

**AGREEMENT FOR PURCHASE AND SALE
OF
REAL PROPERTY**

BY AND BETWEEN

**K2D DEVELOPMENT, LLC,
AN OREGON LIMITED LIABILITY COMPANY**

AS SELLER

AND

**THE STATE OF OREGON,
ACTING BY AND THROUGH THE OREGON DEPARTMENT OF FISH AND WILDLIFE,
AS BUYER**

DECEMBER __, 2011

PROPERTY:

**THE WESTERN TOOL BUILDING
LOCATED AT
4026/4030 FAIRVIEW INDUSTRIAL DRIVE
SALEM, OREGON**

**AGREEMENT FOR PURCHASE AND SALE
OF
REAL PROPERTY**

DATED: December __, 2011

BETWEEN: K2D DEVELOPMENT, LLC,
an Oregon limited liability company, ("Seller")

AND: STATE OF OREGON, acting by and through
its Oregon Department of Fish and Wildlife ("Buyer")

RECITALS

Seller owns that certain real property legally described on attached **Exhibit A** and the improvements constructed or to be constructed thereon prior to Closing (collectively, the "Improvements"), including the building commonly known as the "Western Tool Building" and the Building Improvements (as defined in **Section 5.3**) (collectively, the "Real Property"). Seller owns the movable equipment and supplies located at the Real Property and used in the operation of the Real Property (the "Personal Property") described on attached **Exhibit B**. Seller also owns or will own all intangible personal property held or used or to be held or used in connection with the ownership and operation of the Real Property, including, without limitation, all warranties (including any issued in connection with the Building Improvements), a license to use the Plans (as defined in **Section 5.3**), and all assignable permits, licenses, approvals, certificates and authorizations issued by any governmental authority in connection with the Real Property (the "Intangible Property"). The Real Property, the Personal Property and the Intangible Property are collectively the "Property." Seller desires to sell and Buyer desires to buy the Property on the terms and conditions set forth in this Agreement for Purchase and Sale of Real Property (this "Agreement").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby 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, on all of the terms, covenants and conditions set forth in this Agreement.

SECTION 2 PURCHASE PRICE

The total purchase price for the Property (the “Purchase Price”) shall be the sum of Four Million Six Hundred Thousand Dollars (\$4,600,000.00) plus the total amount of the cost of the Building Improvements, as that cost is determined pursuant to **Section 5.3.4**, plus interest, which, subject to all prorations and adjustments provided in this Agreement, shall be paid in cash by Buyer to Seller through escrow on the Closing Date (as defined in **Section 7.3** below). As used in this Section 2, “Interest” means a commercially reasonable interest rate on the amount of the Property indebtedness refinanced as part of the construction financing obtained by Seller to complete construction of the Improvements (defined below), which amount shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the “Construction Loan”), plus the rate of three percent (3%) per annum on the difference between Four Million Six Hundred Thousand Dollars (\$4,600,000.00) and the amount of the Construction Loan. Interest shall accrue from the date of Buyer’s Notice of Election to Close until the Closing Date.

SECTION 3 PRE-CONDITIONS TO SALE AND PURCHASE

Buyer shall not be obligated to purchase the Property unless the pre-conditions to Buyer’s obligation to purchase set forth in **Section 4** and the pre-conditions to Buyer’s obligation to

purchase set forth in **Section 5**, including the completion of the Building Improvements defined in **Section 5**, have been satisfied or waived by Buyer, pursuant to the terms of **Sections 4** and **5**. Seller's obligation to sell the Property is contingent on the Property and Seller qualifying for a construction loan upon terms satisfactory to Seller by a date no later than the end of the Contingency Period (as defined below).

SECTION 4 PHASE 1 PRE-CONDITIONS

4.1 **In General.** Buyer shall not be obligated to purchase the Property unless Buyer, in its sole discretion, has determined that the pre-conditions set forth in this **Section 4** have been satisfied or waived within the time periods set forth below.

4.2 **Title Review.** Seller shall, within five (5) business days after the date of this Agreement as set forth above (the "Contract Date"), deliver to Buyer a commitment for ALTA extended coverage owner's title insurance with respect to the Real Property (the "Title Report") to be issued to Buyer by the Title Company (as defined in **Section 7.3** below), including, without limitation, copies of all documents that establish exceptions to title and a correct legal description of the Real Property. In the event Buyer objects to any matter contained or referred to in the Title Report or any ALTA survey commissioned by Buyer, Buyer shall deliver written notice of such objection to Seller no later than thirty (30) days after the Contract Date. Seller shall then have five (5) business days after receipt of Buyer's objections within which to notify Buyer in writing as to which of matters objected to by Buyer Seller will or will not cure. Failure of Seller to notify Buyer within such period of its election shall be deemed Seller's election not to cure all of such matters. If Seller elects or is deemed to have elected not to cure any or all of such matters, Buyer shall have the right in its sole and absolute discretion to elect either (i) to terminate this Agreement, or (ii) to waive such matters. If Seller elects to cure any of such matters, such election shall be a covenant of Seller, but Seller shall have until the Closing Date to

effect such cure. Those exceptions not objected to or subsequently waived by Buyer shall be the “Permitted Exceptions.” Buyer shall not be obligated to purchase the Property unless Buyer and Seller have agreed upon the Permitted Exceptions.

4.3 Seller’s Documents Review. Seller shall, within ten (10) business days after the Contract Date, provide Buyer with complete and accurate copies of all of the following which apply to the Property and which are in Seller’s possession or control: all contracts (including all Contract Obligations, as defined below); leases; permits; licenses; easements; covenants; utility agreements; plans, studies and reports (including, but not limited to, environmental, mechanical, structural, soils, traffic and engineering); property surveys; certificates of occupancy; elevator certificates; warranties (including warranties applicable to construction, equipment and fixtures); all utility bills, tax bills, and bills for any assessments or other governmental charges covering the most recent twenty-four (24) months; and all other current and historical information about the Property as Buyer shall request (the “Seller’s Documents”). “Contract Obligations” shall mean those service contracts, utility contracts, construction contracts, maintenance agreements and all other contracts and obligations which relate to the ownership, operation, management, maintenance, use or occupancy of the Property which will or may continue in effect on or after the Closing Date, all of which are listed on attached **Exhibit D**. Buyer shall not be obligated to purchase the Property unless Buyer has given written notice to Seller stating that it is satisfied with its review of the documents pursuant to this **Section 4.3**.

4.4 Buyer Inspection and Assessment of the Property.

4.4.1 During the period commencing on the Contract Date and terminating at 5:00 p.m. Pacific Time on the date which is ninety (90) days after the Contract Date (the “Contingency Period”), Buyer shall have the right to conduct, at its sole cost and expense, such investigations, studies, surveys, appraisals, analyses and tests on and of the Property and its physical, environmental, economic and legal condition as Buyer shall, in its sole and absolute

discretion, determine are necessary or desirable, including, without limitation, structural tests, soil tests, environmental audits and studies, and other engineering tests, and to make such evaluations as Buyer may, in its sole and absolute discretion, determine are necessary or desirable under the circumstances, all subject to **Section 4.4.3** below.

4.4.2 In order to perform the foregoing investigations, Buyer, its agents, contractors and employees, shall have reasonable access to the Property (subject to the rights of existing tenants), all for the purposes of inspecting the same and conducting tests, inspections, and analyses thereon and making evaluations thereof, all at Buyer's expense.

4.4.3 Buyer shall have the right to enter onto and inspect and test the Property, with the prior reasonable approval of Seller as to time and place, and to inspect all documents relating thereto, provided that: (i) Buyer shall only have the right to conduct soils and groundwater tests and borings regarding the environmental condition of the Property or invasive testing of the Improvements with Seller's prior written consent, which shall not be unreasonably withheld or delayed; and (ii) Buyer shall defend, indemnify, protect and hold Seller, the Property, and Seller's affiliates, subsidiaries, officers, directors and agents harmless from and against any loss, cost, damage, or expense (including without limitation, reasonable attorneys' fees) incurred by Seller as a result of property damage, personal injury, or mechanics' liens, to the extent relating to or arising out of Buyer's inspection of the Property, except to the extent arising out of or relating to Seller's negligence. Notwithstanding the foregoing, Buyer shall have no liability for the discovery of any matters in, on, at, or relating to the Property.

