

AGREEMENT OF PURCHASE AND SALE

Kelly Penumbra Building

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between MULTNOMAH COUNTY, a political subdivision of the State of Oregon ("Seller" or "County"), and the CITY OF PORTLAND, a municipal corporation in the State of Oregon ("Buyer" or "City").

RECITALS

A. County is the title owner of a 100% interest in the "Penumbra Kelly Building," a real property, together with the improvements thereon, and all rights appurtenant thereto owned by Seller, including but not limited to access rights, timber rights, water rights, grazing rights, development rights and mineral rights (hereinafter referred to as the "Property") located at 4735- 4747 E Burnside Street, Portland, Oregon 97215, in the County of Multnomah, State of Oregon, and more particularly described in Exhibit A, attached hereto and incorporated herein.

B. Through the Parties' Penumbra Kelly Building Lease Agreement dated July 30, 1982 and effective on July 1, 1982 and as amended through its First Amendment effective on May 16, 1997 (collectively "Penumbra Kelly Building Lease"), City has a perpetual lease interest in 54.3% of the Property.

C. County uses its portion of the Property to house its Data Center and telecom room. City uses its portion of the Property for its Police Bureau.

D. In January 2006, County declared its interest in the Penumbra Kelly Building surplus and submitted the property to appropriate disposition. City and County mutually agree that the value of the Property is \$3,600,000.00, of which \$1,645,200.00 represents County's 45.7% interest.

E. City desires to purchase from County its right, title and interest in the Property, and County desires to sell and convey to City, all right, title and interest in the Property. The terms of this Agreement are below.

F. Contemporaneous with this Agreement the parties are entering into a Second Amendment to the Penumbra Kelly Building Lease Agreement a copy of which is attached as Exhibit D.

TERMS

- 1. Purchase and Sale.** The Seller agrees to sell and convey to City, and City agrees to purchase from the Seller, the Property upon the terms and conditions set forth in this Agreement.
- 2. Purchase Price.** The Purchase Price for the Property shall be One Million Six Hundred Forty-Five Thousand Two Hundred Dollars (\$1,645,200.00).
- 3. Payment of Purchase Price.** The Purchase Price shall be payable as follows:

- A. Deposit/Escrow. No escrow deposit shall be required from City. Within twenty (20) business days after execution of this Agreement, a joint escrow will be opened at First American Title Insurance Company (the "Escrow Holder" and "Title Company").
 - B. Cash Balance. On or before the Closing Date, City shall deposit into escrow the cash, a wire transfer of funds, a certified check, or a cashier's check, the Purchase Price in the amount of \$1,645,200.00.
4. **Closing Date**. This transaction shall close on June 29, 2012, or as soon thereafter as reasonably possible, unless otherwise extended as set forth herein (the "Closing Date" or "Closing"). Unless otherwise agreed, execution of documents for Closing may occur at the respective offices of City and County.
5. **AS IS Sale**. City has examined the Property to its own satisfaction and has formed its own opinion as to the condition (including environmental condition) and value thereof. Except as provided in this Agreement, City has not relied on any statements or representations from the Seller or any person acting on behalf of the Seller concerning any of the following: the size or area of the Property; the location of corners or boundaries of the Property; the location of Seller improvements, the condition of the Property, including but not limited to, environmental condition above or below the surface of the Property (including without limitation releases or threatened releases of hazardous substances) or compliance with environmental laws and other governmental requirements; the availability of services to the Property; the ability of City to use the Property or any portion thereof for any intended purpose. City is acquiring the Property, in the condition existing at the time of Closing, AS IS, with all defects, if any. The provisions of this section shall not merge with the Deed, shall survive Closing and shall be binding on the City and City's successors and assigns.
6. **Conditions Precedent to Closing**.
- A. Conditions Precedent to City's Obligations. In addition to any other conditions contained in this Agreement, the following conditions precedent must be satisfied prior to City's obligation to acquire the Property. These conditions are intended solely for City's benefit and City shall have the sole right and discretion to waive, by written notice, any of the conditions. In the event any condition is not satisfied or waived on or before Closing, or other date as set forth herein, City shall have the right to terminate this Agreement and be refunded any escrow deposit, if any, and to exercise any other remedy available.
 - 1) Title. At Closing, the Seller shall convey fee simple title to the Property by Statutory Warranty Deed, in the form as attached hereto as Exhibit B, and subject to acknowledgement and approval by City. Title shall be good and marketable and shall be insurable as such at ordinary rates pursuant to an ALTA standard owner's title insurance policy issued at Closing by the Title Company free and clear of all liens and encumbrances except for the Permitted Exceptions (defined below).
 - 2) Title Report. Within ten (10) days following the Effective Date of this Agreement, City shall order a preliminary Title Report covering the Property, together with legible copies of all plats and exceptions to title referenced in the Title Report. Within fifteen (15) days of receiving the Title Report and the Exceptions documents, or within thirty (30) days of the Effective Date, whichever is later, City shall give written notice to Seller of the exceptions to title that City shall require Seller to remove of record at or before Closing (the "Unacceptable Exceptions"). Exceptions to title not objected to as provided above are referred to as "Permitted Exceptions." Seller shall thereafter have fifteen (15) days to use its best efforts to remove the Unacceptable Exceptions at Seller's sole cost or inform City in writing that it is unable to remove any such

