

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Acting as the Board of Directors of the Housing Authority**

Study Session Worksheet

Presentation Date: August 21, 2012 **Approximate Start Time:** 2:30 p.m. **Approximate Length:** 1 hour

Presentation Title: Option Agreement for further Due Diligence – Elks Site

Department: Health Housing and Human Services, Housing Authority

Presenters: Cindy Becker, Trel Anderson, Scot Sideras

Other Invitees: Exalted Ruler of the Milwaukie Elks, Chair of the Milwaukie Elks Board, Judicial Officer of the Milwaukie Elks, Realtor for the Milwaukie Elks

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Approval of the Option Agreement with the Milwaukie Elks in order to perform further due diligence and to make a funding application; while considering the acquisition of the Elks property.

EXECUTIVE SUMMARY (why and why now):

In early 2011, representatives of the Milwaukie Elks Lodge approached the County to consider the acquisition of their Lodge located at 13121 SE McLoughlin Boulevard in Milwaukie, Oregon.

Two study sessions were held with the Board of County Commissioners - May, 2011 and November, 2011 - to consider acquiring the property. Both resulted in the BCC directing staff to continue negotiations with the Elks. The Elks have provided a signed Option Agreement.

Site Description

The Elks Lodge is located at 13121 SE McLoughlin Boulevard, Milwaukie, Oregon. The site is 7.47 acres in size and includes a three-story, 61,340 square foot building. The property is located to the south of the intersection of SE McLoughlin Blvd. and SE Park Avenue, and just south of the City of Milwaukie in unincorporated Clackamas County. The property consists of two tax parcels totaling 325,392 square feet and features 250 feet of frontage on SE McLoughlin Blvd, and additional egress via SE 27th Place to SE Park Ave. The estimated Fair Market Value is \$6,500,000, which equates to \$870,147 per acre or \$19.98 per square foot.

The Elks Lodge property is located in a C-3 General Commercial District zone designation. The C-3 zone permits all uses allowed in a Retail Commercial District, Business Park District, service and retail uses, senior housing, institutional uses and cultural or public uses. Under the Retail Commercial District, retail, office and multi-family housing are permitted outright, and these uses can be combined into a mixed-use development.

Financing

Last updated: January 2012

HACC has been in discussion with the Community Development Department to use the Community Development Block Grant Section (CDBG) 108 Loan to finance the acquisition of the site. The CDBG 108 Loan is granted by the U.S. Department of Housing and Urban Development (HUD) and conditioned against future CDBG allocations. Terms of the loan are set by the local entity (the County) and are generally much more favorable than private market loans. This would be the first time the County's Community Development Department has considered the use of this tool. The Community Development Department will submit a CDBG Section 108 Loan to HUD for review and consideration. During the application process, there must be a public hearing and public comment period before the Board of County Commissioners may consider the loan application. The HUD review period may last nine months before the Board is notified of a loan approval.

If the Section 108 Loan is approved by HUD, and if through HACC's due diligence process the property is determined to be financially feasible, then the Board of County Commissioners may approve a Section 108 Loan to the Housing Authority. The Board of Commissioners as the Housing Authority may subsequently agree to the loan terms and execute the final purchase of the Elks property. It is expected to be a twelve-month process before these final decisions to acquire the site are made.

Public Process

While the Housing Authority is interested in developing workforce housing on part of the property; it has consistently supported a community-based public process – in addition to the hearings and comment period required by HUD for the 108 Loan application - to determine how best to use the rest of the site. This could include such uses as a community center, retail, professional, and/or other commercial development.

It is HACC's intent to engage the local community in such a process once the Board approves final acquisition of the property.

FINANCIAL IMPLICATIONS (current year and ongoing):

The proposed Option Agreement requires a \$10,000 payment to the Elks for the sole and exclusive option to subsequently purchase the property for \$4.3 million. Execution of the Option Agreement is the first step to seriously consider the acquisition of the property. After the Option Agreement is executed, HACC will have a year to begin and complete the appropriate level of due diligence, especially in terms of an environmental review and determination of financial feasibility.

The Option Agreement's \$10,000 payment is funded with HACC Local Project Development funds. No County General Funds are involved. County Counsel has reviewed and approved the Option Agreement.

LEGAL/POLICY REQUIREMENTS:

HACC is not bound by legal requirements to enter into this Option Agreement. Funding sources for the eventual acquisition (108 Loan) will include guidelines and regulations that govern the Community Development Block Grant (CDBG) program.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Tri-Met is currently finalizing plans for the Park Ave station area and new parking structure. The site of the parking structure is adjacent to the Elks property. With site control of the Elks property, HACC and the County can fully engage with Tri-Met to plan road access and egress of both sites.

