

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 95 - 2140
THE EXECUTIVE OFFICER TO PURCHASE) Introduced by Mike Burton
PROPERTIES WITHIN THE WHITAKER) Executive Officer
POND MASTER PLAN AREA)

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, The Columbia Slough is considered a Greenspace of regional significance; and

WHEREAS, Whitaker Pond has been identified as an important natural area within the Columbia Slough system, and

WHEREAS, the properties to be purchased has been identified, through a public planning process, to be within the Whitaker Pond Master plan area, and

WHEREAS, The properties, as indicated in Exhibit A, will be purchased only if funding is obtained from the City of Portland and Multnomah County; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to enter into agreements as attached in Exhibit A and to purchase the property upon receipt of the funds necessary to do so from the City of Portland and Multnomah County.

ADOPTED by Metro Council this 1 day of June, 1995.



J. Ruth Mc Farland , Presiding Officer

Staff Report

**CONSIDERATION OF RESOLUTION NO. 95- 2140, FOR THE PURPOSE OF
AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTIES
WITHIN THE WHITAKER POND MASTER PLAN AREA**

Date: 16 MAY 1995

Presented by: Nancy Chase

PROPOSED ACTION

Resolution No. 95-2140 requests the approval of a resolution to authorize the Executive Officer to purchase properties within the Whitaker Pond master plan area, along the Columbia Slough, in NE Portland.

BACKGROUND AND ANALYSIS

The Whitaker Pond site is located in NE Portland at approximately NE 47th St. and Columbia Blvd. A master plan for this site is scheduled for adoption in June. The master plan pointed out the need for the acquisition of all or part of the privately owned property bordering Whitaker Pond. Negotiations are in progress with six property owners, all willing sellers.

The acquisition and restoration of the properties will be a combined effort by local governments and non-profit groups.

One property is currently under option to The Trust for Public Land. This project was reviewed by the Regional Facilities Committee in 1994.

Three of the properties are occupied by residential homes. As part of the negotiation process they will be reviewed for code compliance and their potential as rentals. One of the homes may be needed for a management unit. The remaining two properties are vacant industrial land.

BUDGET IMPACT

Property Acquisition cost, for the property under option by the Trust for Public Land, will be funded by the City of Portland and Multnomah County. Acquisition cost for the remaining properties will be funded by the City of Portland. Metro will take title (with a reversion clause to the City) and provide property management.

It is intended that the properties will be land banked until restoration and maintenance dollars for the Whitaker Pond project are available.

EX. A
95-2159
2140

METRO

REAL ESTATE OPTION

GRANTOR: Minnie Talbert Estate
c/o Terrence M. Houck, Executor

MAILING ADDRESS: 823 N.E. 196th Avenue
Portland, OR 97230

TELEPHONE NO: 667-8352

IN CONSIDERATION of the offer to the undersigned, Grantor, for the hereinafter described property, Grantor gives to METRO, upon the following terms and conditions, the option to buy the following described real property in the City of Portland, County of Multnomah and State of Oregon, to wit:

Lot 33, London Acres
Eighty-Five ^{RDH} _{TMH} for the sum of ~~SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00)~~ ^{\$85,000.00} ^{RDH} _{TMH} Purchase Price, to be paid upon conveyance of marketable title and delivery of a title insurance policy to METRO. Under the provisions of Public Law 91-646 it is understood that the Purchase Price is the estimated just compensation for the fee title of the Property based on an independent fee appraisal and fair market value established by a Certified Real Estate Appraiser licensed in the State of Oregon to be selected and paid for by METRO prior to closing.

METRO shall have the irrevocable right at any time within 60 days from the date of this Option to elect to purchase the Property. The election to purchase shall be made by METRO by delivering to the Grantor, or by mailing by registered mail at any United States post office to the Grantor, addressed as follows:

Terrence M. Houck, Executor
823 N.E. 196th Avenue
Portland, OR 97230

written notice of its election. The notice shall be deemed to have been given the date of such delivery, or the date immediately following such mailing by registered mail. Upon the giving by METRO of the notice, Grantor agrees AT GRANTOR'S OWN EXPENSE AND WITHIN TEN (10) DAYS OF THE GIVING OF SUCH NOTICE TO:

- (1) Convey the Property with appurtenances, hereditaments and tenements to METRO

by Warranty Deed in such name as METRO may prescribe, free and clear of all liens and encumbrances, rights of possession, claims to rights of possession, and recorded and/or unrecorded leasehold interests, except building restrictions of record and zoning ordinances, and quitclaim all right, title and interest which Grantor may have in any alleys, roads, streets, ways, strips, easements, gores, or rights of way abutting or adjoining the Property and in any means of ingress or egress appurtenant to the Property.

(2) Furnish to METRO an owner's policy of title insurance in the amount of the Purchase Price prepared by Chicago Title Insurance Company of Oregon, insuring METRO as fee simple owner of the Property free and clear of all liens and encumbrances except building restrictions of record and zoning ordinances.

(3) Pay all delinquent taxes and assessments against the Property for the preceding tax years, and pay proportional part of current real property taxes prorated as of the date of closing of escrow.

(4) Pay all water and sewer bills charged to the property as of date of closing of escrow.

(5) Deliver to METRO possession of the Property at the closing of escrow.

(6) Deliver to METRO a full set of keys for property at closing of escrow.

Grantor represents the following:

(1) To the knowledge of Grantor, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government;

(2) Grantor has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, or emitted or released from, the Property any Hazardous Substances in violation of any environmental laws of the federal or state government; and

(3) To the knowledge of Grantor, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Grantor agrees not to cause or permit any such tanks to be installed in the Property before Closing.

For purposes of this subsection, the phrase "Hazardous Substances" has the same meaning as is designated in ORS 465.200(9).

It is further understood and agreed that the Property will be delivered to METRO subject

to any existing tenant occupancy.

The purchase will be closed in an escrow, and the escrow fee shall be shared equally by Grantor and METRO. Grantor authorizes Nancy Chase, METRO to sign the escrow instructions or amendments thereto, or any other statements required by METRO other than Warranty Deed on behalf of all Grantors in this transaction.

It is specifically understood and agreed that the Property agreed to be conveyed, unless stated to the contrary herein, includes all structures, buildings, fixtures, trees, shrubbery and all other real property improvements of any nature whatsoever which are on the Property, and Grantor agrees to keep the same in good condition without waste, damage or destruction prior to delivery of possession of the Property to METRO.

Grantor agrees that loss or damage to the Property by fire or other casualty shall be at the risk of Grantor until the title to the land and deed to METRO shall have been accepted and in the event that such loss or damage occurs, METRO may, without liability, refuse to accept conveyance of title. Or, in the event of loss or damage to the Property from fire, which property is covered by insurance held by or on behalf of Grantor or in which the Grantor may have rights, METRO may elect to take the proceeds from insurance upon exercise of this Option; and Grantor shall assign the proceeds to METRO, which proceeds shall be applied to reduce the purchase price of the Property by amount of the proceeds.

In the event METRO does not deposit the purchase price with the escrow holder within a period of 60 days from the date of this Option, it shall remain in force until Grantor shall terminate this Option by giving thirty (30) days prior written notice to METRO of Grantor's election to terminate.

