

RESOLUTION NO. 825

A RESOLUTION AUTHORIZING, APPROVING AND RATIFYING THE PURCHASE OF PROPERTY ON LOWER BOONES FERRY ROAD FOR \$135,000 FROM GLACIER PARK COMPANY, A DELAWARE CORPORATION.

WHEREAS, the City Council recognizes that frontage property on the Willamette River is a natural resource of limited quantity; and

WHEREAS, it has come to the attention of the City Council that Glacier Park Company, a Delaware Corporation, possesses a parcel of property which is adjacent to the City Boones Ferry Park to the west and separated only by a public street, Lower Boones Ferry, and that said parcel contains property which fronts on the Willamette River, and that Glacier Park Company desires to sell said parcel with frontage; and

WHEREAS, prior City Councils' have recognized the need and desirability of purchasing said land for public use and in conjunction with the existing public Boones Ferry Park and did obtain an appraisal report and opinion of value of the portion of property which fronts on the Willamette River; and

WHEREAS, the acting City Manager has negotiated a purchase of the parcel of property, including the frontage land, for a price that is within the appraisal range for the frontage land alone, subject to final approval of the City Council, as set forth in Exhibit "A", Earnest Money Purchase Agreement; and

WHEREAS, the City Council also recognizes that the parcel has certain construction cost constraints if privately developed and, therefore, finds that there is a public need and benefit to purchase said parcel for public use, with the least amount of private impact, that the purchase price is reasonable, and that prior efforts of former members of the City Council have provided a significant cornerstone leading to purchase of this property; and

WHEREAS, the Finance Director has advised that he finds sufficient funds are budgeted in the Park Reserve Fund to purchase this parcel.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City of Wilsonville authorizes, approves and ratifies the purchase for \$135,000 from Glacier Park Company, a Delaware Corporation, in accordance with

Exhibit "A", Purchase and Sales Agreement, which includes the legal description, a copy of which is attached hereto and incorporated herein.

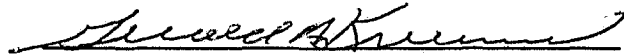
2. The Acting City Manager is authorized to enter into and execute any necessary documents in accordance herewith.

3. Payment for said purchase in the sum of \$135,000 and any incidental closing costs and pro-rated property tax is authorized, approved and to the extent applicable, ratified from the Park Reserve Fund.

4. Recognition of the efforts of the former Councilors toward this purchase is hereby made, with special recognition and acknowledgment to the efforts of past Council Member Richard Clarke and past Mayor John Ludlow.


5. Upon purchase, the City staff is directed to institute the necessary land use applications to obtain Comprehensive Plan and Map and Zoning Map changes to public facility zone and use for the property.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 6th day of May, 1991 and filed with the Wilsonville City Recorder this date.



GERALD A. KRUMMEL, Mayor

ATTEST:



VERA A. ROJAS, CMC, City Recorder

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Chandler	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Lehan	<u>AYE</u>
Councilor Van Eck	<u>AYE</u>



City of
WILSONVILLE
in OREGON

3000 SW Town Center Loop E • PO Box 220
Wilsonville, OR 97070
(503) 682-1011

ADMINISTRATION DEPARTMENT
MEMORANDUM

DATE: APRIL 30, 1991
TO: HONORABLE MAYOR AND CITY COUNCILORS
FROM: MICHAEL E. KOHLHOFF, ACTING CITY MANAGER
SUBJECT: PURCHASE OF PROPERTY

Pursuant to the City Council's direction I have initiated a purchase of a 2± acre site for \$135,000. The City had obtained an appraisal on river frontage lots (tax lots 700 and 701) consisting of 1.26 acres at a low of \$130,00 and a high of \$140,000, Davis Appraisal Report, October 13, 1989.

Please note a Phase I environmental assessment was conducted and no evidence of hazardous material disposal was found. I have a copy of same on file.

Information assisting me in this purchase was initially provided by former Councilor Dick Clarke. I then contacted former Mayor John Ludlow who had sought to obtain this property earlier. He provided me with valuable background information which assisted greatly in determining whether an acceptable offer could be made within the former appraisal price.

While he could have been in a position to charge a real estate commission, he waived same and provided his expertise. I recommend Council approval of the purchase and for the Council to recognize the good will and community effort of Mr. Clarke and former Mayor Ludlow.

mek:pjm



FAX TRANSMISSION COVER LETTER

DATE: 5/6

TIME: 8:45

Please deliver the following pages to:

NAME: MICHAEL KOHLOFF

FAX: 682-1015

FROM: JOHN ROSENTHAL

OF:

Realty Marketing/Northwest
503/224-1906
503/242-1814 Fax
800/433-4669
206/684-9824

522 S.W. Fifth Avenue
Suite 1250
Portland, Oregon 97204

10 Pages (including this cover sheet) are being transmitted. If transmission is not complete, please call: Pattilyn at (503)224-1906.

PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between GLACIER PARK COMPANY, a Delaware corporation ("Seller"), and City of Wilsonville, a Municipal Corp. ("Purchaser").

1. *Offer and Acceptance.* Purchaser offers and agrees to purchase from Seller and Seller accepts such offer and agrees to sell and convey to Purchaser all of Seller's right, title and interest in and to that parcel of land in or near Wilsonville, County of Clackamas, State of Oregon, more particularly described on the attached Exhibit A which is hereby incorporated ("Property").

(Check if applicable) This Agreement relates only to land. This conveyance shall exclude Seller's buildings and any other improvements on the Property, all of which may be removed by Seller prior to the date of closing and which, if not removed, shall be deemed abandoned by the Seller and shall thereafter be and become the property of the Purchaser in place without further obligation by the Seller.

2. *Purchase Price.* The purchase price shall be one hundred thirty five thousand & 00/100 Dollars (\$135,000.00), payable as follows:

Deposit: thirteen thousand five hundred & 00/100 (\$13,500.00)

Cash at Closing: The balance of the Purchase Price by cash or certified check.

3. *Deposit.* Purchaser shall pay to Seller a non-refundable (except as provided herein) deposit ("Deposit") as consideration for Seller withdrawing the Property from the market during the term of this Agreement.

4. *Escrow.* The parties shall deposit this Agreement, the Deposit and such other documents and monies as are required hereby into the Escrow established with Glacier Park Company Title Services or its assigns (the "Title Company").

*M.E.K.
W.S.B.*

This offer is subject to final approval at an open, public meeting of the City Council scheduled for May 6, 1991.

5. *Title/Title Insurance.* Subject to performance by the Purchaser the Seller agrees to execute and deliver on the date of closing a Special Warranty Deed conveying title to the Property subject only to: all special assessments and local improvement district charges, easements and permits of record, Seller's reservation of minerals, all building and zoning laws, ordinances, State and Federal regulations, and the Permitted Exceptions approved by Purchaser pursuant to this paragraph.

The Seller shall, within 20 days after this Agreement is executed by both parties, furnish either a preliminary title insurance commitment for standard coverage issued by the Title Company to include proper searches covering bankruptcies, and State and Federal judgments and liens, or a commitment for an Abstract of Title. Purchaser shall be allowed 10 days after receipt of the commitment for examination of said title and the making of any objections thereto, all objections to be made in writing to Seller or they shall be deemed to be waived. If any objections to title are timely made, and Seller is so notified, all as herein provided, Seller shall be allowed until ten (10) days prior to the date of closing to cure or to obtain title insurance coverage over said objections. Seller will use reasonable efforts to cure or to insure over the objections provided, however, Seller shall not be required to incur more than \$500.00 in costs in doing so. If Seller is unable to cure or to insure over said objections by use of said efforts, Seller shall so notify Purchaser, and Purchaser shall have five (5) days to notify Seller in writing of its election to either:

- a. Terminate this Agreement, by written notice to Seller, whereupon Seller shall immediately return the Deposit to Purchaser and thereafter neither party shall be further liable hereunder; or
- b. Waive its objections to title and, in such event, Seller shall remove the objections that Seller was able to cure, and the parties shall close the transaction contemplated by this agreement; or
- c. Postpone the date of closing for up to thirty (30) days, during which time Seller shall continue to use reasonable efforts as specified above as may be reasonably necessary to cure said objections. If said objections to title are not cured on or before the closing date, as postponed, Purchaser may either terminate this Agreement, as provided in subparagraph (a) of this paragraph 5, or waive said objections to title and, in such event, close the transaction contemplated by this Agreement in the same manner as if there had been no title objections.

Exceptions approved or waived by Purchaser under this Paragraph 5 shall be "Permitted Exceptions".

MSK
WEB

6. *Date of Closing.* Closing of this transaction, subject to paragraphs 9 and 10 of this Agreement, shall occur in the offices of the Title Company, on or before 1 PM, on the date which is ~~30~~ days after Purchaser accepts the condition of title as provided in paragraph 5 of this Agreement, unless another date is agreed to by the parties, provided, however, that unless extended in writing by agreement of the parties, this Agreement shall be null and void, and the Deposit shall be returned to Purchaser if the closing has not occurred prior to a date which is 60 days after the date hereof. For purpose of this Agreement "date of closing" shall be construed as the date upon which all appropriate documents are recorded and the proceeds of the sale are available for disbursement to Seller.

7. *Closing Costs.* Seller shall pay the following costs and expenses in connection with the transaction:

- a. Seller's attorney fees;
- b. Real property taxes prorated to date of closing;
- c. All special assessment installments and local Improvement District assessment installments against the Property which are due prior to the date of closing.