OPTIONS:

- A. Approve the Option Agreement as signed by the Elks Lodge Board Chair and direct staff to undertake further due diligence including but not limited to environmental testing, financial feasibility, and the submittal of a Section 108 Loan application to HUD.
- B. Amend the Option Agreement and direct staff to negotiate further with the Elks Lodge Steering Committee.
- C. Do not approve the Option Agreement.

RECOMMENDATION:

Staff respectfully recommends the approval of this Option Agreement as signed by the Elks Lodge Board Chair (Option A above), and that Cindy Becker be authorized to sign the Agreement on behalf of the Board of County Commissioners.

ATTACHMENTS:

- 1. Option Agreement signed by the Elks

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Trell Anderson @ 503-655-8506

Fiscal Impact Form – Instructions

RESOURCES:

Is this item in your current work plan and budget?

- YES
 NO

START-UP EXPENSES AND STAFFING (if applicable):

N/A

ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable):

N/A

ANTICIPATED RESULTS:

N/A

COSTS & BENEFITS:

Costs:							
	Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	Capital purchase: Option Agreement			\$10,000			\$10,000
	Environmental Tests			\$20,000			\$20,000
	Financial Feasibility			\$10,000			\$10,000
	Submittal of 108 Loan App/Consultant Fee and Standard and Poors Rating			\$50,000			\$50,000
	Total Start-up Costs			\$90,000			\$90,000
	Ongoing Annual Costs						
Benefits/Savings:							
	Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	Productivity increase	XXX			\$\$\$		\$\$\$
	Training savings over time				\$\$\$		\$\$\$
	Technology replacement svgs				\$\$\$		\$\$\$
	Total Start-up Benefit/Savings						
	Ongoing Annual Benefit/Savings				\$\$\$		\$\$\$

**OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE
BY AND BETWEEN
THE BENEVOLENT AND PROTECTIVE ORDER OF ELKS
AND THE
HOUSING AUTHORITY OF CLACKAMAS COUNTY
AS TO
PROPERTY LOCATED AT 13121 SE McLOUGHLIN BOULEVARD,
MILWAUKIE, OREGON**

July _____, 2012

This is an Option Agreement and Agreement of Purchase and Sale (the "Agreement"). It is by and between the Benevolent and Protective Order of the Elks, Milwaukie Elks 2032, the owner ("Owner") of real property it wishes to commit to an option and agreement to buy and sell, and the Housing Authority of Clackamas County ("Optionee") who wishes to secure an option to purchase the property and an agreement to buy and sell.

The Agreement has an effective date as set out above.

RECITALS

- A. Owner owns fee simple title to the real property located at 13121 SE McLoughlin Boulevard in Milwaukie, Oregon, as described in this Agreement's Exhibit A, together with all improvements and rights, title, and interests associated thereto. The real property and improvements, together with all other rights, hereditaments, and tenements appurtenant to the real property and improvements are collectively referred to herein as the "Property".
- B. Optionee desires to acquire an option to purchase the Property on the terms and conditions herein stated.
- C. Owner has agreed to grant Optionee an exclusive option to purchase the Property and the parties desire to evidence their agreement regarding the option as set out in this Agreement.

The parties therefore agree as follows:

AGREEMENT

1. **Grant of Option-** Owner, for and in consideration of the sum of \$10,000 (ten thousand dollars) (the "Option Money Payment") paid to Owner by Optionee in immediately bankable funds, the receipt of which is acknowledged by Owner, grants to Optionee the sole and exclusive option to purchase the Property in the manner

and for the price stated in this Agreement (the "Option"). No other Option Money payment shall be due or payable.

1.1. Contingency- The purchase of the Property is contingent upon Optionee receiving a federal loan of funds sufficient to finance its purchase.

1.2. Nonrefundable- The Option Money Payment shall be nonrefundable should Optionee be unable to secure the necessary funding.

1.3 Credited- The Option Money Payment shall be credited against the subsequent payment of the purchase price.

2. Option Terms

2.1 Term- The term of the Option (the "Term") shall commence on the effective date and shall continue for a period of 12 (twelve) months thereafter. If the last day of the Term falls upon a Saturday, a Sunday, or a holiday recognized by the federal government or state of Oregon, all of Optionee's rights during such time period shall extend through the next business day.

2.2 Exercise of Option- This Option shall be exercised, if chosen by Optionee, by written notice (the "Exercise Notice"). The Exercise Notice shall provide that Optionee has elected to exercise this Option and may be given by Optionee to Owner at any time during the Term. The Option may only be exercised only with respect to the entirety of the Property, and nothing contained herein shall be construed as permitting Optionee to purchase less than all of the Property pursuant to this Option. Upon exercise of this Option, Optionee shall be obligated to purchase the Property from Owner, and Owner shall be obligated to sell the Property to Optionee, for the price and in the manner herein set forth.

