

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 2018-072

Approving Sale of the Central Office Building, 421 SE 10th Avenue, Portland, Oregon to SamNick Holdings, LLC.

The Multnomah County Board of Commissioners Finds:

- a. The Central Office Building, 421 SE 10th Avenue, Portland, Oregon ("Property") has been used by the Department of Community Justice ("DCJ") as a probation facility. DCJ has determined that the Property is no longer needed for its operations. In addition, the Director of the Multnomah County Facilities and Property Management Division ("Director") has determined that there is no other current or anticipated County use for the Property. Accordingly, through Resolution 2018-022 (March 8, 2018), the Board declared the Property surplus and directed County staff ("Staff") to prepare and market the Property for disposition and solicit public comment through a 30 day public comment period.
- b. Staff has complied with the Board's directives and, in consultation with its marketing consultant on this matter, CBRE, has recommended sale of the Property to SamNick Holdings, LLC, on the terms and conditions set forth in the Purchase and Sale Agreement ("Agreement") attached hereto as Exhibit 1.
- c. It is in the best interests of the County to act on Staff's recommendation.

The Multnomah County Board of Commissioners Resolves:

1. It is in the best interests of the County to sell the Property to SamNick Holdings, LLC, on the terms and conditions set forth in the Agreement attached hereto as Exhibit 1.
2. The Chair is authorized to execute all documents necessary to complete the sale of the Property substantially consistent with the Agreement and to direct Staff to satisfy all conditions of the Agreement needed to ensure a timely closing of the sale.

ADOPTED this 21st day of June, 2018



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

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

By *Jed Tomkins*
Jed Tomkins, Senior Assistant County Attorney

SUBMITTED BY: Sherry Swackhamer, Director, Department of County Assets

RESOLUTION NO.____, EXHIBIT 1

PURCHASE AND SALE AGREEMENT

Central Office Building

Date (for reference purposes only): June 15, 2018

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between MULTNOMAH COUNTY, an Oregon political subdivision ("Seller"), and SamNick Holdings, LLC, an Oregon limited liability company ("Buyer"), (each a "Party" and collectively the "Parties") who, intending to be legally bound, DO HEREBY AGREE AS FOLLOWS:

1. Purchase and Sale.

1.1. Generally. In accordance with this Agreement, Buyer agrees to purchase and acquire from Seller, and Seller agrees to sell and convey to Buyer the real property, together with all improvements, fixtures, easements, and all other appurtenances thereto, and, if applicable, the Personal Property as set forth in Section 8 of this Agreement, commonly referred to as the Central Office Building located at 421 SE 10th Ave., Portland, Oregon, and legally described in Exhibit A ("Property").

1.2. Purchase Price. The purchase price for the Property shall be One Million Eight Hundred Fifty Thousand and no/100s Dollars (\$1,850,000.00) ("Purchase Price").

1.3. Escrow. The purchase and sale of the Property shall be accomplished through an escrow opened jointly by the Parties within two (2) business days after full execution of this Agreement at Chicago Title Company of Oregon, National Commercial Services, 1211 SW Fifth Avenue, Suite 2130, Portland, Oregon 97204 (ATTN.: Patricia Parsons) ("Escrow Agent") (collectively, "Escrow"). Seller shall deliver into Escrow a fully executed copy of this Agreement at the time of opening of Escrow. Buyer and Seller hereby authorize their respective advisors to execute and deliver into Escrow any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement and to close this transaction. In the event of any conflict between such additional or supplemental instructions and the terms of this Agreement, the terms of this Agreement shall control.

1.4. Payment of Purchase Price.

1.4.1. Earnest Money Deposit. Within two (2) business days after opening of Escrow, Buyer shall deposit into Escrow Two Hundred Fifty Thousand and no/100s Dollars (\$250,000.00) in the form of cash, wire transfer of funds, certified check, or cashier's check as earnest money towards the purchase of the Property ("Earnest Money"). Escrow Agent shall deposit the Earnest Money in an interest-bearing account and any interest earned on the Earnest Money shall be part of the Earnest Money. The Earnest Money shall become nonrefundable upon waiver or satisfaction of all Conditions Precedent pursuant to Section 2 of this Agreement. The Earnest Money shall be credited to the Purchase Price at Closing.

1.4.2. Balance of Purchase Price. On or before the Closing Date, Buyer shall deposit into Escrow the balance of the Purchase Price in the form of cash, wire transfer of funds, certified check, or cashier's check.