exception. If new exceptions to title appear on an updated Title Report, City shall have fifteen (15) days from the date of receipt the updated Title Report and the Exceptions documents to give written notice to Seller that such new exceptions are Unacceptable Exceptions. If no such notice is given, any new exceptions shall be considered Permitted Exceptions. If for any reason Seller cannot remove any of the Unacceptable Exceptions before Closing, then City may elect to:

- (a) accept title to the Property subject to such Unacceptable Exceptions;
 - (b) refuse to accept the Property and terminate this Agreement; or
 - (c) extend the Closing Date for a period of up to 45-days so that Seller may have additional time to remove the Unacceptable Exceptions, and, if at the end of such extended period, the Unacceptable Exceptions have not been removed, City may elect either (2)(a) or 2)(b) above.
- 3) Environmental Review and Property Inspection. Between the Effective Date and February 24, 2012, City may, at its expense, engage consultants, surveyors or engineers of City's choosing to conduct property inspection and environmental studies, soil analyses, surveys, and appraisals of the Property as City in its sole discretion deems necessary. City acknowledges receipt of the reports and other documents in Seller's files concerning the Property. City or its agents shall, after having obtained written permission from Seller to do so, have the right to enter the Property at reasonable times before Closing to make property and environmental review, tests, inspections, soil analyses, studies, surveys, appraisals and other investigations (the "Inspection") as City may require, at City's sole discretion and subject to Seller approval which shall not be unreasonably withheld. Seller shall cooperate with City in the Inspection. However, Seller and City recognize the importance of the continued, uninterrupted operation of the data center and first floor telecom room on the Property. Any Inspection by the City shall not unreasonably interfere with the Seller's use of its data center and telecom room. Any area disturbed by the Inspection shall be restored by City, at City's expense, to its pre-inspection condition. If City's inspection shall reveal any matters which are not acceptable to City, in City's sole discretion, City may elect, by written notice to Seller, on or before 5:00 p.m. on February 21, 2012 not to proceed with the transaction contemplated herein, in which event this Agreement shall be null and void without recourse to either party hereto. If the sale does not close due to matters revealed in City's inspection, City will provide copies of all documents related to City's inspection to County.
- 4) Representations, Warranties, and Covenants of Seller. The Seller shall have duly performed every act to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct, to the best of Seller's knowledge, as of the Closing Date.
- 5) No Material Changes. Between the date when the City's environmental review and property inspection concludes until the Closing Date, there shall have been no material adverse changes related to or connected with the Property due to County's activities except that the Data Center computer racks and trays shall be removed.
- 6) Seller's Deliveries. The Seller shall have timely delivered each item to be delivered by the Seller pursuant to this Agreement.
- 7) Title Insurance. As of Closing, the Title Company shall have issued or committed to issue the title policy to City.
- 8) Taxes, Assessments and Encumbrances. The Property is currently tax exempt due to the ownership, occupancy and use by the Parties for public purpose. If applicable, Seller agrees that any taxes, assessments and encumbrances that will be a lien against the Property at Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied of record by Seller. If Seller shall fail to

do so, City may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real property taxes payable during the year in which Closing occurs and any rents or income applicable to the Property shall be prorated as of Closing. County shall work cooperatively with City to ensure the current tax exempt status continues to be applicable to the Property upon Closing.