Entry by METRO, its employees or agents, upon the Property for the purpose of inspection or survey or any slight or inadvertent entry without material damage or injury to the realty, or without the exercise of dominion thereover to the exclusion of Grantor; shall not be construed as a final election to close this Option.

METRO or its agents shall have the right to enter onto the property in order to conduct environmental or other studies prior to closing of the purchase of the property. METRO will not commit any damage or waste to the property.

It is further agreed that no statements, expressions of opinion, representations or agreements of any nature whatsoever, made by any representative or agent of METRO shall be binding on, or of any effect against, METRO.

Grantor acknowledges that all items of damages, all sums of money to be paid, and all things to be done by METRO are included in this Option. All claims for damages, injury, or loss on account of failure to close this Option are waived by Grantor. Grantor agrees that they shall have no claim or cause of action against METRO or any of its employees except such as

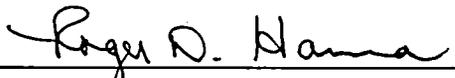
may arise by reason of this Option.

Dated this 18th day of May, 1995.



Terrence M. Houck, Executor

WITNESS:



Roger D. Hanna, Agent

ASSIGNMENT OF OPTION

The Trust for Public Land, a nonprofit California public benefit corporation ("Assignor") hereby assigns to Metro, a political subdivision of the State of Oregon ("Assignee"), without representation or warranty except as provided herein, all of Assignor's right title and interest in and to that certain Amended and Restated Option Agreement dated as of July 25, 1994 by and between John D. Klein as optionor and Assignor as optionee ("Option Agreement") a copy of which is attached hereto. Assignor represents that as of the date of this Agreement the Option Agreement is in full force and effect and that Assignor has received no notices or other information indicating that there are any breaches of either party's obligations, representations or warranties under the Option Agreement.

By signing below, Assignee agrees as follows:

1. To accept this assignment according to the terms of this Agreement;
2. That Assignee has full power and authority to enter into this Agreement (and the person(s) signing this Agreement for Assignee have full power and authority to sign for Assignee and bind it to this Agreement);
3. That Assignee has reviewed the Option Agreement and understands all the terms and provisions thereof, and that Assignee has had the opportunity to make such inspections, investigations and studies regarding the Subject Property, and the transactions contemplated by the Option Agreement as Assignee deems necessary, and that Assignee is not relying on any statements or representations of Assignor regarding the same except as provided in this Agreement in accepting this assignment or proceeding with the transaction contemplated by the Option Agreement;
4. That Assignee shall indemnify and hold Assignor harmless from any claims, obligations, costs or liabilities related to the Option Agreement arising from events occurring after the date of this assignment.

Date as of the _____ day of _____, 1995.

The Trust for Public Land

Metro

By: _____

By: _____

Its: _____

Its: _____

OPTION AGREEMENT

This is an Agreement dated as of July 25, 1994, between JOHN D. KLEIN ("Seller"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Buyer").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

SELLER:

John D. Klein
% 1807 N. Kilpatrick Street
Portland, Oregon 97217

BUYER:

The Trust for Public Land
1510 Smith Tower
506 2d Avenue
Seattle, Washington 98104-2311

Attn: Thomas E. Tyner
Tel.: (206) 587-2447
Fax : (206) 382-3414

Copies of any notices to Seller should also be sent to:

R. Erik Peterson, Esq.
1709 SW Morrison St., Ste. 210
Portland, Oregon 97205

Tel.: (503) 294-1970

B. Seller is the owner of certain real property in Multnomah County, Oregon, described as follows:

Lot 34, London Acres Plat 2, as shown in that plat recorded in Book 2112, Page 508, Multnomah County, Oregon.

Said real property, which comprises approximately five and seven one hundredths (5.07) acres, together with any and all improvements, fixtures, timber, water and minerals located thereon and any and all rights appurtenant thereto including but not limited to timber rights, water rights, grazing rights, access rights and mineral rights, shall be referred to in this Agreement as the "Subject Property".

C. It is the mutual intention of Seller and Buyer that the Subject Property be preserved and used eventually for public, open space and recreational purposes. However this intention shall not be construed as a covenant or condition to this Agreement. Buyer makes no representation that any efforts it may undertake to secure the eventual government acquisition of the Subject Property will be successful.

D. Seller acknowledges that Buyer is entering into this Agreement in its own right and that Buyer is not an agent of any governmental agency or entity.

E. Seller acknowledges that upon acquisition of the Subject Property Buyer shall be free to use and dispose of the Subject Property in any manner Buyer deems appropriate and that Buyer may sell the Subject Property for any price Buyer deems appropriate to any subsequent buyer provided that the proceeds of any such sale be devoted to Buyer's charitable purposes.

F. Buyer is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic and recreational lands. Buyer is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended from time to time, the "Code") and is included in the "Cumulative List of Organizations" described in Section 170(c) of the Internal Revenue Code published by the Internal Revenue Service. Buyer is not a private foundation within the meaning of Section 509(a) of the Code.

THE PARTIES AGREE AS FOLLOWS:

1. Option. In consideration of the payment by Buyer to Seller of One Hundred Dollars (\$100.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller grants to Buyer an exclusive and irrevocable option to purchase the Subject Property on the terms and conditions set forth in this Agreement (the "Option").

2. Term. The Option shall be effective as of the date hereof (the "Effective Date") and shall expire ninety (90) days from the date this Agreement is last signed.

3. Exercise. In the event Buyer elects to exercise the Option, it shall do so by notifying Seller in writing within the term specified in Section 2. Such notice shall be deemed timely if it is transmitted by facsimile, deposited in the mail, first class postage prepaid, or delivered personally by courier or Express Mail within the term specified in Section 2.

4. Purchase Terms:

(a) Price. In the event Buyer exercises the Option, Seller shall sell to Buyer and Buyer shall buy from Seller the Subject Property for a purchase price equal to the highest and best

use fair market value of the Subject Property (the "Purchase Price") as determined by a full narrative written appraisal of the Subject Property prepared by an M.A.I. appraiser selected by Buyer, which appraisal has been finally approved by the public agency to which Buyer ultimately intends to convey the Subject Property, provided, however, that the Purchase Price shall in no event be less than One Hundred Thousand Dollars (\$100,000.00). Buyer shall pay for the appraisal and the appraisal will belong to Buyer. If the appraisal described above concludes that the fair market value of the Subject Property is less than One Hundred Thousand Dollars (\$100,000.00), Seller can terminate this Agreement by so notifying Buyer within ten (10) business days of receiving a copy of such appraisal.

(b) Method of Payment. The Purchase Price shall be payable in cash on close of escrow.

5. Escrow and Closing. Upon Buyer's exercise of the Option, or at any earlier time as may be convenient, the parties shall open an escrow with Ticor Title Insurance Company, 1029 SW Salmon Street, Portland, Oregon 97205, telephone (503) 224-0550, or such other third party as Buyer and Seller shall jointly appoint to serve as the escrow holder (the "Escrow Holder"), for the purpose of closing the purchase and sale of the Subject Property. Subject to the provisions of Section 8(b) of this Agreement, escrow shall close within forty-five (45) days of the date on which Buyer exercises the Option. The amount payable by Seller to Buyer under that donation letter referred to in Section 24 shall be payable to Buyer through such escrow.