1.5. Section 1031 Like-Kind Exchange. Each Party acknowledges that either Party (as applicable, the "Exchanging Party") may elect to engage in and affect a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, involving the Property (or any legal lot thereof) (a "1031 Exchange"). The non-exchanging party with respect to a 1031 Exchange is referred to herein as the "Cooperating Party."

Buyer and Seller each hereby agrees to reasonably cooperate with the other in completing each such 1031 Exchange; provided, however, that such cooperation shall be at the Exchanging Party's sole expense and shall not delay the Closing for the Property. Accordingly, the Exchanging Party may assign the Exchanging Party's rights with respect to the Property (or any legal lot thereof) to a person or entity for the purpose of consummating a 1031 Exchange ("Intermediary"), provided that such assignment does not delay the Closing for the Property (or applicable legal lot thereof), or otherwise reduce or diminish the Exchanging Party's liabilities or obligations hereunder. Such assignment by the Exchanging Party shall not release the Exchanging Party from the obligations of the Exchanging Party under this Agreement. The Cooperating Party shall not suffer any costs, expenses or liabilities for cooperating with the Exchanging Party and shall not be required to take title to the exchange property. The Exchanging Party agrees to indemnify, defend and hold the Cooperating Party harmless from any liability, damages and costs arising out of the 1031 Exchange.

1.6. Acceptance. This Agreement shall be null and void unless executed by the Parties on or before June 22, 2018.

2. Conditions Precedent to Purchase.

2.1. Buyer's obligation to purchase the Property is conditioned on the following (the "Condition Precedent"):

2.1.1. Within forty-three (43) days after the Effective Date, Buyer's approval of the results of Buyer's Due Diligence pursuant to Section 3 of this Agreement.

2.2. Buyer's Notice of Waiver or Satisfaction. If Buyer has not given written notice to Seller of waiver or satisfaction of the Condition Precedent within the time periods allowed in Section 2.1 of this Agreement, this Agreement shall be deemed automatically terminated. Neither Seller nor Buyer shall act or fail to act for the purpose of permitting or causing the Condition Precedent to fail or otherwise not be satisfied, except to the extent that Buyer, in the exercise of its discretion subject to its obligation of good faith, exercises its right to disapprove any such Condition Precedent or any item or matter of concern therein.

2.3. Failure of Conditions Precedent. In the event any Condition Precedent is not timely waived or satisfied, for a reason other than the default of Buyer or Seller under this Agreement, Escrow Agent is hereby instructed to promptly take the following actions, with each of the following instructions and actions surviving any termination of this Agreement prior to Closing:

2.3.1. Refund the Earnest Money to Buyer;

2.3.2. Return to Seller and Buyer all documents and all other funds delivered or deposited into Escrow by each Party, respectively, that are held by Escrow Agent as of the date of termination of this Agreement; and

2.3.3. Collect from Buyer, or deduct from any funds held in Escrow and refundable to Buyer, any and all Escrow cancellation charges. Buyer shall indemnify, defend, and hold harmless Seller from all liens, damages, judgments, liabilities, costs, and expenses (including reasonable attorneys' fees and experts' fees) arising from or relating to any claims or demands of Escrow Agent in connection with or arising out of the collection of any such cancellation charges. This agreement to indemnify, hold harmless, and defend Seller shall survive any termination of this Agreement.

3. Due Diligence. Buyer shall have the right to conduct, in Buyer's sole discretion and at Buyer's sole cost and expense, any and all due diligence reasonably related to Buyer's intended use of the Property or otherwise reasonably related to the purchase of the Property during the time period set forth in Section 2.1.1 ("Due

Diligence"). of this Agreement. Due Diligence may include review of: zoning, land use approvals, architectural and engineering plans, drawings, specifications, permits, surveys, leases, operating expenses, vendor contracts, preliminary title report, environmental review, engineering studies, and any other inspections, tests, surveys or other reviews reasonably within the scope of Due Diligence.

