

**ORDINANCE NO. 1101**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PURCHASE AND SALE AGREEMENT WITH HOLLY CORNERS, LLC., AN OREGON CORPORATION FOR THE PURCHASE OF A LOT WITHIN TERRITORIAL ESTATES SUBDIVISION LOCATED AT N. HOLLY AND TERRITORIAL ROAD FOR PUBLIC PARK PURPOSES, AND DECLARING AN EMERGENCY.**

**WHEREAS**, in accordance with ORS 226.320, the Canby City Council (City) decided to exercise an option to purchase Lot 30 of Territorial Estates located at the corner of N. Holly Street and Territorial Road for the sum of Sixty Seven Thousand Dollars (\$67,000.00) to be used for public park and open space purposes; and

**WHEREAS**, the Canby City Attorney has negotiated and prepared an Earnest Money Receipt memorializing the negotiated terms and is prepared to establish an escrow account for closing the transaction. A copy of said Earnest Money Receipt with the legal description of the property is attached hereto as Exhibit "A" and by this reference, incorporated herein; and

**WHEREAS**, the Canby Municipal Charter requires the Council to approve any contract purchase over Fifteen Thousand Dollars (\$15,000.00) in cost by municipal ordinance; now therefore,

**THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. In order to acquire property for public park and recreation purposes in accordance with ORS 226.320, the Canby City Council hereby authorizes the Mayor to sign the proposed Purchase and Sale Agreement on behalf of the City attached hereto as Exhibit "A" and to return an executed original to the City Attorney to establish an escrow account to close the transaction as soon as possible.

Section 2. In as much as it is in the best interest of the citizens of Canby to complete the transaction as soon as possible to secure this property, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

**SUBMITTED** to the Canby City Council and read the first time at a regular

meeting thereof on Wednesday, July 3, 2002, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, July 17, 2002, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Chaunee Seifried  
Chaunee Seifried  
City Recorder - Pro Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 17<sup>th</sup> day of July, 2002, by the following vote:

YEAS 6

NAYS 0

Terry L Prince  
Terry L Prince, Mayor

**ATTEST:**

Chaunee Seifried  
Chaunee Seifried, City Recorder - Pro Tem

EXHIBIT "A"

OWNER'S SALE AGREEMENT AND EARNEST MONEY RECEIPT

A. PURCHASER'S OFFER: City of Canby, a municipal corporation, ("Purchaser")  
offer(s) to purchase the following real property in the County of Clackamas, State of Oregon (insert address and legal description):  
Lot 30, Territorial Estates Subdivision,

and the following personal property (personal property if applicable): X

for the purchase price of Sixty Seven Thousand and no/100 Dollars \$ 67,000.00  
payable as follows: (a) earnest money herein received for of ..... \$ 0.00;  
(b) on (date) ....., as additional earnest money, the sum of ..... \$ 0.00;  
(c) on delivery of  deed  contract, the sum of (balance of down payment) ..... \$ 0.00;  
(d) the balance of the purchase price ..... \$ 67,000.00.  
payable as follows: payable in full at closing.

(CHECK IF APPLICABLE) SEE ADDENDUM A FOR ADDITIONAL PROVISIONS.  
Loan Contingencies. If a loan is provided for above, Purchaser shall promptly apply and use best efforts to obtain that loan, and the sale and purchase are subject to the Purchaser and the property qualifying for the loan.  
Earnest Money Deposit. If this offer is accepted, the earnest money received for shall be: (a) (use only if closing in escrow)  deposited with Pacific Northwest Title Company, Tigard, Oregon as escrow; or (b)  retained by Seller, and either (i) applied at closing to the Purchase Price or otherwise retained by Seller as provided in this agreement, or (ii) retained by Seller until refundable to Purchaser as provided in this agreement.  
Property Included/Excluded. With the following exceptions, Seller shall leave on the premises as part of the property purchased: all irrigation, plumbing, heating, cooling, electrical and lighting fixtures (including oil tanks but excluding unattached fireplace equipment); built-in appliances; water heaters; bulbs and tubes; window treatments; window and door screens; storm doors and windows; attached floor coverings; attached television antennae; and all shrubs, plants and trees. The exceptions are (if none, so state): n/a

Deed. The property is to be conveyed by statutory warranty deed free and clear of all liens and encumbrances except zoning ordinances, building and use restrictions, reservations in Federal patents, easements of record which benefit the property or area where the property is located and (if none, so state) none

Seller Financing. If Seller will hold a contract or trust deed, the contract or trust deed shall require Purchaser to: (a) maintain the real property in good condition; (b) provide fire and customary casualty insurance naming Seller as an insured, for the full insurable value of the real property; and (c) pay all real property taxes and assessments when due. Purchaser's default shall entitle Seller to: (a) call all amounts owing, due and payable; (b) recover Seller's reasonable attorney fees incurred in exercising Seller's remedies under the contract or note and trust deed; and (c) exercise all remedies legally available.  
Possession. Possession of the property is to be delivered to Purchaser:  within 10 day(s) after closing;  on or before .....