Purchaser shall pay the following costs and expenses in connection with this transaction:

- a. The escrow fees;
- b. Recording of warranty deed;
- c. Any real estate excise taxes due on the conveyance;
- d. Any documentary stamps, recording fees or transfer taxes;
- e. Purchaser's attorney fees;
- f. Title insurance premium or abstract fee and sales tax thereon;
- g. Expenses of a survey, if any; and
- h. All real estate compensation taxes or rollback taxes and penalties as a result of a change in use or designation of the Property including, but not limited to, a change from open space, agricultural, forest land or recreational.

8. *Conveyance.* Seller shall convey title to Purchaser by Special Warranty Deed, subject only to the exceptions and reservations and Permitted Exceptions listed in paragraph 5 of this Agreement.
9. *Governmental Approval.* If the approval of any governmental agency is required for the sale of the Property, it is understood and agreed that this Agreement is subject thereto and that both parties shall use their best efforts to obtain such approval. The closing date shall be extended, subject to the limits in paragraph 6 of this Agreement, for such period as may be required to obtain such approval. In the event said approval cannot be obtained, either party may terminate this Agreement without liability to the other, except that Seller shall return the Deposit to Purchaser.
10. *Survey; Subdivision.* In the event a city, county, or other governing authority where the Property is located, requires a survey or plat or has a subdivision ordinance, the Purchaser shall, at Purchaser's expenses, comply and take all steps necessary to obtain such survey, plat, or subdivision. The survey, plat or subdivision shall be submitted by Purchaser to Seller for review and approval prior to recording and within a period of thirty (30) days after the date of Seller's acceptance of this offer. Seller agrees to cooperate with Purchaser in obtaining the necessary approvals. The closing date shall be extended, subject to the limits set forth in paragraph 6 of this Agreement, for such period as may be required to obtain such approval.
11. *Taxes and Assessments.* Seller shall be responsible for the real property taxes and all special assessment and L.I.D. installments due for the Property for all prior years and to the date of closing. Purchaser shall be responsible for the real property taxes and all special assessments and L.I.D. installments for the Property due on or after the date of closing.
12. *Possession.* The Purchaser shall be entitled to possession of the Property upon the date of closing.
13. *Condition of Premises.* Purchaser offers to purchase the Property in an "as is" condition, with all physical defects, including those that cannot be observed by casual inspection. Seller shall have no obligation to repair or remedy any physical defects of the Property.
14. *Commission.* Each party warrants and represents to the other that, except as set forth on Exhibit B, no real estate brokerage commission or fees of any kind or type are or will be payable by such other party as a result of the transaction herein provided for, or, if any such commissions or fees are payable, the warranting party shall pay the same and hereby indemnifies such other party of, from and against any and all claims for any real estate brokerage commission or fee which may arise as a result of any acts of the warranting party.

15. *Time is of the Essence.* Time is of the essence of this Agreement, and it is agreed that in case the Purchaser shall fail to comply with or perform any condition or agreement hereof or to make any payment required, the Seller may elect, by written notice to Purchaser, to declare all the Purchaser's rights hereunder terminated, and upon its doing so, all payments made by the Purchaser hereunder shall be forfeited to the Seller as liquidated damages, or the Seller may, at its election, treat this Agreement as being in full force and effect with the right to an action for specific performance. No waiver by the Seller of any default on the part of the Purchaser shall be construed as a waiver of any subsequent default.
16. *Notices.* Any notices required or permitted to be given shall be in writing and delivered either in person or by certified mail, return receipt requested, postage prepaid, addressed as follows or such other address as may be designated by either party:

SELLER: Glacier Park Company
1011 Western Avenue, Suite 700
Seattle, Washington 98104
Attn: Ray Flaherty

With a copy to:
Glacier Park Company
Attn: Corporate Counsel
1011 Western Avenue, Suite 700
Seattle, Washington 98104

PURCHASER: City of W. Linnville
PO Box 220
W. Linnville OR 97070
Attn: Mike Kohlhoff

Any notice given pursuant to this Agreement, except as otherwise provided in paragraph 5, shall be deemed effective the day it is personally delivered or three business days after the date it is deposited in the United States mails.

17. *Reasonable Attorney's Fees.* If by reason of any default on the part of either party to this Agreement it becomes necessary for the other party to employ an attorney, then and in such event the unsuccessful party shall pay to the prevailing party a reasonable attorney's fee and all reasonable costs and expenses necessarily expended or incurred by either party in connection with such default or action.