4.4.4 All due diligence investigations, if any, and the results, reports, and other work product relating thereto (the "Buyer's Due Diligence Materials"), shall be Buyer's property and solely for the benefit of Buyer. Buyer shall not be obligated to purchase the Property unless Buyer has given Seller written notice that it is satisfied with the physical and environmental condition of the Property, pursuant to **Section 4.6**.

4.5 Zone Change, Other Governmental Approvals and Financing. During the Contingency Period, Buyer shall also determine the following, which determination shall be made in Buyer's sole and absolute discretion: (i) whether applicable zoning for the Real Property allows for public administration use; (ii) whether all necessary government approvals, including by the Buyer's Commission, for the acquisition of the Property will be obtainable; (iii) whether the Oregon State Legislature has appropriated sufficient funds or sufficient public bonds have or will be sold or both to make the acquisition of the Property financial feasible for Buyer; (iv) whether the acquisition of the Property qualifies for a sole source exemption from the public procurement processes described in Oregon Revised Statutes Sections 279A-279C; and (v) approval of DAS Director after review of recommendations of the Capital Project Advisory Board and Capitol Planning Commission.

4.6 Conditions Precedent. Buyer's obligation to purchase the Property or otherwise to perform any obligation provided in this Agreement shall be conditioned expressly upon the fulfillment to Buyer's satisfaction (as determined by Buyer in its sole and absolute discretion) of each of the following conditions precedent within the time periods specified:

4.6.1 Buyer's review and approval of title as described in **Section 4.2** above. Additionally, Seller shall on or prior to the Closing Date, remove all monetary liens not caused by Buyer and pay off and remove any assessments on the Property.

4.6.2 During the Contingency Period, Buyer determining, to Buyer's satisfaction, that Buyer can obtain an ALTA Extended Coverage Owner's Policy of Title Insurance, together with such endorsements as Buyer may reasonably require (the "Owner's Policy"), insuring Buyer in the amount of the Purchase Price that fee simple absolute title to the Real Property is vested in Buyer subject only to the Permitted Exceptions, all as set forth in a pro forma policy of title insurance to be delivered to and approved by Buyer prior to the expiration of the Contingency Period and re-issued to Buyer prior to the Closing Date.

4.6.3 The issuance by the Title Company on the Closing Date, upon payment of its normal premium, of the Owner's Policy.

4.6.4 Buyer's delivery of written notice to Seller on or before the end of the Contingency Period, of Buyer's election in its sole and absolute discretion to proceed under the terms of this Agreement (the "Notice of Election to Close"). Buyer's failure to timely deliver the Notice of Election to Close shall automatically terminate this Agreement as if a written termination notice had been timely delivered.

4.6.5 As of the Closing Date, there shall have been no material adverse change in the condition of the Property (except for the construction of the Building Improvements in accordance with **Section 5**), or any portion thereof, or in any document, laws or governmental restrictions, the Contract Obligations or other circumstances affecting the Property previously approved by Buyer, including without limitation, the condition of title approved pursuant to **Section 4.2**.

4.6.6 Seller's execution and delivery of the Closing Certificate (as defined in **Section 7.4** below).

4.6.7 On or before the expiration of the Contingency Period, the Director of the Department of Administrative Services of the State of Oregon or his or her designee shall have issued an order exempting the transaction contemplated by this Agreement from competitive bidding requirements under and in accordance with ORS 279C.

4.6.8 The conditions in **Section 4.2** through **4.7** are solely for the benefit of Buyer. At any time or times on or before the date for the satisfaction or waiver of each condition, at Buyer's election in its sole and absolute discretion, Buyer may waive any of the foregoing conditions by written notice to Seller. Other than Buyer's close of escrow pursuant to this Agreement which shall waive all such unfulfilled conditions, no waiver shall be effective

unless made in writing specific as to the conditions or matters so waived. No such waiver shall be inferred or implied by any act or conduct of Buyer or reduce the rights or remedies of Buyer arising from any breach of any undertaking, agreement, covenant, warranty, or representation of Seller under this Agreement. In the event any of the foregoing conditions or other conditions to this Agreement which are for the benefit of Buyer are neither fulfilled, nor waived pursuant as provided above, Buyer, at its election in its sole and absolute discretion, by written notice to Seller, may terminate this Agreement and be released from all obligations under this Agreement.

SECTION 5 PHASE 2 PRE-CONDITIONS.

5.1 **In General.** Buyer shall not be obligated to purchase the Property unless Buyer, in its sole discretion, has determined that each and every pre-condition set forth in this **Section 5** has been satisfied or waived within the time periods set forth below, as applicable.

5.2 **Commencement and Completion of Improvements.** The Building Improvements shall have been timely commenced and Substantially Completed (as defined in **Section 5.3.2**) in a good and workmanlike manner in accordance with **Section 5.3** and in accordance with the Schedule of Performance. To ensure that the Building Improvements are Substantially Completed in accordance with the Schedule of Performance, Seller and the principals of Seller shall execute a guaranty of completion of the Building Improvements in favor of Buyer, which guaranty shall be in a form acceptable to Buyer in its sole and absolute discretion.

5.3 **Building Improvements.** Seller shall be required to cause Dalke Construction Co. Inc. to complete construction of the Improvements (the "Building Improvements") substantially in accordance with the Plans (defined below) approved by Buyer in its sole and absolute discretion, as the Plans may be changed as permitted in this Agreement. Seller hereby covenants and agrees that it shall perform its obligations under this **Section 5.3**, and covenants and agrees that it shall, with reasonable diligence and continuity, cause the Building

Improvements to be substantially completed in accordance with the Plans and any other specifications therefor approved in accordance with this Agreement (each as modified by changes permitted by this Agreement) (collectively, the “Final Plans”), and in compliance with all applicable Laws (as defined in **Section 5.3.2**), and free and clear of all liens for materials supplied or work performed in connection therewith. Seller and Buyer shall, prior to the date for approval of Final Plans set forth in the Schedule of Performance attached hereto as **Exhibit I**, affix authorized signatures and dates to two (2) sets of the Final Plans. Each party shall retain one (1) set of the Final Plans. As used in this Agreement “Plans” means each of the following design and construction stages or phases for the Project, each of which shall be consistent with the immediately preceding phase as approved by Buyer: (a) conceptual design documents, if any, at the 100% level of detail, as defined in the Architect’s agreement; (b) schematic design documents at the 100% level of detail, as defined in the Architect’s agreement; (c) design development documents at the level customarily understood in the construction industry as 50% complete; (d) design development documents at the level customarily understood in the construction industry as 100% complete; (e) construction documents at the level of detail customarily understood in the construction industry as 50% complete; (f) construction documents at the level of detail customarily understood in the construction industry as 100% complete; and (g) plans and specifications consisting of (i) graphic and pictorial portions of the construction documents, wherever located and whenever issued, showing the design, location and dimensions of the Building Improvements, generally including plans, elevations, sections, details, schedules and diagrams and (ii) the written requirements for materials, equipment, systems, standards and workmanship for the Project, and performance of related services. Buyer will have ten (10) Business Days from receipt of each phase or stage of the Plans to review or to have a representative designated by Buyer approve or disapprove such Plans. Failure of Buyer to timely approve or disapprove of each phase of the Plans in writing shall be deemed Buyer’s disapproval; *provided, however*, that Seller, after the ten (10) Business Day period, may demand in writing that Buyer approve or disapprove of the applicable phase or stage of the Plans within

three (3) Business Days after receipt of the demand. Any such written demand by Seller shall not be effective unless it is accompanied by a clear statement in capital letters that it is given pursuant to this Section 5.3 and that failure of Buyer to respond within three (3) Business Days after receipt shall be deemed Buyer's approval of the applicable phase or stage of the Plans. If Buyer fails to respond to Seller's demand within three (3) Business Days, then the applicable stage or phase of the Plans shall be deemed approved. Seller acknowledges that design and construction of the Building Improvements are the responsibility of Seller, and Buyer's approval of the Plans shall not be deemed any statement by Buyer, whether express or implied, of the sufficiency of the Plans for the construction of the Building Improvements.

