motion carried unanimously in a voice vote.

## LOCAL CONTRACT REVIEW BOARD

The Agency, acting as the Local Contract Review Board, met at 6:30 P.M.

**Authorization of a Notice of Intent to Award a Contract for Auditing Services for the Urban Renewal Agency for the City of Newport to Boldt, Carlisle, and Smith, LLC.** Nebel reported that the most recent contract for conducting the annual financial audit expired following the year-end 2014 audit. He stated that in preparation for the upcoming year-end 2015 financial audit, the Finance Department requested proposals from multiple firms through a formal competitive Request for Proposal (RFP) process and received proposals from six qualified firms.

Nebel reported that a Selection Review Committee (consisting of Laura Swanson, City Councilor and Audit Committee, the Finance Director, the Assistant Finance Director, and the Financial Specialist III) reviewed the responses to the RFP. He stated that the results were tabulated into a matrix and were presented to the Audit Committee to decide if interviews were necessary. He noted that based on the review by the Audit Committee, three firms were invited to participate in interviews to further evaluate their suitability for the auditing services contract.

Nebel reported that after the interviews, the final results were tabulated and added to the initial matrix. He stated that the apparent successful proposer is the firm, Boldt, Carlisle, and Smith LLC, which was ranked the highest. He added that this was a new process with the Audit Committee being involved in the selection, and that there were a couple of procedural issues raised in the initial scoring. He noted that subsequently, the Committee met again and modified the scoring with the same end result.

Nebel reported that the Audit Committee has reviewed the results and is recommending that the Agency award the contract to Boldt, Carlisle and Smith LLC and have the Finance Director negotiate the contract to be awarded. He stated that once the contract is negotiated, the Finance Director will present the contract to the City Manager for execution. He noted that the contract would be for three years with options for two one-year extensions.

MOTION was made by Swanson, seconded by Saelens, to authorize a Notice of Intent to Award a contract for auditing services for the Urban Renewal Agency for the City of Newport to Boldt, Carlisle, and Smith, LLC and authorize the Executive Director to sign a contract between the City of Newport, acting as the Newport Urban Renewal Agency, with Boldt, Carlisle, and Smith LLC for professional auditing services for three years, with an option to extend the contract for two additional, one-year terms, contingent upon no protest after seven days. Allen abstained from voting based on his past abstentions when consideration of this item occurred at Audit Committee meetings. The motion carried in a voice vote with one abstention.

#### **RETURN TO REGULAR URBAN RENEWAL AGENCY MEETING**

The Agency returned to its regular meeting at 6:35 P.M.

#### **ADJOURNMENT**

Having no further business, the meeting adjourned at 6:35 P.M.

---

Margaret M. Hawker, City Recorder

---

David N. Allen, Chair



## EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATIONS

Agenda #: IV.A.  
Meeting Date: April 20, 2015

### Agenda Item: Consideration of South Beach Church Lease

#### Background:

On July 14 2014, the Agency entered into a Purchase and Sale Agreement to purchase property in South Beach that includes the current location of the South Beach Church. The agreement includes a provision allowing the South Beach Church to remain on the property pursuant to the terms of a new lease that is to be executed when the Agency completes the purchase. Specific terms that are to be included in the lease are outlined in Section 10 of the Purchase and Sale Agreement which is included in the packet, but include the lease of a 6,598 square foot building and adjoining parking at 3335 South Coast Highway.

On November 17, 2014, the Agency adopted Amendment No. 11 to the South Beach Urban Renewal authorizing the purchase of the property (Resolution No. 3695). It was determined that acquisition of the property is advantageous, in the near term, because it provides the Agency with the flexibility to reconfigure the parcel, as needed, to accommodate planned transportation improvements that are to be constructed between 2015 and 2018. The purchase also affords the Agency an opportunity to position the property for resale to a private developer once the infrastructure work is completed. A plan for redeveloping the site will be developed with public input, and will likely emphasize attracting retail service uses (e.g. grocery store, gas station, restaurant, etc.), as such uses are critical to the continued economic growth of South Beach. It is Agency's intent to use proceeds from the sale to accelerate the urban renewal district's debt retirement. The Agency agreed as part of the Purchase and Sale Agreement to allow the South Beach Church to stay on the property while the transportation improvements are being constructed (i.e. through December 31, 2017). The site cannot be positioned for redevelopment until those transportation improvements are complete, so this lease arrangement is not inconsistent with the purpose of the acquisition.

#### Recommended Action:

I recommend that the City Council consider the following motion:

I move to approve the lease with the South Beach Church, as presented, and authorize the Executive Director to sign the lease at such time as the Agency closes on the property.

#### Fiscal Effects:

Lease revenues will be placed in a reserve account that can be used in the future to fund the demolition of structures and preparation of the site for redevelopment.

**Alternatives:**

None. The lease has been prepared pursuant to the Purchase and Sale Agreement.