6. Title. Seller shall convey to Buyer's designee by a statutory warranty deed marketable title to the Subject Property.

This Agreement is entered into without the benefit of a current title report on the Subject Property. Buyer shall order such a report from the Escrow Holder together with copies of all of the documents referred to therein as exceptions. Not later than the date Buyer exercises the Option or within fourteen (14) days of receipt of the current title report and copies of the documents referred to above, whichever date is later, Buyer shall advise Seller of any exceptions in the title report which Buyer will require to be removed on close of escrow. Thereafter, Seller shall use its best efforts to ensure the removal of any such objectionable exceptions by the close of escrow. In the event Seller is unable to remove any such exceptions to which Buyer has objected, Buyer shall elect to either: (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the Subject Property; (b) defer the closing date until such objectionable exceptions are removed, during which time Seller shall continue to use its best efforts to remove such objectionable exceptions; or (c) proceed with the purchase of the Subject Property and accept a policy of title insurance with the exceptions to which Buyer objected. In any event, Seller shall remove all monetary liens and encumbrances (except any statutory liens for

nondelinquent real property taxes) prior to or concurrent with the close of escrow.

7. Title Insurance. Seller shall provide Buyer or Buyer's designee with an ALTA standard coverage owner's policy of title insurance, in form and substance acceptable to Buyer, in the full amount of the Purchase Price, insuring that title to the Subject Property is vested in Buyer or Buyer's designee upon close of escrow subject only to the exceptions noted in Section 6.

8. Seller's Preclosing Covenants.

(a) Negative Covenants. Seller shall not do any of the following without the prior written consent of Buyer:

(i) Make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Subject Property;

(ii) Cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon the Subject Property;

(iii) Permit any mortgage, deed of trust or other lien to be foreclosed upon due to Seller's actions or omission, including failure to make a required payment; or

(iv) Take or permit any action that could reduce the value of the Subject Property, including but not limited to cutting or harvesting any timber on the Subject Property.

(b) Positive Covenants. Seller shall do the following:

(i) Remove all trash, rubbish, debris, junk, waste materials, scrap, and other personal property and/or unsightly or offensive materials ("Debris") from the Subject Property, including all Debris stored in buildings or improvements on the Subject Property; and

(ii) Terminate all leases, licenses, agreements or other arrangements with any third parties who may currently have a right or ability to use the Subject Property to store or dump Debris of any sort.

Seller shall complete the actions described above to Buyer's reasonable satisfaction as soon as possible, but in no event later than ninety (90) days from the Effective Date of this Agreement. If Seller has not completed the actions described above by such date, then the term of this Option shall be automatically extended for a period of sixty (60) days from the last day of the original Option term.

If Seller still has not completed the actions described above at or prior to the end of such sixty (60)-day extension, and

if Buyer also elects to exercise the Option as set forth in Section 3, then Buyer may arrange to complete such actions on Seller's behalf, in which case Buyer shall be credited at the close of escrow with the amount expended by Buyer in this regard in order to satisfy Seller's promises contained herein. If Buyer has exercised the Option but elects not to complete such actions on Seller's behalf, and if the close of escrow has not occurred on or before December 15, 1994 due to Seller's failure to complete the actions set forth above, then Buyer may elect to terminate this Agreement, in which case Buyer shall have no obligation to purchase the Subject Property.

9. Seller's Representations. Seller makes the following representations and warranties:

(a) Seller has full power and authority to enter into this Agreement and to sell, transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement.

(b) The conveyance of the Subject Property in accordance with this Agreement will not violate any provision of state or local subdivision laws.

(c) The Subject Property has improved, insurable vehicular access to a public road.

(d) No one other than Seller will be in possession of any portion of the Subject Property at the close of escrow.

(e) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Subject Property, or any portion thereof, affect the value of the Subject Property, or any portion thereof, or subject Buyer or Buyer's successors and assigns to liability.

(f) Within Seller's knowledge, there are no:

(i) Intended public improvements or private rights which will result in the creation of any liens upon the Subject Property or any portion thereof.

(ii) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Subject Property or any portion thereof.

(iii) Actual or impending mechanics liens against the Subject Property or any portion thereof.

(iv) Notices or other information giving Seller reason to believe that any conditions existing on the Subject Property or in the vicinity of the Subject Property or in ground or surface waters associated with the Subject Property may have a material affect on the value of the Subject Property or subject the owner of the Subject Property to potential liabilities under environmental laws.

(v) There is no lease, license, permit, option or right of first refusal which affects the Subject Property or any portion thereof which will not be terminated by closing.

(g) Within Seller's knowledge, there is no condition at, on, under or related to the Subject Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance, as hereinafter defined, on the Subject Property nor any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Subject Property or into or upon ground or surface water at the Subject Property.

(h) Within Seller's knowledge, no Hazardous Substance is now or ever has been stored on the Subject Property in underground tanks, pits or surface impoundments and there are no asbestos-containing materials incorporated into the buildings or interior improvements or equipment that are part of the Subject Property or other assets to be transferred pursuant to this Agreement, nor is there any electrical transformer, fluorescent light fixture with ballasts or other PCB item, as defined at 40 CFR Section 761.3, on the Subject Property or among the assets to be transferred pursuant to this Agreement. Seller is in compliance with all applicable laws and regulations in connection with the handling, use, storage or disposal of Hazardous Substances, including the maintenance of all required permits and licenses.

For purposes of this Agreement:

(i) The term "Hazardous Substance(s)" means any substance which is (a) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, (b) a petroleum hydrocarbon, including crude oil or any fraction thereof, (c) hazardous, toxic corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or reproductive toxicant, (d) regulated pursuant to any Environmental Law, or (e) any pesticide regulated under state or federal law; and

(ii) The term "Environmental Law(s)" means each and every federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or

other governmental authority, pertaining to the protection of human health and safety or the environment.

(i) Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Subject Property is subject.

Each of the above representations and warranties is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the close of escrow, Seller shall be obligated either to remedy the problem before the close of escrow or to credit to Buyer at the close of escrow the amount reasonably required to remedy the problem. If the problem is not remedied before close of escrow and cannot be remedied by payment of money, Buyer may elect to terminate this Agreement in which case Buyer shall have no obligation to purchase the Subject Property.

In the event either party defaults in the performance of any of its obligations under this Agreement, the non-defaulting party shall have any and all remedies provided in this Agreement or by law or equity.

10. Indemnification. Seller shall indemnify, defend with counsel of Buyer's choice and Seller's approval, which approval shall not be unreasonably withheld, and hold harmless Buyer, its officers, directors, employees and agents, from and against all expense, loss, liability, damages and claims, including Buyers' attorneys' fees, if necessary, arising out of the breach of any of Seller's representations, warranties or covenants in this Agreement.

11. Right to Inspect Subject Property. During the term of this Agreement Buyer through its employees and agents may enter upon the Subject Property for the purpose of making inspections and investigations as Buyer deems appropriate, including, without limitation, making a level 1 and level 2 environmental assessment of the soils, waters and improvements on the Subject Property.