2.3 Failure to Exercise Option- If Optionee fails for any reason to exercise this Option in the manner set forth herein, Optionee shall have no further claim against or interest in the Property or any of the Option Money Payment, unless Optionee is entitled to a refund of the Option Money Payment under another provision of this Agreement. In the event of Optionee's decision to not exercise the Option, Optionee shall promptly give notice to Owner and proceed without delay to provide Owner with any instruments or declarations that Owner reasonably may deem necessary for the purpose of expeditiously marketing the property and removing from the public record any cloud on title to the Property which is attributable to the grant or existence of this Option.

3. Purchase Price- The purchase price for the Property (the "Purchase Price") shall be \$4,300,000.00 (four million, three hundred thousand dollars). Owner and Optionee acknowledge that the Option Money Payment shall be applied as a credit towards the Purchase Price.

4. Remedies

4.1 Remedies of Optionee- In the event Owner breaches any term or provision of this Agreement, then Optionee, as Optionee's exclusive remedy and in lieu of any other relief, may either-

-terminate this Agreement and obtain the return of the Option Money Payment previous paid to Owner, or-

-tender performance of the obligations of Optionee and specifically enforce all obligations of Owner.

Except as noted in Section 4.3 and any specific remedies reserved elsewhere in this Agreement, Optionee waives the right to pursue any remedy in law or equity against Owner other than the remedies specified above, including any action for damages or the breach or lapse in the warranties set out in Section 10, in the event of a default by Owner.

4.2 Remedies of Owner- In the event Optionee breaches any term or provision of this Agreement, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise of the Option, then Owner, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Agreement by giving Optionee written notice of termination and to retain the Option Money Payment paid by Optionee. Owner acknowledges-

-the adequacy of this exclusive remedy, and-

-that this limitation of remedies is an essential part of this Agreement from the perspective of Optionee.

Except as noted in Section 4.3 and any specific remedies reserved elsewhere in this Agreement, Owner expressly waives the right to pursue any other right or remedy in law or equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Optionee. Optionee and Owner have established the foregoing remedy in favor of Owner because of the difficulty and inconvenience of ascertaining the actual damages Owner may suffer as a result of a breach of this Agreement by Optionee.

4.3 Other Remedies- The limitations on remedies set forth in this section shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property.

5. Conditions Precedent to Closing- In addition to any other conditions contained in this Agreement, the following conditions are conditions precedent for the benefit of Optionee (the "Conditions"). The Conditions are intended solely for the benefit of Optionee and Optionee shall have the right to waive, by written notice, any of the Conditions at its sole discretion. Absent a specific declaration of waiver, giving the Exercise Notice shall not constitute such a waiver. In the event any Condition is not satisfied or waived on or before closing as set out in Section 7.1, then Optionee shall have the right to terminate this Agreement, at its sole election, by giving Owner notice of termination before the expiration of the Term. If Optionee does not give Owner notice of termination before the expiration of the Term, then Optionee shall be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions specifically delineated in this section are the following:

5.1 Title- Optionee's determination that title to the Property is acceptable to Optionee in its sole discretion.

5.2 Condition- Optionee's determination that the condition of the Property is acceptable to Optionee in its sole discretion.

6. Title- Owner shall convey title to the Property subject only to the reservations, restrictions, and easements that are currently of record, as more particularly set forth on Exhibit B. Owner shall not cause, permit, or suffer any encumbrance, reservation, restriction, or easement to be recorded with respect to the Property during the Term, except-

-the Memorandum referenced in Section 11, and-

-any other matter that Optionee approves, in writing and at its sole discretion, before recordation.

7. Closing and Conveyance

7.1 Time and Place- Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") mutually selected by the parties, but in all events the Closing shall occur within 180 (one hundred eighty) days after the date that the Exercise Notice is given. The escrow for the Closing shall be established at the office of Chicago Title Company of Oregon (the "Title Company") at 10135 SE Sunnyside Road, Suite 130, Clackamas, OR 97015, or such other place as the parties may designate.

7.2 Closing Obligations- On the Closing Date, Owner and Optionee shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Owner and Optionee.

7.2.1 Owner's Deposits- Owner shall deposit the following:

7.2.1.1 The conveyance documents described in Section 7.4, duly executed and acknowledged;

7.2.1.2 A duly executed affidavit certifying that Owner is not a foreign person, trust, partnership, or corporation, all in compliance with IRC Section 1445;

7.2.1.3 Original counterparts or legible photocopies of all documents, feasibility studies, surveys, engineering reports, and other items of a similar nature in the possession of Owner that related to the Property;

7.2.1.4 Such documents as Optionee or the Title Company may require to evidence the authority of Owner to consummate the transaction; and

7.2.1.5 Such other documents and funds, including without limitation escrow instructions, as required of Owner to close the sale in accordance with this Agreement.