5.3.1 Entitlements. As used in this Agreement, "Entitlements" means all zoning, platting, site plan and other applicable development approvals and permits from all applicable governmental authorities for the construction of the Building Improvements, including, without limitation, conditional use permits and building permits. Seller shall be solely responsible for satisfying prior to the Closing at its cost and expense, in a manner satisfactory to the applicable governmental authorities, all conditions of approval and all other obligations, conditions and restrictions associated with the Entitlements.

5.3.2 Completion of the Building Improvements. Prior to Closing, Seller shall deliver to Buyer: (i) a temporary certificate of occupancy for the Building Improvements (the "TCO"); and (ii) a certificate from the Architect (the "Architect's Certificate"), in the form of AIA Document G704-2000 certifying to Buyer that the Building Improvements have been substantially completed in a good and workmanlike manner and substantially in accordance with the Final Plans and in compliance with all applicable Laws (all of the foregoing being necessary for the Building Improvements to be "Substantially Complete" or "Substantially Completed"). Seller shall promptly deliver the TCO and the Architect's Certificate to Buyer at such time as Seller in good faith believes the Building Improvements have been Substantially Completed. As used herein, "Laws" means all local, state and federal laws, ordinances, codes, regulations, rules

and orders, specifically including, without limitation, zoning, building, environmental and fire laws, ordinances, codes, regulations, rules and orders and the Americans with Disabilities Act.

5.3.3 Walk-Through and Punch-List Items. Within ten (10) business days after Buyer receives written notice that Seller reasonably believes the Building Improvements are or will be Substantially Completed, Seller, Buyer, its agents and representatives, and the architect for Building Improvements, which shall be selected by Seller, but subject to Buyer's prior reasonable approval based on such architect's experience, insurance capacity and claims history (the "Architect"), shall conduct a final walk-through of the Real Property to verify that the Building Improvements are then Substantially Complete (the "Walk-Through").

(i) During the Walk-Through, Seller and Buyer shall list any Punch-List Items (as defined below), which Seller agrees to cause to be completed or corrected at Seller's expense within sixty (60) days following the Closing substantially in accordance with the terms of the Final Plans and this Agreement. Buyer hereby grants Seller (and its contractors and agents) the right to access the Real Property after the Closing to complete the Punch-List Items. For purposes of this Agreement, the term "Punch-List Items" shall mean minor, uncompleted items related to the construction of the Building Improvements that do not materially interfere with Buyer's use or occupancy of the Real Property, such as, for example, landscaping items which have not been completed as a result of severe weather or because they are to be completed after completion of the Building Improvements.

(ii) Seller and Buyer agree to allow the Title Company to withhold from the Purchase Price due Seller at the Closing an amount equal to one hundred fifty percent (150%) of the estimated cost of completing such Punch-List Items after Closing (the "Punch-List Holdback"). The Punch-List Holdback shall be deposited by the Title Company in an interest-bearing account pursuant to a commercially reasonable holdback agreement containing the terms

and provisions of Sections 5.3.3 (ii) and (iii) and executed by Buyer, Seller and Title Company prior to or at Closing.

(iii) After the Closing and following the lien-free completion and payment in full of all Punch-List Items to Buyer's satisfaction (in its sole and absolute discretion), the Title Company shall release to Seller the Punch-List Holdback in accordance with this Section 5.3.3(iii). If Seller has not completed the Punch-List Items within sixty (60) days after the Closing, then Buyer shall be entitled to withdraw funds from the Punch-List Holdback to complete the Punch-List Items. To the extent the cost of completion of the Punch-List Items exceeds the Punch-List Holdback, Seller shall indemnify and upon written demand reimburse Buyer for all additional reasonable costs incurred in completing the Punch-List Items. After lien-free completion and payment in full of all Punch-List Items, the reasonable approval thereof by Buyer, and Seller's delivery of a final certificate of occupancy to Buyer, any remaining balance of such Punch-List Holdback (and all interest accrued thereon) shall be disbursed by the Title Company to Seller. The provisions of this **Section 5.3.3(iii)** shall survive the Closing.

(iv) If Seller and Buyer cannot agree upon the Punch List Items, the Punch List Items in dispute shall be submitted to, reviewed by, and determined by the Architect, which determination will be final and binding upon Seller and Buyer. If Buyer and Seller agree upon some but not all of the Punch List Items, the Architect's determination shall be limited to those items which are in dispute (the "Disputed Items"). Buyer and Seller shall share equally the costs and fees charged by the Architect in connection with a dispute. For any disputes regarding the Punch List Items, Buyer and Seller shall each, within ten (10) days after the Walk-Through, prepare its list of the Disputed Items ("Disputed Items List"), and submit its Disputed Items List to the other party and the Architect, and the Architect shall select either Buyer's or Seller's Disputed Items List, or create Architect's own list from the two, within ten (10) days after Seller

or Buyer delivers its Disputed Items List to the Architect. If either Buyer or Seller fails to provide its Disputed Items List to the other party and the Architect within such ten (10) day period, the party that provided its Disputed Items List shall deliver a written notice to the other party and if such other party does not provide a Disputed Items List within ten (10) days after such written notice, then the Architect shall select the Disputed Items List by the party who so submitted such list.

5.3.4 Cost of the Building Improvements. An estimate of Costs (as defined below) for the Building Improvements based on the Plans (at least 50% Construction Documents) shall be provided by Seller by the date set forth on the Schedule of Performance, and Seller and Buyer shall attempt in good faith to agree on such Costs in writing within thirty (30) days. Seller shall cause the construction of the Building Improvements at the final firm estimate of Costs agreed to by the parties pursuant to the preceding sentence, and the general contract for construction shall be a lump sum contract based, at least in part, on such agreed upon Costs. No higher total of Costs related to the Building Improvements shall be used to determine the Purchase Price except that Costs incurred by Seller as a result of changes to the Building Improvements that Buyer requests in writing after approval of the Costs shall be added together and such sum shall result in an increase in the Purchase Price. "Costs" means all costs and expenses incurred by Seller in connection with the design and construction of the Building Improvements, including but not limited to the costs of labor, materials, permits and fees, general conditions, Architect's fees, construction management expenses, study expenses, as-built surveys, and construction period all-risk insurance and real property taxes, provided that all Costs shall be set forth in a written budget agreed upon by the Seller and Buyer in accordance with this **Section 5.3.4**. Subject to Buyer's approval of the cost of such bonds, Seller shall

require Dalke Construction Co. Inc. to obtain payment and performance bonds for the Building Improvements, with each of Seller and Buyer named as a beneficiary of such bonds, the cost of which shall be included in Costs. If and when the budget is updated or amended, Seller will deliver such updated or amended budget to Buyer for Buyer's review and approval; *provided, however*, that after Seller and Buyer have agreed upon the lump sum contract with the general contractor, no increases in the Purchase Price will be made unless agreed upon in writing and signed by both Seller and Buyer.

5.3.5 Seller Change Orders. As used herein, "Seller Change Order" means a change to the Final Plans or Schedule of Performance which Seller desires to implement. Buyer shall have the right to approve any Seller Change Order to the Final Plans that (i) have an aggregate value in excess of \$10,000 for each component of the change order or in total or for (ii) changes for each component of the change order or in total that are less than or equal to \$10,000 that would materially affect ingress or egress or the functionality of the Improvements, or that materially would affect the amount of usable or rentable square footage of the Improvements, materially affect the aesthetic appearance or materially affect the design, the scope or the quality of construction of the Building Improvements. Buyer acknowledges that prompt responses to matters submitted for its review and approval pursuant to this **Section 5.3.5** are necessary to maintain the construction schedule and comply with Seller's obligations under the Agreement. If Buyer has not responded to Seller's request for approval of any matter pursuant to this **Section 5.3.5** within ten (10) Business Days following the date Seller has requested such approval in writing and Buyer has in fact received copies of the applicable materials reasonably required to make an informed decision on such matter, Buyer shall be deemed to have disapproved the matter in question. All change orders under the \$10,000

threshold that Buyer is not required to review will be delivered promptly to Buyer after execution along with all of the supporting documentation. Seller Change Orders shall not affect the Purchase Price, regardless of whether approved by Buyer. As used in this Agreement, "Business Days" means any day that is not a Saturday, Sunday or state of Oregon holiday or furlough day.