- B. Conditions Precedent to Seller's Obligations. The close of escrow and the Seller's obligations with respect to the transactions contemplated by this Agreement are subject to City's delivery to the Escrow Holder on or before the Closing Date, for disbursement as provided herein, of the Purchase Price and the documents and materials described in Section 7.B.
- C. Failure of Conditions to Closing. In the event any of the conditions set forth in Section 6.A. or 6.B. are not timely satisfied or waived, for a reason other than the default of City or the Seller under this Agreement:
 - 1) This Agreement, the escrow, and the rights and obligations of City and the Seller shall terminate, except as otherwise provided herein; and
 - 2) The Escrow Holder is hereby instructed to promptly return to the Seller and City all funds and documents deposited by each Party, respectively, in escrow that are held by the Escrow Holder on the date of the termination.
- D. Cancellation Fees and Expenses. In the event the escrow terminates because of the nonsatisfaction of any condition for a reason other than the default of the Seller under this Agreement, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by City. In the event this escrow terminates because of the Seller's default, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by the Seller.

7. Deliveries to Escrow Holder.

- A. By Seller. On or before the Closing Date, the Seller shall deliver the following in escrow to the Escrow Holder:
 - 1) Deed. A Statutory Warranty Deed duly executed and acknowledged in recordable form by the Seller, conveying the Property to City subject only to those exceptions acceptable to City as established under Section 5 of this Agreement, and any other matters that may be approved in writing by City.
 - 2) Proof of Authority. Proof of the Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it. A valid and effective County resolution authorizing this Agreement shall be sufficient proof of seller's authority.
 - 3) Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Escrow Holder in order to issue the title policy.
 - 4) Other Documents. Such other fully executed documents and funds, including without limitation, escrow instructions, as are required of Seller to close the sale in accordance with this Agreement.
- B. By City. On or before the Closing Date, City shall deliver the following in escrow to the Escrow Holder.
 - 1) Purchase Price. The Purchase Price in accordance with Sections 2 and 3 above.
 - 2) Proof of Authority. Such proof of City's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the

power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of City to act for and bind City, as may be reasonably required by the Escrow Holder and/or the Seller. A valid and effective City ordinance authorizing this Agreement shall be sufficient proof of seller's authority.

- C. Jointly. On or before the Closing Date, the Parties shall deliver to the Escrow Holder an executed agreement terminating the Penumbra Kelly Building Lease, in the form as attached hereto as Exhibit C.

8. Deliveries to City at Closing. The Seller shall deliver exclusive possession of the Property to City at close of escrow. Notwithstanding this Section, the Parties are contemporaneously entering into an amendment to the Penumbra Kelly Building Lease (Exhibit D) for use of a portion of the Property by City prior to Closing.

9. Title Insurance. At Closing, the Seller shall provide, at its expense, a standard owner's ALTA title insurance policy in the full amount of the Purchase Price specified above, insuring fee simple title vested in City or its nominees, subject only to the Permitted Exceptions as established under Section 5 of this Agreement.

10. Costs. With the exception of title insurance policy and its premium in Section 8 which shall be the sole expense of the County, Seller and Buyer shall pay pro-rata costs in this transaction (e.g., recordation fees, escrow fees and other closing costs) as follows: Seller 45.7%; and Buyer 54.3%. City and the Seller shall each pay its own legal and professional fees of other consultants incurred by City and the Seller, respectively. All other costs and expenses shall be allocated between City and the Seller in accordance with the customary practice in Multnomah County, Oregon.

11. Seller's Representations and Warranties. Seller hereby warrants and represents to City the following matters, and acknowledges that they are material inducements to City to enter into this Agreement. Subject to the Oregon Constitution and Tort Claims Act, Seller agrees to indemnify, defend, and hold City harmless from all expense, loss, liability, damages and claims, including attorneys' fees, arising out of the breach or falsity of any of Seller's representations, warranties, and covenants. These representations, warranties, and covenants shall survive Closing. Seller warrants and represents to City that the following matters are true and correct, and shall remain true and correct through Closing:

A. Authority. 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 has authority to sell, transfer and convey all right, title, and interest in and to the Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

B. Reports and Documents. To the knowledge of Seller, Seller has provided to City all of the reports and other documents in County's files concerning the Property.