7.2.2 Optionee's Deposits- Optionee shall deposit the following:

7.2.2.1 The Purchase Price specified in Section 3, minus any credits available to Optionee under the terms of this Agreement;

7.2.2.2 Such documents as Owner or the Title Company may require to evidence the authority of Optionee to consummate the transaction contemplated;

7.2.2.3 Such other documents and funds, including without limitation escrow instructions, as required of Optionee to close the sale and purchase the Property in accordance with this Agreement; and

7.2.2.4 A lease leasing back (the "Leaseback") the Property from Optionee to Owner according to the terms set out in Section 12 below and such other clauses and conditions as will be subsequently negotiated between Optionee and Owner.

7.3 Costs- Optionee and Owner shall each pay one-half of the escrow fee of the Title Company. Owner shall pay the premium for the title insurance policy that Owner is obligated to provide to Optionee, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Optionee shall pay the fee for recording the conveyance documents referenced herein.

7.4 Conveyance and Title Insurance- At the Closing, Owner shall execute, acknowledge, and deliver to Optionee a statutory warranty deed conveying the Property to Optionee subject only to the Permitted Exceptions. As soon as is practicable after Closing, Owner shall cause the Title Company to issue 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 Optionee, subject only to the Permitted Exceptions.

7.5 Holdbacks- In addition to the customary prorations, credits, or set offs typical of escrow, the escrow shall specifically commit to a holdback of \$1,000,000.00 (one million dollars) from the amount otherwise due to Owner according to the respective contingencies set out in Subsections 7.5.1 and 7.5.2 below.

7.5.1 The Property currently supports a cell tower. Owner commits to the timely removal of the cell tower, at the sole expense of Owner, prior to Closing. Should the cell tower not be removed at the point escrow would otherwise close, Owner and Optionee agree that the escrow holder shall retain \$500,000.00 (five hundred thousand dollars) of the \$1,000,000.00 (one million dollars) set out above until such time as the cell tower is removed.

7.5.2 As set out in Section 12 below, Owner shall continue to occupy the Property following Closing through a Leaseback of the premises. Owner and Optionee agree that the escrow holder shall retain \$500,000.00 (five hundred thousand dollars) of the \$1,000,000.00 (one million dollars) set out above until such time as the Leaseback is terminated and Owner vacates the Property.

8. Access and Approvals

8.1 Access- Owner grants to Optionee and its agents the right to enter on to the Property at any reasonable times before the Closing Date for the purpose of conducting tests or studies that Optionee may deem necessary or appropriate in connection with its acquisition of the Property. Owner shall cooperate with Optionee in making such tests and studies. No soil tests or drilling shall be undertaken without first obtaining Owner's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Optionee shall protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Optionee's activities on the Property. If Optionee fails to exercise the Option and purchase the Property, Optionee shall fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Optionee's activities pursuant to this Section 8. In the event Optionee fails to exercise the Option, Optionee shall deliver to Owner a legible copy of any reports, studies, and drawings owned by Optionee that relate to the Property.

8.2 Approvals- Optionee shall have the right to apply for and obtain any government approvals to use and develop the Property as Optionee may desire. Owner shall assist and cooperate with Optionee in obtaining any such approvals. Such cooperation shall include, but not be limited to, signing all applications and other documents requested by Optionee that may be reasonably related to such

matters, provided that Owner approves the form and substance of all of such documents. All costs and expenses with respect to such approvals shall be paid by Optionee.

9. Covenants of Owner- Owner acknowledges that the covenants of Owner contained in this Agreement, including the covenants contained in this Section 9 (the "Covenants"), are material inducements to Optionee to enter into this Agreement. The Covenants specifically delineated in this Section are the following:

9.1 Information- Owner agrees to deliver to Optionee, within sixty (60) days after the Effective Date, photocopies of all documents related to the use or ownership of the Property that Owner possesses, including (without limitation) all studies, reports, aerial photographs, and other documents of a like nature.

9.2 Maintenance- Before the Closing Date, Owner 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. Optionee and Owner recognize that the Property's structures and improvements and the components thereof may be approaching the end of their useful lives, and agree to consult with one another, according to a test of reasonable discretion, as to the appropriate extent of maintenance during the Option Term.

9.3 Ownership- During the Term, Owner shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, nor grant an option to any third party to acquire all or any portion of it.