Should the Buyer determine, in its sole discretion, based on its investigation of the Subject Property, that the environmental conditions on the Subject Property are unacceptable to Buyer, Buyer shall so notify Seller and Seller shall use its best efforts to remove such unacceptable environmental conditions by close of escrow. Alternatively, if Buyer's environmental consultant, which shall be Hahn and Associates, has determined that the unacceptable environmental condition of the Subject Property

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can be remedied at a cost of less than ~~Five~~ Thousand Dollars (\$5,000.00), then Seller may instead credit Buyer at the close of escrow with such amount toward the Purchase Price. In the event Seller is unable to remove any such unacceptable conditions, or if Buyer's environmental consultant determines that the cost to remedy any unacceptable environmental condition equals or exceeds Five Thousand Dollars (\$5,000.00), then either Seller or Buyer may elect to terminate this Agreement in which case Buyer shall have no obligation to purchase the Subject Property.

12. Risk of Loss. All risk of loss shall remain with Seller until closing. In the event the Subject Property is destroyed or damaged after Buyer has exercised the Option and prior to close of escrow, Buyer may rescind this Agreement and be refunded the Option Consideration. Except as provided for in Section 8(b)(iii), Seller agrees that upon close of escrow such improvements shall be in the same order and condition as on the date of this Agreement, except for reasonable wear and tear.

13. Condemnation. In the event of the taking of all or any part of the Subject Property by eminent domain proceedings, or the commencement of such proceedings prior to closing, Buyer shall have the right, at its election, to terminate this Agreement by written notice to Seller, in which case Seller shall promptly refund to Buyer the Option Consideration. If Buyer does not so terminate the Agreement, then Buyer may, at its election, either (a) proceed to close with the Purchase Price reduced by the total of any awards or other proceeds received or to be received by Seller as a result of such proceedings, or (b) proceed to close with an assignment by Seller of all Seller's right, title and interest in and to any and all such awards and proceeds. Seller shall notify Buyer in writing of any eminent domain proceedings affecting the Subject Property within five (5) business days after Seller learns of such proceedings.

14. Prorations and Fees. Real property taxes on the Subject Property shall be prorated as of the close of escrow based upon the latest available tax bill. -The escrow fee shall be paid by Buyer. Buyer shall pay any recording fees. Any documentary tax or real property transfer tax arising out of the conveyance of the Subject Property shall be paid by Seller. Seller shall be responsible for any compensatory or roll back taxes on the Subject Property arising from the termination of a preferential tax classification of the Subject Property payable as a result of this conveyance. Buyer shall pay for the title insurance policy as specified hereinabove. Other fees and charges shall be allocated in accordance with the customary practice of the county in which the Subject Property is located.

15. 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 which, in farm or forest zones, may not authorize siting or construction of a residence. 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 approved uses and existence of fire protection for structures. (Statutory notice required by Oregon Revised Statute ("ORS") 93.040(2).)

16. Notices. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered; or if transmitted by facsimile, shall be deemed given when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

17. Legal Costs. If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

18. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement, or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will indemnify and hold the other party harmless from said claim.

19. Time of the Essence. Time is of the essence of this Agreement.

20. Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their respective heirs, personal representatives, assigns, and other successors in interest.

21. Memorandum of Option. Concurrently with the signing of the Agreement the parties shall sign a Memorandum of Option in form of Exhibit A which is attached to this Agreement and incorporated herein by this reference. Buyer shall cause the Memorandum of Option to be recorded. In the event Buyer does not exercise the Option within the term of this Agreement, Buyer shall deliver a quit claim deed in a form suitable for recordation covering the Subject Property so as to eliminate any cloud on Seller's title to the Subject Property.

22. Additional Documents. Seller and Buyer agree to execute such additional documents, including escrow instructions and, if applicable, an assignment of Option Agreement, as may be reasonable and necessary to carry out the provisions of this Agreement.

23. Non-Foreign Certificate. Concurrently with the execution of this Agreement, Seller shall execute a Non-Foreign Certificate in the form of Exhibit B attached hereto, and shall deliver such certificate to Buyer. Seller acknowledges that if Seller is unable to certify that it is not a "foreign person", Buyer may be required to withhold a portion of the purchase price at closing for United States income tax purposes.

24. Entire Agreement; Modification; Waiver. Except for that related donation letter between Seller and Buyer, dated as of the date of this Agreement, this Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

25. Assignment of Buyer's Interest. The parties hereto agree that the Buyer may assign its interest in this Agreement to the public agency to whom Buyer ultimately intends to convey the Subject Property, or to an organization or entity that is a qualified organization at the time of transfer under Section 170(h) of the Code, and the applicable regulations promulgated thereunder. If requested to do so by Buyer in connection with the closing of escrow, Seller shall deed the Subject Property directly to a public agency rather than to Buyer.

26. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

27. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

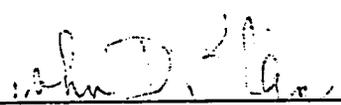
28. No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance of title to the Subject Property, placing any deeds of trust on the Subject Property and delivery of money and documents in the escrow), shall not merge with transfer of title but shall remain in effect until fulfilled.

(Continued on Next Page)

29. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

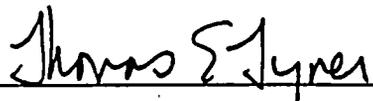
SELLER:



John D. Klein

BUYER:

THE TRUST FOR PUBLIC LAND,
a California nonprofit
public benefit corporation

By: 
Its: REGIONAL COUNSEL
Date: 8/15/94

HANNA, McELDOWNEY AND ASSOCIATES

8835 SW Canyon Lane - Suite 405

Portland, OR 97225

PHONE: (503) 297-9588 FAX: (503) 297-2835

FAX COVER SHEET

TO: Nancy Chase

FAX NUMBER: 792-1849

FROM: Roger Hanna

PHONE NUMBER: (503) 297-9588

SUBJECT: Hayes Option with his signature

NO. OF PAGES: 6 DATE: 2-22-95 TIME: _____
(Includes Cover Page)

METRO**REAL ESTATE OPTION****GRANTOR:**

Edmund Hayes Jr., Owner, Grantor
707 SW Washington #934
Portland, OR 97205-3531

Voith Sulzer Paper Technology, North American, Inc., Lessee
Ray Hall c/o Don Leighton
6654 N.E. 47th Avenue
Portland, OR 97208

TELEPHONE NO:

Hayes: 227-2123 Leighton: 284-1440

IN CONSIDERATION of the offer to the undersigned, Grantor, for the hereinafter described property, gives to METRO, upon the following terms and conditions, the option to buy the following described real property in the City of Portland, County of Multnomah and State of Oregon, to wit:

See Exhibit "A" attached to and by reference made part of this Option

for the sum of SEVENTY-SIX THOUSAND AND NO/100 DOLLARS (\$76,000.00) Purchase Price, to be paid upon conveyance of marketable title and delivery of a title insurance policy to METRO. Under the provisions of Public Law 91-646 it is understood that the Purchase Price is the estimated just compensation for the fee title of the Property based on an independent fee appraisal and fair market value established by a Certified Real Estate Appraiser licensed in the State of Oregon to be selected and paid for by METRO prior to closing.