3.1. Property Inspection. During Due Diligence, Buyer may, at its sole cost and expense and risk, enter the Property for the purpose of conducting any and all inspections reasonably related to Buyer's intended use of the Property or otherwise reasonably related to the purchase of the Property. In each instance of entry, prior to entering the Property, Buyer shall provide Seller with reasonable advance notice of the instance of entry and shall obtain Seller's approval of the intended date and time of such entry. Prior to the close of each instance of entry under this paragraph, Buyer shall restore the Property to substantially the condition the Property was in prior to such entry. Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, agents and employees from and against any and all liens, claims, actions, damages, judgments, liabilities, costs, and expenses (including reasonable attorneys' fees and experts' fees) caused by, arising out of, relating to, or in connection with Buyer's entry on and inspection of the Property. In addition to the indemnities provided above, Buyer agrees to indemnify, defend and hold harmless Seller, its officers, directors, agents and employees from and against any and all liens, claims, actions, damages, judgments, liabilities, costs, and expenses (including reasonable attorneys' fees and experts' fees) caused by, arising out of, relating to, or in connection with Buyer's handling, storage, discharge, transportation or disposal of any "hazardous substance" or "hazardous material" as defined at ORS 466.605 (7) (2011). For purposes of this paragraph, damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency. The agreements in this paragraph to indemnify, defend, and hold harmless Seller, as well as Buyer's obligation in this paragraph to restore the Property, shall survive Closing or any termination of this Agreement.

3.1.1. Access. The Property shall remain in Seller's possession and control throughout the Due Diligence period and until such time as Seller delivers possession to Buyer under this Agreement. Buyer shall contact Seller in advance to coordinate the scheduling and access of inspections of the Property under this Section 3.1. On or before July 1, 2018, Seller shall ensure that neither its operations or use of the Property nor the presence of any of Seller's personal property at, on, or about the Property impedes any form of Buyer's inspection authorized in this Section 3.1. Further, on or before midnight on July 31, 2018, Seller shall have completely vacated the Property, leaving it in broom clean condition.

3.2. Document Review. To facilitate Due Diligence, within five (5) business days after the Effective Date, to the extent Seller has not already delivered the same to Buyer, Seller shall deliver to Buyer true and complete copies of all studies, reports, surveys, inspections, analyses and other documentation in Seller's possession relating to the ownership, use, operation, condition, development, and entitlements of the Property; as well as a list of any Personal Property proposed by Seller for acquisition by Buyer.

3.3. Title Review. To Facilitate Due Diligence, within two (2) days after the opening of Escrow, Seller shall order a preliminary title report, with a copy thereof to be furnished to Buyer, 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 ("Title Report"). Buyer will have ten (10) business days after receipt of the Title Report within which to notify Seller in writing of disapproval of any of the exceptions shown in the Title Report. The following shall be deemed permitted exceptions ("Permitted Exceptions"): Zoning ordinances; building restrictions; existing deed restrictions; taxes, fees or assessments due and payable for the current tax year; reservations in federal patents and state deeds; any exceptions specifically identified in the Title Report of which Buyer does not disapprove in writing; and any exceptions specifically identified in the Title Report of which Buyer does object in writing, but Seller is unable or unwilling to cure and eliminate, and Buyer nevertheless elects to proceed with the purchase and sale of

the Property subject to such disapproved exceptions. Without the need for objection by Buyer, Seller shall, with respect to liens and encumbrances that can be satisfied and released by the payment of money, eliminate such exceptions to title on or before Closing. Seller will have ten (10) business days after receipt of Buyer's disapproval of any of the exceptions to title within which to notify Buyer in writing of Seller's response. If Seller responds that it is unwilling or unable to cure and eliminate any disapproved exception or matter, Buyer may elect to terminate this Agreement by delivering written notice to Seller within ten (10) business days after receipt of Seller's response. If Buyer fails to give Seller notice of Buyer's election to terminate this Agreement as set forth herein, then such inaction shall be deemed to be Buyer's election to purchase the Property subject to the disapproved exceptions which Seller is not willing or able to cure and eliminate. If Buyer terminates this Agreement pursuant to this paragraph, the Parties shall have no further obligations to or claims against each other under this Agreement, except for those rights, obligations, instructions, actions and claims that survive the termination of this Agreement prior to Closing.