10. Warranties and Representations of Owner

10.1 Warranties- Owner acknowledges that the warranties and representations of Owner contained in this Agreement, including the warranties and representations contained in this Section 10 (the "Warranties"), are material inducements to Optionee to enter into this Option Agreement. All Warranties, and Optionee's right to assert a breach of them, shall come into being with the execution of this Agreement, but shall not survive the Closing. The execution and delivery of the Closing documents shall extinguish Owner's warranties, save for those warranties and guarantees made in the statutory form of deed.

As used herein, the phrase "to the knowledge of Owner" or any variation of that phrase shall refer to matters within the actual knowledge of Owner and shall not include constructive or imputed notice or knowledge; and the use of that phrase shall not imply that Owner has undertaken any special inquiry or investigation with respect to the representation modified by such phrase, unless circumstances within the actual knowledge of Owner would warrant a reasonable person to undertake further inquiry when presented with similar circumstances.

If, before Closing, Optionee discovers or is advised that any of the Warranties was untrue when made or subsequently changed by discovery or circumstance, then Optionee shall have the option to either-

-terminate this Agreement and obtain the return of all Option Money Payments paid, or-

-continue this Agreement, negotiating in good faith with Owner as to whether the altered warranty is of sufficient consequence to require the amendment of this Agreement.

Owner warrants and represents to Optionee that the following matters are true and correct:

10.1.1 No Condemnation or Assessment Proceedings- There is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part of it and, to the knowledge of Owner, no such proceeding is contemplated by any governmental entity.

10.1.2 Litigation; Law- There is no litigation, arbitration, or administrative hearing pending before any governmental authority that concerns or affects the Property or any portion of it and, to the knowledge of Owner, no such proceeding is threatened. To the knowledge of Owner, the Property complies with all laws, ordinances, and governmental approvals and decisions that relate to it.

10.1.3 Access and Site Conditions- To the knowledge of Owner, there are no pending changes in land use designation (comprehensive plan or zoning ordinance) that apply to the Property. To the knowledge of Owner, there are no material encroachments onto the Property.

10.1.4 Hazardous Substances- In lieu of any warranty, representation, or covenant as to hazardous substances as that term is designated in ORS 465.200(16), Owner and Optionee agree to the following procedure.

10.1.4.1. Optionee shall commission a Level 1 environmental site assessment according to the standards promulgated by the Environmental Protection Agency. Optionee shall consult with Owner in the selection of the contractor and the expense of the assessment.

10.1.4.2. Optionee shall pay for the Level 1 environmental site assessment, and promptly share the results and report of the investigation with Owner.

10.1.4.3. If the result of the Level 1 environmental assessment indicates the presence of hazardous substances or underground tanks to the extent that a reasonable purchaser in the position of Optionee would choose to

not exercise the Option to purchase the Property, then Optionee shall have the option to terminate this Agreement and obtain the return of all Option Money Payments paid.

10.1.4.4. Optionee shall have the ability to exercise its right under Section 10.1.4.3 only if Optionee does not exercise the Option because of the hazardous substances or underground storage tanks discovered by the site assessment.

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

10.1.6 Breach of Agreements. Neither the execution of this Agreement, nor the execution, delivery, or recordation of any document or agreement referenced herein, nor the exercise of the Option and closing of the transaction contemplated herein, constitutes or will constitute a default under any other agreement or contract that relates to the Property or to which Owner is a party.

10.1.7 Authority. No consents, documents, or approvals that have not been obtained are necessary to the effectiveness of the grant of the Option by Owner.

10.1.8 Contracts and Leases. Owner warrants and represents to Optionee that, save for the cell tower discussed in Section 7.5.1, there are no lease agreements, maintenance contracts, service agreements, or other contracts of any nature that pertain to, cover, or affect the Property or any part of it.

10.2 Changed Conditions- If Owner discovers that one or more of the Warranties or one of the conditions referred to in the Warranties has changed after this Agreement is executed, through no fault of Owner, Owner shall immediately inform Optionee, in writing, of such discovery. A change caused by Owner is deemed to be a breach of this Agreement by Owner if the change materially and adversely affects the Property or Optionee's rights.

11. Recording- On the Effective Date, Owner shall execute, acknowledge, and deliver to Optionee a Memorandum in the form attached as Exhibit C. In the event Optionee fails to exercise the Option before the Term expires, Optionee shall execute, acknowledge, and deliver to Owner a statutory quitclaim deed releasing any interest in the Property.

12. Possession and Leaseback- Contemporaneously with the Closing set out in Section 7, Optionee agrees to lease the Property back to Owner. The Leaseback shall be for at least twenty-four (24) months, at a rate of \$1 per month.