5.3.6 No Material Adverse Change. Upon Buyer's request from time to time, Seller shall give Buyer its reasonable estimate as to the anticipated date on which the Building Improvements will be Substantially Completed, if such date varies from the date set forth in the Schedule of Performance. Not less than twenty (20) days prior to the anticipated date that the Building Improvements shall be Substantially Completed as set forth in the Schedule of Performance, Buyer may inspect the Property to determine if there has been any material adverse change in the condition of the Property (except for construction of the Building Improvements in accordance with this **Section 5**), as described in **Section 4.6.5**. Seller shall obtain for Buyer's review and approval (at its commercially reasonable discretion) an updated as-built survey verifying the location of the Improvements, driveways for the Real Property, parking lot and parking spaces required to be striped on the Real Property in accordance with the City of Salem requirements, and other items typically reflected on an as-built survey.

5.3.7 Acquisition of Insurance Policies. For so long as the Building Improvements have not been Substantially Completed, Seller shall maintain or cause to be maintained all of the insurance coverages and bonds deemed reasonably prudent by Seller and Buyer, the cost of which shall be included in the Costs of the Building Improvements. Such insurance shall include Builder's Risk, Worker's Compensation and Employer Liability, Commercial General Liability (including tail coverage for a period of not less than ten (10) years), Error and Omissions (maintained by the Architect and, if it performs design work on the Building Improvements, Dalke Construction Co. Inc.), and Umbrella insurance in amounts and

form approved by Buyer prior to commencement of construction of the Building Improvements in its reasonable discretion. All policies of insurance required under this **Section 5.3.7** shall be issued on forms approved by Buyer, by responsible companies qualified to do business in Oregon and satisfactory to Buyer. Each liability policy of insurance shall name Seller, Buyer and any of their respective lenders as additional insureds (to the extent of their respective insurable interests). Each such policy of insurance, a copy thereof, or an insurance certificate in respect thereof (as requested by Buyer), shall be deposited with Buyer and Seller prior to the commencement of construction of the Building Improvements.

5.3.8 Warranty. Seller warrants the Building Improvements against defective workmanship and materials for a period of two years after the Building Improvements are Substantially Complete (**"Seller's Warranty"**). Seller's sole obligation under Seller's Warranty is to repair or replace, as necessary, any defective item caused by poor workmanship or materials if Buyer gives written notice to Seller of the defective item within such two-year period.

5.3.9 Availability of Buyer Funds. The Oregon Legislative Assembly (the "Oregon Legislature") has approved a Sixteen Million Dollars (\$16,000,000.00) limitation on the capital budget for Buyer to acquire a new headquarters, to be raised by the issuance (sale) of authorized bonds. Buyer intends to have the bonds sold in approximately April or May of 2013. Buyer intends to fund its purchase of the Property with the proceeds from the sale of the bonds. At the time of entering into this Agreement, Buyer reasonably believes that the bonds will be successfully sold and sufficient funds will be received from the sale to allow Buyer to purchase the Property, and Buyer will use commercially reasonable efforts to see that sufficient funds from the sale of the bonds are successfully received. If the sale of the bonds does not generate sufficient funds for Buyer to purchase the Property, Buyer will use commercially reasonable efforts to obtain alternate funding authority. Notwithstanding anything to the contrary set forth in this Agreement, Buyer's obligation to purchase the Property is contingent on Buyer receiving

sufficient funds from the sale of the bonds or receiving from the Oregon Legislature other appropriations, limitations or other expenditure authority sufficient to allow Buyer to purchase the Property under this Agreement.

SECTION 6 REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS.

6.1 Representations And Warranties Of Seller. Seller hereby makes the following representations and warranties to and for the benefit of Buyer, each of which representations and warranties: (i) is material and is being relied upon by Buyer; (ii) is made as an inducement to Buyer to enter into this Agreement and consummate the transaction contemplated hereby; (iii) is true in all respects as of the date of this Agreement; (iv) shall be true in all respects on the Closing Date; and (v) shall survive the close of escrow. Buyer shall not be obligated to close if, as of the Closing (defined in **Section 7.3**), any of the following representations are not true.

6.1.1 K2D Development, LLC is duly organized and validly existing as an Oregon limited liability company, and Seller has the full power, authority and legal right to enter into and perform this Agreement. The execution, delivery and performance of this Agreement and all documents and agreements executed or to be executed pursuant to this Agreement, have been duly authorized by all necessary action on the part of the Seller.

6.1.2 Seller does not have knowledge of any condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would detrimentally affect the use, operation or value of the Property, nor has Seller received notice of any special assessment proceedings affecting the Property (other than as set forth in the Title Report). Seller shall notify Buyer promptly of any such proceedings of which Seller becomes aware.

6.1.3 To Seller's knowledge, any survey, the mechanical and structural plans and specifications for the Improvements, soil reports, certificates of occupancy, warranties and all books and records relating to the Property and all other Seller Documents are and at the time of Closing will be true, correct and complete copies of such documents, and are and at the time of Closing will be in full force and effect, without default by (or notice of default to) any party. To Seller's knowledge, the Improvements were constructed in substantial compliance with the plans and specifications and are in compliance with all applicable laws.

6.1.4 At the time of Closing there will be no outstanding written or oral contracts made by Seller for any improvements to the Property which have not been fully paid for and Seller shall cause to be discharged all actual or potential mechanics' and materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing.

6.1.5 There are no obligations in connection with the Property which will be binding upon Buyer after Closing, except (i) the Permitted Exceptions and (ii) the Contract Obligations.

6.1.6 There are no leases or rights of any parties other than Seller to possess or occupy the Property, which would survive the Closing.

6.1.7 There are no threatened or pending claims or litigation against Seller related to the Property.

6.1.8 Seller has received no written notice of any breach by Seller of any of the Contract Obligations.

6.1.9 The list of Contract Obligations attached as **Exhibit D** is complete and accurate, and lists all of the Contract Obligations affecting the Property that will remain in effect after Closing.

6.1.10 There are no adverse or other parties in possession of the Property or any part thereof.

6.1.11 Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, no person or entity has been granted any option or right of first refusal or first opportunity to acquire any interest in any of the Property. There is no unrecorded or undisclosed legal or equitable interest in the Property owned or claimed by any party other than Seller.

6.1.12 Seller has not received any written notices from any governmental agencies of any condition, or defects with respect to any violations of building codes or zoning ordinances or other laws with respect to the Property. Seller shall promptly notify Buyer of any violations or conditions of which Seller becomes aware.

6.1.13 To Seller's knowledge, there has been no use, release, storage or production of any Hazardous Substances on the Property, and the Property does not contain any Hazardous Substances or any underground storage tanks. "Hazardous Substances" shall mean flammable explosives, pollutants, contaminants, radioactive materials, asbestos, polychlorinated biphenyls, lead, lead-based paint, under or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.), the and Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), and any other applicable federal, state or local laws, rules, regulations or governmental requirements (collectively, "Environmental Laws").

6.1.14 Seller is not a “foreign person” as defined in Internal Revenue Code Section 1445 and any related regulations. At the Closing, Buyer will have no duty to collect withholding taxes for Seller pursuant to the Foreign Investment in U.S. Real Property Tax Act of 1980, as amended, or any regulations promulgated with respect thereto.

6.1.15 Seller has not: (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any voluntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; or (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets.