Pro Rates. Real property taxes, rents, unused tenant deposits (whether or not refundable), interest on obligations assumed by Purchaser, other expenses prepaid by Seller for the property, and accrued and unpaid obligations relating to the property and for which Purchaser will be responsible, shall be prorated between Seller and Purchaser as of the date of possession.  
Real property taxes assessed after closing on account of prior special assessment of the property (e.g., as farm or forest property) shall be paid by  Purchaser  Seller (INDICATE WHICH). Purchaser shall pay Seller for heating oil in the tank at date of possession.  
Closing. Closing shall occur on or before ASAP  (CHECK IF APPLICABLE) The transaction will be closed by the escrow company named above, with the escrow fee paid 50% by Seller and 50% by Purchaser. At closing, Seller may pay out of the purchase money, encumbrances to be discharged by Seller.

Asbestos. If any of the purchase price is being paid to Seller after closing, Seller may not assign Purchaser's rights under this agreement without the written consent of Seller.  
Seller's Representations. Seller represents that: (a) except as stated in writing in this agreement or in Seller's Property Disclosure, if any, Seller knows of no material structural defects in the real property including the heating, cooling, plumbing, electrical and lighting fixtures, built-in appliances, water heaters, bulbs and tubes, window treatments, window and door screens, storm doors, and attached floor coverings; (b) the real property is sold and purchased as is, with all defects apparent and not apparent. NOTE: Seller may be required to give Purchaser a statutory property disclosure or disclaimer.  
Private Well. If the property is served by a private water well, Seller represents that: (a) the well has provided an adequate supply of water during the entire year for the uses it serves; (b) the well provides water for human consumption; and (c) the continued use of the well and water complies with the laws of all governmental agencies. No other representations are made concerning the water supply and well. If the well provides water for domestic use, upon Seller's acceptance of Purchaser's offer, Seller, at Seller's expense, will have the well tested for nitrates and total coliform bacteria and for such other matters as are required by the Oregon Health Division. Upon receipt, Seller shall submit the test results to the Oregon Health Division and Purchaser. If the written report of the test made by Seller shows a substantial deficiency in quality of the water, then Purchaser may terminate this transaction by delivering written notice of termination to Seller within 24 hours after receipt by Purchaser of the written test report, unless within 24 hours after delivery of notice of termination, Seller agrees in writing to correct before closing, the deficiencies shown on the report.

Inspection. Purchaser understands that a complete professional inspection of the property is advisable. CHECK ONE OF THE FOLLOWING TWO BOXES:  
 PROFESSIONAL INSPECTION(S): Purchaser may have the property and all elements and systems thereof (including any private water well serving the property) inspected by one or more professionals chosen and employed by Purchaser. If an inspector reports the presence of a material defective condition or of a lead-based paint hazard in the property, Purchaser may terminate the transaction by delivering to Seller, written notice of Purchaser's disapproval of the inspection report. Notice must be delivered within \_\_\_\_\_ business days (seven if not filled in) after the date this agreement is made. Purchaser shall promptly provide a copy of the report to Seller if requested by Seller. Purchaser understands that if Purchaser does not give written notice of disapproval of an inspection report showing a material defective condition or a lead-based paint hazard, within the time provided above, that constitutes acceptance of the condition of the property.

PURCHASER'S INSPECTION: Purchaser has personally inspected the property and all elements and systems thereof. Purchaser is fully satisfied and has elected NOT to have an inspection performed by anyone else.  
Lead-Based Paint.  Check and comply if property includes non-exempt housing constructed before 1978) See attached "Seller's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards."  
Smoke Detectors. Seller agrees that prior to closing a properly installed and functioning smoke detector(s) will be installed in each dwelling unit as required by law.  
Title Insurance. As part of closing, Seller will furnish to Purchaser at Seller's expense a title policy in the amount of the purchase price and insuring marketable title. Prior to closing, Seller shall give Purchaser a title insurance company's report showing its willingness to insure title to the property.  
Earnest Money Payment/Refund. If Seller does not accept this offer, or if Seller accepts this offer and fails to close the sale as provided in the agreement, the earnest money shall be refunded, but Purchaser's acceptance of the refund is not a waiver of other remedies available to Purchaser. If Seller accepts this offer and is ready, willing and able to perform, and Purchaser fails to perform as and when provided in this agreement, then the earnest money and additional earnest money, if any, shall be paid to Seller and this contract will be of no further binding effect.

Statutory Disclosures. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES. (IF THE PROPERTY IS TAXED AS HISTORIC PROPERTY, INCLUDE STATEMENT IN ORS 93.040(3))  
Time/Essence/Binding Effect. Time is of the essence. This contract is binding upon the successors and permitted assigns of Purchaser and Seller.  
Purchaser may revoke this offer any time prior to Seller's acceptance. If not accepted by \_\_\_\_\_ o'clock \_\_\_\_\_ M., (date) \_\_\_\_\_, this offer is automatically revoked. Purchaser has an executed copy of this offer, which Purchaser has read and understands. The deed or contract is to be prepared in the name of \_\_\_\_\_

Purchaser (A): Tony J. Linn, Mayor Date: 7/17/2002 (B): \_\_\_\_\_ Date: \_\_\_\_\_  
Address (A): City of Canby  
Address (B): 182 N. Holly Street, Canby, OR 97013  
Phone(s): (A) \_\_\_\_\_ & \_\_\_\_\_; (B) \_\_\_\_\_ & \_\_\_\_\_ Fax: (A) \_\_\_\_\_; (B) \_\_\_\_\_

SELLER'S ACCEPTANCE/REJECTION/COUNTER OFFER AND RECEIPT FOR EARNEST MONEY (COMPLETE ONE OF THE FOLLOWING TWO OPTIONS)