13. Personal Property and Salvage- Upon Owner's vacation of the Property Owner shall be entitled to all its personal property; Lodge paraphernalia and accruements; and all non fixture property. Upon Optionee's decision to demolish the building, Optionee shall give Owner prompt notice of the opportunity to salvage, and Owner shall have the right to salvage the fixtures within the building as well as the building components, which includes, without limitation, such items as the gymnasium flooring.

14. Subsequent Payments- In the event Optionee shall sell the entire Property within ten years of the Closing Date for a sum larger than the Purchase Price set out above, and such sale is to an outside private buyer, not within the normal practices Optionee uses to develop similar property for public use, Optionee shall pay Owner ten percent (10%) of the difference between the Purchase Price and the price at which the entire parcel was subsequently sold to the private buyer.

15. Waiver- Failure by Owner or Optionee to enforce any right under this Agreement shall not be deemed to be a waiver of that right or any other right.

16. Successors and Assigns- Subject to the limitations on Owner'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 Owner and Optionee. Notwithstanding the foregoing, Optionee may assign its interest in this Agreement and the Property only with the prior written consent of Owner.

17. 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 Owner: Michael S. Sommers
 80 NW 2nd St.
 Gresham, OR 97030

 Virginia Van Loo
 5065 SE Britton Ave.
 Portland, OR 97267

 Paul Magdaleno
 2587 Bronco Ct.
 West Linn, OR 97068

With a copy to: Lodge Secretary
Milwaukie, OR No. 2032
PO Box 22242
Milwaukie, OR 97269-2242
Telephone: 503-654-9588
Fax: 503-654-0909
E-mail: milwaukie2032@elks.comcastbiz.net

To Optionee: Scot A. Sideras
Office of County Counsel
Development Services Building
150 Beaver Creek Rd.
Oregon City, OR 97045
Direct line: 503-742-4332
Fax: 503-742-4272
E-mail: scotsid@co.clackamas.or.us

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

18. 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 other sums an 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 said matter is heard.

19. Commissions- 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.

20. Risk of Loss- Owner 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, Owner shall give Optionee written notice of such event. Optionee may terminate this Agreement by giving written notice to Owner within 15 (fifteen) days following receipt by Optionee of written notice from Owner of such casualty or condemnation and Owner will return to Optionee the Option Money Payment previously paid. If Optionee does not elect to terminate this Agreement, then this Agreement shall continue in force and, if Optionee exercises the Option and the Property is conveyed to

Optionee, then all interest of Owner in and to any insurance proceeds or condemnation awards that may be payable to Owner on account of such casualty or condemnation shall be assigned to Optionee at closing.

21. 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 Owner and Optionee in writing.

22. Representation- Owner and Optionee have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 18, each party shall be responsible for all attorney fees incurred by it with respect to this Agreement.

23. Promise of Good Faith- Optionee and Owner recognize that they will have to draft and complete other documents to consummate the steps required by this Agreement, including Escrow Instructions, Leaseback, Right of First Refusal, and Permits of Entry. Optionee and Owner commit to mutual assurances of good faith in the drafting and execution of these documents as well as the other actions necessary to complete the transaction or transactions required by this Agreement.

24. Counterparts; Pronouns- This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall be effective when one or more counterparts have been signed and delivered by Owner and Optionee. With respect to any pronouns used, each gender used shall include the other gender and the singular and the plural, as the context may require.

25. Governing Law; Interpretation- This Agreement shall be governed by the laws of the state of Oregon. In the event a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Owner and Optionee intend that-

-that portion of this Agreement shall be enforced to the extent permitted by law, and-

-the balance of this Agreement shall remain in full force and effect.

26. Time is of the Essence- Time is of the essence of this Agreement.

27. Authority to Execute- Each person executing this Agreement on behalf of Owner and Optionee, respectively, warrants his or her authority to do so.

28. Statutory Disclaimer

"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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

EXECUTED AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.


OWNER

For the BPOE, Milwaukie Elks 2032



Chair, Board of Directors

Approved by the Steering Committee



Michael S. Sommers

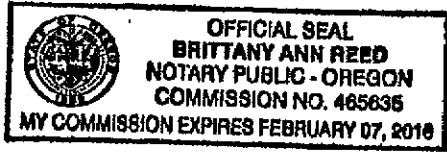


Paul Magdalen



Virginia Van Loo

This instrument was acknowledged before me on July 16, 2012 by Steven Stiles as the Chair, Board of Directors.



Brittany Ann Reed
Notary Public for Oregon

This instrument was acknowledged before me on July 17, 2012 by Michael S. Sommers as member of the Steering Committee.