6.2 Representations And Warranties Of Buyer. Buyer hereby makes the following representations and warranties to and for the benefit of Seller, each of which representations and warranties: (i) is material and being relied upon by Seller; (ii) is made as an inducement to Seller to enter into this Agreement and consummate the transaction contemplated hereby; (iii) is true in all respects as of the date of this Agreement; and (iv) shall be true in all respects on the Closing Date. Seller shall not be obligated to close if, as of the Closing, either of the following representations are not true:

6.2.1 The execution and delivery of this Agreement have been duly authorized by all necessary action on the part of Buyer, including approval of the Oregon Fish and Wildlife Commission.

6.2.2 Buyer has no knowledge of any pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the ability of Buyer to perform Buyer’s obligations under this Agreement.

6.3 Operating Agreements And Covenants. Seller hereby agrees as follows:

6.3.1 From the date of this Agreement to the Closing Date and except as necessary to construct the Building Improvements, Seller shall: (i) manage, maintain, operate, and service the Property to the same standard as existed at the Contract Date; (ii) keep the Property and every portion thereof in good working order and repair; (iii) timely perform all its obligations under all Contract Obligations and any applicable laws and pay all bills, charges, invoices and other expenses arising in connection with the Property; (iv) not modify, terminate, cancel, extend, or amend any existing Contract Obligations, nor enter into any new contracts or arrangements which will affect the Property on or after the Closing Date; and (v) maintain in full force and effect all insurance with coverage and in amounts as agreed upon in accordance with **Section 5.3.7**.

6.3.2 Seller shall promptly notify Buyer in writing of any event or circumstance which adversely affects Seller's ability to perform its obligations under this Agreement in a timely manner.

6.3.3 Seller shall comply with all federal, state, and local laws and ordinances applicable to this Agreement, including ORS 279A-279C, including, without limitation, the (a) 1.5% solar requirement set forth in ORS 279C.527, (b) state energy requirements described in ORS 279C.528, (c) 1% art requirement set forth in ORS 276.080, and (d) wage requirements contained in ORS 279C.800 – 279C.870.

6.3.4 Seller shall promptly notify Buyer in writing if Seller becomes aware of any fact or occurrence that would render any representation by Seller under **Section 6.1** above untrue, in which case Buyer shall have the right to terminate this Agreement within ten (10) Business Days after its receipt of such written notice.

SECTION 7 TITLE, ESCROW AND CLOSING.

7.1 **Conditions Of Title.** Seller shall deliver to the Title Company (defined in **Section 7.3**) a deed in the form attached as **Exhibit E** (the "Deed"). Buyer's obligation to acquire the Property shall be subject to Title Company insuring title to the Property subject to no exceptions other than the Permitted Exceptions and the lien for local real estate taxes not yet due or payable.

7.2 **Title Insurance.** Buyer's obligation to purchase the Property shall be subject to and conditioned upon the issuance of the Owner's Policy by the Title Company upon payment of its normal premium on the close of escrow of the transaction contemplated by this Agreement.

7.3 **Closing Date.** Through an escrow established with Fidelity National Title in Salem, Oregon (the "Title Company"), Buyer and Seller shall consummate this transaction on the date that is 30 days after the Building Improvements are Substantially Completed (the "Closing Date"), which Closing Date shall occur not later than June 30, 2013. The "Closing" consists of the performance of the deliveries and deposits set forth in **Sections 7.4** and **7.5** and the recording of the Deed. If the Building Improvements are not Substantially Completed on or before this outside date for Substantial Completion set forth in the Schedule of Performance, as such date is extended due to any Force Majeure Event (as defined below) or Buyer-Caused Delay (as defined below), Buyer shall have the right, in its sole discretion, to terminate this Agreement. A "Buyer-Caused Delay" shall be a delay caused by Buyer or any of Buyer's agents in the design, permitting, or construction the Building Improvements, such as a delay in Buyer's timely approval of any item requested by Seller. A "Force Majeure Event" shall mean an act of God, a strike, other labor trouble, a lockout, governmental preemption of priorities or other controls in connection with a national or other public emergency or any failure or defect in the supply, quantity or character of electricity, water or other utilities furnished to the Real Property or any shortage of fuel, supplies or labor, or the effect of governmental regulations or the time

required for permitting or obtaining governmental approvals, inclement weather that cannot reasonably be anticipated by Seller, delays in obtaining any governmental license, permission or certificate, or any other cause, whether similar or dissimilar, beyond Seller's reasonable control.

7.4 Deposits And Deliveries By Seller. Seller shall deposit or cause to be deposited into escrow with the Title Company on or before the Closing Date, the following documents duly executed and acknowledged as required:

7.4.1 The Deed.

7.4.2 A Bill of Sale in the form attached hereto as **Exhibit F** transferring the Personal Property to Buyer (the "Bill of Sale").

7.4.3 An Affidavit of Non-Foreign Status in form attached hereto as **Exhibit G** (the "Non-Foreign Affidavit").

7.4.4 A counterpart of an Assignment of Intangible Property in the form attached hereto as **Exhibit H** transferring to Buyer all of the Intangible Property (the "Assignment of Intangible Property").

7.4.5 A Closing Certificate confirming the accuracy and completeness as of the Closing Date of each representation and warranty made by Seller under **Section 6.1** (the "Closing Certificate").

7.4.6 A counterpart of the escrow holdback agreement referenced in Section 5.3.3(ii), duly executed by Seller.

7.4.7 Seller's written escrow instructions to close escrow in accordance with the terms of this Agreement, and Seller's executed settlement statement as prepared by the Title Company and approved by Buyer and Seller.

7.4.8 Evidence reasonably acceptable to Buyer's counsel that the documents delivered to Buyer by Seller at closing have been duly authorized by Seller, duly executed on behalf of Seller and when delivered constitute valid and binding obligations of Seller.

7.4.9 Such other documents, resolutions, consents and affidavits reasonably necessary or advisable to effect the valid consummation of the transaction evidenced by this Agreement.

7.5 **Deposits And Deliveries By Buyer.** Buyer shall deposit or cause to be deposited into escrow with the Title Company, on or before the Closing Date, each of the following documents duly executed and acknowledged as required and funds:

7.5.1 Cash, wire transfer, cashier's check, or other immediately available funds, which shall equal the Purchase Price (the "Purchase Funds").

7.5.2 A counterpart of the escrow holdback agreement referenced in Section 5.3.3(ii), duly executed by Buyer.

7.5.3 Buyer's written escrow instructions to close escrow in accordance with the terms of this Agreement, and Buyer's executed settlement statement as prepared by the Title Company and approved by Seller and Buyer.

7.5.4 Evidence reasonably acceptable to Seller's counsel that the documents delivered to Seller by Buyer at closing have been duly authorized by Buyer, duly executed on behalf of Buyer and when delivered constitute valid and binding obligations of Buyer.

7.5.5 A counterpart of the Assignment of Intangible Property.

7.6 **Closing.** The Title Company shall close escrow on the Closing Date when it is irrevocably committed to issue the Owner's Policy and has received all of the documents and funds listed in **Sections 7.4 and 7.5** above. The Title Company shall close escrow by:

7.6.1 Recording the Deed.

7.6.2 Issuing to Buyer the Owner's Policy.

7.6.3 Delivering to Buyer the original of the Bill of Sale, the Non-Foreign Affidavit, the Closing Certificate, and the counterpart original of the Assignment of Intangible Property and escrow holdback agreement, each duly executed by Seller.

7.6.4 Delivering to Seller the Purchase Funds after deducting Seller's share of closing costs and prorations, and the counterpart original of the Assignment of Intangible Property and escrow holdback agreement each duly executed by Buyer.

7.6.5 Delivering to Buyer and Seller of copies of all other documents and things deposited or delivered through escrow, the originals of which are not being delivered by the Title Company to such parties, together with Title Company's final Buyer's and Seller's closing statements for this transaction.