In connection with the above, it is further understood by Grantor and METRO that the Purchase Price of Seventy-Six Thousand Dollars is only an estimated Purchase Price and that agreement for a final Purchase Price will be based on the following:

(1) The final agreed purchase price will be based on the actual area acquired, per paragraph (2) and (3) below, times the unit price for each property type as follows:

- (a) Pond: \$2,000 per acre
- (b) Buffer area: \$6,000 per acre
- (c) Lowland adjacent and south of buffer: \$69,000 per acre

(2) The actual area to be acquired will be determined by survey and aerial photo and will consist of the northerly portion of Tax Lots 11 and 318. Said area will lie north of a line

beginning at the northeast corner of Tax Lot 318 and extending northwest across said tax lots to the west property line of Tax Lot 11.

(3) Said actual area is intended to include all of Whitaker Pond that lies on subject and a minimum 50 foot wide buffer adjacent and south of the pond that lies on subject. Some additional low land adjacent to the buffer may also be acquired. See Exhibit "B" attached to and by reference made a part of this Option.

(4) All costs associated with the property survey and proposed lot line adjustment for the acquired area will be the responsibility of METRO.

It is further agreed that METRO, at its expense, will install a fence along Grantor's new property line after the acquisition with the intent to provide a barrier that will exclude the general public from Grantor's remaining property.

METRO shall have the irrevocable right at any time within 90 days from the date of this Option to elect to purchase the Property. The election to purchase shall be made by METRO by delivering to the Grantor, or by mailing by registered mail at any United States post office to the Grantor, addressed as follows:

Edmund Hayes Jr.
707 SW Washington #934
Portland, OR 97205-3531

Don Leighton, General Manager
Voith Sulzer
6654 N.E. 47th Avenue
Portland, OR 97208

written notice of its election. The notice shall be deemed to have been given the date of such delivery, or the date immediately following such mailing by registered mail. Upon the giving by METRO of the notice, Grantor agrees **AT GRANTOR'S OWN EXPENSE AND WITHIN TEN (10) DAYS OF THE GIVING OF SUCH NOTICE TO:**

(1) Convey the Property with appurtenances, hereditaments and tenements to METRO by Warranty Deed in such name as METRO may prescribe, free and clear of all liens and encumbrances, rights of possession, claims to rights of possession, and recorded and/or unrecorded leasehold interests, except building restrictions of record and zoning ordinances, and quitclaim all right, title and interest which Grantor may have in any alleys, roads, streets, ways, strips, easements, gores, or rights of way abutting or adjoining the Property and in any means of ingress or egress appurtenant to the Property. It is expressly agreed that this Option to purchase is conditioned upon the agreement of Chicago Title to issue to METRO the title insurance policy in (2) below, and that Grantor shall have no obligation to institute litigation or spend any sum of money to cure or remove any exceptions to title.

(2) Furnish to METRO an owner's policy of title insurance in the amount of the Purchase Price prepared by Chicago Title Insurance Company of Oregon, insuring METRO as fee simple owner of the Property free and clear of all liens and encumbrances except building

restrictions of record and zoning ordinances.

(3) Pay all delinquent taxes and assessments against the Property for the preceding tax years, and pay proportional part of current real property taxes prorated as of the date of closing of escrow.

(4) Pay all water and sewer bills charged to the property as of date of closing of escrow.

(5) Deliver to METRO possession of the Property at the closing of escrow.

(6) Deliver to METRO a full set of keys for property at closing of escrow.

Grantor represents the following:

(1) To the best knowledge of Grantor, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government;

(2) To the best knowledge of Grantor, Grantor has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, or emitted or released from, the Property any Hazardous Substances in violation of any environmental laws of the federal or state government; and

(3) To the best knowledge of Grantor, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Grantor agrees not to cause or permit any such tanks to be installed in the Property before Closing.

For purposes of this subsection, the phrase "Hazardous Substances" has the same meaning as is designated in ORS 465.200(9).

It is further understood and agreed that the Property will be delivered to METRO subject to any existing tenant occupancy.

The purchase will be closed in an escrow, and the escrow fee shall be shared equally by Grantor and METRO. Grantor authorizes Peter Stoloff, Attorney to sign the escrow instructions or amendments thereto, or any other statements required by METRO other than Warranty Deed on behalf of all Grantors in this transaction.

It is specifically understood and agreed that the Property agreed to be conveyed, unless stated to the contrary herein, includes all structures, buildings, fixtures, trees, shrubbery and all

other real property improvements of any nature whatsoever which are on the Property, and Grantor agrees to keep the same in good condition without waste, damage or destruction prior to delivery of possession of the Property to METRO.

Grantor agrees that loss or damage to the Property by fire or other casualty shall be at the risk of Grantor until the title to the land and deed to METRO shall have been accepted and in the event that such loss or damage occurs, METRO may, without liability, refuse to accept conveyance of title. Or, in the event of loss or damage to the Property from fire, which property is covered by insurance held by or on behalf of Grantor or in which the Grantor may have rights, METRO may elect to take the proceeds from insurance upon exercise of this Option, and Grantor shall assign the proceeds to METRO, which proceeds shall be applied to reduce the purchase price of the Property by amount of the proceeds.

In the event METRO does not deposit the purchase price with the escrow holder within a period of 60 days from the date of this Option, it shall remain in force until Grantor shall terminate this Option by giving thirty (30) days prior written notice to METRO of Grantor's election to terminate.

Entry by METRO, its employees or agents, upon the Property for the purpose of inspection or survey or any slight or inadvertent entry without material damage or injury to the realty, or without the exercise of dominion thereover to the exclusion of Grantor, shall not be construed as a final election to close this Option.

METRO or its agents shall have the right to enter onto the property in order to conduct environmental or other studies prior to closing of the purchase of the property. METRO will not commit any damage or waste to the property, and shall not interfere with or disturb the rights of Grantor or Lessee.

It is further agreed that no statements, expressions of opinion, representations or agreements of any nature whatsoever, made by any representative or agent of METRO shall be binding on, or of any effect against, METRO.

Grantor acknowledges that all items of damages, all sums of money to be paid, and all things to be done by METRO are included in this Option. All claims for damages, injury, or loss on account of failure to close this Option are waived by Grantor. Grantor agrees that they shall have no claim or cause of action against METRO or any of its employees except such as may arise by reason of this Option.

METRO shall not have the right to assign or transfer all or any part of its rights under this agreement without the prior written consent of Grantor which consent may be withheld in Grantor's sole and unfettered discretion.

Time is of the essence of this Agreement.

In the event METRO fails to exercise the Option before the Term expires, METRO shall execute, acknowledge and deliver to Owner a statutory quitclaim deed releasing any interest in the Property.

Each party agrees to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify the other party against any claims for commissions or fees asserted by any broker claiming by, through, or under the indemnifying party.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

This agreement shall not be effective until executed by authorized representatives of Owner and Lessee and accepted by Metro.

Dated the last day signed below.

