



MULTNOMAH COUNTY, OREGON

BOARD OF COMMISSIONERS

Beverly Stein, Chair

1120 SW Fifth Avenue, Suite 1515
Portland, Or 97204-1914

Phone: (503) 248-3308 FAX (503) 248-3093
Email: mult.chair@co.multnomah.or.us

Diane Linn, Commission Dist. 1

1120 SW Fifth Avenue, Suite 1500
Portland, Or 97204-1914

Phone: (503) 248-5220 FAX (503) 248-5440
Email: diane.m.linn@co.multnomah.or.us

Gary Hansen, Commission Dist. 2

1120 SW Fifth Avenue, Suite 1500
Portland, Or 97204-1914

Phone: (503) 248-5219 FAX (503) 248-5440
Email: gary.d.hansen@co.multnomah.or.us

Lisa Naito, Commission Dist. 3

1120 SW Fifth Avenue, Suite 1500
Portland, Or 97204-1914

Phone: (503) 248-5217 FAX (503) 248-5262
Email: lisa.h.naito@co.multnomah.or.us

Sharron Kelley, Commission Dist. 4

1120 SW Fifth Avenue, Suite 1500
Portland, Or 97204-1914

Phone: (503) 248-5213 FAX (503) 248-5262
Email: sharron.e.kelley@co.multnomah.or.us

**ANY QUESTIONS? CALL BOARD
CLERK DEB BOGSTAD @ 248-3277**

Email: deborah.l.bogstad@co.multnomah.or.us

**INDIVIDUALS WITH DISABILITIES
MAY CALL THE BOARD CLERK AT
248-3277, OR MULTNOMAH COUNTY
TDD PHONE 248-5040, FOR
INFORMATION ON AVAILABLE
SERVICES AND ACCESSIBILITY.**

JULY 23, 1998 BOARD MEETING

FASTLOOK AGENDA ITEMS OF INTEREST

*	THERE WILL BE NO VOTING MEETING OF THE BOARD OF COMMISSIONERS THIS WEEK
2	Work Session on Public Safety Sites and Implications - Meeting Open to the Public
2	Executive Session Regarding Real Property Negotiations - Closed to Public
2	Executive Session Regarding Labor Negotiations - Closed to Public
*	Check the County Web Site: http://www.multnomah.lib.or.us

This Thursday's work session of the Multnomah County Board of Commissioners will be cable-cast live and taped and may be seen by Cable subscribers in Multnomah County at the following times:

Thursday, 9:30 AM, (LIVE) Channel 30
Friday, 10:00 PM, Channel 30
Sunday, 1:00 PM, Channel 30
Produced through Multnomah
Community Television

Thursday, July 23, 1998 - 9:30 AM
Multnomah County Courthouse, Boardroom 602
1021 SW Fourth Avenue, Portland

WORK SESSION

WS-1 Update on Public Safety Facility Siting and Implications; Discussion on GO Bond Financial Overview; Radio Towers Site; Next Steps; Siting Process for Alcohol and Drug Facility; Implications of Decision on Public Safety Levy; Planning Process and Timing of Levy Request. Presented by Dave Warren, Larry Nicholas, Dave Boyer, Dan Noelle, Dan Oldham, Bobbi Luna, Tim Brooks, Tim Ramis, Elyse Clawson, Gina Mattioda, Ginger Martin, Larry Aab, Bill Farver and Peter Ozanne. 2 HOURS REQUESTED.

Thursday, July 23, 1998 - 11:30 AM
Multnomah County Courthouse, Boardroom 602
1021 SW Fourth Avenue, Portland

EXECUTIVE SESSION

E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(e) and (h) to Deliberate with Persons Designated to Negotiate Real Property Transactions, and for Consultation with Counsel Concerning Legal Rights and Duties Regarding Current Litigation or Litigation Likely to be Filed. Presented by Bob Oberst, Thomas Sponsler and Jacqueline Weber.

Thursday, July 23, 1998 - 3:00 PM
Multnomah County Courthouse, Boardroom 602
1021 SW Fourth Avenue, Portland

EXECUTIVE SESSION

E-2 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(d) for Labor Negotiator Consultation Concerning Labor Negotiations. Presented by Darrell Murray. 1.5 HOURS REQUESTED.

MEETING DATE: July 23, 1998
AGENDA #: E-1
ESTIMATED START TIME: 11:30 AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Executive Session Pursuant to ORS 192.660(1)(e)

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: Thursday, July 23, 1998
AMOUNT OF TIME NEEDED: 30 Minutes

DEPARTMENT: Non-Departmental DIVISION: Chair Beverly Stein

CONTACT: Bob Oberst TELEPHONE #: 248-3851
BLDG/ROOM #: 421/3rd

PERSON(S) MAKING PRESENTATION: Bob Oberst

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(e) to Deliberate with Persons Designated to Negotiate Real Property Transactions

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein
(OR)
DEPARTMENT
MANAGER: _____

CLERK OF BOARD OF COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JUL 13 AM 10:49

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES
Any Questions? Call the Board Clerk @ 248-3277

BOGSTAD Deborah L

From: SPONSLER Thomas
Sent: Wednesday, July 22, 1998 2:26 PM
To: STEIN Beverly E; LINN Diane M; HANSEN Gary D; NAITO Lisa H; KELLEY Sharron E
Cc: MOYER Catherine M; FARVER Bill M; FORD Carol M; BOGSTAD Deborah L
Subject: Executive Session

I suggest that the Board executive session scheduled for 11:30 am tomorrow be called under ORS 192.660 (1)(h), legal counsel, as well as 192.660(1)(e), real property transaction.

This will permit the Board to discuss legal issues with Tim Ramis, the lawyer representing the county to obtain the required permits for the Radio Tower site. It is likely that legal challenges will be filed attempting to prevent the county from obtaining the permits. This executive session authorization allows commissioners to have candid discussion with counsel about legal issues likely to be raised by litigation. Questions can be asked about procedural options, as well as about substantive analysis of legal merits, risks and ramifications of possible litigation.

It is appropriate for commissioners to ask these questions in executive session. This will preserve objective and fair hearings when administrative agencies and courts later hear these legal issues. And private and candid consultation between the Board and counsel will promote more efficient resolution of subsequent litigation.

The Chair should announce that the executive session will be held under ORS 192.660(1)(h), legal counsel, as well as (1)(e), real property transaction.

Please let me know if you have questions.



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF FACILITIES AND
PROPERTY MANAGEMENT
2505 S.E. 11TH AVENUE
PORTLAND, OREGON 97202
(503) 248-3322

July 22, 1998

To: Multnomah County Board of Commissioners

From: Bob Oberst, Facilities & Property Management

Subject: Executive Session July 23, 1998 – Correctional Facility Project Site

The following is a summary of the actions and negotiations leading to the present status of the process of acquisition of the EXCL Communications property (referred to as Radio Towers Site and hereinafter as RTS).

Copies of the following are attached to this summary: February 1998 purchase proposal to EXCL; February 1998 counterproposal of EXCL; April 1998 proposal to EXCL; June 1998 draft purchase and sale agreement from EXCL; July 1998 draft response (unsent) to EXCL's purchase and sale agreement draft.

August 1996. During initial site search, RTS shown by realtor from Norris Beggs & Simpson; indicated price (none quoted) about \$5,000,000 based upon 40 usable acres (\$2.87/sf).

September 1996 – January 1997. RTS on site list; Siting Advisory Committee and public involvement process.

February 1997. SAC recommendation to Board, RTS #1 recommendation; no negotiations with EXCL during period of Sheriff/Port of Portland discussions as to Port assistance.

June 1997. Professional appraisal of value \$6,550,000 based upon assumption of 40 acres ready to develop industrial land.

July 1997. County consultants estimate cost of site preparation for development at about \$7,112,232.

February 1998. Purchase proposal to EXCL: \$3,000,000; \$125,000 earnest money; not less than 25 acres approved for development; other conditions.

February 1998. Counterproposal of EXCL: \$5,000,000 or \$3,250,000 plus EXCL retains 15 acres ready to develop; \$150,000 earnest money; most conditions OK.

April 1998. Proposal to EXCL: \$3,750,000; not less than 23 acres approved for development; no retention by EXCL; \$150,000 earnest money; conditions.

May 1998. Meeting with EXCL at Portland (represented at meeting: Chair, Facilities & Property Management, Sheriff's Office, Kitchell, Barney & Worth, O'Donnell Ramis, EXCL, Titan Development, Ball Janik, Norris Beggs).

June 1998. Draft Purchase and Sale Agreement from EXCL: \$4,500,000: \$150,000 earnest money; conditions.

June 1998. Professional appraisal of value: \$4,700,000 (\$11,800,000 for 68 acres to be developed @ \$4.00/sf, less site preparation costs).

July 1998. Response to Draft Purchase and Sale Agreement from EXCL prepared, not sent pending authorization.



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF FACILITIES AND
PROPERTY MANAGEMENT
2505 S.E. 11TH AVENUE
PORTLAND, OREGON 97202
(503) 248-3322

February 10, 1998

Mr. Jack McConnell
Norris, Beggs & Simpson
121 SW Morrison Street, #200
Portland, Oregon 97204

Subject: EXCL Communications - Portland Radio AM Transmitter Site

Dear Mr. McConnell:

Multnomah County submits this proposal for purchase of the subject property (consists of Tax Lots 7, 22, 24, 25 and 26 in Section 4, T1N, R1E, WM, Multnomah County, Oregon comprising approximately 90 acres) from your client, EXCL Communications (or the current owner), for the purpose of construction of a Multnomah County Corrections Facility project.

1. Purchase price \$3,000,000.00, payable in cash at closing.
2. Non refundable earnest money payment at time of contract in the amount of \$125,000.00, said earnest money to be applied to the purchase price at closing.
3. Transfer of title by statutory warranty deed, subject only to exceptions to be approved by purchaser.
4. Closing shall be subject to the following conditions:
 - Approval by City of Portland of site development Master Plan;
 - Approval by City of Portland of conditional use for first phase of project;
 - Review and approval by City of Portland of project environmental plan;
 - Approval by US Army Corps of Engineers and Oregon Division of State Lands of project wetland fill permit;
 - Approval by City of Portland of project building permit;
 - Corps of Engineers and Drainage District improvements to dike system to lower the 100 year flood level to 10.5 feet or lower;
 - All other prior governmental approvals necessary to construction of the project.

- Such governmental approvals shall be for not less than 25 acres. In the event that such approvals are for an area greater than 25 acres, the purchase price shall be increased on a proportional basis. If such approvals are for less than 25 acres, the purchase price shall be reduced on a proportional basis, provided that Multnomah County may, in such event, terminate the agreement without further obligation.
- 5. Closing shall take place within a period of one year from the execution of a sale contract by the parties, unless extended as follows: the period for closing may be extended at the option of Multnomah County for additional consecutive periods of three months each, not to exceed four such periods, upon payment to owner of \$25,000.00 at the time of each such extension, which payments shall be non refundable and shall be applied to the purchase price at closing.
- 6. The purchase price shall be increased by one-half of one per cent (0.5 %) for each month after the twelfth month from the date of the sale contract.
- 7. This proposal is not to be construed as an offer of purchase; purchase and sale of the property is subject to execution of a detailed agreement for the purchase and sale which must be approved by the Multnomah County Board of Commissioners and the owner of the real property.

Very truly yours,



Robert Oberst
Property Manager

CC: Bradley S. Miller
Ball Janik LLP
101 SW Main Street, #1100
Portland, Oregon 97204-3219

bcc: Bob Nilsen
Wayne George
Bill Farver
Barbara Simon
faxed to Barney & Worth

February 12, 1998

VIA TELECOPY 503/248-5082

Mr. Robert Oberst
Property Manager
Department of Environmental Services
2505 S.E. 11th Avenue
Portland, Oregon 97202

Re: EXCL Communications -- Portland Radio AM Transmitter Site

Dear Mr. Oberst:

I have had a chance to consider your February 10, 1998 letter to Jack McConnell. EXCL continues to wish to work with the Sheriff's office to structure a transaction which will permit the County to erect its proposed correctional facility at the EXCL transmitter site. This letter sets forth our thoughts on structuring a transaction.

Our analysis of the developable portion of the site would permit approximately 45 acres to be developed. We understand from your letter that the County requires a minimum of 25 acres. The difficulty with your proposal is that it shifts the risk to EXCL when EXCL as a practical matter will not control the process. Accordingly, this approach will inevitably result in a minimum development of the parcel.

We have structured our response to correspond to the numbered points in your letter.

1. Purchase Price.

EXCL proposes a \$5,000,000 purchase price. We understand that the County requires only 25 acres. Accordingly, in the event EXCL is permitted to retain at least 15 contiguous acres fronting the road, with a reasonable configuration and at a mutually agreed grading, and which is filled and ready for development with no contingent mitigation obligations, EXCL will agree to accept \$3,250,000 for the portion of the parcel transferred to the County. EXCL and the County would agree on permitted uses relative to the retained 15 acres.

Mr. Robert Oberst
February 12, 1998
Page 2

2. Earnest Money.

The County would make a non-refundable earnest money payment of \$150,000 which would be released to EXCL upon the filing of the request for the project wetland fill permit and which would be applied against the purchase price.

3. Title.

The transfer title will be "As Is" and without warranty other than the delivery of a title insurance policy in the amount of the purchase price, the premium which shall be paid by EXCL. EXCL would retain its rights relative to its lease with Citicasters relative to the existing transmitters and Citicasters would be directed to relocate its transmitting facilities prior to the later of June 30, 1999 or six months after closing. The transfer would be by statutory warranty deed subject to existing encumbrances which will be mutually acceptable to the parties.

4. Closing Conditions.

Closing shall be subject to the following conditions:

- Approval by City of Portland of site development of Master Plan;
- Approval by City of Portland of conditional use for first phase of project;
- Review and approval by City of Portland of project environmental plan; and
- Approval by US Army Corps of Engineers and Oregon Division of State Lands of project wetland fill permit.

All fees, expenses and liabilities associated with the permits shall be the obligation of the County and any such permits and site approvals shall be in form reasonably acceptable to EXCL and otherwise available to EXCL should the County elect not to close. Site approvals shall not limit or restrict land use by EXCL in any way should the transaction not close for any reason.

We do not believe that closing should be delayed for building permits or other construction-related government approvals, since the design of the facility and the drawings may take considerable time to finalize. We accept conditions relative to the site development and environmental permitting. Similarly, we believe that the

Mr. Robert Oberst
February 12, 1998
Page 3

arrangement between the County and the Port of Portland relative to improvements to the dike system, which are the subject of separate agreement between the County and the Port of Portland, should not be conditions to the transaction.

5. Closing.

The Closing would be scheduled for December 21, 1998. The County would be entitled to twelve monthly extensions of the closing date provided EXCL received non-refundable extension payments of \$25,000 per month. The extension payments would not be applied to the purchase price, which would remain constant during the extension period.

6. Adjustments to the Purchase Price.

The purchase price would be increased by .5% per month for each month after December 31, 1998 that the closing was delayed.

7. No Offer Intended.

It is understood that the County requires approval from its board of commissioners. Similarly, any transaction would require approval by EXCL's lenders and its board of directors. Accordingly, the foregoing is not intended to be an offer to sell. Rather, it expresses the parameters under which management would recommend the transaction to the board subject to execution of a definitive agreement and diligence on the likelihood that the conditions to the project are reasonably likely to be satisfied within the time periods.

I am certain you appreciate that nearly ten months have passed since our letter agreement when we each agreed to work cooperatively to explore the feasibility of a mutually acceptable transaction. Given the effort of all parties, we have deferred action on a number of proposed transactions at values exceeding the price suggested by this letter. We continue to believe that we can work together to achieve a transaction. After you have had a chance to discuss the foregoing, I would suggest that representatives of EXCL and your development team meet to determine whether a mutually acceptable transaction can be structured.

Mr. Robert Oberst
February 12, 1998
Page 4

Thank you for your past courtesies and for the thought and effort which you have placed in the proposal. We recognize the investment that has been made to date in exploring this opportunity and would like to move expeditiously to facilitate the project.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Chris Marks", with a stylized flourish at the end.

Christopher Marks
Chairman of the Board
EXCL Communications, Inc.

cc: Jack McConnell
Ball Janik, LLP
Elias N. Matsakis
Titan Development



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF FACILITIES AND
PROPERTY MANAGEMENT
2505 S.E. 11TH AVENUE
PORTLAND, OREGON 97202
(503) 248-3322

April 22, 1998

Christopher Marks
Chairman of the Board
EXCL Communications, Inc.
2905 South King Road
San Jose, California 95122

Subject: EXCL Communications - Portland Radio AM Transmitter Site

Dear Mr. Marks:

Thank you for your February 12, 1998 letter regarding the proposal of Multnomah County to purchase EXCL's Portland Radio transmitter site land for construction of the County's correctional facility project.

We have considered the various aspects of your February 12 response and reconsidered the aspects of our February 10 proposal to EXCL and believe that EXCL and Multnomah County are close in this matter and remaining differences can be resolved to our mutual satisfaction. The following will address each of these in the order in which the provisions appear in your February 12 letter.

1. PURCHASE PRICE

Multnomah County proposes a purchase price of \$3,750,000.00 for the land, conditioned upon approval of a Master Plan for development of not less than 23 acres and approval of a conditional use permit for the first phase of the project.

The optimal area of developable land for the corrections facility project is in a range of 25 to 35 acres, depending upon buffering requirements imposed upon development.

The City of Portland rejected both the original draft Natural Resources Management Plan For Peninsula Drainage District No. 1, which would have allowed up to 46 acres of wetland fill on the property, and the second draft of the Plan, which would have allowed up to 47.9 acres of fill, both utilizing wetlands outside the site as well as wetlands on the site for impact mitigation. The Plan finally adopted by the City omitted specifying any allowable fill acreage, but refers to mitigation standards which certainly would require providing additional wetlands outside the site for development even approaching 40 acres and probably also to allow development of 25 acres.

The City of Portland has indicated in advance of any formal filing that it will require the developable area to be limited to the smallest acreage which will support feasible development and that this will not in any event exceed, nor may it even equal, 25 acres regardless of the amount of mitigation proposed utilizing this or other sites.

For these reasons we feel that there is no risk to EXCL, insofar as the value of a maximum number of developable acres on the site is concerned, and Multnomah County is willing to assume the risk that development will be limited to less than the optimal area, so long as it is not less than 23 acres.

The proposal that EXCL retain 15 acres of developable land, filled and ready to develop, is not consistent with the correctional facility project, not economically feasible because of extraordinary site preparation costs and, we believe, not achievable with the restrictions placed upon the use of the site by the governing authorities having jurisdiction over the development.

2. Earnest Money.

This earnest money provision is acceptable to County.

3. Title.

The provisions for transfer of title are acceptable to County.

4. Closing Conditions.

County would be agreeable to revised closing conditions as follows:

- Approval of Master Plan submitted by Multnomah County;
- Approval by City of Portland of conditional use for first phase of the project;
- Review and approval by City of Portland of project environmental plan;
- Approval by US Army Corps of Engineers, Oregon Division of State Lands and other governmental agencies, as required, of project wetland fill permit and related permits.
- FEMA revision of flood plain maps to lower the 100 year flood plain elevation of the site to 10.5 feet or lower or a letter certifying that it will so revise the flood plain map.

The balance of the closing conditions stated in your February 12, 1998 letter are agreeable to Multnomah County.

5. Closing.

It is extremely unlikely that the conditions recited in item 4 above could be satisfied by December 21, 1998. If December 21, 1998 is to be the stated closing date, it will be agreeable provided that County be entitled to twelve monthly extensions with non-refundable payments of \$10,000 per month, to be credited against the purchase price and that the closing may be deferred for an additional period not to exceed two years in the event that use of the property for the corrections facility project is being legally challenged or denied and County is proceeding diligently to defend against such challenge or denial. This is predicated upon EXCL permitting County to proceed to conduct its investigation activities and regulatory approval processes at this time.

6. Adjustments to Purchase Price.

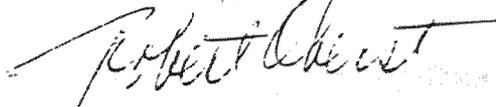
It is acceptable to County that the purchase price be increased by 0.5% per month for each month after December 1998 that closing may be delayed.

7. No Offer Intended.

This is agreeable to County.

Your suggestion that representatives of EXCL and our project team meet to determine a specific and mutually acceptable transaction is welcomed by Multnomah County. We are available to do this immediately and look forward to hearing from you on this.

Very truly yours,



Robert Oberst
Property Manager

CC: Beverly Stein, County Chair (*Bill Farver*)
Dan Noelle, Sheriff (*Bobbi Lena, Barb. Simon / Dan D*)
Jack McConnell, Norris Beggs & Simpson *copy also*
Ball Janik, LLP *copy also to Brad Miller*

BALL JANIK LLP

ATTORNEYS

ONE MAIN PLACE
101 SOUTHWEST MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3219

TELEPHONE 503-228-2525
FACSIMILE 503-295-1058

TELECOPY TRANSMISSION FORM

SEND TO: Mr. Robert Oberst
COMPANY: Multnomah County
FROM: Christen C. White
CLIENT NO:
TELECOPY NO: 248-5082
VERIFICATION NO: 248-3851
OPERATOR:

DATE: 06/08/98

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER SHEET): 16

COMMENTS

BOB, ATTACHED IS THE PURCHASE AND SALE AGREEMENT FOR THE RADIO TOWERS SITE. FEEL FREE TO GIVE ME A CALL TO DISCUSS ANY OF THE PROVISIONS. CCW

ORIGINAL WILL:

BE SENT BY MAIL

BE SENT BY FEDEX/OVERNIGHT COURIER

BE SENT BY MESSENGER

✓ NOT BE SENT

CONFIDENTIALITY NOTICE

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PLEASE CALL (503) 228-2525 IF THIS TRANSMITTAL IS INCOMPLETE OR UNREADABLE.

PURCHASE AND SALE AGREEMENT

Between

PORTLAND RADIO, INC.,
a wholly owned subsidiary of
EXCL COMMUNICATIONS, INC.

"Seller"

And

MULTNOMAH COUNTY

"Buyer"

Dated June __, 1998

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PURCHASE AND SALE AGREEMENT

DATE: June __, 1998

BETWEEN: **PORTLAND RADIO, INC.**
 a wholly owned subsidiary of
EXCL COMMUNICATIONS, INC.
 40th Floor
 500 West Madison Street
 Chicago, Illinois 60661
 Attn: Elias Matsakis
 Telephone: (312) 715-5700
 Telecopy: (312) 993-9350

("Seller")

AND: **MULTNOMAH COUNTY**

 Portland, Oregon _____
 Attn: _____
 Telephone: _____
 Telecopy: _____

("Buyer")

Recitals:

A. Seller owns the real property located in Multnomah County, Oregon within Tax Lots 7, 22, 23, 25 and 26, Section 4, Township 1N, commonly known as the Radio Towers Property and comprising 90 acres more or less and more particularly described on the attached Exhibit A (the "Property"). The radio tower facilities (defined below in Section 3.4) are specifically excluded from the Property conveyed and are hereby expressly reserved by the Seller subject to the conditions in Section 3.4.

B. Seller desires to sell the Property to Buyer in its "AS IS, WITH ALL FAULTS" condition.

C. Based on a site selection study and feasibility analysis, Buyer has identified the Property as the first priority site for construction of a new County corrections facility.

D. Buyer acknowledges that Buyer will acquire the Property in its "AS IS, WITH ALL FAULTS" condition.

Agreements:

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth below, Seller and Buyer agree as follows:

SECTION 1 PURCHASE AND SALE

Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller, all on the terms and conditions set forth in this Purchase and Sale Agreement (the "Agreement"). This Agreement shall be effective upon its execution by both Seller and Buyer (the "Effective Date").

SECTION 2 PURCHASE PRICE PAYMENT

2.1 Purchase Price

Buyer agrees to pay as the purchase price for the Property the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) (the "Purchase Price"), subject to any adjustments set forth in this Agreement.

2.2 Payment of Purchase Price

The Purchase Price shall be paid as follows:

2.2.1 On the Effective Date, Buyer shall deliver to Ticor Title Insurance Company, 1000 S.W. Broadway, Portland, Oregon 97205 (242-1210) (the "Title Company") an earnest money deposit (the "Deposit") of One Hundred Fifty Thousand Dollars (\$150,000.00) by cash, cashier's check or wire transfer to be held in escrow by the Title Company. The Deposit shall be released from escrow to Seller on the earlier of: (i) the date Buyer first submits a wetlands fill permit application to either the Division of State Lands ("DSL") or the Army Corps of Engineers ("Army Corps") or (ii) October 1, 1998.

2.2.2 On the Closing Date (as defined below), Buyer shall pay Seller cash in the amount of Four Million Dollars (\$4,000,000.00). Buyer shall receive a credit towards the purchase price in the amount of the Deposit and all interest earned thereon.

2.2.3 Within 10 days of the Final Approval Date (as defined below), Buyer shall pay Seller cash in the amount of Five Hundred Thousand Dollars (\$500,000.00) subject to the conditions set forth in this Agreement.

SECTION 3 BUYER'S DUE DILIGENCE CONDITIONS

3.1 Buyer's Due Diligence

3.1.1 Buyer shall have until September 1, 1998 (the "Complete Application Submittal Date") to complete its due diligence with respect to the Property and submit a conditional use master plan and environmental review application to the City of Portland and a wetland fill permit application to the DSL and the Army Corps requesting development of the corrections facility on the Property. No later than October 1, 1998, Buyer shall obtain written confirmation from each of: (i) the City of Portland; and (ii) the Army Corps or DSL that the applications under this Section are deemed complete.

3.1.2 The terms and conditions of Buyer's due diligence inspection and investigation of the Property are governed by the License for Access dated _____, 1998, a copy of which is attached as Exhibit B.

3.1.3 Buyer shall diligently seek and pursue: (i) approvals for a conditional use master plan and environmental review before the City of Portland's land use review bodies; and (ii) approvals for a wetland fill permit from the Army Corps or DSL permitting the necessary fill for and construction of the corrections facility. Buyer's diligence under this Section shall include: (1) submitting the conditional use master plan and environmental review applications to the City of Portland and Army Corps or DSL by September 1, 1998 under Paragraph 3.1.1 of this Agreement; (2) receiving written confirmation from both DSL/Army Corps and the City of Portland that the applications are complete by October 1, 1998; (3) obtaining a decision from the Portland City Council on the conditional use master plan and environmental review application within 120 days from the date Buyer has submitted a completed application to the City of Portland for Buyer's proposed conditional use master plan and environmental reviews; and (4) diligently and expeditiously pursuing the wetland permit application before DSL or Army Corps.

3.1.4 If Buyer fails to comply with any of the deadlines established in Section 3.1.3, Seller shall provide Buyer written notice of such failure and shall provide Buyer up to thirty (30) days from the date of such notice to cure the failure. In no event shall the cure period extend beyond March 31, 1999. If Buyer fails to cure within the applicable cure period or fails to close by March 31, 1999, Seller shall have the right to terminate the Agreement and retain the Deposit.

3.2 Title Report

Within twenty (20) business days after the Effective Date, Seller shall provide Buyer with a preliminary title report issued by the Title Company (the "Preliminary Report"), together with copies of all documents which establish the underlying title exceptions set forth in the Preliminary Report. Buyer shall have ten (10) days after receipt of the Preliminary Report within which to give Seller written notice of any exceptions which are unacceptable to Buyer. Within ten (10) days after receipt of Buyer's notice, Seller shall notify Buyer in writing whether Seller, in its sole discretion, will cause the removal of the exceptions objected to by Buyer, on or before the Closing Date. If Seller does not elect to remove an objected to exception or fails to respond to Buyer within such period, Buyer shall give Seller written notice within five (5) days after the expiration of such period stating either: that Buyer is terminating this Agreement, or that Buyer is waiving its objection to the exception(s) which Seller will not remove. If Buyer fails to give any such notice, then such inaction shall be deemed to be Buyer's election to waive its objection to such exception(s). Buyer shall not object to any title exceptions pertaining to the radio towers equipment and ground lease described in Section 3.4.2. Buyer understands that such radio towers facilities may not be relocated prior to the Final Approval Date (defined below).

3.3 Conditions to Buyer's Obligations

Except as otherwise specifically provided in this Agreement, Buyer shall be obligated to purchase the Property unless, by 5:00 P.M. Pacific Time, on the Contingency Removal Date (as defined below), Buyer has given its written notice to Seller stating that Buyer does not want to purchase the Property (a "Termination Notice"). If such Termination Notice is delivered to Seller, Buyer will forfeit the Deposit to Seller. If Seller does not timely receive a Termination Notice by 5:00 p.m. Pacific Time on the Contingency Removal Date, Buyer shall be obligated to proceed with the purchase of the Property under the conditions set forth in this Agreement.

3.4 Conditions to Seller's Obligations

3.4.1 Seller's obligation to close shall be conditioned upon the performance by Buyer of all of Buyer's obligations set forth in this Agreement, including, but not limited to, Buyer's obligations set forth in Section 4.4.

3.4.2 Buyer acknowledges that the Property as developed contains two radio tower facilities currently under an equipment and ground lease ("Ground Lease") which was negotiated as part of a purchase and sale agreement with KOTK. The radio tower facilities include all aboveground and underground facilities such as towers, underground cables and conduits and related transmission facilities. Payments under the Ground Lease represent a portion of the consideration due under Seller's purchase and sale agreement to KOTK. Accordingly, Seller shall have the exclusive right under this Agreement to collect and retain all rental proceeds under the Ground Lease. Seller's exclusive right to such rental proceeds shall survive the Closing Date and such rental proceeds shall not be prorated. It is further understood that Seller has the right under the Ground Lease to cause the ground lessee to relocate the radio tower facilities. Seller represents that, prior to the Closing Date, Seller will provide the ground lessee with a notice to vacate. Ground lessee's relocation of the radio tower facilities is subject to Federal Communication Commission approval of an alternative transmitting site. Seller shall have no obligation under this Agreement to remove the radio tower facilities but shall retain the right to relocate the facilities and reenter the Property to affect such relocation until a date which is no later than six (6) months after the Final Approval Date.

SECTION 4 CLOSING

4.1 Manner of Closing

The closing of the purchase and sale of the Property will occur in an escrow to be administered by the Title Company. The parties agree to provide the Title Company with escrow instructions consistent with the terms of this Agreement.

4.2 Closing Date

The closing date (the "Closing Date") shall be ten (10) days after the sooner of the following (which sooner date is hereinafter referred to as the Contingency Removal Date): (i) the date the Portland City Council adopts a decision supported by findings on the conditional use

master plan and environmental review application submitted by Buyer; or (ii) 120 days after the date Buyer has submitted a completed application to the City of Portland for Buyer's proposed use master plan and environmental reviews. The Portland City Council decision contemplated under subsection (1) of this Paragraph shall not include any appeal periods, including without limitation, any appeal periods to the Land Use Board of Appeals or any other review body.

4.3 Final Approval Date

The Final Approval Date shall be the sooner of: (1) the date the Portland City Council decision on the environmental review and conditional use master plan decision becomes final and not subject to further appeal to the Land Use Board of Appeals; (2) if an appeal is filed on either the City Council decision or the Army Corps/DSL wetland permit decision, the date all appeals are finally resolved and not subject to further proceedings; (3) the date Buyer commences development of the corrections facility including any grading or preparatory work; or (4) the date Buyer conveys an interest in, leases to, or otherwise grants a material interest in or to the Property to any person or entity.

4.4 Documents to Be Deposited Into Escrow by Seller

On or before the Closing Date, Seller shall deposit into Escrow:

4.4.1 An executed and acknowledged special warranty deed (the "Deed") conveying the real property to Buyer which deed shall contain the following language:

In the event: (i) Grantee prosecutes or defends an appeal of the City of Portland decision on the conditional use master plan and environmental review application or the DSL/Army Corps wetland fill permit application submitted by Grantee and such appeal is resolved in favor of Grantee; or (ii) no appeals are filed on either the City of Portland conditional use master plan and environmental review decision or the DSL/Army Corps wetland fill permit decision; (iii) Grantee commences development of the Property including any grading or preparatory work; or (iv) the date Buyer conveys an interest in, leases to, or otherwise grants a material interest in or to the Property to any other person or entity, Grantee shall pay Grantor cash in the amount of Five Hundred Thousand Dollars (\$500,000.00) representing the balance of the Purchase Price. The balance of the Purchase Price shall be paid to Grantor within 10 days of the date any of the above events occur.

4.4.2 An executed certificate of non-foreign person (the "FIRPTA Certificate").

4.5 Documents and Sums to Be Deposited Into Escrow by Buyer

On or before the Closing Date, Buyer shall deposit into Escrow Four Million Dollars (\$4,000,000.00) Purchase Price as advised in accordance with Section 2.2.2 of this Agreement.

4.6 Close of Escrow

On the Closing Date, the Title Company shall:

4.6.1 Cause the Deed to be recorded in the Official Records of Multnomah County, Oregon;

4.6.2 Deliver Four Million Dollars (\$4,000,000.00) as adjusted pursuant to Section 2.2.2 of this Agreement to Seller;

4.6.3 Deliver to Buyer the following:

- (a) the Buyer's Title Policy (as defined below); and
- (b) Executed FIRPTA Certificate.

4.6.4 Deliver to Seller the Seller's Title Policy (as defined below).

4.6.5 Promptly after closing, the Title Company shall deliver to each of Buyer and Seller an accounting of all funds received and disbursed and copies of all executed and recorded or filed documents deposited with the Title Company with the recording or filing information noted on such documents.

4.7 Title Insurance

4.7.1 On the Closing Date, the Title Company shall issue to Buyer an ALTA owner's policy of title insurance (the "Buyer's Title Policy"), insuring Buyer as the owner of the Property subject only to non-delinquent real property taxes and assessments and such other exceptions as are deemed approved by Buyer pursuant to Section 3.2. The Buyer's Title Policy shall have a liability limit equal to Four Million Dollars (\$4,000,000.00) (the "Title Insurance Amount"). Seller shall pay the premium for standard current form ALTA coverage, but Buyer shall pay all costs and expenses, including title insurance premiums, in obtaining any extended ALTA coverage.

4.7.2 On the Closing Date, the Title Company shall issue to Seller a seller's policy of title insurance, in the amount of the Title Insurance Amount, in a form and substance satisfactory to Seller (the "Seller's Title Policy") and Seller shall pay the premium for such policy.

4.8 Closing Costs

The following closing costs shall be paid by the parties as follows: (i) Buyer shall pay: one-half of the Title Company's escrow fee and any transfer tax, and all recording fees, and (ii) Seller shall pay one-half of the Title Company's escrow fee and the any transfer tax.

4.9 Prorations

4.9.1 The Title Company shall prorate, as of the Closing Date, real property taxes and assessments payable in the calendar year of the closing between Buyer and Seller based upon the number of days the Property is owned by the respective parties during such year.

4.9.2 All items of income or expense from the operation of the Property shall be prorated by the parties, outside of escrow, as of the Closing Date, with Seller receiving a credit for all delinquent rents and Buyer receiving a credit for all tenant deposits.

4.10 Property Documents

Seller shall deliver to Buyer all keys, personal property and documents pertaining to the Property outside of escrow on the Closing Date.

SECTION 5 WARRANTIES

5.1 Seller's Warranties

Seller hereby represents and warrants as follows:

5.1.1 Seller has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Seller in connection with the execution of this Agreement and the transaction contemplated by this Agreement.

5.1.2 Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

5.1.3 Except as may be disclosed in writing to Buyer, there is no litigation, claim or arbitration pending with respect to the Property.

5.2 Buyer's Warranties

Buyer hereby represents and warrants that Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Buyer in connection with the execution of this Agreement and the transactions contemplated hereby.

5.3 Seller's Disclaimer

Except as expressly set forth in Section 5.1, no warranties, guarantees or representations have been or are being made by Seller or any agent or representative of Seller concerning: the financial and operating records of the Property; any governmental permits or approvals obtained or to be obtained in connection with Buyer's use of the Property; the suitability of the Property for Buyer's intended use; the physical condition of the Property; the compliance of the Property with any past or present zoning, land use, building, fire, safety, environmental or other ordinances, restrictions, laws and regulations; the sub-surface condition of the Property; or the presence of any material in, under, or on the Property which is regulated by any ordinance, regulation or law.

5.4 Buyer's Acknowledgment

Buyer accepts the Property in its present condition, "AS-IS, WITH ALL FAULTS" without any representations or warranties by Seller or any agent or representative of Seller, expressed or implied, except as set forth in Section 5.1. Buyer acknowledges that Buyer has ascertained for itself the value and condition of the Property and Buyer is not relying on, nor has Buyer been influenced by, any representation of Seller or any agent or representative of Seller regarding the value, condition, or any aspect of the Property. If this Agreement required Seller to make any representation or warranty, express or implied (beyond those explicitly set forth in this Agreement), relating to the Property or to accept any liability with respect to the Property, Seller would have required a materially higher Purchase Price for the Property or refused to sell the Property. Buyer agrees that Buyer's payment of the Purchase Price is Buyer's acknowledgment that it has had every opportunity to conduct whatever inspection, test, or analysis of the Property that Buyer deemed to be relevant to Buyer's decision to purchase the Property. Seller shall not be responsible for any failure to investigate the Property on the part of Seller, any real estate broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of Seller, or any third party. As part of Buyer's agreement to purchase the Property "AS-IS, WITH ALL FAULTS", and not as a limitation on such agreement, Buyer hereby unconditionally and irrevocably waives any and all actual or potential rights Buyer might have regarding any form of warranty, express or implied, of any kind or type, relating to the Property, except for Seller's warranties set forth in this Agreement. Such waiver is absolute, complete, total and unlimited in every way.

5.5 Release of Seller by Buyer

Buyer hereby releases Seller, Seller's, partners, employees, and agents, and their respective heirs, successors, personal representatives and assigns, from and against any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and court costs and expenses of whatever kind and nature, in law or in equity, known or unknown, which Buyer may have and which arise out of or are in any way connected with: (i) the use, maintenance, condition, operation, ownership and possession of the Property, except for a breach of this Agreement by Seller; and (ii) the use, generation, manufacture, storage, discharge, disposal, transportation or presence of Hazardous Materials on the Property. "Hazardous Materials" means: (a) any

petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, or any mixture thereof, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes, wastes or substances or any other materials or pollutants which: (i) pose a hazard to the Property or to persons on or about the Property or (ii) cause the Property to be in violation of any federal, state or local law, ordinance, regulation, code, or rule relating to Hazardous Materials; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; (c) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "waste" or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property.

5.6 Indemnity by Buyer

Buyer hereby agrees to indemnify, protect, defend and hold Seller, Seller's employees and agents and their respective successors and assigns for, from and against any suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and court costs and expenses of whatever kind asserted by a third party and which arise out of or are in any way connected with: the use, maintenance, operation, ownership or possession of the Property. This indemnity shall survive the closing or the termination of this Agreement.

SECTION 6 BROKERAGE COMMISSIONS

Buyer shall protect, defend, indemnify, and hold Seller harmless for, from and against any and all other claims, liabilities or demands with respect to any fees or other compensation asserted as a result of Buyer's actions in connection with this Agreement. Seller shall protect, defend, indemnify, and hold Buyer harmless for, from and against any and all claims, liabilities or demands with respect to any fees or other compensation asserted as a result of Seller's actions in connection with this Agreement. These indemnities shall survive the closing or the termination of this Agreement.

SECTION 7 BREACH

7.1 Buyer's Failure to Close

In the event that Buyer is obligated to pay the Purchase Price and fails to do so, then Seller shall be entitled to all available legal and equitable remedies, including, but not limited to, specific performance or damages and the Title Company shall pay the Deposit to Seller as a partial payment of the Purchase Price or a partial recovery of damages. Buyer specifically acknowledges that its liability under this Agreement is not limited to the Deposit.

7.2 Seller's Failure to Close

In the event that Seller is obligated to convey the Property to Buyer but fails to do so, then Buyer shall be entitled to the remedy of specific performance.

7.3 Other Breaches

Upon any other default by a party, the other party shall be entitled to all available legal or equitable remedies.

SECTION 8 GENERAL PROVISIONS

8.1 Assignment

Buyer shall not assign, transfer or convey its interest in this Agreement without Seller's prior written consent which consent shall not be unreasonably withheld. Any attempted assignment without Seller's prior written consent shall be void. Any permitted transfer shall not relieve the assigning party from its liability under this Agreement. Except as provided herein, this Agreement shall be binding upon the upon and inure to the benefit of any permitted assignee or successor in interest to a party.

8.2 Notices

All written notices and demands which either party may give the other may be given by hand delivery, registered or certified mail, telecopy, or by Federal Express or other delivery service guaranteeing overnight delivery to a party at the address set forth above or as may be changed upon written notice to the other party. Notices shall be effective as follows: if given by hand delivery, then upon delivery; if given by fax, then upon receipt so long as the sending fax electronically confirms receipt; if given by overnight courier, then the business day after delivery to the overnight courier; and if given by certified mail, then the third day (excluding the day of mailing) after mailing.

8.3 Headings

The headings of the sections of this Agreement are intended for reference only and are not intended to be used to interpret this Agreement.

8.4 Invalidity

If any provision of this Agreement shall be invalid or unenforceable the remaining provisions shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8.5 Attorneys Fees

The prevailing party in any action or proceeding brought by either party against the other under this Agreement shall be entitled to recover such court costs, costs and fees of the attorneys, paralegals, experts and consultants in such action or proceeding (whether at the administrative, trial or appellate levels) in such amount as the court may adjudge reasonable.

8.6 Entire Agreement

The terms of this Agreement are intended by the parties as a final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement constitute the exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

8.7 Time of the Essence

Time is of the essence in this Agreement.

8.8 Counterparts

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

8.9 Amendment to this Agreement

The terms of this Agreement may not be modified or amended except by an instrument in writing executed by Seller and Buyer.

8.10 Waiver

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

8.11 Effectiveness of Agreement

This Agreement shall not be effective and shall not be binding on Buyer and Seller unless and until fully executed by Buyer and Seller.

8.12 Exhibits

All exhibits attached to this Agreement are an integral part of this Agreement and are incorporated into this Agreement by reference.

8.13 Statutory Disclaimer

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE REAL PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

SELLER:

PORTLAND RADIO, INC., a wholly owned subsidiary of EXCL COMMUNICATIONS, INC.

By: _____
Title: _____

BUYER:

MULTNOMAH COUNTY

By: _____
Title: _____

DRAFT

Christen C. White
Ball Janik LLP
101 SW Main Street, #1100
Portland, Oregon 97204-3219

Subject: PURCHASE AND SALE AGREEMENT – EXCL

I have reviewed the draft Purchase and Sale Agreement between Portland Radio, Inc. and Multnomah County with County Counsel and other appropriate County representatives. The following responses resulting from the review are numbered in accordance with the draft numbering sequence.

- 3.1 Our consultants expect to submit the application for approval of conditional use master plan to the City on February 15, 1999 and the applications for fill permits to the state and Corps of Engineers by mid October 1998. The due diligence dates should be revised to reflect this.
- 3.2 Buyer should have right to terminate the agreement and receive refund of earnest money deposit if seller fails or refuses to remove exceptions to title objected to by Buyer.
- 3.3 Buyer should have ten days after Contingency Removal Date within which to give Termination Notice (if this action is taken).
- 3.4.2 Seller should be obligated to remove the tower by a date certain as a condition to closing.
- 4.2 Closing date should be date upon which periods for filing of appeals (not appeal periods) have run on approvals of conditional use master plan and fill permits.
- 4.3 Conveyance should be by Warranty Deed rather than Special Warranty Deed and the deed need not contain the specified language.
- 4.9.2 This article does not appear to be appropriate to this transaction.
- 5.3 Seller should make a "to best of knowledge" representation as to environmental condition.
- 5.4 Same comment as 5.3.
- 5.5 Eliminate the environmental release.

5.6 Buyer should indemnify Seller only as to acts of Buyer prior to closing. Indemnity by Buyer should be made subject to applicable Oregon Constitutional provisions and Oregon Tort Claims Act.

7.2 In the event Seller fails to close, Buyer should be entitled to all legal and equitable remedies.

Multnomah County should be provided a copy of the ground lease reasonably soon in order to consider its affect, if any, upon the proposed transaction. Also, if "due diligence" investigations were made by EXCL, I would like to receive copies of the reports of such investigations.

Please contact me at 248-3851 to discuss the above or any other aspect of the transaction.

Very truly yours,

Robert Oberst
Property Manager

DRAFT

Christen C. White
Ball Janik LLP
101 SW Main Street, #1100
Portland, Oregon 97204-3219

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Very truly yours,

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