7.7 Prorations.

7.7.1 The following are to be prorated as of the Closing Date, as follows:

(i) **Utility Charges.** Seller shall cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. Notwithstanding the foregoing, if it is not feasible to read such meters on the Closing Date, the cost of all such utilities shall be prorated based upon the most recently available bills, subject to reconciliation as provided in subsection (v) below.

(ii) **Other Prorations.** Amounts payable under any Contract Obligations expressly assumed in writing at Closing by Buyer, insurance premiums (as to those policies, if any, that Buyer continues after the Closing), and liability for other Property operation and maintenance expenses and other recurring costs shall be prorated as of the Closing Date.

(iii) **Real Estate Taxes and Special Assessments.** General real estate taxes payable for all tax years prior to the tax year in which the Closing occurs shall be paid by Seller. General real estate taxes payable for the tax year in which the Closing occurs shall be prorated between Seller and Buyer as of the Closing Date. Seller shall pay the full amount of any bonds or assessments against the Property including interest. If the amount of general real estate taxes for the tax year in which the Closing occurs cannot be determined on the Closing Date, Seller shall deposit with the Title Company, from the Purchase Price, an amount equal to one hundred twenty percent (120%) of Seller's proportionate share of the taxes for the tax year in which the Closing occurs based upon the most current estimate of such taxes, assuming for estimating purposes that the Property shall be fully assessed. Such deposit shall be held in escrow and all interest earnings on such deposit shall be paid to Seller. The Title Company shall retain such deposit to pay Seller's share of the actual general real estate taxes payable for the tax year in which the Closing occurs, paying any excess over to Seller. Seller shall pay any deficiency, when such general real estate taxes are known.

(iv) **Preliminary Closing Adjustment.** Seller and Buyer shall jointly prepare a preliminary Closing proration schedule, and shall deliver such computation to the Title Company prior to Closing.

(v) **Post-Closing Reconciliation.** Subject to the provisions of subsection (iii) above, if any prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay such sum to the other party, together with interest thereon at the rate of two-thirds of one percent per month (8% per year) from the Closing Date to the date of payment if payment is not made within forty-five (45) days after delivery of a bill therefor.

(vi) **Survival.** The provisions of this **Section 7.7** shall survive the Closing.

7.8 Closing Costs. Seller shall pay: the cost of the standard ALTA coverage title insurance premiums for the Owner's Policy (but only for a liability amount equal to the Purchase Price) and endorsement fees to the extent relating to defects in title or exceptions disapproved by Buyer which Buyer, in its sole and absolute discretion, agrees to accept with an endorsement; one-half of the escrow fees; and Seller's legal fees and costs incurred in connection with this transaction. In addition, Seller shall be solely responsible for the cost (including payment of prepayment fees or other charges) to pay off in full and have cancelled and discharged of record: (i) all liens, encumbrances and other instruments of record to which Buyer has objected, and which Seller has agreed to remove in accordance with **Section 4.2** above, or which were not expressly set forth as exceptions to title insurance coverage in the initial Title Report or any supplementary Title Report delivered to Buyer at least 10 days prior to the expiration of the Contingency Period; (ii) any loans or bonds secured by the Property or any portion thereof, including without limitation any prepayment fees, penalties or charges; and (iii) all assessments. Buyer shall pay the balance of the title insurance premium, one-half of the escrow fees, the costs of any ALTA survey, and Buyer's legal fees and costs incurred in connection with the contemplated transaction. Recording fees and all other costs and charges of the escrow for the sale not otherwise provided for in this **Section 7.8** or elsewhere in this Agreement shall be allocated in accordance with the closing customs for Marion County, Oregon.

7.9 Possession and Other Deliverables. Buyer shall be entitled to possession of the Property and the Seller's Documents on the Closing Date. Seller shall transfer and deliver to Buyer on the Closing Date the originals of all approved written Contract Obligations, all instruments and documents evidencing or relating to the Intangible Property, files, books and records, as-built Survey and Plans, correspondence, and all other documents transferred to Buyer by this Agreement which have not yet been delivered to Buyer. If not previously provided to

Buyer, within sixty (60) days after the Closing, Seller shall deliver to Buyer an endorsement naming Buyer as an additional insured on the tail coverage insurance policy obtained from the general contractor (which shall be for a period of not less than ten (10) years from Substantial Completion) and shall assign to Buyer all warranties obtained in connection with the Building Improvements. The provisions of this **Section 7.9** shall survive the Closing.

7.10 Filing Of Reports. Title Company shall be solely responsible for the timely filing of any reports or returns required pursuant to the provisions of Section 6045(e) of the Internal Revenue Code of 1986 (and any similar reports or returns required under any state or local laws) in connection with the closing of the transaction contemplated in this Agreement.

7.11 Cooperation. Without further consideration, Seller shall execute, acknowledge and deliver to Buyer on or after the Closing Date any and all other instruments or documents, and do and perform any other acts which may be required or which Buyer may reasonably request in order to fully assign, transfer and convey to Buyer, and vest in Buyer, the Property, and each and every part and component thereof.

SECTION 8 DEFAULT; DAMAGES

8.1 Buyer Default. In the event that: (i) all of the conditions to this Agreement shall have been satisfied, or waived in writing by Buyer; (ii) Seller shall have performed or tendered performance of all of its obligations under this Agreement; and (iii) Buyer shall default in its obligations to purchase the Property, then Seller shall have all remedies available to it at law but shall not assert any equitable remedies, including, without limitation, specific performance.

8.2 Seller Default. In the event that: (i) Buyer shall have performed or tendered performance of all of its obligations under this Agreement; and (ii) Seller shall default in its obligations under this Agreement, including Seller's obligation to Substantially Complete the Building Improvements in accordance with the Schedule of Performance, then Seller shall pay to

Buyer, Buyer's actual out-of-pocket costs related to such failure to perform, including holding over under the lease for Buyer's existing space, or temporarily relocating to other space and subsequently moving to the Real Property, or both. This provision shall not be deemed a limitation of remedies, and Buyer shall have all remedies available to it at law and in equity in the event of a Seller default, including specific performance.

SECTION 9 INDEMNIFICATION.

9.1 Seller's Indemnity. Seller agrees to defend (with counsel approved by Buyer in its sole and absolute discretion), indemnify and protect Buyer and hold Buyer harmless from any and all claims, demands, liabilities, losses, damages, costs and expenses including, without limitation, all reasonable attorneys' fees, asserted against, incurred or suffered by Buyer resulting from: (i) any breach by Seller of this Agreement; (ii) any liability or obligation of Seller which Buyer is not required to assume under this Agreement or accruing prior to such assumption; (iii) any personal injury or property damage occurring in, on or about the Property or relating thereto on or before the Closing Date, from any cause whatsoever except Buyer's inspection activities; or (iv) the untruth, inaccuracy or breach of any of the representations, warranties, covenants and agreements made by Seller pursuant to this Agreement; and/or any and all construction defects associated with the Building Improvements. Seller's obligations under this Section 9.1 shall survive close of escrow or termination of this Agreement. Neither the foregoing nor any other provision of this Agreement shall limit the rights and remedies available to Buyer at law or in equity, whether by statute or otherwise, and all such rights and remedies shall be cumulative and non-exclusive. The obligations of Seller under this Section 9.1 shall terminate twelve (12) months after the Closing Date for all claims except any which have been made in writing and delivered to Seller on or prior to the end of such twelve (12) month period; *provided, however, that subsection (v) shall survive the closing until the statute of repose has expired.*

9.2 Buyer's Indemnity. Buyer agrees to defend, indemnify, protect and hold Seller harmless from any claims, losses, damages, costs or expenses including, without limitation, any reasonable attorneys' fees, asserted against, incurred or suffered by Seller resulting from any damage to the Property caused by Buyer and not restored and from any breach by Buyer following the Closing Date of express obligations of Buyer arising under this Agreement, subject to Section 12.12 and the damage limitation of Section 8. Buyer's obligations under this Section 9.2 shall survive close of escrow or termination of this Agreement for a period of twelve (12) months. In the event of a material breach by Buyer of this Agreement prior to the Closing Date, Seller shall have as its sole and exclusive remedy the right to retain the Buyer's Due Diligence Materials as liquidated damages as provided in Section 8. The obligations of Buyer under this Section 9.2 shall terminate twelve (12) months after the Closing Date for all claims except any which have been made in writing and delivered to Buyer on or prior to the end of such twelve (12) month period.