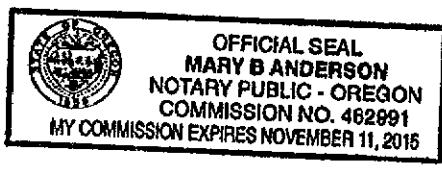
Mary B. Anderson
Notary Public for Oregon

This instrument was acknowledged before me on July 17, 2012 by Paul Magdaleno as member of the Steering Committee.



Mary B. Anderson
Notary Public for Oregon

This instrument was acknowledged before me on July 17, 2012 by Virginia Van Loo as member of the Steering Committee.



Mary B. Anderson
Notary Public for Oregon

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OPTIONEE

Board of County Commissioners as the Governing Body of the Housing Authority of
Clackamas County

Chair

STATE OF OREGON)
) ss
County of Clackamas)

This instrument was acknowledged before me on _____, 2012 by the
Chair of the Board of County Commissioners Acting as the Governing Body of the
Clackamas County Housing Authority.

Notary Public for Oregon

EXHIBITS

- Exhibit A- The Property
- Exhibit B- Exceptions
- Exhibit C- The Memorandum

Exhibit A.

PARCEL I:

A tract of land situated in the Southeast one-quarter of Northwest one-quarter of Section 1, Township 2 South, Range 1 East, of the Willamette Meridian, in the County of Clackamas, State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of CABLE ACRES, in the City of Milwaukie, County of Clackamas and State of Oregon and running thence North 407 feet to an iron pipe; thence West 178.4 feet to an iron pipe; thence South 407 feet to an iron pipe; thence East 178.4 feet to the point of beginning.

TOGETHER WITH that portion of vacated SE Evergreen Street which inured thereto by reason of the vacation thereof under Order 83-649 of the Board of County Commissioners of the County of Clackamas recorded April 14, 1983, Fee No. 83010484, Records of Clackamas County.

PARCEL II:

A tract of land situated in the George Crow Donation Land Claim No. 49, in Southeast one-quarter of the Northwest one-quarter of Section 1, Township 2 South, Range 1 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the intersection of the Westerly line of Super Highway No. 99E (McLaughlin Boulevard) with the North line of said Donation Land Claim; thence South 89° 25' West, 482.63 feet to the Northeast corner of that tract described in deed to Milwaukie Lodge Number 2032 recorded March 31, 1962 in Book 869, Page 362; thence South 0° 10' 30" East 398.06 feet to the Southwest corner of that tract described in deed to Builders, Inc., an Oregon corporation recorded January 5, 1948 in Book 401, Page 267; thence North 89° 23' 20" East 437.19 feet, more or less, to the Southwest corner of that tract described in deed to Charlotte M. Russell recorded January 11, 1933 in Book 218, Page 150; thence North 0° 12' 50" East along the Westerly line of said Russell Tract, 117.69 feet to a point; thence North 89° 23' 20" East 54.75 feet to the Westerly line of said Super Highway No. 99; thence North 6° 21' 50" West along said Westerly highway line, 279.71 feet to the point of beginning.

TOGETHER WITH that portion of vacated SE Evergreen Street which inured thereto by reason of the vacation thereof under Order 83-649 of the Board of County Commissioners of the County of Clackamas recorded April 14, 1983, Fee No. 83010484, Records of Clackamas County.

EXCEPT FROM the hereinabove described tracts, that portion lying within the Super Highway No. 99E (McLaughlin Boulevard).

PARCEL III:

That portion of Block 29, MILWAUKIE PARK, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Southeast corner of said block; and running thence North on the East line of

Preliminary Title Report

Order No.: 16F017B429

said block, 170 feet to a point; thence Westerly and parallel with the Southerly line of said block, 318.34 feet to a point in the Westerly line thereof; thence Southwesterly along the Westerly line of said block, 225.0 feet to the Southwesterly corner thereof; thence Easterly along the Southerly line of said Block 449.29 feet to the point of beginning.

TOGETHER WITH that portion of vacated SE Evergreen Street which inured thereto by reason of the vacation thereof under Order 83-649 of the Board of County Commissioners of the County of Clackamas recorded April 14, 1983, Fee No. 830104B4, Records of Clackamas County.