4. Default; Remedies. Notwithstanding anything to the contrary contained in this Agreement, in the event Buyer fails to deposit the Earnest Money in Escrow strictly as and when contemplated under Section 1.4.1 of this Agreement, Seller shall have the right at any time thereafter, but prior to Buyer's deposit of the Earnest Money to Escrow, to terminate this Agreement and all further rights and obligations of the Parties hereunder, except for those rights, obligations, instructions, actions and claims that survive the termination of this Agreement prior to Closing, by giving written notice thereof to Buyer. If the conditions, if any, to Buyer's obligation to consummate this transaction are satisfied or waived by Buyer and Buyer fails, through no fault of Seller, to Close on the purchase of the Property, Seller's sole remedy shall be to retain the Earnest Money paid by Buyer. In the event Seller fails, through no fault of Buyer, to Close the sale of the Property, Buyer shall be entitled to pursue any remedies available at law or in equity, including without limitation, the return of the Earnest Money paid by Buyer or the remedy of specific performance. In no event shall either Party be entitled to punitive or consequential damages, if any, resulting from the other Party's failure to Close the sale of the Property.
5. Closing.
 - 5.1. Process. The purchase and sale of the Property shall be consummated in Escrow ("Closing") within ten (10) business days after Buyer has given written notice to Seller of waiver or satisfaction of the Condition Precedent pursuant to Section 2.2 of this Agreement ("Closing Date"). The purchase and sale of the Property shall be deemed closed when the document(s) conveying title to the Property is/are delivered and recorded and the Purchase Price is disbursed to Seller ("Closed").
 - 5.2. Closing Obligations. At Closing:
 - 5.2.1. Buyer and Seller shall deposit with the Escrow Holder all documents and funds required to Close the transaction in accordance with the terms of this Agreement.
 - 5.2.2. Seller shall deliver a certification in a form provided by the Escrow Holder confirming whether Seller is or is not a "foreign person" as such term is defined by applicable law and regulations.
 - 5.2.3. Seller shall convey fee simple title to the Property to Buyer by Statutory Bargain and Sale Deed, conveying the Property to Buyer, free and clear of all liens and encumbrances except the Permitted Exceptions.
 - 5.2.4. Seller shall cause the Title Company to deliver to Buyer a standard ALTA form owner's policy of title insurance ("Title Policy") in the amount of the Purchase Price insuring fee simple title to the Property to in Buyer subject only to the Permitted Exceptions and the standard preprinted exceptions contained in the Title Policy. Seller shall reasonably cooperate in the issuance to Buyer of an ALTA extended form

policy of title insurance. Buyer shall pay any additional expense resulting from the ALTA extended coverage and any endorsements required by Buyer.

- 5.3. Closing Costs; Prorations. Seller shall pay the premium for the Title Policy, provided, however, if Buyer elects to obtain an ALTA extended form policy of title insurance and/or any endorsements, Buyer shall pay the difference in the premium relating to such election. Seller and Buyer shall each pay one-half (1/2) of the Escrow fees charged by the Escrow Holder. Any excise tax and/or transfer tax shall be paid in accordance with the local custom determined by the Title Company and applicable law. Real property taxes for the tax year of the Closing, assessments (if a Permitted Exception), personal property taxes, interest on assumed obligations, and utilities shall be prorated as of the Closing Date. Buyer shall be responsible for payment of all taxes, interest, and penalties, if any, upon removal of the Property from any special assessment or program.
- 5.4. Possession. Seller shall deliver exclusive possession of the Property to Buyer on the later of the Closing Date or August 1, 2018.
6. Seller's Representations. Seller represents and warrants to Buyer as follows ("Seller's Representations"):
 - 6.1. Seller knows of no written notice of any liens or assessments to be levied against the Property.
 - 6.2. Seller knows of no written 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.
 - 6.3. 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.
 - 6.4. Seller conveys the Property in the condition, known or unknown, existing at the time of Closing, "AS IS," "WHERE IS," AND "WITH ALL FAULTS." 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.
 - 6.5. Seller has full and complete authority to enter into this Agreement and convey the Property in accordance with the terms hereof.
 - 6.6. 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.
 - 6.7. 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.
 - 6.8. Seller shall maintain the Property prior to Closing consistent with Seller's current operating practices, 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 and any service contracts or other agreements affecting the Property to terminate and vacate prior to Closing.
 - 6.9. 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 Earnest Money and, upon such termination, the Parties shall have no further obligations to or claims against each other

under this Agreement, except for those rights, obligations, instructions, actions and claims that survive the termination of this Agreement prior to Closing.