EMK

Edmund Hayes, Jr. 6/19/95
Edmund Hayes, Jr., Owner Date

Don Leighton, Authorized Representative of Lessee Date

Witness Date

EXHIBIT A

OPTION TO PURCHASE REAL PROPERTY

THIS OPTION AGREEMENT (the "Agreement") is made and entered into by and between Stuart L. Stickler and Kelley A. Stickler (the "Seller") and Metro, a municipal corporation of the state of Oregon organized under Oregon Revised Statutes, chapter 268, and the 1992 Metro Charter (the "Buyer"), this 5th day of December, 1994.

1. Grant of Option. Seller, in consideration of the sum of \$3,000, does hereby grant to Buyer the sole and exclusive option to purchase the real property described in Exhibit "A" attached and incorporated by this reference into this Agreement (the "Property") in the manner and for the price stated in this Agreement.
2. Option Terms.
 - 2.1 Term. This Agreement shall become effective (the effective date) on that date executed by Seller, provided that within 28 days thereafter, Buyer formally accepts the agreement and delivers to Seller a fully executed agreement and the *initial cash sum* as provided in Section 3. The initial term of the option shall commence on the effective date and shall continue until July 30, 1995.
 - 2.2 Exercise of Option. Buyer may exercise this option by written notice to Seller at any time during the term stating that Buyer has elected to exercise the option. Upon exercise of this option, Buyer shall be obligated to purchase the Property from Seller and Seller shall be obligated to sell the Property to Buyer for the price and in the manner herein set forth.
 - 2.3 Failure to Exercise Option. If Buyer fails for any reason to exercise this option in the manner set forth herein, Buyer shall have no further claim against or interest in the Property or any of the Option Money Payments, unless Buyer is entitled to a refund of the Option Money Payments under another provision of this Agreement. In the event of the failure to exercise the option, Buyer shall provide Seller with any instruments that Seller reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of this option.
3. Option Money. In payment for Seller's grant of this option, Buyer has paid or will pay Seller the following *option money payment*: (a) The *initial cash sum* of \$3,000 mentioned in Section 1;

4. Purchase Price. Purchase price offered by Metro for the above property is the sum of Eighty Thousand and No/100 Dollars (\$80,000.00) less option payments to be paid in cash upon closing if the fair market value of this property in a full narrative written appraisal prepared by an Oregon Licensed Certified Appraiser selected by Metro is within 80% of this sum. Metro may elect to proceed to closing at the above purchase price if its appraisal of the fair market value of this property is less than 80% of the purchase price by written notice to Seller(s). Finally, in the event the appraisal of the fair market value of the property is greater than the price offered herein then the final sale price shall be the appraised value.

The entire balance of the purchase price shall be paid at closing.

5. Recording. On the effective date, Seller shall execute, acknowledge and deliver to Buyer a memorandum in the form attached as Exhibit B. In the event Buyer fails to exercise the option before the term expires, the memorandum will automatically terminate on that date and the Seller will not have to seek a release or quitclaim deed. Buyer shall record the memorandum.
6. Possession. Possession of the Property shall remain with Seller, subject to the covenants in this Agreement, until Buyer exercises the option and closing of the sale of the property. Buyer shall be entitled to exclusive possession of the Property on and after the closing date.
7. Access to Property. Seller grants to Buyer and its agents the right to enter on the Property at any reasonable times before the closing date for the purpose of conducting tests or studies that Buyer may deem necessary or appropriate in connection with its acquisition of the Property. Seller shall cooperate with Buyer in making such tests and studies. No soil tests or drilling shall be undertaken without first obtaining

Seller's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Buyer shall not interfere with or disturb the rights of any tenants of Seller in possession of any portion of the Property. Buyer shall protect, defend, and hold Seller harmless from any loss, liability, or damage to persons or property arising out of or related to Buyer's activities on the Property. If Buyer fails to exercise the option and purchase the Property, Buyer shall fully compensate Seller for any physical damage to the Property or charge on it attributable to Buyer's activities pursuant to this paragraph. In the event Buyer fails to exercise the option, Buyer shall deliver to Seller a legible copy of any reports, studies, and drawings owned by Buyer that relate to the Property.

8. Covenants of Seller. Seller acknowledges that the Covenants of Seller contained in this Agreement, including the Covenants contained in this Section 7 (the "Covenants"), are material inducements to Buyer to enter into this Agreement. The Covenants specifically delineated in this section are the following:

- 8.1 Information. Seller agrees to deliver to Buyer, within 20 days after the effective date, photocopies of all documents related to the use or ownership of the Property that Seller possesses, including (without limitation) all studies, reports, aerial photographs, and other documents of a like nature.
- 8.2 Maintenance. Before the Closing Date, Seller shall maintain the Property in the same condition as it now exists, ordinary wear and tear excepted, and shall not cause or permit any waste.
- 8.3 Seller's Promise to Remove Personal Property. Before the Closing Date, Seller promises to remove or cause to be removed from the subject Property at Seller's expense any and all personal property and/or trash, rubbish, or any other unsightly or offensive materials, unless otherwise agreed to in writing by Buyer.
- 8.4 Covenant to Maintain Property in Natural State. Seller, its successors and assigns hereby covenants, promises, agrees to maintain the Property to retain (specific features needed undisturbed).
- 8.5 Ownership. During the term, Seller shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, unless it is transferred subject to this option, nor grant an option to any third party to acquire all or any portion of it.

9. Seller's Representations.

- 9.1 Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the subject Property in accordance with this Agreement.
- 9.2 The subject Property has legal vehicular access to a public road.
- 9.3 No one other than Seller will be in possession of any portion of the subject Property at the close of escrow.
- 9.4 There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending or threatened against the subject Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the subject Property, or any portion thereof, affect the value of the subject Property or any portion thereof, or subject an owner of the subject Property, or any portion thereof, to liability.

on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Seller agrees not to cause or permit any such tanks to be installed in the Property before Closing.

- 9.9 **Status of Seller.** Seller warrants that Seller is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in IRC § 1445.

Each of the above representations is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow. Seller shall indemnify, defend with counsel of Buyer's choice and hold Buyer harmless from all expense, loss, liability, damages and claims, including Buyer's attorney fees, if necessary, arising out of the breach of any of Seller's warranties, representations, and covenants. Upon close of escrow, if Buyer so requests, Seller shall deliver to Buyer a certificate in a form satisfactory to Buyer's counsel stating that each of the above representations is true and current as of the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing warranties and representations cease to be true before the close of escrow, Seller shall be obligated to use its best efforts to remedy the problem before the close of escrow. If the problem is not remedied before close of escrow, Buyer may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the subject Property, or (b) defer the Closing Date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

10. **Remedies Upon Default.** In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Seller. In the event Buyer defaults in the performance of any of its obligations under this Agreement, Seller shall have the right to retain the option consideration without thereby waiving Seller's right to recover damages for breach of contract or any other remedy provided in this Agreement or by law or equity.
11. **Property Taxes and Expenses.** During the term of this option, Seller shall pay all taxes, assessments, and expenses related to the Property. Property taxes shall be prorated as of the Closing Date.

12. Closing.

12.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by Buyer, but in all events the Closing shall occur within 30 days after the date that the exercise notice is given. The escrow for the Closing shall be established at the office of Fidelity Title Company (the "Title Company"), at 900 SW Fifth St., Portland, OR 97204.