C. Hazardous Substances. For purposes of this Agreement, the phrase "Hazardous Substances" shall include but not be limited to the substances defined in ORS 465.200. Seller warrants, represents, and covenants as follows:

- 1) To the knowledge of Seller, 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 knowledge of the Seller, Seller has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from or on the Property, any Hazardous Substances in violation of any environmental laws of the federal or state government;
- 3) To the knowledge of Seller, there are two existing underground storage tanks (UST) located in or under the Property, that contain or previously contained potential Hazardous Substances. One UST has been decommissioned and Seller has provided Buyer with the decommissioning documents. Seller agrees not to cause or permit any additional tanks to be installed in the Property before Closing;
- 4) To the knowledge of Seller, Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property;
- 5) To the knowledge of Seller, Seller has not transferred Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the Seller's knowledge, no other person has transferred Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and,
- 6) To the knowledge of Seller, there are no proceedings, administrative actions, or judicial proceedings pending relating to the Property under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

D. Contracts, Leases, Rights Affecting Property. Seller has not entered into, and will not enter into, any other contracts for the sale of the Property, nor, to the knowledge of Seller, do there exist, nor will there be, any rights of first refusal, options to purchase the Property, leases, mortgages, licenses, easements, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affect or encumber the Property or any portion thereof. The Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions, relating to the Property, and to the knowledge of Seller no such rights encumber the Property, and will not through Closing.

E. No Legal Proceedings. To the knowledge of Seller, there is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's right or title to the Property, or any portion thereof, affect the value of the Property or any portion thereof, or subject an owner of the Property, or any portion thereof, to liability.

F. Mechanic's and Other Liens. No work on the Property has been done or will be done, or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other liens, against the Property or any portion thereof.

G. Public Improvements or Governmental Notices. To the knowledge of Seller, there are no intended public improvements which will result in the creation of any liens upon the Property or any portion thereof, nor have any notices or other information been served upon Seller

from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.

- H. Breach of Agreements. The execution of this Agreement will not constitute a breach or default under any agreement to which Seller is bound or to which the Property is subject.
- I. Possession. Buyer shall be entitled to possession of the Property at the time of recording of the deed.
- J. Bankruptcy Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by Seller.
- K. Reforestation. The Property is not subject to any pending or delinquent reforestation requirements/ Seller has complied with all reforestation requirements.
- L. Recitals. To the best of Seller's knowledge, the statements and information set forth in the Recitals are true and correct.
- M. Changed Conditions. If Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to City 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, at its sole expense, before the close of escrow. If the problem is not remedied before close of escrow, City may elect to either: (a) terminate this Agreement in which case City shall have no obligation to purchase the Property, or (b) defer the Closing Date for a period not to exceed thirty (30) days or until such problem has been remedied, whichever occurs first. If the problem is not remedied within that timeframe, City may elect to terminate this Agreement.
- N. To the knowledge of Seller. The term "To the knowledge of the Seller" as used in this Section means the actual current knowledge of the County Attorney, Michael Sublett, Project Manager, Esther Lugalía, Property Manager for the Property and Michael McBride, Compliance Section Lead, and the current facilities and maintenance staff who perform services at the Penumbra Kelly Building for the County after reasonable efforts of review of the documents provided to the City and inquiry to such County staff.

12. Seller's Representations, Warranties and Covenants Regarding the Property Through the Close of Escrow. The Seller further represents, warrants, and covenants that, until this transaction is closed or escrow is terminated, whichever occurs first, it shall:

- A. Maintain the all portions of the Property under County's occupancy or control in its present state, with no tree cutting, timber harvesting, or, except as provided in this agreement, alteration of the Property in any way;
- B. Keep all existing insurance policies affecting or relating the Property in full force and effect;
- C. Make all regular payments of interest and principal, if any, on any existing financing;

D. Comply with all government regulations; and

E. Keep City timely advised of any repair or improvement or scheduled maintenance required to keep any portion of the Property under County's occupancy or control in substantially the same condition as when inspected by City and make commercially reasonable efforts to instruct City staff and contractors on the operation of building systems, procedures, and maintenance for the Property.

13. Deferred Taxes. If the Property is subject to farm or forest deferred taxes, Seller shall have no obligation or responsibility for said deferred taxes, unless the Property becomes disqualified for or loses its deferred tax status as a result of Seller's actions prior to Closing in which case such taxes shall be Seller's responsibility.