Respectfully submitted,

Spencer R. Nebel  
City Manager



Agenda Item # A.  
Meeting Date April 20, 2015

**URBAN RENEWAL  
AGENDA ITEM SUMMARY**  
City of Newport, Oregon

Issue/Agenda Title Approval of Lease Agreement with South Beach Church (3335 South Coast Highway)

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval:

**ISSUE BEFORE THE AGENCY:** Consideration of a lease agreement with the South Beach Church for use of a 6,598 sq. ft. building and adjoining parking at 3335 South Coast Highway. The building is located on property at the northeast corner of SE 35<sup>th</sup> Street and US 101 (Portion of Lot 2, Block J, Harborton Subdivision (Tax lot 1400, Assessor's Map 11-11-17-DB)).

**STAFF RECOMMENDATION:** Staff recommends that the Agency approve the lease.

**PROPOSED MOTIONS:** I move that the Urban Renewal Agency approve the lease with the South Beach Church, as presented, and authorize the City Manager to sign the lease at such time as the Agency closes on the property.

**KEY FACTS AND INFORMATION SUMMARY:** Agency is purchasing the property pursuant to a Purchase and Sale Agreement that it entered into on July 14, 2014. The Agreement includes a provision allowing the South Beach Church to remain on the property pursuant to the terms of a new lease that is to be executed when the Agency completes the purchase. Specific terms that are to be included in the lease are outlined in Section 10 of the Purchase and Sale Agreement (attached).

**OTHER ALTERNATIVES CONSIDERED:** None. The lease has been prepared pursuant to the Purchase and Sale Agreement.

**CONSISTENCY WITH SOUTH BEACH URBAN RENEWAL PLAN:** Agency adopted Amendment No. 11 to the South Beach Urban Renewal Plan on November 17, 2014 authorizing the purchase of the subject property (Resolution No. 3695). It was determined that acquisition of the property is advantageous, in the near term, because it provides Agency with the flexibility to reconfigure the parcel, as needed, to accommodate planned transportation improvements that are to be constructed between 2015 and 2018. The purchase also affords the Agency an opportunity to position the property for resale to a private developer once the infrastructure work is completed. A plan for redeveloping the site will be developed with public input, and will likely emphasize attracting retail service uses (e.g. grocery store, gas station, restaurant, etc.), as such uses are critical to the continued economic growth of South Beach. It is Agency's intent to use proceeds from the sale to accelerate the urban renewal district's debt retirement. Agency agreed as part of the Purchase and Sale Agreement to allow the South Beach Church to stay on the property while the transportation improvements are being constructed (i.e. through December 31, 2017). The site cannot be positioned for redevelopment until those transportation improvements are complete, so this lease arrangement is not inconsistent with the purpose of the acquisition.

**ATTACHMENT LIST:**

- Draft Lease Agreement
- Purchase and Sale Agreement dated July, 10, 2014

**FISCAL NOTES:** Lease revenues will be placed in a reserve account that can be used in the future to fund the demolition of structures and preparation of the site for redevelopment.



**AGREEMENT FOR LEASE OF PREMISES**  
**3335 South Coast Highway**

Date: April 30, 2015

Between: Newport Urban Renewal Agency (Agency), Lessor  
169 SW Coast Highway, Newport, Oregon

And: South Beach Church (Church), Lessee  
3335 South Coast Highway, South Beach, Oregon

**Newport Urban Renewal Agency** leases to South Beach Church and South Beach Church leases from the Newport Urban Renewal Agency the following described property (the "Premises"):

A 6,598 sq. ft. building located at 3335 South Coast Highway the dimensions of which are depicted on Exhibit A together with paved parking areas adjacent to and east of the building.

The building is situated on real property identified as follows:

Beginning at a point on the North line of Lot 2, Block J, HARBORTON, which point is at the intersection of the North line of said Lot 2 and the East line of U.S. Highway 101 as now located; thence East along the said North line of Lot 2, 170.1 feet to the true point of beginning; thence continuing East along said North line of Lot 2, 261.9 feet to the West line of the old Ferry Road; thence Southwesterly along the Westerly right-of-way line of said Ferry Road to the intersection of the same and the South line of Lot 2, Block J, HARBORTON; thence West along the South line of Lot 2 to a point that is South 30'18" West from the true point of beginning; thence North 30'18" East 299 feet, more or less, to the true point of beginning, all in Lincoln County, Oregon.

Said lease is subject to the terms and conditions stated below:

**Section 1. Term**

**1.1 Original Term.** The original term of this Lease shall be for a period of 2 years, 8 months commencing on May 1, 2015, and continuing through December 31, 2017.

**Section 2. Rent**

**2.1 Base Rent.** The base rent shall be \$3,500.00 per month.

**2.2 Additional Rent.** All taxes, insurance costs, utility charges that Church is required to pay by this lease, if any, and any other sum that Church is required to pay to Agency, Newport, or third parties shall be additional rent.

**2.3 No Partnership.** Agency is not by virtue of this section a partner or joint venturer with Church in connection with the activities carried on under this lease, and shall have no obligation with respect to Lessee's debts or other liabilities, and no interest in Lessee's profits.

### **Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used for church functions including but not limited to religious services, child care, meetings, and church related outreach and activities. Lessee shall use the premises for no other purpose without the consent of Agency, which consent shall not be unreasonably withheld. The use and installation of church related equipment shall be contracted for by Lessee and installed and used at Lessee's cost.

**3.2 Restrictions on Use.** In connection with the use of the Premises, Church shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use, but shall not make any structural changes to effect such compliance without prior written consent of Agency.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Agency from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Agency to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Agency.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent and appropriate permits issued by Newport.

**3.3. Hazardous Substances.** Church shall not cause or permit any hazardous substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Church may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold for the purpose of perming maintenance and repairs. Church may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Church shall comply with all environmental laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Church shall remove all Hazardous Substances from the Premises. The term environmental law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other

governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any environmental law and shall include, without limitation, petroleum oil and its fractions.

#### **Section 4. Repairs and Maintenance**

**4.1 Lessee's Obligations.** Church is responsible for all maintenance and repair of the Premises and shall keep the Premises in good condition.

**4.2 Inspection of Premises.** Agency shall have the right to inspect the Premises at any reasonable time.

#### **Section 5. Alterations**

**5.1 Alterations Prohibited.** Church shall make no improvements or alterations on the Premises of any kind without first obtaining Agency's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

**5.2 Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by Church shall be the property of Agency when installed unless the parties agree otherwise. At any time Church relinquishes occupancy or the Lease is otherwise terminated, improvements and alterations installed by Church shall, at Agency's option, be removed by Church and the premises restored unless Agency specifically provides otherwise.

#### **Section 6. Property Insurance**

**6.1 Casualty/Loss Insurance Required.** Agency shall keep the Premises insured at Agency's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Lessee shall bear the expense of any renter's insurance insuring its property on the Premises against such risks.

**6.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

#### **Section 7. Taxes; Utilities**

**7.1 Property Taxes.** Church shall pay all taxes on its personal property located on the Premises and any real property taxes that may be assessed on the Premises due solely to Lessee's use.

**7.2 New Charges or Fees.** If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom, or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Church shall pay such charge or fee.

**7.3 Payment of Utilities Charges.** Lessee shall be responsible for all utilities to the building including natural gas, electricity, water, sewer, garbage, door locks, and any telephone or telecommunication equipment.

## **Section 8. Damage and Destruction**

**8.1 Partial Damage.** If the Premises are partly damaged and Section 6.1 does not apply, the Premises shall be repaired by Church at its' expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Church and shall be performed in accordance with the provisions of Section 5.

**8.2 Destruction.** If the Premises are destroyed or damaged such that the cost of repair exceeds 25% of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of termination, and Church shall be entitled to reimbursement of any prepaid amounts paid by Church and attributable to the anticipated term. If neither party elects to terminate, Church shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Church's reasonable control.

**8.3 Damage Late in Term.** If damage or destruction to which Section 8.2 would apply occurs within four months before the end of the then-current lease term, Church may elect to terminate the lease by giving written notice to Agency within 30 days after the date of the damage. Such termination shall have the same effect as termination under Section 8.2.

## **Section 9. Liability Insurance and Indemnity**

### **9.1 Liens**

(1) Except with respect to activities for which Agency is responsible, Church shall pay as due all claims for work contracted by Church for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Church fails to pay any such claims or to discharge any lien, Agency may do so and collect the cost as additional rent. Any amount so added shall bear interest at the then-current rate allowed by law from the date expended by Agency and shall be payable on demand. Such action by Agency shall not constitute a waiver of any right or remedy which Agency may have on account of Church default.

(2) Church may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Agency's property interests are not jeopardized.

**9.2 Indemnification.** Church shall indemnify and defend Agency from any claim, loss, or liability arising out of or related to any activity of Church on the Premises or any condition of the Premises in the possession or under the control of Church including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Church's own negligence or failure to effect any repair or maintenance required by this lease. Agency shall have no liability to Church for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Agency's negligence or breach of duty under this lease.

**9.3 Liability Insurance.** Church shall procure and maintain during the term of the lease general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Church or of any of its employees, agents or assigns, with \$1,000,000 per occurrence and in the aggregate. Such insurance shall protect Agency on account of the obligations assumed by Church under this lease, and shall name Agency as an additional insured. A copy of the policy, issued by a company currently licensed in the State of Oregon and certified as a true copy by an authorized representative of the issuing company, or, at the discretion of the Agency, a certificate in a form satisfactory to Agency certifying to the issuance of such insurance, shall be furnished to Agency no later than May 1, 2015.

#### **Section 10. Quiet Enjoyment; Warranty**

Agency warrants that it is the owner of the Premises and has the right to lease them. Agency will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

#### **Section 11. Assignment and Subletting**

No part of the Premises may be assigned or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Agency.

#### **Section 12. Default**

The following shall be events of default:

**12.1 Default in Rent.** Failure of Church to pay any rent or other charge within 10 days after written notice that it is due.

**12.2 Default in Other Covenants.** Failure of Church to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days' after written notice by Agency specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Church begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

#### **Section 13. Termination**

**13.1 Termination.** At any time Church may terminate the lease on not less than 90 days' prior notice to Agency. In the event of a default, or Agency requires possession of

the Premises in order to perform planned improvements to the adjoining rights-of-way, the lease may be terminated at the option of Agency by 30 days' written notice to Church. Agency may reenter and take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**13.2 Remedies Cumulative.** The foregoing remedy shall be in addition to and shall not exclude any other remedy available to Agency under applicable law.

#### **Section 14. Surrender at Expiration**

Upon expiration of the lease term or earlier termination, lessee shall pay any amount owed for utility service provided under Section 7.3. on a pro-rata basis for any partial month.

**14.1 Condition of Premises.** Upon expiration of the lease term or earlier termination, Church shall deliver all keys to Agency and surrender the Premises in first-class condition and broom clean. Alterations constructed by Church with permission from Agency shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Church is responsible shall be completed to the latest practical date prior to such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

#### **14.2 Removal; Fixtures; Repair**

(1) All fixtures placed upon the Premises during the term, other than Lessee's trade fixtures, shall, at Agency's option, become the property of Agency. If Agency so elects, Church shall remove any or all fixtures that would otherwise remain the property of Agency, and shall repair any physical damage resulting from the removal. If Church fails to remove such fixtures, Agency may do so and charge the cost to Church with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Church shall remove all furnishings, furniture, and trade fixtures that remain its property. If Church fails to do so, this shall be an abandonment of the property, and Agency may retain the property and all rights of Church with respect to the property shall cease or, by notice in writing given to Church within 20 days after removal was required, Agency may elect to hold Church to its obligation to remove the property. If Agency elects to require Church to remove the property, Agency may effect a removal and place the property in public storage for Lessee's account. Church shall be liable to Agency for the costs of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Agency.

#### **14.3 Holdover**

(1) If Church does not vacate the Premises at the time required, Agency shall have the option to treat Church as a lessee from month to month, subject to all of the provisions of this lease. Failure of Church to remove fixtures, furniture, furnishings, or trade fixtures that Church is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially

interfere with occupancy of the Premises by another lessee or with occupancy by Agency for any purpose including preparation for a new lessee.

(2) If a month-to-month tenancy results from a holdover by Church under this Section 14.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Agency given not less than 10 days prior to the termination date which shall be specified in the notice. Church waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

**Section 15. Miscellaneous**

**15.1 Nonwaiver.** Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**15.2 Notices.** Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

**15.3 Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**15.4 Recordation.** This lease shall not be recorded without the written consent of Agency.

**15.5 Entry for Inspection.** Agency shall have the right to enter upon the Premises at any time to determine Lessee's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective lessee or purchaser, and in addition shall have the right, at any time during the last two months of the term of this lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

**NEWPORT URBAN RENEWAL AGENCY**

\_\_\_\_\_  
Spencer Nebel, Executive Director

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
Steve Rich, City Attorney

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Date



## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“**Agreement**”) is made as of this 10 day of July 2014, by and between THANK DAD, LLC, an Oregon limited liability company (“**Seller**”) and CITY OF NEWPORT URBAN RENEWAL AGENCY (“**Purchaser**”).

### RECITALS

A. Seller is the owner of that certain real property, together with all rights, easements, right-of-way and appurtenances thereto and all improvements thereon, legally described as Lot 2, Block J, Harborton Subdivision, in the city of Newport, County of Lincoln, State of Oregon (the “**Property**”).

B. Seller desires to sell the Property to Purchaser and Purchaser desires to purchase the Property from Seller all on the terms, covenants and conditions hereinafter set forth.

### AGREEMENT

NOW THEREFORE, in consideration of the following mutual covenants and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **Agreement to Purchase and Sell.** Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from the Seller, on the terms and conditions set forth in this Agreement.

2. **Purchase Price.** The purchase price for the Property shall be One Million Five Hundred Twenty-Five Thousand and No/100 (\$1,525,000.00) (the “**Purchase Price**”). The Purchase Price shall be paid as follows:

2.1 Within five (5) business days after both parties have signed this Agreement (the “**Execution Date**”), Purchaser shall deliver to Premiere Title of Oregon in Newport, Oregon (the “**Title Company**”) in cash or by wire transfer funds or by cashier’s check the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) (the “**Deposit**”). The Title Company shall place the Deposit in an interest-bearing account and all interest earned on the Deposit shall be included within the meaning of “**Deposit**” in this Agreement. If Purchaser elects to terminate this Agreement in accordance with Purchaser’s termination rights under Section 3.1 (Title), Section 3.2 (Inspection), Section 3.3 (South Beach Urban Renewal Plan Amendment), or Section 3.4 (Financing) of this Agreement, then the Deposit shall be refunded to Purchaser. If Purchaser has not so terminated this Agreement, then the entire Deposit shall be deemed nonrefundable upon the expiration of the Financing Deadline (as defined below).

2.2 At Closing, Purchaser shall deliver to the Title Company the remainder of the Purchase Price, in cash or by wire transfer of funds or cashier's check, in the amount of One Million Four Hundred Seventy-Five Thousand and No/100 (\$1,475,000.00), subject to adjustment for pro-rations as provided herein.

3. **Conditions Precedent to Purchaser's Obligation to Purchase.**

Purchaser's obligation to purchase the Property shall be subject to the satisfaction or waiver of all the conditions precedent set forth below within the applicable time periods specified.

3.1 **Title.** Within ten (10) days after the Execution Date, Seller shall deliver to Purchaser a preliminary title report from the Title Company (the "**Preliminary Report**"), together with legible copies of all documents shown therein as exceptions to title, showing the status of Seller's title to the Property. Purchaser shall have ten (10) days after receipt of a copy of the Preliminary Report within which to give notice in writing to Seller of any disapproval of any exceptions set forth in the Preliminary Report. Within ten (10) days after the date of such notice from Purchaser, Seller shall give Purchaser written notice of whether it is willing and able to remove the disapproved exceptions. Within ten (10) days after the date of such notice from Seller, Purchaser shall elect by notice to Seller to either (i) purchase the Property subject to the disapproved exceptions that Seller is not willing or able to remove, or (ii) terminate this Agreement and receive a refund of the Deposit. On or before the Closing Date, Seller shall have removed all disapproved exceptions to which Purchaser disapproves and which Seller agrees that Seller is willing and able to remove; provided, however, if Seller is unable to remove any disapproved exceptions that Seller has agreed to remove through no fault of Seller, Purchaser may terminate this Agreement and receive a refund of the Deposit. Those exceptions Purchaser does not object to are referred to herein as the "**Permitted Exceptions**".

3.2 **Inspection.** Within sixty (60) days after the Execution Date ("**Inspection Period**"), Purchaser shall have approved in Purchaser's sole discretion the physical condition of the Property and other matters affecting the suitability of the Property for Purchaser's intended use. Within ten (10) days after the Execution Date, Seller shall provide Purchaser 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, Purchaser and its representatives, agents, and contractors shall have the right to enter upon the Property, at Purchaser'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 3.2; provided, however, Purchaser 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 Purchaser submits a written plan to Seller describing the testing to be done and provides documentation that the party conducting the testing possesses personal injury or property damage insurance coverage in amounts reasonably acceptable to Seller. In the event of any damage to the Property resulting from Purchaser's entry and inspection, Purchaser shall promptly repair such damage and restore the Property.

Purchaser 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 Purchaser, its representatives, agents, contractors or invitees. Purchaser'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, Purchaser does not approve the condition of the Property and other matters affecting the suitability of the Property for Purchaser's intended use, Purchaser 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 Purchaser. In the event Purchaser does not provide such termination notice to Seller on or before the expiration of the Inspection Period, Purchaser shall have been deemed to have waived this condition.

**3.3 South Beach Urban Renewal Plan Amendment.** Purchaser shall have amended the South Beach Urban Renewal Plan (the "Plan") to identify the Property for strategic site acquisition as part of its Phase 2 funding program, including completion of all public meetings and hearings required by law to amend the Plan, by no later than November 1, 2014 (the "Plan Amendment Deadline"). The determination of whether to amend the Plan to acquire the Property shall be in Purchaser's sole discretion, after consideration of public testimony at meetings and hearings held for that purpose. Purchaser shall use reasonable efforts to pursue an amendment of the Plan to identify the Property for acquisition so that a determination is made on or before the Plan Amendment Deadline. If Purchaser fails to amend the Plan as described by the Plan Amendment Deadline, Purchaser may, prior to the Plan Amendment Deadline, request in writing that the deadline be extended thirty (30) days, which Seller in its sole discretion may grant. Purchaser may terminate this Agreement by written notice to Seller given no later than the Plan Amendment Deadline, or any extension of such, in which case the Deposit shall be refunded to Purchaser. In the event Purchaser does not provide such termination notice to Seller on or before the Plan Amendment Deadline or any extension of such, Purchaser shall have been deemed to have waived this condition.

**3.4 Financing.** Purchaser shall have obtained financing for the acquisition of the Property as part of the Plan's Phase 2 borrowing, on or before March 31, 2015 (the "Financing Deadline"). Purchaser shall use reasonable efforts to pursue such financing so that a determination on financing is made on or before the Financing Deadline. If Purchaser fails to obtain financing for the acquisition of the Property, Purchaser may, prior to the Financing Deadline, request in writing that the deadline be extended thirty (30) days, which Seller in its sole discretion may grant. Purchaser may terminate this Agreement by written notice to Seller given no later than the Financing Deadline, or any extension of such, in which case the Deposit shall be refunded to Purchaser. In the event Purchaser does not provide such termination notice to Seller on or before the Financing Deadline or any extension of such, Purchaser shall have been deemed to have waived this condition and the entire Deposit shall be deemed nonrefundable and released to Seller.