12.2 Closing Obligations. On the Closing Date, Seller and Buyer shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Seller and Buyer.

12.2.1 Seller shall deposit the following:

- (a) The conveyance documents described in Section 11, duly executed and acknowledged;
- (b) A duly executed affidavit certifying that Seller is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC § 1445;
- (c) Original counterparts of legible photocopies of all documents, feasibility studies, surveys, engineering reports, and other items of a similar nature in the possession of Seller that relate to the Property;
- (d) Such documents as Buyer or the Title Company may require to evidence the authority of Seller to consummate this transaction; and
- (e) Such other documents and funds, including (without limitation) escrow instructions, as are required of Seller to close the sale in accordance with this Agreement.

12.2.2 Buyer shall deposit the following:

- (a) The cash payment specified in Section 4, minus any credits available to Buyer under the terms of this Agreement;
- (b) Such documents as Seller or the Title Company may require to evidence the authority of Buyer to consummate the transaction contemplated; and

- (c) Such other documents and funds, including (without limitation) escrow instructions, as are required of Buyer to close the sale and purchase of the Property in accordance with this Agreement.
- 12.3 **Costs.** Buyer and Seller each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Seller shall pay the premium for the title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Buyer shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.
- 12.4 **Prorations.** All items of expense incurred by Seller with respect to the Property shall be paid by Seller at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Seller and Buyer as of the Closing Date.
- 12.5 **Farm Tax Deferral.** Seller has advised Buyer that the Property has been classified as farm use property and therefore has been given an ad valorem tax deferral. At Closing, Seller shall pay all Deferred Taxes and other charges due by reason of the loss of the real property tax deferral (the "Deferred Taxes") or, at the option of Buyer, the amount of the Deferred Taxes shall be credited against the purchase price at Closing.
- 12.6 **Title Insurance Policies.** As soon as practicable after Closing, and in any event no later than 30 days after the Closing Date, Seller shall cause the Title Company to issue at Seller expense its standard form Owner's ALTA Title Insurance Policy, with extended coverage, in the amount of the purchase price, insuring fee simple title to the Property vested in Buyer, subject only to the permitted exceptions.
13. **Conveyance.** At the Closing, Seller shall execute, acknowledge, and deliver to Buyer a Statutory Warranty Deed conveying the Property to Buyer, subject only to the permitted exceptions.
14. **Waiver.** Failure by Seller or Buyer to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.
15. **Successors and Assigns.** Subject to the limitations on Seller's right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of Seller and Buyer. Buyer may assign its interest in this Option Agreement and the Property to any person or entity, without the consent of Seller. In the event

that an assignee assumes the obligations of Buyer hereunder, then Buyer shall have no further liability with respect to this Agreement.

16. **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller: Stuart L. and Kelley A. Stickler
7008 NE 47th St.
Portland, OR 97218

To Buyer: Metro
Attention: Nancy Chase
600 NE Grand Ave.
Portland, OR 97232-2736

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

17. **Attorney Fees.** If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.
18. **No Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.
19. **Risk of Loss.** Seller shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the exercise notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Seller shall give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within 15 days following receipt by Buyer of written notice from Seller of such casualty or condemnation and Seller will return to Buyer the Option Money Payments previously paid.

20. Integration, Modification, or Amendments. This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Seller and Buyer, in writing.
21. Representation. Seller and Buyer have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 16, each party shall be responsible for all attorney fees incurred by it with respect to this Agreement.
22. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
23. No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance title to the subject Property and delivery of money and documents in the escrow), shall not merge with transfer of title but shall remain in effect until fulfilled.
24. Governing Law; Interpretation. This Agreement shall be governed by the laws of Oregon. In the event a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Seller and Buyer intend that (a) that portion of this Agreement be enforced to the extent permitted by law, and (b) the balance of this Agreement remain in full force and effect.
25. Time is of the Essence. Time is of the essence of this Agreement.
26. Statutory Disclaimer. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Executed and effective on the day and year first above written.

SELLER:



Kelley Stickler

BUYER: METRO



By: _____

Name: _____

Title: _____

By: Rena Cusma

Name: Rena Cusma

Title: Executive Officer

Attachments:

Exhibit A - Property

Exhibit B - Form of Memorandum

rpj
1220

When recorded, mail to:
Metro
600 N.E. Grand Avenue
Portland, OR 97232-2736
Attn: Office of General Counsel

Exhibit B

MEMORANDUM OF OPTION

This is a memorandum of a certain Option Agreement dated December 5, 1994, between Stuart + Kelley Stickler ("Seller"), and Metro, an Oregon municipal corporation ("Buyer"). By said Option Agreement, Seller has granted to Buyer an exclusive option to purchase that certain real property in Multnomah County, Oregon, described in Exhibit A attached herein and incorporated herein by this reference.

Said option extends from the date of the Option Agreement through and including July 30, 1995, at which time it shall automatically expire.

SELLER:



Kelley Stickler

State of Oregon)
) ss.
County of MULTNOMAH)

On this 5TH day of DEC, 1994, before me RICHARD M. CERNIN, the undersigned Notary Public, personally appeared STUART STICKLER and KELLEY STICKLER personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.



My commission expires: 1-28-97

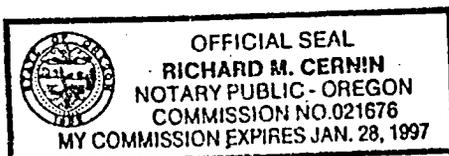


EXHIBIT A

CHICAGO TITLE INSURANCE COMPANY
10001 SE SUNNYSIDE ROAD
CLACKAMAS, OR 97015

= METROSCAN PROPERTY PROFILE =
Multnomah County

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OWNERSHIP INFORMATION

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Parcel Number:R50600 1020 Ref Parcel Number:1N2E18BA 3300
Map Number :2335 T:01N R:02E S:18 Q:NW NE
Owner :STICKLER STUART L;KELLEY A
CoOwner :
Site Address :7008 NE 47TH AVE PORTLAND 97218
Mail Address :7008 NE 47TH AVE PORTLAND OR 97218
Telephone :Owner 503-281-5454 Tenant

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SALES AND LOAN INFORMATION

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Transferred:01/01/91 Loan Amount :
Document # :2380-0584 Lender :
Sale Price :\$49,950 Loan Type :
Deed Type :WARRANTY Interest Rate:
% Owned : Vesting Type :

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ASSESSMENT AND TAX INFORMATION

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Land :\$44,700 Exempt Amount:
Structure :\$11,100 Exempt Type :
Total :\$55,800 Levy Code :001
% Improved:20 Millage Rate :20.6941
93-94 Taxes :\$1,154.73,

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PROPERTY DESCRIPTION

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Map Page & Grid :567 C6
Census :Tract 73.00 Block 1
Improvement Type:B DWELLING (SINGLE)
Zoning :IG2H
Subdivision/Plat:LONDON AC & PLAT 2
Neighborhood Cd :150
Land Use :341 IND,SFD AND ATTACHED,IMPROVED
Legal :LONDON AC & PLAT 2 LOT 32 MAP 2335

METRO

REAL ESTATE OPTION

GRANTOR: Thomas J. and Carolyn M. Krueger
MAILING ADDRESS: 6938 N.E. 47th Avenue
Portland, OR 97218
TELEPHONE NO: 287-3807

IN CONSIDERATION of the offer to the undersigned, Grantor, for the hereinafter described property, Grantor gives to METRO, upon the following terms and conditions, the option to buy the following described real property in the City of Portland, County of Multnomah and State of Oregon, to wit:

All of Lot 31, London Acres, according to the duly recorded plat thereof
ONE Hundred Ten *\$110,000.00* *AK CK.*
for the sum of ~~EIGHTY-SIX~~ THOUSAND AND NO/100 DOLLARS (~~\$86,000.00~~) *RON* Purchase Price, to be paid upon conveyance of marketable title and delivery of a title insurance policy to METRO. Under the provisions of Public Law 91-646 it is understood that the Purchase Price is the estimated just compensation for the fee title of the Property based on an independent fee appraisal and fair market value established by a Certified Real Estate Appraiser licensed in the State of Oregon to be selected and paid for by METRO prior to closing.