14. City's Representations and Warranties. In addition to any express agreements of City contained here, the following constitute representations and warranties of City to the Seller:

A. City has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated here;

B. All requisite action has been taken by City in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated here; and

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

15. Seller's Promise to Remove Personal Property and Debris. Prior to the close of escrow, Seller promises to remove or cause to be removed from the Property at Seller's expense personal property (whether County's or a third party's) not necessary for its Data Center, and/or trash, rubbish, debris, or any other unsightly or offensive material, unless otherwise agreed to in writing by City or as may be permitted through a post-Closing Lease Agreement.

16. Risk of Loss, Condemnation. Seller shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Seller shall give City written notice of such event. City may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by City of written notice from Seller of such casualty or condemnation.

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 Multnomah County/Seller:

Facilities and Property Management
Attn: Mike Sublett, Strategic Projects
401 N. Dixon
Portland, OR 97227
Telephone: 503-988-4149

To City of Portland/Buyer:

Office of Management and Finance
Attn: Property Manager Janene Edgerton
1120 SW 5th Avenue, Rm 1204
Portland, Oregon 97204
Telephone: 503-823-6018

Facsimile: 503-988-5082
Email: michael.a.sublett@multco.us

Facsimile: 503-823-3624
Email: janene.edgerton@portlandoregon.gov

Copy to:
Office of the Multnomah County
Attorney
Attn: John S. Thomas, Asst. County
Atty
501 SE Hawthorne Blvd Ste 500
Portland OR 97214
Telephone: 503 988-3138
Facsimile: 503 988-3377
Email john.s.thomas@multco.us

Copy to:
Office of City Attorney
Attn: Linda Law, Deputy City Atty
1221 SW 4th Avenue, Rm 430
Portland, Oregon 97204
Telephone: 503-823-4047
Facsimile: 503-823-3089
Email: linda.law@portlandoregon.gov

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. Telephone and facsimile numbers and email addresses are for information only.

18. No Broker or Commission. Each party represents and warrants to the other that it has not used or engaged 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, then, subject to the Oregon Constitution and Tort Claims Act, Seller shall indemnify, hold harmless, and defend City from and against any such claim if based on any action, agreement, or representations made by Seller; and, subject to the Oregon Constitution and Tort Claims Act, City shall indemnify, hold harmless, and defend Seller from and against any such claim if based on any action, agreement, or representations made by City.

19. Further Actions of City and Seller. City and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and shall use their best efforts to accomplish the close of escrow in accordance with the provisions hereof.

20. Legal and Equitable Enforcement of This Agreement.

- A. Default by the Seller. In the event the close of escrow and the consummation of the transaction herein contemplated do not occur by reason of any default by the Seller, City shall be entitled to all its out-of-pocket expenses incurred in connection with the transaction, including any deposit, and shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.
- B. Default by City. In the event the close of escrow and the consummation of the transaction herein contemplated do not occur by reason of any default by City, County shall be entitled to its actual out-of-pocket expenses incurred in connection with the transaction up to \$10,000, and shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.

21. Miscellaneous.

- A. Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- B. Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.
- C. Survival of Representations. The covenants, agreements, representations, and warranties made herein shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.
- D. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.
- E. Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.
- F. Time of Essence. The Seller and City hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision.
- G. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- H. Governing Law. The parties acknowledge that this Agreement has been negotiated and entered into in the State of Oregon. The parties expressly agree that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon. Any litigation between the parties arising under this Agreement shall occur in Multnomah County Circuit Court.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE

APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The Parties, by and through the undersigns, execute this Agreement as of the last date of signature(s) specified below and in accordance with the undersigned's respective authority to act and bind the Parties.

Seller: Multnomah County

Buyer: City of Portland

BY: _____

BY: _____

Date: _____

Date: _____

Reviewed:

Approved as to Form:

John Thomas, Assistant County Attorney
County Attorney

City Attorney

Attachments:

Exhibit A – Property Description

Exhibit B – Statutory Warranty Deed

Exhibit C – Termination of Perpetual Lease

Exhibit D – Second Amendment to Lease Agreement

Exhibit A: Property Description

Penumbra Kelly Building/Property Legal Description

Real property in the County of Multnomah, State of Oregon, described as follows:

PARCEL I*:

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF NORTHEAST 47TH AVENUE AS SAID STREET WAS WIDENED BY DEED FROM SAFEWAY STORES, INCORPORATED, TO THE CITY OF PORTLAND, RECORDED APRIL 28, 1955 IN BOOK 1719 PAGE 402, DEED RECORDS, WITH THE SOUTH LINE OF NORTHEAST COUCH STREET, AS SAID STREET IS NOW ESTABLISHED AND LOCATED;
THENCE EAST ALONG THE SOUTH LINE OF NORTHEAST COUCH STREET 380.5 FEET TO THE EAST LINE OF THE TRACT OF LAND CONVEYED TO FRANK T. GUMP, ET UX, BY DEED RECORDED SEPTEMBER 6, 1928 IN BOOK 1142 PAGE 390, DEED RECORDS; THENCE SOUTH ALONG THE EAST LINE OF SAID GUMP TRACT 117.30 FEET TO THE NORTH LINE OF THE TRACT OF LAND CONVEYED TO CHARLES WEEKS, ET UX, BY DEED RECORDED FEBRUARY 15, 1929, IN BOOK 1169 PAGE 258, DEED RECORDS; THENCE EAST ALONG THE NORTH LINE OF SAID WEEKS TRACT 14.34 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH ALONG THE EAST LINE OF SAID TRACT 160.49 FEET TO THE NORTH LINE OF EAST BURNSIDE STREET AS SAID STREET IS NOW ESTABLISHED AND LOCATED; THENCE WESTERLY ALONG SAID NORTH STREET LINE 299 FEET TO THE SOUTHEAST CORNER OF THE TRACT OF LAND CONVEYED TO RUDOLPH DISTLER BY DEED RECORDED APRIL 22, 1926 IN BOOK 1050 PAGE 360, DEED RECORDS; THENCE NORTH ALONG THE EAST LINE OF SAID DISTLER TRACT AND CONTINUING ALONG THE EAST LINE OF THE TRACT OF LAND CONVEYED TO G. J. KAUFMAN BY DEED RECORDED NOVEMBER 12, 1902 IN BOOK 301 PAGE 6, DEED RECORDS, TO THE NORTHEAST CORNER OF SAID KAUFMAN TRACT; THENCE WEST ALONG THE NORTH LINE OF SAID TRACT 95 FEET TO THE EAST LINE OF NORTHEAST 47TH AVENUE AS WIDENED BY DEED FROM SAFEWAY STORES, INCORPORATED TO THE CITY OF PORTLAND, RECORDED APRIL 28, 1955, IN BOOK 1719 PAGE 402, DEED RECORDS; THENCE NORTH ALONG THE EAST LINE OF NORTHEAST 47TH AVENUE AS WIDENED BY THE AFORESAID SAFEWAY STORES, INCORPORATED DEED, 100.4 FEET TO THE PLACE OF BEGINNING.

THE LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 01, 2008.

PARCEL II*:

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF NORTHEAST 47TH AVENUE AS SAID STREET WAS WIDENED BY DEED FROM MARIE MICHELS TO THE CITY OF PORTLAND, RECORDED APRIL 28, 1955 IN BOOK 1719 PAGE 504, DEED RECORDS, WITH THE NORTH LINE OF EAST BURNSIDE STREET, AS SAID STREET IS NOW ESTABLISHED AND LOCATED; THENCE NORTH ALONG THE EAST LINE OF NORTHEAST 47TH AVENUE AS WIDENED BY THE ABOVE DESCRIBED MICHELS DEED, 65 FEET, MORE OR LESS, TO THE SOUTH LINE OF

THE TRACT OF LAND CONVEYED TO G. J. KAUFMAN, BY DEED RECORDED NOVEMBER 12, 1902 IN BOOK 301 PAGE 6, DEED RECORDS; THENCE EAST ALONG THE SOUTH LINE OF SAID KAUFMAN TRACT, 95 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF NORTHEAST 47TH AS WIDENED TO THE NORTH LINE OF EAST BURNSIDE STREET; THENCE WESTERLY ALONG THE SAID NORTH STREET LINE TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM A PORTION OF SAID LAND DEEDED TO CITY OF PORTLAND, RECORDED JUNE 12, 1992, IN BOOK 2553, PAGE 1523.

THE LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 01, 2008.

*SUBJECT TO THE EXCEPTIONS NOS. 1-14 AS MORE PARTICULARLY SET FORTH IN THE STATUTORY WARRANTY DEED, COPY OF WHICH IS ATTACHED IDENTIFIED AS EXHIBIT B TO THIS PSA. .

Exhibit B: Deed

Grantor:
Facilities and Property Management
Attn: Mike Sublett, Strategic Projects
401 N. Dixon
Portland, OR 97227

After recording return to:
Grantee: City of Portland
Office of Management and Finance
Attn: Property Management
1120 SW 5th Avenue, Rm 1204
Portland, Oregon 97204
Until a change is requested,
tax statements shall be sent to:
(Same as Grantee)

STATUTORY WARRANTY DEED

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, **Grantor**, conveys and warrants to the **CITY OF PORTLAND**, a municipal corporation, **Grantee**, the following described real property free of encumbrances except as specifically set forth herein:

Parcels I and II described in attached Exhibit1, subject to the exceptions set forth in the attached Exhibit 2. . .

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..

The true consideration for this conveyance is \$1,645,200.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Dated this _____ day of _____, 2012.

IN WITNESS WHEREOF, the Multnomah County Board of Commissioners by authority of the Board, entered of record; has caused this deed to be executed by the Chair of the County Board.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jeff Cogen, Chair

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

This Deed was acknowledged before me this _____ day of _____, 2012, by Jeff Cogen, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.

Marina A. Baker

Notary Public for Oregon;
My Commission expires: 7/14/2014

The City of Portland, a municipal corporation of the State of Oregon, by and through its Office of Management and Finance,
approves this conveyance and accepts the title conveyed.

Dated this _____ day of _____, 2012.

City of Portland, by and through its Office
of Management and Finance.

By: _____
Print Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 2012, by _____
_____, as _____ of the City of Portland, by and through its Office
of Management and Finance, on its behalf.

Notary Public for
My commission expires: _____

Exhibit 1 to Statutory Warranty Deed

PARCEL I:

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

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THE LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 01, 2008.

PARCEL II:

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

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EXCEPTING THEREFROM A PORTION OF SAID LAND DEEDED TO CITY OF PORTLAND, RECORDED JUNE 12, 1992, IN BOOK 2553, PAGE 1523.

THE LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 01, 2008.

Exhibit 2 to Statutory Warranty Deed

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 records; 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. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, 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 a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. General and special taxes and assessments for the fiscal year 2011-2012 are exempt. If the exempt status is terminated an additional tax may be levied. Account No. R319362
(Affects Parcel No. I)
7. General and special taxes and assessments for the fiscal year 2011-2012 are exempt. If the exempt status is terminated an additional tax may be levied. Account No. R319271
(Affects Parcel No. II)
8. City liens, if any, for the city of Portland.
9. Easement for community driveway purposes as disclosed by Warranty Deeds to Safeway Stores Incorporated, a Maryland corporation, recorded April 28, 1955, in Book 1719, Page 421, and in Book 1719, Page 407.
(Affects Parcel I)
10. Covenants, conditions, restrictions and easements in the document recorded June 30, 1971 as Book 797, Page 1361 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
(Affects Parcel I)
11. Covenants, conditions, restrictions and easements in the document recorded June 30, 1971 as Book 797, Page 1363 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
(Affects Parcel II)

12. An easement for construction and incidental purposes, recorded June 12, 1992 as in Book 2553,
Page 1523

In Favor of: City of Portland
(Affects: Parcel II)

13. Conditions and Restrictions contained in Land Use Review File No.LU 06-185447 AD, Recorded:
May 30, 2007 as Fee No. 2007-096283
(Affects Parcel II)

14. Unrecorded leases or periodic tenancies, if any.

Exhibit C: Termination Agreement

TERMINATION AGREEMENT
Kelly Penumbra Building Lease Agreement

THIS TERMINATION AGREEMENT is made and entered into as of the last date of signature indicated below, by and between MULTNOMAH COUNTY, a political subdivision of the State of Oregon ("County"), and the CITY OF PORTLAND, a municipal corporation in the State of Oregon ("City").

This Termination Agreement relates to the Parties' Penumbra Kelly Building Lease Agreement dated July 30, 1982 and effective on July 1, 1982 and as amended its First Amendment and Second Amendment (collectively "Penumbra Kelly Building Lease")., wherein City has a perpetual lease interest in the Penumbra Kelly Building, a real property, together with the improvements thereon and all rights appurtenant and rights thereto owned by County, (hereinafter referred to as the "Property") located at 4735- 4747 E Burnside Street, Portland, Oregon 97215, in the County of Multnomah, State of Oregon.

The Parties have executed a purchase and sale agreement through which the interest of County shall be conveyed to the City. This Termination Agreement is made pursuant to the purchase and sale agreement.