- 6.10. Seller's Representations are materially true and correct as of the Effective Date and shall be continue to be materially true and correct thereafter and through the Closing Date, except as necessarily revised by any further disclosure or notification Seller is obligated to make under this Agreement after the Effective Date and on or prior to Closing.
7. AS-IS Purchase and Sale. Except for Seller's Representations, Buyer shall rely on the results of its own inspection, investigation, and other Due Diligence in Buyer's purchase and acquisition of the Property, and not on any statements or representations from the Seller or any person acting on behalf of the Seller, except for Seller's Representations, and, accordingly, Buyer shall acquire the Property in the condition existing at the time of Closing, "AS IS," "WHERE IS," AND "WITH ALL FAULTS."
8. Personal Property. As part of the purchase and sale of the Property, Seller shall convey the personal property, if any, set forth in a list of such property delivered to Buyer as part of Seller's documents under Section 3.2 of this Agreement ("Personal Property") and accepted for acquisition under this Agreement by Buyer prior to the close of the time period allowed for Due Diligence. Seller represents that Seller is the owner of the Personal Property and is free and clear to convey such property to Buyer. Seller shall convey the Personal Property, if any, to Buyer by executing and delivering to Buyer at Closing through Escrow a Bill of Sale substantially in the form of Exhibit B attached hereto ("Bill of Sale"). A list of such Personal Property accepted for acquisition by Buyer shall be attached to the Bill of Sale.
9. Risk of Loss. Unless caused by Buyer, Seller shall bear all risk of loss and damage to the Property until Closing, and Buyer shall bear such risk at and after Closing.
10. Buyer's Representations. Buyer represents and warrants to Seller as follows ("Buyer's Representations"):
 - 10.1. Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.
 - 10.2. The person(s) executing this Agreement and the instruments referred to herein on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms and conditions of this Agreement.
 - 10.3. This Agreement and all documents required by it to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms.
 - 10.4. This Agreement does not breach or violate any term or provision of any other agreement or contract to which Buyer is a party.
 - 10.5. The Federal Government, Executive Order 13224, requires that business persons of the United States not do business with any individual or entity on a list of "Specially Designated nationals and Blocked Persons" - that is, individuals and entities identified as terrorists or other types of criminals. Buyer hereinafter certifies that:
 - 10.5.1. It is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, specially designated national and/or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

- 10.5.2. It has not executed this Agreement, directly or indirectly on behalf of, or instigating or facilitating this Agreement, directly or indirectly on behalf of, any such person, group, entity, or nation.
- 10.5.3. Buyer hereby agrees to defend, indemnify, and hold harmless Seller from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the certification set forth in this Section 10.5. This certification by Buyer and agreement to indemnify, hold harmless, and defend Seller shall survive Closing or any termination of this Agreement
- 10.6. Buyer's Representations are materially true and correct as of the Effective Date and shall be continue to be materially true and correct thereafter and through the Closing Date, except as necessarily revised by any material change therein, which Buyer hereby agrees to promptly communicate to Seller, after the Effective Date and on or prior to Closing.
11. Assignment. Assignment of this Agreement is permitted only upon Seller's written consent. Buyer acknowledges that the question of consent to assignment may be presented to Seller's Board.
12. Successors. This Agreement shall be binding on the heirs, successors, assigns and personal representatives of the Parties hereto.
13. Broker Fees.
- 13.1. Commission Agreement. Buyer represents and warrants to Seller that Buyer has not dealt with any broker, agent, or finder for the Property. Buyer 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.
- 13.2. Indemnity. Each Party agrees to indemnify, defend and hold harmless the other Party and its officers, directors, agents and employees from and against any and all liens, claims, actions, damages, judgments, liabilities, costs, and expenses (including reasonable attorneys' fees and experts' fees) caused by, arising out of, relating to, or in connection with any claims or demands of any broker, agent, or finder, other than those identified in this Section 13, with whom the indemnifying Party has dealt for any commission or fee alleged to be due in connection with its participation in the purchase or sale of the Property.
14. Litigation; Waiver of Jury Trial; Costs and Expenses.
- 14.1. Each and every claim, demand, action or other form of proceeding of any kind (including but not limited to any appeal, petition for review, or bankruptcy proceeding) instituted in connection with any controversy arising out of this Agreement ("Claim") shall be brought and conducted SOLELY AND EXCLUSIVELY BY BENCH TRIAL within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively by bench trial within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

14.2. BY EXECUTION OF THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER AND BUYER EACH:

14.2.1. CONSENT TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 14; AND

14.2.2. WAIVE RIGHT TO TRIAL BY JURY.

14.3. Except as otherwise stated in this Agreement, with respect to any Claim, each Party shall bear its own costs and expenses, including but not limited to attorney and expert fees.