Exhibit B

Except for the items properly cleared through closing, the proposed policy or policies will not insure against loss or damage which may arise by reason of the following:

STANDARD EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easements, or encumbrances not shown by the public records, reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien, or right to lien, for unemployment taxes, workmen's compensation, services, labor, equipment rental or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

SPECIAL EXCEPTIONS:

6. 2011-2012 taxes, a lien in an amount to be determined, but not yet payable, including assessments collectible with such taxes.
7. Taxes, including current year, not assessed because of an exemption. If the exempt status is terminated under the statute prior to the date on which the assessment roll becomes the tax roll in the year in which said taxes were assessed, an additional tax may be levied.
Exemption : Fraternal Organization
Account No. : 00169784
Affects Parcel III
8. Taxes, including current year, not assessed because of an exemption. If the exempt status is terminated under the statute prior to the date on which the assessment roll becomes the tax roll in the year in which said taxes were assessed, an additional tax may be levied.
Exemption : Fraternal Organization
Account No. : 05007095
Affects parcels I and II

9. NOTE: 2010-11 TAXES ARE PAID IN FULL and are being shown for informational purposes only. This exception will not be shown on a title insurance policy.
 Original Amount : \$773.53
 Account No. : 00171138; Levy Code: 012-057; Map 21E01BD03900
 Affects Parcels I and II
- Prior to close of escrow, please contact the Tax Collector's Office to confirm all amounts owing, including current fiscal year taxes, supplemental taxes, escaped assessments and any delinquencies.
10. The subject property lies within the boundaries of Oak Lodge Sanitary District and is subject to the levies and assessments thereof.
- An inquiry has been sent to determine if liens are claimed, and a supplemental report will follow if any liens are found.
11. Rights of the public, riparian owners and governmental bodies as to the use of the waters of an unnamed creek and the natural flow thereof on and across that portion of the subject land lying below the high water line of said waterway.
12. Terms and provisions of Agreement
 Recorded : September 14, 1953
 As : B 473; P 432
 By and between : Oak Lodge Water District and Joseph William Hart and Lois Hart
 Affects Parcel I
13. An easement disclosed by Instrument,
 Recorded : June 4, 1959
 As : B 558; P 420
 In favor of : Oak Lodge Sanitary District
 For : Sewer
 Affects Parcel I
14. An easement disclosed by Instrument,
 Recorded : October 13, 1959
 As : B 562; P 343
 In favor of : Oak Lodge Sanitary District
 For : Sewer
 Affects Parcel III
15. Easements for existing public utilities in vacated street area reserved by Ordinance No. 83-649 and the conditions imposed thereby,
 Recorded : April 14, 1983
 As : 83010484
16. Terms and provisions of unrecorded Option and Lease lease, and such other matters, interests, or exceptions as may appear necessary upon examination of the original lease,
 Dated : August 24, 1999
 Lessor : Milwaukie Lodge #2032, Benevolent and Protective Order of Elks of the United States of America
 Lessee : US West Wireless, LLC
 A memorandum of which was
 Recorded : August 24, 1999
 As : 99083924

Assignment of Assumption of Option and Site Lease Agreement, including the terms and provisions thereof,

Recorded : June 22, 2006
As : 2006057270
From : Verizon Wireless (VAW) LLC d/b/a Verizon Wireless
To : Mountain Union Telecom, LLC

17. An easement created by instrument, including the terms and provisions thereof,
Recorded : July 2, 2002
As : 2002061644
In favor of : Adjacent property owners
For : Ingress and egress to access the fire hydrant

END OF EXCEPTIONS

Exhibit C

MEMORANDUM OF OPTION AGREEMENT

BPOE, Milwaukie Elks 2032 (the "Owner") and the Housing Authority of Clackamas County (the "Optionee") have entered into an Option Agreement and Agreement of Purchase and Sale dated _____, 2012 (the "Option") pertaining to the property described in Exhibit A attached hereto (the "Property"). The term of the agreement is 12 (twelve) months, commencing on _____, 2012, and expiring on _____.

This Memorandum of Option Agreement is prepared for purposes of recording and in no way modifies the provisions of the Option.

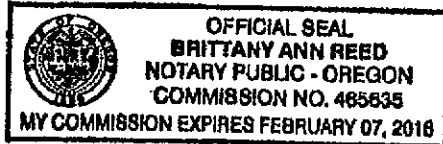
In witness whereof, Owner and Optionee have executed this Memorandum of Option Agreement as of _____, 2012.

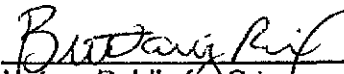
OWNER- For the BPOE, Milwaukie Elks 2032



Chair, Board of Directors

This Instrument was acknowledged before me on July 16, 2012 by Steven Stike as the Chair, Board of Directors.





Notary Public for Oregon

OPTIONEE- For the Housing Authority of Clackamas County

Board of County Commissioners as the Governing Body of the Housing Authority of Clackamas County

Chair

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STATE OF OREGON)
) ss
County of Clackamas)

This instrument was acknowledged before me on _____, 2012 by the
Chair of the Board of County Commissioners Acting as the Governing Body of the
Clackamas County Housing Authority.

Notary Public for Oregon