

AGREEMENT OF PURCHASE AND SALE

DATE: _____, 2017

PARTIES: **Seller:** **MULTNOMAH COUNTY,**
 an Oregon political subdivision
 Address: **c/o Ken Wilson**
 Facilities & Property Management
 401 North Dixon
 Portland, OR 97227

Purchaser: **KEHOE NORTHWEST PROPERTIES, LLC**
 an Oregon limited liability company or Assigns
 (in accordance with Section 10)
 Address: **ATTN.: Martin Kehoe, Manager**
 6605 SW Macadam Ave, Suite 100
 Portland, OR 97239

RECITALS:

- A. Seller is the owner of the 155,000 SF Multnomah County Wapato Detention Facility, sited on 18.24 acres located at 14355 N Bybee Lake Ct., Portland, OR 97203-6495, and further described in **Exhibit "A,"** attached hereto and made a part hereof (the **"Property"**). The Property is located in North Portland's Rivergate Industrial District.
- B. On April 28, 2005, Seller's Board of County Commissioners approved Resolution No. 05-065 for the County to pursue alternative options for use of the Property. Seller's General Obligation Public Safety Bonds issued to finance construction of the Wapato Detention Facility were completely defeased effective October 1, 2016. The State of Oregon has advised Seller, by letter dated August 25, 2016, that the remaining balance due on the Oregon bonds issued for construction of Wapato will not impede sale of the Property for a non-corrections use.
- C. The Port of Portland's (the **"Port"**) Special Warranty Deed conveying the Property to Seller, recorded November 19, 2001, as Instrument No. 2001-184585 in the Official Records of Multnomah County, contains several restrictive covenants. Covenant #3 requires Seller to notify the Port in writing if the County intends to sell the Property. By letter dated August 29, 2016, Seller notified the Port of Seller's intent to begin negotiations for sale of the Property.
- D. Covenant #3 also requires Seller and the Port to negotiate in good faith for a period of one hundred twenty (120) days for the Port's purchase of the Property, unless the Port notifies Seller that the Port is not interested in buying the Property. By letter (a copy of which has been delivered to Purchaser) dated September 2, 2016, from Bill Wyatt, the Port's Executive Director, the Port formally confirmed that it was not interested in buying the

Property but that it maintains an interest in ensuring the Property is used “in a manner consistent with the industrial uses of the Rivergate Industrial Park.”

- E. The parties executed a Letter of Intent dated effective October 31, 2017 (the “**LOI**”), which granted Purchaser a permit of entry and authorized Purchaser to conduct Due Diligence over a sixty (60)-day period from November 9, 2017, through close of business (5 PM PST) on January 8, 2018, except as otherwise provided in Section 3 of this Agreement.
- F. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, in accordance with the terms and conditions set forth in this Agreement of Purchase and Sale (this “**Agreement**”). Purchaser intends to use the Property for development, construction and operation of warehouse, distribution and other industrial facilities or any other legal purpose.

AGREEMENTS:

1. **Sale and Purchase.** Purchaser agrees to purchase the Property from Seller and Seller agrees to sell the Property to Purchaser for the sum of **Ten Million Eight Hundred Thousand and no/100s Dollars (\$10,800,000.00)**, payable in cash at closing, as defined in Paragraph 3 below (the “**Purchase Price**”).
2. **Opening of Escrow & Earnest Money.** Within two (2) business days after full execution of this Agreement, the parties will open escrow at Chicago Title Company of Oregon, National Commercial Services, 1211 SW Fifth Avenue, Suite 2130, Portland, Oregon 97204 (ATTN.: Patricia Parsons) (the “**Escrow Agent**”), and Purchaser will deposit **Two Hundred Thousand and no/100s Dollars (\$200,000.00)** cash with the Escrow Agent as Earnest Money (the “**Initial Deposit**”). The Initial Deposit shall become nonrefundable upon expiration of the Due Diligence Period (as defined in Section 3), except in the event of Seller’s default, but shall be applicable to the Purchase Price.

Purchaser shall make a second Earnest Money deposit of **Three Hundred Thousand and no/100s Dollars (\$300,000.00)** cash (the “**Second Deposit**”) with the Escrow Agent upon expiration of the Due Diligence Period. The Second Deposit shall be immediately non-refundable to Purchaser, except in the case of default by Seller or upon Purchaser’s termination in accordance with Section 6(i) hereof, but shall be applicable to the Purchase Price. Failure of Purchaser to make the Second Deposit shall result in termination of this Agreement with all deposits and interest released to Purchaser. Both Earnest Money Deposits shall be deposited in an interest-bearing account and shall be credited toward the Purchase Price at Closing.