METRO shall have the irrevocable right at any time within 60 days from the date of this Option to elect to purchase the Property. The election to purchase shall be made by METRO by delivering to the Grantor, or by mailing by registered mail at any United States post office to the Grantor, addressed as follows:

Thomas and Carolyn Krueger
6938 N.E. 47th Avenue
Portland, OR 97218

written notice of its election. The notice shall be deemed to have been given the date of such delivery, or the date immediately following such mailing by registered mail. Upon the giving by METRO of the notice, Grantor agrees AT GRANTOR'S OWN EXPENSE AND WITHIN TEN (10) DAYS OF THE GIVING OF SUCH NOTICE TO:

(1) Convey the Property with appurtenances, hereditaments and tenements to METRO by Warranty Deed in such name as METRO may prescribe, free and clear of all liens and encumbrances, rights of possession, claims to rights of possession, and recorded and/or

unrecorded leasehold interests, except building restrictions of record and zoning ordinances, and quitclaim all right, title and interest which Grantor may have in any alleys, roads, streets, ways, strips, easements, gores, or rights of way abutting or adjoining the Property and in any means of ingress or egress appurtenant to the Property.

(2) Furnish to METRO an owner's policy of title insurance in the amount of the Purchase Price prepared by Chicago Title Insurance Company of Oregon, insuring METRO as fee simple owner of the Property free and clear of all liens and encumbrances except building restrictions of record and zoning ordinances.

(3) Pay all delinquent taxes and assessments against the Property for the preceding tax years, and pay proportional part of current real property taxes prorated as of the date of closing of escrow.

(4) Pay all water and sewer bills charged to the property as of date of closing of escrow.

(5) Deliver to METRO possession of the Property at the closing of escrow.

(6) Deliver to METRO a full set of keys for property at closing of escrow.

Grantor represents the following:

(1) To the knowledge of Grantor, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government;

(2) Grantor has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, or emitted or released from, the Property any Hazardous Substances in violation of any environmental laws of the federal or state government; and

(3) To the knowledge of Grantor, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Grantor agrees not to cause or permit any such tanks to be installed in the Property before Closing.

For purposes of this subsection, the phrase "Hazardous Substances" has the same meaning as is designated in ORS 465.200(9).

~~It is further understood and agreed that the Property will be delivered to METRO subject to the right of the Grantor to rent the property from METRO for a period of up to two years from the date of closing. Said rental agreement will be based on a month-to-month tenancy at~~

N/A
AK
KOH
CJ

~~the rate of \$500.00 per month. In connection therewith, Grantor agrees to keep the property in good condition without waste, damage or destruction during the term of the rental agreement. Said rental agreement to be signed at closing.~~

The purchase will be closed in an escrow, and the escrow fee shall be shared equally by Grantor and METRO. Grantor authorizes Nancy Chase, METRO to sign the escrow instructions or amendments thereto, or any other statements required by METRO other than Warranty Deed on behalf of all Grantors in this transaction.

It is specifically understood and agreed that the Property to be conveyed, unless stated to the contrary herein, includes all structures, buildings, fixtures, trees, shrubbery and all other real property improvements of any nature whatsoever which are on the Property, and Grantor agrees to keep the same in good condition without waste, damage or destruction prior to delivery of possession of the Property to METRO.

Grantor agrees that loss or damage to the Property by fire or other casualty shall be at the risk of Grantor until the title to the land and deed to METRO shall have been accepted and in the event that such loss or damage occurs, METRO may, without liability, refuse to accept conveyance of title. Or, in the event of loss or damage to the Property from fire, which property is covered by insurance held by or on behalf of Grantor or in which the Grantor may have rights, METRO may elect to take the proceeds from insurance upon exercise of this Option, and Grantor shall assign the proceeds to METRO, which proceeds shall be applied to reduce the purchase price of the Property by amount of the proceeds.

In the event METRO does not deposit the purchase price with the escrow holder within a period of 60 days from the date of this Option, it shall remain in force until Grantor shall terminate this Option by giving thirty (30) days prior written notice to METRO of Grantor's election to terminate.

Entry by METRO, its employees or agents, upon the Property for the purpose of inspection or survey or any slight or inadvertent entry without material damage or injury to the realty, or without the exercise of dominion thereover to the exclusion of Grantor, shall not be construed as a final election to close this Option.

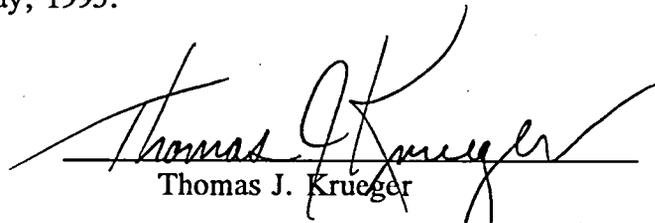
METRO or its agents shall have the right to enter onto the property in order to conduct environmental or other studies prior to closing of the purchase of the property. METRO will not commit any damage or waste to the property.

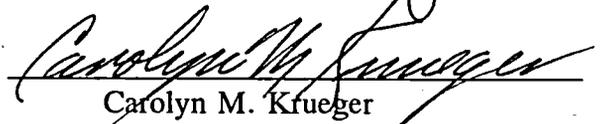
It is further agreed that no statements, expressions of opinion, representations or agreements of any nature whatsoever, made by any representative or agent of METRO shall be binding on, or of any effect against, METRO.

Grantor acknowledges that all items of damages, all sums of money to be paid, and all things to be done by METRO are included in this Option. All claims for damages, injury, or

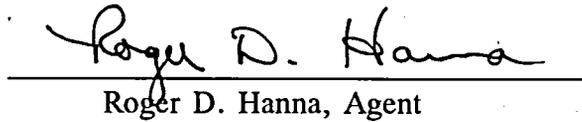
loss on account of failure to close this Option are waived by Grantor. Grantor agrees that they shall have no claim or cause of action against METRO or any of its employees except such as may arise by reason of this Option.

Dated this 13th day of ~~May~~ ^{June}, 1995.


Thomas J. Krueger


Carolyn M. Krueger

WITNESS:


Roger D. Hanna, Agent