SECTION 10 DAMAGE AND DESTRUCTION; CONDEMNATION

Seller shall notify Buyer immediately of the occurrence of any damage to or destruction of the Property, or the institution or maintenance of any condemnation or similar proceedings with respect to the Property. In the event of any damage to or destruction of the Property for which the cost to repair exceeds \$500,000, or in the event any such condemnation or other proceedings are instituted or maintained, Buyer at its option either (i) may terminate this Agreement as provided in **Section 4** above, or (ii) may consummate the purchase evidenced by this Agreement. In the event that Buyer elects to consummate the purchase pursuant to (ii) above, all insurance or condemnation proceeds, including business interruption and rental loss proceeds, collected by Seller prior to the Closing Date, together with an amount equal to all deductible amounts under the insurance policies covering such damage or destruction, shall be

credited against the Purchase Price on Buyer's account, and all insurance or condemnation proceeds arising out of such damage or destruction or proceedings and not collected prior to the Closing Date shall be assigned by Seller to Buyer on the Closing Date, and all such deductible amounts not credited against the Purchase Price shall be immediately paid by Seller to Buyer.

SECTION 11 COMMISSIONS

Each party to this Agreement warrants to the other that no other person or entity can properly claim a right to a real estate commission, broker's fee, real estate finder's fee, real estate acquisition fee or other real estate brokerage-type compensation (collectively, "Real Estate Compensation") based upon the acts of such warranting party with respect to the transaction contemplated by this Agreement. In the event of a claim for Real Estate Compensation on account of this Agreement: (i) subject to **Section 12.12**, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, shall indemnify and defend Seller against and hold Seller harmless (using counsel reasonably satisfactory to Seller) from any and all damages, liabilities, costs, expenses and losses (including attorneys' fees and costs) that Seller sustains or incurs by reason of such claim; and (ii) Seller, if such claim is based upon any agreement alleged to have been made by Seller, shall indemnify and defend Buyer against and hold Buyer harmless (using counsel reasonably satisfactory to Buyer) from any and all damages, liabilities, costs, expenses and losses (including, without limitation, attorneys' fees and costs) that Buyer sustains or incurs by reason of such claim. The provisions of this **Section 11** shall survive the termination of this Agreement or the Closing.

SECTION 12 GENERAL PROVISIONS.

12.1 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing with all postage and delivery charges prepaid and (i) personally delivered, (ii) sent by United States mail, registered or certified mail, return receipt requested, (iii) sent by Federal Express or other reputable overnight courier service, or (iv) transmitted by facsimile or email with a hard copy sent simultaneously by any of the above means, and in all cases addressed as follows:

TO SELLER:

K2D DEVELOPMENT, LLC

Attention: _____
Fax No. (____) _____
Phone No. (____) _____
Email: _____

with copies to:

Fax No. (____) _____
Phone No. (____) _____
Email: _____

TO BUYER:

OREGON DEPARTMENT OF FISH AND WILDLIFE

Facilities & Engineering
3406 Cherry Avenue
Salem, OR 97303
Attn: Gregory Parker
Fax No. (503) 947-6202
Phone No. (503) 947-6223
Email: greg.parker@coho2.dfw.state.or.us

with copies to:

BALL JANIK LLP

101 SW Main Street, Suite 1100
Portland, Oregon 97204
Attn: Stephen T. Janik and Dina Alexander
Fax No. (503) 295-1058
Phone No. (503) 228-2525

Email: sjanik@balljanik.com
dalexander@balljanik.com

Any such notice shall be deemed given on the earlier of actual delivery or refusal of a party to accept delivery thereof (including ignoring delivery attempts). Any party may change its address for notice by written notice given to the other in the manner provided in this **Section 12.1**. Counsel to a party may give notice on behalf of such party.

12.2 Entire Agreement; No Modifications. This Agreement, together with the attached exhibits, incorporate all agreements, warranties, representations and understandings between the parties to the Agreement with respect to the subject matter of this Agreement and constitutes the entire agreement of Seller and Buyer with respect to the purchase and sale of the Property. Any prior or contemporaneous correspondence, memoranda, understandings, offers, negotiations and agreements, oral or written, are merged herein and replaced in total by this Agreement and the attached exhibits and shall be of no further force or effect. This Agreement may not be modified or amended except in a writing signed by Seller and Buyer.

12.3 Time. Time is of the essence in the performance of the parties' respective obligations set forth in this Agreement.

12.4 Attorneys' Fees. If either Buyer or Seller brings suit or action or a proceeding in bankruptcy with respect to the interpretation or the enforcement of this Agreement, subject to **Section 12.12**, the prevailing or non-defaulting party (as determined by the court, agency or other authority before which such suit or proceeding is commenced), in addition to such other relief as may be awarded, shall be entitled to recover all costs and expenses including, without limitation, reasonable attorneys' and paralegals' fees and expenses, incurred by such prevailing or non-defaulting party. The foregoing includes, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings, costs incurred in collection of any award(s), judgment or other relief, costs incurred in establishing the right to indemnification, or

in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code, 11 United States Code Section 101 et seq., or any successor statutes.

12.5 Specific Performance. The parties understand and agree that the Property is unique and for that reason, among others, Buyer will be irreparably damaged in the event that Seller breaches this Agreement. Accordingly, in the event of any breach of this Agreement by Seller, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any right or remedy available at law or in equity, the right to demand and have specific performance of this Agreement enforced.

12.6 Successors And Assigns. Except as permitted by this **Section 12.6**, this Agreement may not be assigned by Seller or Buyer without the prior written consent of the other party which may be granted or withheld by the other party in its sole and absolute discretion. Subject to the foregoing provision, this Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns. Buyer shall have the right to assign its rights under this Agreement, without Seller's consent but with notice to Seller, to one or more agencies of the State of Oregon, and upon Buyer's assignment of this Agreement and the assignee's assumption of Buyer's obligations under this Agreement, Buyer shall be released from any obligation under, or liability accruing pursuant to, this Agreement.

12.7 Counterparts. This Agreement or its exhibits may be executed in one or more counterparts and each such counterpart shall be deemed to be an original; all counterparts so executed shall constitute one instrument and shall be binding on all of the parties to this Agreement notwithstanding that all of the parties are not signatory to the same counterpart. Facsimile or electronically transmitted copies of this Agreement signed by the parties shall be binding and enforceable as if the same were executed originals.

12.8 **Construction.** This Agreement shall be governed by and construed under the laws of the State of Oregon, without regard to such state's conflicts of laws provisions. Words used in the singular shall include the plural, and vice-versa, and any gender shall be deemed to include the other. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions of this Agreement. Further, each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement and the schedules, and, given the opportunity each has had to comment, each shall be deemed to have drafted it. As such, the terms of this Agreement and the exhibits to it shall be fairly construed and the usual rule of construction, to the effect that any ambiguities should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications, or its exhibits. If any provision of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

12.9 **Confidentiality.** Seller shall keep all information obtained from or about Buyer or the transaction contemplated by this Agreement strictly confidential and will not disclose any such information to any other person or entity without first obtaining the prior written consent of Buyer. However, Seller may disclose this Agreement to its executive officers, accountants and legal counsel, subject to the obligation of confidentiality. This provision shall survive the Closing Date for a period of 24 months.

12.10 **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance. No waiver shall be binding unless executed in writing by the party making the waiver.