3. **Due Diligence Period & Permit of Entry.** The LOI grants Purchaser and its agents a permit of entry to conduct due diligence on the Property over a sixty (60)-day period through close of business (5 PM PST) on January 8, 2018 (the “**Due Diligence Period**”). Due diligence shall include delivery of complete and accurate copies for review (at no charge to Purchaser) of existing zoning, land use approvals, architectural and engineering plans (including, but not limited to, as built plans), drawings, specifications, permits, surveys, operating expenses, vendor contracts, environmental review, and engineering

studies related to the Property in Seller's possession, which have previously been provided to Purchaser through an on-line Dropbox. Purchaser, at its expense, may enter upon the Property and conduct a feasibility study of the Property about any matter related to or associated with the Property (including, without limitation, architectural, geotechnical, environmental, structural, marketing, engineering and financial feasibility studies) to determine whether or not the Property is suitable to Purchaser as determined by Purchaser in its sole and absolute discretion. Purchaser shall be entitled to extend the Due Diligence Period, following written notice to Seller prior to expiration of the Due Diligence Period, for one thirty (30)-day period through close of business (5 PM PST) on February 7, 2018, if Purchaser in good faith considers that additional time is needed to resolve a material, unknown or unknowable matter related to or associated with the Property.

4. **Closing.** Closing (the "**Closing**") shall take place at the offices of the Escrow Agent no later than sixty (60) days after expiration of the Due Diligence Period, as it may be extended in accordance with Section 3. On Closing, Seller shall execute and deliver to Purchaser a Statutory Bargain and Sale Deed ("**Seller's Deed**"), conveying the Property to Purchaser, free and clear of all liens and encumbrances except the Permitted Exceptions defined in Section 5(a). Each party shall pay one-half of the escrow fee. Real property taxes for the current tax year, utility bills, city or district assessments, and other usual items shall be prorated at Closing in accordance with customary Multnomah County practice. Promptly after Closing, Seller shall furnish Purchaser with an ALTA standard owner's policy of title insurance in the amount of the Purchase Price, at Seller's expense, insuring Purchaser as the owner of the Property, subject only to the standard printed exceptions and the Permitted Exceptions. Purchaser shall pay for the difference between the cost of the ALTA standard owner's Policy and the cost of an extended coverage ALTA title insurance policy ("**Extended ALTA Policy**"). Purchaser shall be entitled to possession immediately upon Closing. The date on which the transaction closes is referred to herein as the "**Closing Date.**" If Purchaser elects to schedule Closing prior to the sixtieth (60th) day after expiration of the Due Diligence Period, Purchaser shall provide Seller with written, email notice of the Closing Date at least three (3) business days before that date, unless Seller waives the notice period in writing.
5. **Purchaser's Preconditions to Closing.** Purchaser's obligation to purchase the Property will be contingent on satisfaction of title review and approval and Purchaser's satisfaction of its Due Diligence review and analysis, in accordance with Subsection 5(a), prior to expiration of the Due Diligence Period, as it may be extended in accordance with Section 3:
 - (a) **Title Review & Approval.** Within five (5) business days after the mutual execution of this Agreement, Seller will furnish to Purchaser a preliminary title report from the Escrow Agent showing its willingness to issue a standard ALTA owner's form of title insurance policy on the Property in the amount of the Purchase Price, together with copies of all exceptions listed therein (the "**Title Report**"). Purchaser will have ten (10) business days after receipt of the Title Report and receipt of complete and full copies of any and all documents shown as exceptions in the Title Report within which to notify Seller in writing of its objection to any of the exceptions shown in the Title Report. Zoning ordinances, building restrictions, the Restrictive Covenants of the Rivergate Industrial Park, restrictive

covenants set forth in the 2001 Deed from the Port to Seller, and reservations in federal patents and state deeds shall be deemed permitted exceptions (“**Permitted Exceptions**”). Whether or not Purchaser objects, however, Seller agrees to remove prior to the Closing, (a) any mortgage or deed of trust, (b) any mechanic’s lien, and (c) any other monetary liens and obligations of any kind whatsoever, including, for example, any deferred fees that are due upon Closing to the City, County or utility provider(s). Seller will have five (5) business days after receipt of Purchaser’s objections to title within which to notify Purchaser in writing of Seller’s response to title issues. If Seller responds that it is unwilling or unable to cure and eliminate any disapproved exception or any matter or issue raised by Purchaser in the Due Diligence Period, Purchaser may waive the exception or condition and proceed to Closing or terminate the Agreement by delivering written notice to Seller within fifteen (15) business days after receipt of Seller’s response. If Purchaser terminates this Agreement, the parties shall have no further obligations to or claims against each other under this Agreement, except for Seller’s refund of the Initial Deposit to Purchaser and Purchaser’s obligations to restore any physical damage to the Property to the extent caused by Purchaser’s Due Diligence Investigations, as defined in the LOI and this Agreement, and to indemnify Seller with respect to the same as provided in Section 4(b), below, to the extent accrued as of such termination. For the avoidance of doubt, Purchaser shall not have any liability for existing conditions that are disclosed by such inspections unless Purchaser exacerbates an existing condition in the course of its Due Diligence or the cause of such conditions is arising out of, or in connection with, Purchaser’s handling, storage, discharge, transportation or disposal of any “hazardous substance” or “hazardous material” as defined at ORS 466.605 (7) (2011).