The parties agree that the Penumbra Kelly Building Lease shall terminate effective upon the recordation of the Statutory Warranty Deed related to the Property as executed by the Parties as a result of the purchase and sale agreement.

This Termination Agreement shall terminate the perpetual lease agreement executed by the Parties for purpose of merger of all right, title and interest in the Property in City.

Each party to the Penumbra Kelly Building Lease acknowledges that the other party is not in default under the terms of such lease and hereby releases the other party from any claims of any nature whatsoever, known or unknown, related to or arising out of such lease.

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/// (continue on next page)

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The Parties, by and through the undersigned, execute this Termination Agreement as of the last date of signature(s) specified below and in accordance with the undersigned's respective authority to act and bind the Parties.

Multnomah County, a political subdivision of the
State of Oregon

City of Portland, a municipal corporation of the
State of Oregon, by and through its Office of
Management and Finance

By: _____
Print Name: _____
Title: _____
Date: _____

By: _____
Print Name: _____
Title: _____
Date: _____

Reviewed:

Approved as to Form:

John S. Thomas
Assistant County Attorney

City Attorney

Exhibit D: Second Amendment to Lease Agreement

SECOND AMENDMENT

This Second Amendment to the Lease is effective the _____ day of _____, 2012, between MULTNOMAH COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "County", and THE CITY OF PORTLAND, a municipal corporation, hereinafter referred to as "City".

County and City entered into an Agreement dated July 30, 1982, as amended on May 16, 1997, ("the Lease") for lease of the premises at NE 47th Avenue and East Burnside Street, with a street address of 4735 East Burnside Street, Portland, Oregon, and also known as the Penumbra Kelly Building ("the Property").

RECITALS:

- a. County and City entered into a Memorandum of Understanding effective November 3, 2011 regarding City's purchase of County's interest in the Property with an anticipated closing date of June 29, 2012.
- b. Pending closing of the sale of the County's interest to the City, the City desires to use a portion of the building not currently being used by the County and the County is willing to allow such use, all on the terms and conditions set forth below.

AGREEMENT:

1. Section 1 of the lease is amended to add the area shown on Exhibit A ("the County Surplus Space") to the Premises. City shall be permitted to use the County Surplus Space for office purposes, including the installation of standard office related tenant improvements.
2. City and County recognize the importance of the continued, uninterrupted operation of the data center and first floor telecom room on the Property. Any use or occupancy of the County Surplus Space during the term of the Lease shall not unreasonably interfere with the County's use of its data center and telecom room. Interference could result from: interruption of building services excessive vibrations or acoustics or radio frequency interference, major tenant improvement construction affecting structure and building systems; and, core drills or other physical intrusions. City shall be permitted to construct tenant improvements including partitioning off portions of the floor with approved City plans, permits and installation of industry standard office furniture and modular cubicle office systems. Before undertaking any of the foregoing activities, City shall seek and obtain written approval from County. County shall expeditiously respond to City's request. County will not withhold permission for any proposed City activities unless the County reasonably determines that the proposed activity will create a risk of damage to equipment or interference with operations in the data

center and telecom room. If County makes such a determination, County shall respond in writing to City's request identifying County's objection to the proposed activity and the damage or interference County expects may result from the proposed activity. The parties agree to work cooperatively to expeditiously resolve any conflicts between the City's proposed activities and the County's objections.

3. City shall not be required to pay any compensation to the County for use and occupancy of the County Surplus Space until the date that the City first begins to conduct business in the County Surplus Space, at which time City shall be required to pay utilities related to use of the County Surplus Space. Utilities shall be billed to City at cost without overhead charges. If the sale does not close by June 29, 2012 then after such date, the party responsible for the delay in closing shall pay Operation and Maintenance on the County Surplus Space under the terms of the Lease, until Closing.

Except as expressly amended herein, all other terms and conditions of the Lease, as amended to date, shall remain in full force and effect.

For Landlord:

MULTNOMAH COUNTY

Dated: _____

By: _____
Jeff Cogen, Chair

Reviewed By:

Dated: _____

John Thomas
Assistant County Attorney

For Tenant:

CITY OF PORTLAND

Dated: _____

By: _____
Jeffrey B. Baer, Director
Bureau of Internal Business Services

APPROVED AS TO FORM

City Attorney

EXHIBIT A