12.11 **Further Acts.** Each party, at the request of the other, shall execute, acknowledge or have notarized (if appropriate) and deliver in a timely manner such additional documents, and do such other additional acts, also in a timely manner, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

12.12 **Indemnification, Defense, Hold Harmless and Attorneys' Fees.** All indemnification of Seller by Buyer, agreements by Buyer to defend Seller or hold Seller harmless or both, and other monetary obligations owed by Buyer to Seller under this Agreement, including liability to pay attorneys' fees, are subject to the conditions and limitations of Article XI, Section 7 of the Oregon Constitution and other laws regulating liabilities or monetary obligations of the State of Oregon, including the Oregon Tort Claims Act, ORS 30.260 through ORS 30.300.

12.13 **No Intent To Benefit Third Parties.** Seller and Buyer do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party, and no third party shall be entitled to enforce, or otherwise shall acquire any right, remedy or benefit by reason of, any provision of this Agreement.

12.14 **Performance Due On Day Other Than Business Day.** If the time period for the performance of any act called for under this Agreement expires on a Saturday, Sunday or any other day that is a State of Oregon holiday or furlough day (a "Holiday"), the act in question may be performed on the next succeeding day that is not a Saturday, Sunday or Holiday.

12.15 **No Joint Venture.** Nothing set forth in this Agreement shall be construed to create a joint venture between Buyer and Seller.

12.16 **Venue.** Each of the parties consents to the jurisdiction of the Circuit Court for Marion County, Oregon for any action arising out of matters related to this Agreement. Notwithstanding the preceding sentence, if a claim must be brought in a federal forum, then it

must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including, but not limited to, sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

12.17 **No Merger.** The provisions of this Agreement shall not merge with the delivery of the Deed but shall, except as otherwise provided in this Agreement, survive the Closing.

12.18 **Patriot Act.** Seller represents and warrants to Buyer that Seller is not named, and is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub L 107-56, 115 Stat 272 ("**USA Patriot Act**"), Executive Order No. 13224 or any other Executive Order or the United States Treasury Department as a terrorist, "Specially Designated Nation and Blocked Person," or other banned 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 ("**Blocked Person**"). Seller is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such Blocked Person. Seller's full, legal, and complete name is set forth above. Seller is not known as, and does not employ any other names or aliases. If Buyer is advised and/or determines that Seller is a Blocked Person, Buyer reserves the right to terminate this Agreement and/or to take all other actions necessary to comply with the requirements of the Executive Order. The provisions of this Section 12.18 will survive the Closing.

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

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement to be effective as of the Contract Date.

SELLER:

K2D DEVELOPMENT, LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

BUYER:

THE STATE OF OREGON,
acting by and through the Oregon
Department of Fish and Wildlife

By: _____
Name: _____
Title: _____

DRAFT

EXHIBIT A
LEGAL DESCRIPTION

Lots 17 and 18, FAIRVIEW INDUSTRIAL PARK – PHASE III, City of Salem,
Marion County, Oregon.

DRAFT

EXHIBIT B

PERSONAL PROPERTY

DRAFT

EXHIBIT C

INTANGIBLE PROPERTY

DRAFT

EXHIBIT D
CONTRACT OBLIGATIONS

DRAFT

EXHIBIT E
FORM OF DEED

AFTER RECORDING RETURN TO AND
UNTIL A CHANGE IS REQUESTED SEND
ALL TAX STATEMENTS TO:

The Oregon Department of Fish and Wildlife
Facilities & Engineering
3406 Cherry Avenue
Salem, OR 97303
Attn: Gregory Parker

STATUTORY WARRANTY DEED

K2D DEVELOPMENT, LLC, an Oregon limited liability company (“Grantor”), conveys and warrants to THE STATE OF OREGON, ACTING BY AND THROUGH THE OREGON DEPARTMENT OF FISH AND WILDLIFE (“Grantee”), the following described real property free of encumbrances, except as specifically set forth on the attached Exhibit A:

Lots 17 and 18, FAIRVIEW INDUSTRIAL PARK – PHASE III, City of Salem,
Marion County, Oregon.

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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD

CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

The true and actual consideration for this conveyance is \$_____.

Dated: _____, 20__

K2D DEVELOPMENT LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT F

PERMITTED EXCEPTIONS

DRAFT

EXHIBIT G

FORM OF BILL OF SALE

For good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the undersigned, K2D DEVELOPMENT LLC, an Oregon limited liability company (“Seller”), does hereby give, grant, bargain, sell, transfer, assign, convey and deliver to THE STATE OF OREGON, acting by and through the Oregon Department of Fish and Wildlife (“Buyer”), pursuant to that certain Agreement for Purchase and Sale of Real Property dated as of _____ 2011 between Seller and Buyer (the “Purchase Agreement”), all of the personal property identified and described on attached Schedule A and made a part of this Agreement together with all other Personal Property (as defined in the Purchase Agreement) to be transferred to Buyer as provided in the Purchase Agreement. Seller hereby represents and warrants that the assets transferred are owned by Seller free and clear of all mortgages, liens, encumbrances and claims of any nature whatsoever.

All references to “Seller” and “Buyer” shall be deemed to include their respective heirs, representatives, nominees, successors and/or assigns, where the context permits.

Dated: _____, 20__

K2D Development, LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

SCHEDULE A
PERSONAL PROPERTY INVENTORY

DRAFT

EXHIBIT H

FORM OF NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by K2D DEVELOPMENT, LLC, an Oregon limited liability company ("Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Income Tax Regulations;

3. Seller's U.S. employer identification number is _____; and

4. Seller's office address is _____ Street, _____,
_____.

Seller understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Dated: _____, 20__

K2D DEVELOPMENT, LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

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EXHIBIT I

FORM OF ASSIGNMENT OF INTANGIBLE PROPERTY

THIS ASSIGNMENT OF INTANGIBLE PROPERTY is executed as of this ____ day of _____, 20__, by K2D DEVELOPMENT, LLC, an Oregon limited liability company (“Assignor”), in favor of THE STATE OF OREGON, ACTING BY AND THROUGH THE OREGON DEPARTMENT OF FISH AND WILDLIFE (“Assignee”), pursuant to that certain Agreement for Purchase and Sale of Real Property, dated _____, 2011 (the “Purchase Agreement”), by and between Assignor, as Seller, and Assignee, as Buyer.

FOR VALUE RECEIVED, Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor’s right, title and interest in, to and under the Intangible Property and the Contract Obligations (as such terms are defined in the Purchase Agreement).

Assignor hereby covenants that it will, at any time and from time to time upon written request therefor, execute and deliver to Assignee, its nominees, successors or assigns, any new or confirmatory instruments and do and perform any other acts which Assignee, its nominees, successors or assigns, may reasonably request in order to fully assign and transfer to and vest in Assignee, its nominees, successors or assigns, and protect its or their rights, title and interest in and enjoyment of, all of the assets of Assignor intended to be transferred and assigned hereby, or to enable Assignee, its nominees, successors or assigns, to realize upon or otherwise enjoy any such assets.

Assignor hereby agrees to indemnify, defend, protect and hold harmless Assignee from and against any and all liability, loss, cost, damage and expense (including, without limitation, attorneys’ and paralegals’ fees and costs) asserted against, incurred or suffered

by Assignee relating to Assignor's obligations with respect to the Intangible Property and Contract Obligations arising prior to the date hereof.

By its acceptance hereof, Assignee agrees to perform or cause to be performed Assignor's obligations, if any, under the Intangible Property and Contract Obligations from and after the date of this instrument, and, subject to the limitations of Article XI of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through ORS 30.300), agrees to indemnify, defend, protect and hold Assignor harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignor relating thereto and arising after the date hereof; however, Assignee shall not be required to indemnify Assignor for any such liability arising out of the wrongful acts of Assignor, its officers, employees or agents.

The provisions of this Assignment of Intangible Property and Contract Obligations shall be binding upon and inure to the benefit of Assignor, Assignee and their successors and permitted assigns.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the undersigned has executed this Assignment of Intangible Property and Contract Obligations as of the date first above written.

K2D DEVELOPMENT, LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF OREGON, acting by and
through the Oregon Department of Fish and
Wildlife

By: _____
Name: _____
Title: _____

EXHIBIT J
SCHEDULE OF PERFORMANCE

DRAFT