- (b) **Indemnity.** Purchaser shall indemnify, defend and hold harmless Seller, its officers, directors, agents and employees from any and all liability, damages, expenses, attorney’s fees, and costs of any nature whatsoever arising from or relating to Purchaser’s Due Diligence or other investigations of the Property, whether said investigations were performed by Purchaser or Purchaser’s agents, employees, independent contractors, permittees or invitees or any other person(s). Seller or its officers, directors, agents and employees shall not be liable for any latent defect of the Property. Purchaser and its agents shall not suffer or permit to be enforced against the Property, or any part thereof, a mechanic’s, materialman’s, contractor’s, or subcontractor’s lien arising from, or any claim for damage or injury growing out of, Purchaser’s or Purchaser’s agents’ entry onto the Property or Purchaser’s Due Diligence or other investigations. In addition to the indemnities provided above, Purchaser agrees to indemnify, defend and hold harmless Seller, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, Purchaser’s handling, storage, discharge, transportation or disposal of any “hazardous substance” or “hazardous material” as defined at ORS 466.605 (7) (2011). Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.

6. **Seller's Representations.** Seller represents and warrants to Purchaser as follows:
- (a) Seller has no knowledge of any liens or assessments to be levied against the Property.
 - (b) Seller has no knowledge of any notice from any governmental agency of any violation of any statute, law, ordinance, or of any deed restriction, rule, or regulation with respect to the Property.
 - (c) Seller is not a "foreign person" as that term is defined in IRC § 1445. At Closing, Seller will execute and deliver to Purchaser a certification of non-foreign status on a form required by the IRS.
 - (d) **Property Sold "AS IS".** Other than as set forth herein, Seller and Seller's agents have made no representations, warranties, or other agreements concerning matters relating to the Property; Seller and Seller's agents have made no agreement or promise to alter, repair, or improve the Property; and Purchaser takes the Property in the condition, known or unknown, existing at the time of this Agreement, "AS IS."
 - (e) Seller has full and complete authority to enter into this Agreement and convey the Property in accordance with the terms hereof.
 - (f) To Seller's knowledge, there is no condemnation, environmental, zoning, or similar proceeding existing or planned which could detrimentally affect the use, development, operation, or value of the Property that is undisclosed to Purchaser.
 - (g) Seller has no knowledge of any actual or threatened claims under any insurance policy covering the Property or of any other actual or threatened third party claim against the Property.
 - (h) Seller shall maintain the Property prior to Closing, and shall have done nothing to damage the reputation or suitability of the Property. Seller shall cause any existing or future leasehold interest in the Property to terminate and vacate prior to Closing. Purchaser will not assume any service contract without prior written approval.
 - (i) Seller agrees to notify Purchaser promptly if Seller receives actual notice, prior to Closing, of any event or condition that would result in making any previously disclosed material information relating to the Property substantially misleading or incorrect. Upon receipt of such notice, Purchaser, in its absolute discretion, may terminate this Agreement by written notice to Seller, in which event Seller shall retain the Initial Deposit as liquidated damages, refund the Second Deposit (if made prior to Purchaser's termination) to Purchaser, neither party shall have any additional claim against the other, and this Agreement shall be terminated and shall have no further force or effect.
7. **Property Use Restrictions.** If the sale and purchase closes, Seller will convey the Property to Purchaser subject to the recorded covenants and restrictions of the Rivergate

Industrial Park, including, but not limited to those covenants set forth in the 2001 Deed from the Port to Seller.