18. *Entire Agreement.* All understandings and agreements previously existing between the parties, if any, are merged into this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement or representation made by the other not embodied herein. This Agreement may not be changed or terminated orally.
19. *Lease Prepayment Limitations.* If the Property is currently being leased to Purchaser or one or more third parties, Seller shall not refund or prorate any prepaid or unearned lease rentals except to the extent that such prepaid or unearned rentals for any lease exceeds the sum of \$500.00.
20. *Lease Rentals; Continuance of Purchaser's Lease.* If the Property is currently being leased to the Purchaser, then Purchaser agrees to keep rentals, taxes and other charges payable to Seller under the terms of the lease fully prepaid. Any refund or adjustment of the lease required pursuant to paragraph 19 above will be made on the date of closing. If the lease is only partially located within the Property being purchased, the refund, if applicable, shall be apportioned by Seller. Termination of Purchaser's lease shall be effective upon the date of closing.
21. *Leases Other Than Purchaser.* If the Property is currently being leased to one or more third parties, the lease(s) will be assigned to the Purchaser on the date of closing. Any refund or proration will be handled pursuant to paragraph 19 of this Agreement.
22. *Non-Foreign Affidavit.* Seller is not a foreign person as the term is used and defined in section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. Seller shall, upon request of Purchaser, complete an affidavit to this effect.
23. *Purchaser's Title Information.* Unless otherwise notified by Purchaser in writing not less than 20 days prior to the Closing Date, Seller shall convey the Property to the Purchaser as named on page one of this Agreement. If Purchaser wishes to have title to the Property conveyed otherwise, Purchaser's written notice shall clearly set forth the full and correct names of the party or parties to whom title will be conveyed, their address, their relationship to Purchaser, if any, and whether conveyance is to be in joint tenancy or otherwise, and if a company, whether it is a partnership, trust, trustee or corporation, address of principal office and state of incorporation.

This offer, consisting of 6 pages and of said Exhibits A and B attached hereto, is made a part hereof, has been made, signed and sealed in duplicate by the Purchaser this 23 day of April, 1991.

PURCHASER

SELLER

City of Wilsonville

GLACIER PARK COMPANY

By Michael E. Kohloff

By Clara Brandberry

By _____

By _____

Attachments:

Exhibit A - Legal Description

Exhibit B - Broker's Commission Information

TICOR TITLE INSURANCE

196-695

LEGAL DESCRIPTION

IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON

PARCEL I:

All that portion of Block "J", Town of Wilsonville, Clackamas County, Oregon, lying Easterly of a line drawn parallel with and distant 25.0 feet Easterly of, as measured at right angles to, the Main Track centerline of Burlington Northern Railroad Company's (formerly Oregon Electric Railway Company's) Portland to Salem, Oregon Branch Line, as now located and constructed.

TOGETHER WITH those portions of vacated 1st Street and alley which inured thereto by Ordinance No. 42, recorded June 10, 1974, Fee No. 74 15505.

EXCEPTING THEREFROM any portion thereof lying within the Bonneville Power Administration tract described in Final Order recorded March 27, 1940, in Book 267, page 308.

AND EXCEPT that portion conveyed by deed to Oregon Electric Railway Company, recorded August 3, 1972, Fee No. 72 22990.

PARCEL II:

That portion of the northeast one-quarter of the southwest one-quarter of Section 23, Township 3 South, Range 1 West, W.M., Town of Wilsonville, Clackamas County, Oregon, bounded on the north by 1st Street, according to the recorded plat thereof; on the east by Main Street, according to the recorded plat thereof; on the south by the meander line of the Willamette River; and on the west by a line drawn parallel with and distant 25.0 feet Easterly of, as measured at right angles to, the Main Track centerline of Burlington Northern Railroad Company's (formerly Oregon Electric Railway Company's) Portland to Salem, Oregon Branch Line, as now located and constructed.

TOGETHER WITH that portion of vacated 1st Street which inured thereto by Ordinance No. 42, recorded June 10, 1974, Fee No. 74 15505.

EXCEPTING THEREFROM any portion thereof lying within the Bonneville Power Administration tract described in Final Order recorded March 27, 1940, in Book 267, page 308.

AND EXCEPT that portion conveyed by deed to Oregon Electric Railway Company, recorded August 3, 1972, Fee No. 72 22990. *****

EXHIBIT B

Seller's Agent in this transaction is:

Realty Marketing/Northwest
522 SW Fifth Avenue, Ste. 1250
Portland, Oregon 97204

Seller shall pay a commission of 6 % of the purchase price to Seller's Agent.

Buyer's Agent, if any, in this transaction is:

None

Seller shall pay a commission of — % of the purchase price to Buyer's Agent.

TRANSACTION REPORT

MAY- 6-91 MON 8:53

RECEIVE

#	DATE	S. T.	NAME	TIME	PGS	NOTE	DP
01	MAY- 6	8:47	5032285053	6'14"	10	OK	