**4. Operations Through the Closing Date.** From and after the Execution Date, through and including the Closing Date, Seller, at its sole cost and expense, shall (a) keep all existing insurance policies affecting the Property in full force and effect; (b) continue to operate, manage and maintain the Property in such condition so that the Property shall be in substantially the same condition on the Closing Date as on the Execution Date, reasonable wear and tear excepted; (c) terminate any existing leases affecting the Property (except the Lease to South Beach Church, which shall continue as provided in Section 10 below); (d) not subject the Property to any additional liens (except real property taxes and assessments which shall be prorated at Closing pursuant to Section 5.4 below), encumbrances, covenants, conditions, easements, rights of way or similar matters without the prior written consent of Purchaser; (e) not make any alterations to the Property except in the ordinary course of business; and (f) pay for all capital and other improvements (including labor and materials) which are performed or contracted for by Seller at or prior to the Closing Date.

**5. Closing and Possession.**

**5.1 Closing Date.** The consummation and closing (herein defined as the “Closing”) of the purchase and sale contemplated by this Agreement shall be held at the offices of the Title Company and shall occur no later than thirty (30) business days after satisfaction or waiver of Purchaser’s conditions precedent set forth in Section 3 above and as may be extended pursuant to Section 5.5, below. (the “Closing Date”).

**5.2 Closing Documents.** The following shall be delivered at or prior to the Closing:

(a) Seller shall deliver to the Title Company (i) an executed and acknowledged statutory form of special warranty deed (the “Deed”), conveying title to the Property free of all encumbrances created by Seller except the Permitted Exceptions; and (ii) an affidavit pursuant to which Seller states that it is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended; and (iii) the Seller’s share of closing costs and prorations as provided herein, in cash or by wire transfer or by cashier’s check.

(b) Purchaser shall deliver to the Title Company (i) the sum set forth in Section 2.2 of this Agreement, subject to adjustment for prorations and other credits as provided herein; and (ii) the Purchaser’s share of closing costs and prorations as provided herein, in cash or by wire transfer of funds or by cashier’s check.

(c) Seller and Purchaser shall each execute and deliver such other documents as may be required by the Title Company in connection with the Closing, including but not limited to escrow instructions consistent with the terms of this Agreement.

**5.3 Title Insurance.** At Closing, Seller shall provide, at its expense, a standard owner’s title insurance policy in the amount of the Purchase Price, insuring title vested in the Purchaser or its assignees or nominees, subject only to the standard printed exceptions and the Permitted Exceptions. Purchaser shall have the right, if Purchaser elects,

to cause the title policy to be issued as an extended coverage policy, provided Purchaser pays the additional premium and all survey costs associated therewith.

**5.4 Closing Costs and Prorations.**

(a) Purchaser and Seller shall each pay one-half of the costs of any escrow fees, if any, incurred in connection with the Closing. Seller and Purchaser shall each pay the fees and expenses of their respective attorneys and consultants in connection with this transaction.

(b) All real property taxes, assessments, utilities and other expenses with respect to the Property shall be prorated and adjusted between the parties as of the Closing Date.

**5.5 Section 1031 Exchange.** Seller shall each be entitled to structure the conveyance of the Property by means of a like kind exchange transaction designed to allow Seller to defer the recognition of taxable gain pursuant to Section 1031 of the Internal Revenue Code, provided that no additional expense shall be imposed on the other party as a result of such transaction. To accommodate Seller in obtaining like kind property the Seller, in its sole discretion may extend the Closing Date thirty (30) days upon providing Purchaser, prior to the Closing Date, written notice of such extension. Seller may obtain up to three (3) thirty (30) day extensions of the Closing Date.

**5.6 Possession.** Purchaser shall be entitled to possession of the Property on the Closing Date.

**6. Seller's Representations and Warranties.** Seller represents, warrants and covenants to Purchaser as follows:

**6.1** Seller agrees to promptly notify Buyer if, prior to closing, Seller receives notice of any event or condition which could result in making any previously disclosure material information relating to the Property substantially misleading or incorrect.

**6.2** To the best of Seller's knowledge, Property has not been affected by the presence of oil, Hazardous Substances or toxic wastes or other pollutants or materials in quantities which would be in violation of current state or federal laws or regulations. To Seller's actual knowledge, without inquiry, neither Seller nor any other user or occupant of any part of the Property known to Seller has ever been cited for violating any federal, state or local environmental law or regulation with respect to operations or activities on or about the Property. To the best of Seller's knowledge, there are no underground storage tanks on Property, nor have underground storage tanks been removed from Property.

**6.3** Seller has all requisite power and authority to execute and deliver this Agreement and perform Seller's obligations hereunder and upon execution this Agreement will constitute the valid and binding agreement of Seller enforceable in accordance with its terms.

6.4 Seller is not a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code, as amended, and Seller shall deliver to Purchaser at Closing an affidavit in confirmation of this Section.

6.5 To Seller’s actual knowledge, no attachment, execution, proceeding, assignment for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceeding is pending or threatened against Seller.

6.6 Seller has not received any written notice of any violation of any law, ordinance, regulation or order or requirements applicable to the Property, including but not limited to land use approvals, permits and recorded covenants, conditions, restrictions or easements applicable to the Property.

6.7 To Seller’s actual knowledge, there is no claim, action, litigation, arbitration or other proceeding pending against Seller which relates to the Property or the transactions contemplated hereby and, to Seller’s actual knowledge, there is currently no governmental investigation, threatened litigation or arbitration proceedings to which Seller is, or would be, a party which relates or would relate to the Property.

7. **Purchaser’s Representations and Warranties.** Purchaser represents and warrants to Seller as follows:

7.1 Purchaser has all requisite power and authority to execute and deliver this Agreement and the documents to be executed at Closing or otherwise in accordance with the terms of this Agreement and this Agreement is valid and binding on Purchaser in accordance with its terms.

7.2 Neither the entering into of this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Purchaser of any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule or regulation of any governmental authority.

8. **Survival of Representation and Warranties.** The representations and warranties set forth in Section 6 and Section 7 of this Agreement shall survive Closing and delivery of the Deed.

9. **Condition of Property.** Purchaser agrees that the Property is being sold and conveyed by Seller and accepted by Purchaser without any representation or warranty by Seller except as expressly set forth herein. Except as otherwise specified herein, Purchaser hereby acknowledges and agrees that Purchaser shall rely solely upon the inspection, examination and evaluation of the Property by Purchaser or its representative(s). In the event of the purchase and sale of the Property hereunder, Seller shall sell the Property to Purchaser, and Purchaser shall accept the Property from Seller “As Is”, “Where Is” and “With All Faults”. Further, Purchaser expressly acknowledges that except as otherwise expressly set forth herein, Seller makes no warranty or representation with respect to the quality, physical

condition or value of the Property; the Property's habitability, suitability, merchantability or fitness for a particular purpose; the presence or absence of conditions on the Property that could give rise to a claim for personal injury, property or natural resource damages, the presence of hazardous or toxic substances, materials or waste substances, contaminants, or pollutants on, under or about the Property; or the income or expenses from or of the Property. Purchaser shall promptly provide Seller with a copy of any and all reports or studies which Purchaser has performed on or about the Property under this paragraph in the event that Purchaser elects to terminate this Agreement and not close on its purchase of the Property. Purchaser shall promptly provide Seller with a copy of any and all reports or studies which Purchaser has performed on or about the Property under this paragraph in the event that Purchaser elects to terminate this Agreement and not close on its purchase of the Property

**10. Church Lease.** Purchaser agrees that the existing tenant on the Property, the South Beach Church (the "Church"), shall be permitted to remain in possession of the Property after Closing, subject to the terms and conditions of a new lease agreement that is to be prepared and agreed upon prior to the end of the Financing Deadline, and executed at Closing. The new lease will extend to January 1, 2018 and include the following terms: (i) the monthly rental shall be no more than \$3,500.00; (ii) the permitted use of the Property shall be for Church functions, including but not limited to; religious services, child care, meetings, church related outreach and activities. (and may include parking on east, south and west boundaries of the Property on Sundays); (iii) the a lease term shall commence on the Closing Date and may be terminated thereafter at any time by the Tenant on not less than ninety (90) days' prior notice to Purchaser; provided, however, that if Purchaser requires possession of all or a portion of the Property to commence its planned improvements to the right-of-way adjoining the Property, Purchaser may terminate the lease by not less than thirty (30) days' prior notice to the Church, (iv) the Church shall be responsible for all maintenance and repair of the Property, and shall be responsible for all services to the Property, including electricity, gas, garbage, water and sewer and door locks, at the Church's expense; and (v) upon termination of the Lease, the Church shall deliver the Property to Purchaser (including all keys to the building) free of debris and in the same condition existing as of the Closing Date, reasonable wear and tear excepted.

**11. Remedies.** In the event that Seller shall fail to close this Agreement due to a default by Seller, Purchaser may either (i) terminate this Agreement by written notice thereof delivered to Seller on or before the Closing Date (in which case the Deposit shall be returned to Purchaser), (ii) enforce specific performance of this Agreement, or (iii) pursue any other remedies at law or in equity. In the event that Purchaser shall fail to close this Agreement due to a default by Purchaser, Seller shall be entitled to receive the Deposit set forth in Section 2.1 as liquidated damages, as its sole and exclusive remedy (which amount Seller and Purchaser agree is a reasonable estimate of the loss that Seller would incur in such event).

**12. Damages or Destruction.** In the event all or a portion of the Property is damaged or destroyed prior to the Closing Date, Seller shall immediately give Purchaser notice of such event. Within ten (10) days of receipt of such notice, Purchaser shall elect, by

written notice to Seller, to either (i) terminate this Agreement, or (ii) purchase the Property. In the event Purchaser elects to terminate, escrow shall terminate, and the Deposit, unless earlier deemed non-refundable and released to Seller, shall be promptly returned to Purchaser and this Agreement shall have no further force or effect, and all insurance proceeds attributable to such damage or destruction shall be paid to Seller free of any right, claim or interest of Purchaser. If Purchaser elects to purchase the Property, this Agreement shall remain in full force and effect and Purchaser shall be obligated to close the transaction as provided herein, and Purchaser shall be assigned all insurance proceeds payable to or for the account of Seller.

**13. Assignment.** This Agreement may not be assigned or transferred by Purchaser at any time without the prior written consent of Seller, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Purchaser shall have the right, without Seller's consent, to assign this Agreement to any entity owned or controlled by Purchaser, or to any affiliate of Purchaser, and Purchaser may designate any entity at closing as the named grantee in the Deed.

**14. Real Estate Commission.** Purchaser and Seller each represents and warrants to the other that they have not dealt with any broker or similar individual or entity in connection with this Property and have not agreed to pay a commission to any broker or similar individual or entity. Seller and Purchaser each agrees to reimburse and indemnify the other and hold the other harmless from and against any and all claims, liabilities, losses and expenses, including but not limited to attorneys' fees and costs, incurred in connection with all claims for commissions or other compensation that may be made by anyone claiming through the indemnifying party in connection with this Agreement or the Property. The provisions of this Section shall survive Closing or termination of this Agreement.

**15. Notices.** Any notice, offer, acceptance, consent or other communication required or desired to be given or delivered under this Agreement shall be in writing and shall be given (a) by hand, (b) by United States, certified registered mail, postage prepaid, return receipt requested, or (c) by overnight delivery (e.g., by Federal Express). If notice is to be given to Purchaser, it shall be addressed as follows:

Thank Dad, LLC  
Attn: Tanny Schones Johnson  
PO Box 1427  
Independence, OR 97351

With a copy to: John M. Junkin  
Garvey Schubert Barer  
121 SW Morrison Street, 11<sup>th</sup> Floor  
Portland, OR 97204

If notice is to be given to Seller, it shall be given to Seller at:

City of Newport Urban Renewal Agency  
Attn: Community Development Director  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365

The addresses set forth above may be changed by notice given in accordance with the terms of this Section. If given by hand or made by overnight delivery, such notice or other communication shall be deemed sufficiently served or given for all purposes hereunder upon delivery, and if by mail, such notice or other communication shall be deemed sufficiently served or given for all purposes hereunder on the date set forth on the return receipt.

**16. Severability.** The invalidity or enforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**17. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the sale and purchase of the Property, and this Agreement supercedes all prior and contemporaneous oral or written agreements, discussions and understandings of the parties hereto. There are no agreements, representations, warranties or other terms between the parties except as expressly stated in this Agreement. This Agreement may be amended only by an instrument in writing signed by the party against whom enforcement of any change is sought.

**18. Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oregon.

**19. Further Cooperation.** Purchaser and Seller further agree they will execute such other and further documents as may be necessary or desirable to complete the transfer of the Property and to satisfy the obligations described in this Agreement, all to the end that this Agreement and the transactions and undertakings contemplated by this Agreement may and will be carried out and consummated in the most expeditious and convenient manner.

**20. Effectiveness.** This Agreement shall not be effective or binding on either party unless and until a fully executed copy is received by both parties hereto.

**21. Miscellaneous.**

**21.1** The captions contained herein are for convenience only and shall be disregarded in the construction of this Agreement.

**21.2** This Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns (as permitted pursuant to the

provisions of this Agreement) of the parties hereto. No third party benefit is intended by any provision of this Agreement nor may a third party act in reliance upon any provision hereof.

**21.3** This Agreement may be executed in counterparts, each of which, once they are executed, shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement binding on the parties hereto.

**21.4** In the event of any dispute arising out of or relating to this Agreement, whether suit or other proceeding is commenced or not, and whether in mediation, arbitration, at trial, on appeal, in administrative proceedings or in bankruptcy (including without limitation any adversary proceeding or contested matter in any bankruptcy case), the prevailing party shall be entitled to its costs and expenses incurred, including but not limited to reasonable attorney fees.

**22. 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, 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.**

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

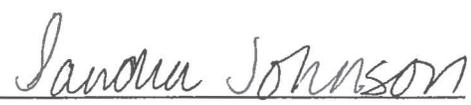
**PURCHASER:**

CITY OF NEWPORT URBAN RENEWAL  
AGENCY

By:   
Its: City Manager  
Date: 07-15-14

**SELLER:**

THANK DAD, LLC, an Oregon limited  
liability company

By:   
Its: \_\_\_\_\_  
Date: July 10, 2014

PDX\_DOCS:519613.1 [39048.00100]