8. **1031 Exchange.** Seller agrees to cooperate with Purchaser if Purchaser desires to coordinate this purchase as part of a tax-deferred, like-kind exchange pursuant to IRC §1031, provided, however, that (1) Seller is not obligated to take title to any exchange property; (2) the exchange does not delay or otherwise affect the Closing Date; and (3) the exchange is at no cost to Seller. Purchaser will defend, indemnify, and hold harmless Seller from and against any liabilities, claims, demands, causes of action, damages, expenses, and costs incurred or suffered by Seller, including attorney fees at trial and on appeal, arising out of the exchange.
9. **Broker's Fees.** Purchaser represents and warrants to Seller that Purchaser has not dealt with any broker, agent, or finder for the Property. Purchaser understands and Seller represents and warrants that Seller is represented in this transaction by Graham Taylor and Charles Safley, Brokers with CBRE Portland, 1300 SW Fifth Avenue, Suite 3000, Portland, OR 97201 (the "**Selling Broker**"), and that Seller will instruct the Escrow Agent to deduct Selling Broker's fee from the Purchase Price at Closing and disburse the same to the Selling Broker in accordance with a separate fee agreement. Each party agrees to indemnify, defend and hold harmless the other party from all damages, judgments, liabilities, and expenses (including reasonable attorneys' fees) arising from any claims or demands of any other broker, agent, or finder with whom the indemnifying party has dealt for any commission or fee alleged to be due in connection with its participation in the sale of the Property.
10. **Assignment.** Seller's decision to sell the Property to Purchaser is based on Purchaser's capability and reputation in the Portland area as a commercial property owner/developer and on Purchaser's stated intentions for redevelopment and use of the Property. Prior to Closing, Purchaser shall only have the right, after giving written notice to Seller, to assign its interest in this Agreement to an affiliate or single asset entity in which Martin Kehoe has direct or indirect managerial control.
11. **Confidentiality and Non-Disclosure.** Seller and Purchaser agree that they shall not disclose the existence, substance, terms or provisions of their continuing discussions concerning the Property, including, but not limited to, the contents of this Agreement (collectively, the "**Negotiations**"), to any other person or entity without the other party's prior, written consent, except (a) as may be required by law or (b) to those persons or entities acting in a fiduciary capacity (e.g., legal representatives, financial institutions, authorized agents, and management employees), who shall be entitled to the knowledge of the Negotiations for the mutual benefit of Seller and Purchaser. Any such fiduciary who is informed of or otherwise gains knowledge of the Negotiations shall be obligated to comply with its principal's (Seller's or Purchaser's, as the case may be) duty of confidentiality under this confidentiality provision of the Agreement. Each party shall inform its fiduciaries of their obligation to maintain the Negotiations in strict confidence.

Notwithstanding the confidentiality provisions of this Agreement, Seller and Purchaser may issue a joint press release in a form mutually agreed by the parties, following execution

of this Agreement. Each party agrees to minimize discussion of this Agreement with the media, beyond the contents of the joint press release, and to afford the other party the opportunity to review and approve any other publicity relating to the Agreement.

12. **County Board Approval.** This Agreement, although accepted and executed by an authorized County representative, is not binding on the County until and unless the Board of County Commissioners approves this Agreement and the sale of the Property, upon such terms and conditions as the Board may impose.
13. **Time Is of the Essence.** Seller and Purchaser hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision of this Agreement.
14. **Failure to Close and Termination.** If the transaction does not close, through no fault of Seller, before the close of business on the Closing Date, Seller shall retain both Earnest Money Deposits as liquidated damages, neither party shall have any additional claim against the other, and this Agreement shall be terminated and shall have no further force or effect.
15. **Notices.** All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted shall be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party, by written notice, may designate a different address for purposes of this Agreement. If Purchaser and Seller both agree, notices and communications in connection with this Agreement may be delivered via email or facsimile transmission or by commercial courier.
16. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by written agreement executed by both parties.
17. **Applicable Law and Venue.** This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon. The venue for any proceeding arising under this Agreement shall be in the federal or state courts in Multnomah County, Oregon.
18. **Captions.** The titles to the sections of this Agreement are descriptive only and are not intended to change or influence the meaning of any section or to be part of this Agreement.
19. **Nonwaiver.** Failure by either party to enforce promptly any provision under this Agreement shall not constitute a waiver of the same and such provision may be asserted at any time after said party becomes entitled to the benefit thereof notwithstanding delay in enforcement.

20. **Acceptance.** This Agreement shall be null and void unless executed by the Parties on or before November 30, 2017.

21. **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 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.

SELLER:

MULTNOMAH COUNTY,
an Oregon political subdivision

By: _____
Deborah Kafoury, Chair

PURCHASER:

KEHOE NORTHWEST PROPERTIES,
LLC, an Oregon limited liability company

By: _____
Martin Kehoe, Manager

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____
Kenneth M. Elliott, Asst. County Attorney

Exhibit "A"

Legal Description of the Property

Lot 8, BYBEE LAKE INDUSTRIAL PARK, in the City of Portland, County of Multnomah and State of Oregon.