15. Confidentiality and Non-Disclosure. Seller and Buyer 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 Buyer'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.
16. Seller's Board Approval. This Agreement, although accepted and executed by an authorized Seller representative, is not binding on the Seller until and unless the Multnomah County Board of Commissioners approves this Agreement, upon such terms and conditions as the Board may impose.
17. 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 set forth in this Section. Any notice so transmitted shall be deemed effective on the day following the date such notice 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 Buyer and Seller both agree, notices and communications in connection with this Agreement may be given via email or facsimile transmission or by commercial courier, in which case such notice shall be deemed effective on the day following the date of sending such email or facsimile transmission or of deposit with the commercial carrier, or by personal delivery in which case such notice shall be deemed effective at the date and time of receipt by the non-delivering Party.
- 17.1. Seller's Address. Multnomah County, Facilities & Property Management, ATTN: Scott Churchill, 501 N. Dixon St., Portland, OR 97227.
- 17.2. Buyer's Address. SamNick Holdings, LLC, PO Box 2507 Wilsonville, Or. 97070.
18. 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.
19. Governing Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon, without reference to the choice-of-law provisions of Oregon law. Regarding matters of law concerning the internal corporate affairs of any corporate entity which is a Party to or the subject of this Agreement, and as to those matters, the law of the jurisdiction under which such entity derives its powers shall govern.

20. Captions. The titles to the Sections and Subsections of this Agreement are descriptive only and are not intended to change or influence the meaning of any Section or Subsection or to be part of this Agreement.
21. 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.
22. Timing. "Days" shall mean calendar days unless expressly stated as business days, which shall mean any day Monday – Friday. If the deadline under this Agreement for delivery of a notice or performance of any obligation is a Saturday, Sunday, or federal or Oregon State legal holiday, such deadline will be deemed extended to the next following business day.
23. Time of Essence. Time is strictly of the essence of each and every provision of this Agreement.
24. Cautionary Notice About Liens. UNDER CERTAIN CIRCUMSTANCES, A PERSON WHO PERFORMS CONSTRUCTION-RELATED ACTIVITIES MAY CLAIM A LIEN UPON REAL PROPERTY AFTER A SALE TO THE PURCHASER FOR A TRANSACTION OR ACTIVITY THAT OCCURRED BEFORE THE SALE. A VALID CLAIM MAY BE ASSERTED AGAINST THE PROPERTY THAT YOU ARE PURCHASING EVEN IF THE CIRCUMSTANCES THAT GIVE RISE TO THAT CLAIM HAPPENED BEFORE YOUR PURCHASE OF THE PROPERTY. THIS INCLUDES, BUT IS NOT LIMITED TO, CIRCUMSTANCES WHERE THE OWNER OF THE PROPERTY CONTRACTED WITH A PERSON OR BUSINESS TO PROVIDE LABOR, MATERIAL, EQUIPMENT OR SERVICES TO THE PROPERTY AND HAS NOT PAID THE PERSONS OR BUSINESS IN FULL.
25. 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.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the last date of signature indicated below.

SELLER:

BUYER:

MULTNOMAH COUNTY,
an Oregon political subdivision

_____, a(n) _____

By: _____
Deborah Kafoury, Chair

By: _____
[Printed Name / Title]

Date: _____

Date: _____

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

By: _____
Jed Tomkins, Asst. County Attorney

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
BILL OF SALE

___ a ___ ("Seller"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby bargain, transfer, convey and deliver to ___, a ___ ("Buyer"), its successors and/or assigns:

All of the personal property owned by Seller (collectively, "Personal Property") located in or on the real property located at ___ in the City of ___, County of ___, State of ___, which Personal Property is more particularly described on Schedule 1 attached hereto and incorporated herein by reference.

Seller hereby covenants with Buyer that said Personal Property is free and clear of and from all encumbrances, security interests, liens, mortgages and claims whatsoever and that Seller is the owner of and has the right to sell same. Seller, on behalf of itself and its successors, does hereby warrant and agree to defend the title in and to said Personal Property unto Buyer, its successors or assigns against the lawful claims and demands of all persons claiming by or through Seller.

IT IS UNDERSTOOD AND AGREED THAT BUYER HAS EXAMINED THE PERSONAL PROPERTY HEREIN SOLD AND THAT THIS SALE IS MADE "AS IS, WHERE IS" AND SELLER DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OTHER THAN THE WARRANTY OF TITLE SET FORTH ABOVE, AS TO THE PERSONAL PROPERTY INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Buyer and Seller agree that this Bill of Sale shall be effective upon the delivery thereof by Seller to Buyer.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be executed this _____ day of _____,

SELLER:

BUYER:
