

**ORDINANCE NO. 1214**

**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT FOR THE PURCHASE OF REAL PROPERTY FOR A FUTURE MUNICIPAL POLICE/COURT BUILDING; AND DECLARING AN EMERGENCY.**

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

**Section 1.** Purchase Authorized. The Canby City Administrator is hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, a contract with Ray L. Burden, deceased and Irene E. Burden Family Trust the following described real property for a future municipal police/court facility:

Lot 5, BURDEN, in the City of Canby, Clackamas County, Oregon

**Section 2.** Purchase Price. The total purchase price to be the sum of Nine Hundred Ninety Six Thousand One Hundred Seventy Four and no/100 dollars (\$996,174.00). The total price is to be paid in full at closing. A copy of the earnest money receipt entered into between the parties is attached hereto and marked as "Exhibit A" thereto. The City Administrator is authorized to complete the transaction according to the terms of "Exhibit A".

**Section 3.** Budgeted Funds to Pay Purchase Price. The purchase price is to be paid from the City's current fiscal budget line item number 427, titled "Capital Reserve Fund".

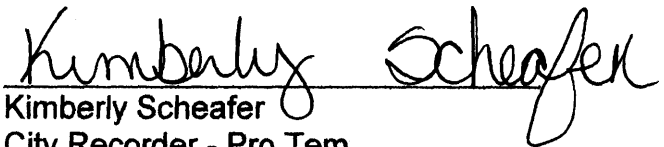
**Section 4.** City Attorney to Approve Title Report and Deed. The City Attorney shall first approve the preliminary title report and form of deed for the City's purchase of said property. Purchase price insuring the City's vendee interest in said property is to be furnished at the expense of the seller and free and clear of all liens or encumbrances except for the usual printed exceptions.

**Section 5.** City Administrator to Execute Deed. The City Administrator is hereby authorized and directed to execute and deliver in the name of and on behalf of the City of Canby, as purchaser, the required deed and any other documents as may be required for closing the transaction.

**Section 6.** Emergency Declared. Inasmuch as it is necessary to proceed as quickly as possible with the plans for the construction and development of a new police and municipal court facility for the use and benefit of the City and since the seller of said property intends to sell this property immediately, and for the general welfare of the

residents, an emergency is hereby declared to exist and this ordinance shall take effect immediately after final reading and enactment by the Canby City Council.

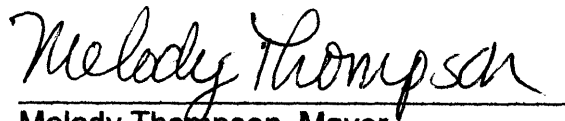
**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on June 21<sup>st</sup>, 2006, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on July 5<sup>th</sup>, 2006, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City hall in Canby, Oregon.

  
Kimberly Scheafer  
City Recorder - Pro Tem

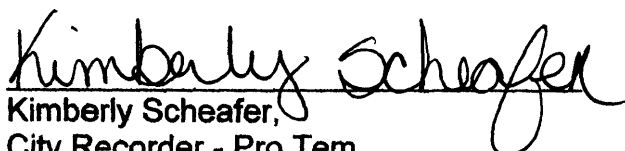
**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 5<sup>th</sup> day of July, 2006, by the following vote:

YEAS 6

NAYS 0

  
Melody Thompson, Mayor

**ATTEST:**

  
Kimberly Scheafer,  
City Recorder - Pro Tem

**COMMERCIAL ASSOCIATION OF REALTORS® OREGON/SW  
WASHINGTON  
PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST  
MONEY  
(Oregon Commercial Form)**

**AGENCY ACKNOWLEDGMENT**

Buyer shall execute this Acknowledgment concurrent with the execution of the Agreement below and prior to delivery of that Agreement to Seller. Seller shall execute this Acknowledgment upon receipt of the Agreement by Seller, even if Seller intends to reject the Agreement or make a counter-offer. In no event shall Seller's execution of this Acknowledgment constitute acceptance of the Agreement or any terms contained therein.

Pursuant to the requirements of Oregon Administrative Rules (OAR 863-015-0215), both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and by execution below acknowledge and consent to the agency relationships in the following real estate purchase and sale transaction as follows:

- (a)  (agent name) Allen Patterson, SIOR of Capacity Commercial Group and Terry Tolls of TN Tolls Company firm) (Selling Licensee) is the agent of (check one):  Buyer exclusively;  Seller exclusively;  both Seller and Buyer ("Disclosed Limited Agency")
- (b)  (agent name) \_\_\_\_\_ of \_\_\_\_\_ (firm) (Listing Licensee) is the agent of (check one):  Buyer exclusively;  Seller exclusively;  both Seller and Buyer ("Disclosed Limited Agency").

If the name of the same real estate firm appears in both Paragraphs (a) and (b) above, Buyer and Seller acknowledge that a principal broker of that real estate firm shall become the Disclosed Limited Agent for both Buyer and Seller, as more fully set forth in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and the named real estate licensee(s).

**ACKNOWLEDGED**

Buyer: (print) \_\_\_\_\_ (sign) [Signature] Date: 31 May 2006

Buyer: (print) \_\_\_\_\_ (sign) \_\_\_\_\_ Date: \_\_\_\_\_

Seller: (print) \_\_\_\_\_ (sign) Charles Edward Buden Date: June 1, 2006

Seller: (print) \_\_\_\_\_ (sign) Personal Representative for the Estate of Kayl. Buden  
Successor Trustee of the Irene E. Buden  
Family Trust

**PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY**

Dated: May 30, 2006

BETWEEN: Ray L. Burden, deceased and Irene E. Burden Family Trust  
("Seller")

Address: 23230 S. Highway 99E, Canby, OR 97013

AND: City of Canby ("Buyer")

Address: 182 N. Holly Street, Canby, OR 97013

Buyer offers to buy and acquire from Seller (i) the real property and all improvements thereon commonly known as Lot 5, Burden subdivision consisting of approximately 6.0984 acres as shown on Exhibit A attached hereto and located at Sequoia Parkway in the City of Canby, County of Clackamas, Oregon legally described on Exhibit A, attached hereto and incorporated herein by reference (the "Property") and [check box if applicable , (ii) all of Seller's right, title and interest in and to certain lease(s) by which the Property is demised as described on Exhibit B attached hereto and incorporated herein by reference (the "Leases"). If no legal description is attached, Buyer and Seller will attach a legal description upon receipt and reasonable approval by both parties of the Preliminary Commitment or, if applicable, the Survey. As partial consideration for the assignment of the Lease(s) to Buyer, at the Closing (as defined in Section 7 hereof) Buyer shall assume all of the obligations of the Lessor under the Lease which first accrue on or after the Closing Date (as defined in said Section 7). The parties shall accomplish such assignment and assumption by executing and delivering to each other through Escrow an Assignment of Lessor's Interest Under Lease substantially in the form of Exhibit B attached hereto (the "Assignment"). The occupancy of the Property by the Lessees under such Leases are hereinafter sometimes referred to as the "Tenancies".

1. Purchase Price. The total purchase price is Nine Hundred Ninety Six Thousand One Hundred Seventy Four and no/100 dollars (\$996,174.00) (\$3.75 per square foot) (the "Purchase Price") payable as follows: All cash at closing.

1.1. Earnest Money Deposit. Upon execution of this Agreement, Buyer shall deliver to the Escrow Holder as defined in herein, for the account of Buyer \$10,000.00 as earnest money (the "Earnest Money") in the form of  cash or  check or  promissory note (the "Note"). If the Earnest Money is in the form of a check being held un-deposited by the  Listing  Selling Firm, it shall be deposited no later than 5 PM Pacific Time three days after execution of the Agreement by Buyer and Seller in the  Listing  Selling Firm's Clients' Trust Account  to the Escrow (as hereinafter defined). If the Earnest Money is in the form of the Note, it shall be due and payable no later than 5 PM Pacific Time one day  after execution of this Agreement by Buyer and Seller or  after satisfaction or waiver by Buyer of the conditions to Buyer's obligation to purchase the Property set forth in this Agreement or  Other: \_\_\_\_\_. If the Note is not redeemed and paid in full when due, then (i) the Note shall be delivered and endorsed to Seller (if not already in Seller's possession), (ii) Seller may collect the Earnest Money from Buyer, either pursuant to an action on the Note or an action on this Agreement, and (iii) Seller shall have no further

obligations under this Agreement. The purchase and sale of the Property shall be accomplished through an escrow (the "Escrow") which Seller has established or will establish with **Fidelity National Title, 900 SW Fifth Ave, Terrace Level, Portland, OR 97204** (the "Title Company") and the Earnest Money shall be deposited with  Title Company or  Other: \_\_\_\_\_ The Earnest Money shall be applied to the payment of the purchase price for the Property at Closing. Any interest earned on the Earnest Money shall be considered to be part of the Earnest Money. The Earnest Money shall be returned to Buyer in the event any condition to Buyer's obligation to purchase the Property shall fail to be satisfied or waived through no fault of Buyer.

2. **Conditions to Purchase.** Buyer's obligation to purchase the Property is conditioned on the following:  none or  Buyer's approval of the results of (i) the Property inspection described in Section 3 below and (ii) the document review described in Section 4 and (iii) (describe any other condition): \_\_\_\_\_ If for any reason in Buyer's sole discretion, Buyer has not given written waiver of these conditions, or stated in writing that these conditions have been satisfied, by written notice given to Seller within **28 calendar** days after the delivery of a fully executed Agreement to Buyer and Seller, this Agreement shall be deemed automatically terminated, the Earnest Money shall be promptly returned to Buyer, and thereafter, except as specifically provided to the contrary herein, neither party shall have any further right or remedy hereunder.

3. **Property Inspection.** Seller shall permit Buyer and its agents, at Buyer's sole expense and risk, to enter the Property at reasonable times after reasonable prior notice to Seller and after prior notice to the tenants of the Property as required by the tenants' leases, if any, to conduct any and all inspections, tests, and surveys concerning the structural condition of the improvements, all mechanical, electrical and plumbing systems, hazardous materials, pest infestation, soils conditions, wetlands, Americans with Disabilities Act compliance, and all other matters affecting the suitability of the Property for Buyer's intended use and/or otherwise reasonably related to the purchase of the Property including the economic feasibility of such purchase. Buyer shall indemnify, hold harmless, and defend Seller from all liens, costs, and expenses, including reasonable attorneys' fees and experts' fees, arising from or relating to Buyer's entry on and inspection of the Property. This agreement to indemnify, hold harmless, and defend Seller shall survive closing or any termination of this Agreement.

4. **Seller's Documents.** Within **5** days after the Execution Date, Seller shall deliver to Buyer, at Buyer's address shown below, legible and complete copies of the following documents and other items relating to the ownership, operation, and maintenance of the Property, to the extent now in existence and to the extent such items are within Seller's possession or control: **Documents related to the property, including surveys, environmental and engineering reports, soil studies, and subdivision plat.**

5. **Title Insurance.** Within **5** days after the Execution Date, Seller shall open the Escrow with the Title Company and deliver to Buyer a preliminary title report from the Title Company (the "Preliminary Commitment"), showing the status of Seller's title to the Property, together with complete and legible copies of all

documents shown therein as exceptions to title ("Exceptions"). Buyer shall have 15 days after receipt of a copy of the Preliminary Commitment and Exceptions within which to give notice in writing to Seller of any objection to such title or to any liens or encumbrances affecting the Property. Within 5 days after the date of such notice from Buyer, Seller shall give Buyer written notice of whether it is willing and able to remove the objected-to Exceptions. Within 5 days after the date of such notice from Seller, Buyer shall elect whether to (i) purchase the Property subject to those objected-to Exceptions which Seller is not willing or able to remove or (ii) terminate this Agreement. On or before the Closing Date (defined below), Seller shall remove all Exceptions to which Buyer objects and which Seller agrees Seller is willing and able to remove. All remaining Exceptions set forth in the Preliminary Commitment and agreed to by Buyer shall be deemed "Permitted Exceptions." The title insurance policy to be delivered by Seller to Buyer at Closing shall contain no Exceptions other than the Permitted Exceptions, any Exceptions caused by Buyer and the usual preprinted Exceptions contained in an owner's standard ALTA form title insurance policy.

6. Default; Remedies. Notwithstanding anything to the contrary contained in this Agreement, in the event Buyer fails to deposit the Earnest Money Deposit in Escrow strictly as and when contemplated under Section 1.1 above, Seller shall have the right at any time thereafter to terminate this Agreement and all further rights and obligations hereunder by giving written notice thereof to Buyer. If the conditions, if any, to Buyer's obligation to consummate this transaction are satisfied or waived by Buyer and Buyer nevertheless fails, through no fault of Seller, to close the purchase of the Property, Seller's sole remedy shall be to retain the Earnest Money paid by Buyer. In the event Seller fails, through no fault of Buyer, to close the sale of the Property, Buyer shall be entitled to pursue any remedies available at law or in equity, including without limitation, the remedy of specific performance. In no event shall Buyer be entitled to punitive or consequential damages, if any, resulting from Seller's failure to close the sale of the Property.

7. Closing of Sale. Buyer and Seller agree the sale of the Property shall be closed  on or before July 31, 2006 or  \_\_\_\_\_ days after the Execution Date (the "Closing Date") in the Escrow. The sale shall be deemed "closed" when the document(s) conveying title to the Property is recorded and the Purchase Price (increased or decreased, as the case may be, by the net amount of credits and debits to Seller's account at Closing made by the Escrow Holder pursuant to the terms of this Agreement) is disbursed to Seller. At Closing, Buyer and Seller shall deposit with the Title Company all documents and funds required to close the transaction in accordance with the terms of this Agreement. At Closing, Seller shall deliver a certification in a form approved by Buyer that Seller is not a "foreign person" as such term is defined in the Internal Revenue Code and the Treasury Regulations promulgated under the Internal Revenue Code. If Seller is a foreign person and this transaction is not otherwise exempt from FIRPTA regulations, the Title Company shall be instructed by the parties to withhold and pay the amount required by law to the Internal Revenue Service. At Closing, Seller shall convey fee simple title to the Property to Buyer by  statutory warranty deed or  (the "Deed")\_\_\_\_\_. If this Agreement provides for the conveyance by Seller of a vendee's interest in the Property by a contract of sale, Seller shall deposit with the Title Company (or

other mutually acceptable escrow) the executed and acknowledged Deed, together with written instructions to deliver such deed to Buyer upon payment in full of the purchase price. At Closing, Seller shall pay for and deliver to Buyer a standard ALTA form owner's policy of title insurance (the "Policy") in the amount of the Purchase Price insuring fee simple title to the Property in Buyer subject only to the Permitted Exceptions and the standard preprinted exceptions contained in the Policy.

8. Closing Costs; Prorates. Seller shall pay the premium for the Policy. Seller and Buyer shall each pay one-half of the escrow fees charged by the Title Company, any excise tax, and any transfer tax. Real property taxes for the tax year in which the transaction is closed, assessments (if a Permitted Exception), personal property taxes, rents and other Lessee charges arising from existing Tenancies paid for the month of Closing, interest on assumed obligations, and utilities shall be prorated as of the Closing Date. Prepaid rents, security deposits, and other unearned refundable deposits regarding the Tenancies shall be assigned and delivered to Buyer at Closing.  Seller  Buyer  N/A shall be responsible for payment of all taxes, interest, and penalties, if any, upon removal of the Property from any special assessment or program.

9. Possession. Buyer shall be entitled to exclusive possession of the Property, subject to the Tenancies existing as of the Closing Date,  on the Closing Date or  \_\_\_\_\_.

10. Condition of Property. Seller represents that, to the best of Seller's knowledge without specific inquiry, Seller has received no written notices of violation of any laws, codes, rules, or regulations applicable to the Property ("Laws"), and Seller is not aware of any such violations or any concealed material defects in the Property which cost more than \$0 to repair or correct. Risk of loss or damage to the Property shall be Seller's until Closing and Buyer's at and after Closing. No agent of Buyer or Seller has made any representations regarding the Property. BUYER AND SELLER AGREE THAT THE REAL ESTATE LICENSEES NAMED IN THIS AGREEMENT HAVE MADE NO REPRESENTATIONS TO ANY PARTY REGARDING THE CONDITION OF THE PROPERTY, THE OPERATIONS ON OR INCOME FROM THE PROPERTY, THE TENANCIES, OR WHETHER THE PROPERTY OR THE USE THEREOF COMPLIES WITH LAWS. Except for Seller's representations set forth in this section 10, Buyer shall acquire the Property "as is" with all faults and buyer shall rely on the results of its own inspection and investigation in Buyer's acquisition of the Property. It shall be a condition of Buyer's obligation to close, and of Seller's right to retain the Earnest Money as of Closing, that all of the Seller's representations and warranties stated in this Agreement are materially true and correct on the Closing Date. Seller's representations and warranties stated in this Agreement shall survive Closing for one (1) year. **Seller represents and warrants that he has not received notice of any liens to be assessed against the property, except for LID, EID and AFD, as stated above.**

11. Personal Property. This sale includes the following personal property:  **None** or  the personal property located on and used in connection with the Property and owned by Seller which Seller shall itemize in a schedule. Seller shall deliver to Buyer such schedule within \_\_\_\_\_ days after the Execution Date. Seller

shall convey all personal property owned by Seller on or in the Property to Buyer by executing and delivering to Buyer at Closing through Escrow a Bill of Sale substantially in the form of Exhibit C attached hereto and incorporated herein by reference (the "Bill of Sale").

12. Notices. Unless otherwise specified, any notice required or permitted in, or related to, this Agreement must be in writing and signed by the party to be bound. Any notice will be deemed delivered (i) when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or (ii) on the day following delivery of the notice by reputable overnight courier, or (iii) three (3) days after mailing in the U.S. mails, postage prepaid, by the applicable party in all events, to the address of the other party shown in this Agreement, unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day. If the deadline under this Agreement for delivery of a notice or payment is a Saturday, Sunday, or legal holiday, such last day will be deemed extended to the next following business day.

13. Assignment. Buyer  may not assign  may assign  may assign, only if the assignee is an entity owned and controlled by Buyer (may not assign, if no box is checked) this Agreement or Buyer's rights under this Agreement without Seller's prior written consent. If Seller's consent is required for assignment, such consent may be withheld in Seller's reasonable discretion.

14. Attorneys' Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith (the "Fees"). In the event of suit, action, arbitration, or other proceeding, the amount of Fees shall be determined by the judge or arbitrator, shall include all costs and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

15. Statutory Land Use Disclaimer. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM AND 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.

16. Cautionary Notice About Liens. UNDER CERTAIN CIRCUMSTANCES, A PERSON WHO PERFORMS CONSTRUCTION-RELATED ACTIVITIES MAY



CLAIM A LIEN UPON REAL PROPERTY AFTER A SALE TO THE PURCHASER FOR A TRANSACTION OR ACTIVITY THAT OCCURRED BEFORE THE SALE. A VALID CLAIM MAY BE ASSERTED AGAINST THE PROPERTY THAT YOU ARE PURCHASING EVEN IF THE CIRCUMSTANCES THAT GIVE RISE TO THAT CLAIM HAPPENED BEFORE YOUR PURCHASE OF THE PROPERTY. THIS INCLUDES, BUT IS NOT LIMITED TO, CIRCUMSTANCES WHERE THE OWNER OF THE PROPERTY CONTRACTED WITH A PERSON OR BUSINESS TO PROVIDE LABOR, MATERIAL, EQUIPMENT OR SERVICES TO THE PROPERTY AND HAS NOT PAID THE PERSONS OR BUSINESS IN FULL.

17. Miscellaneous. Time is of the essence of this Agreement. The facsimile transmission of any signed document including this Agreement, in accordance with Paragraph 12, shall be the same as delivery of an original. At the request of either party, the party delivering a document by facsimile will confirm facsimile transmission by signing and delivering a duplicate original document. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements between them with respect thereto. Without limiting the provisions of Section 13 of this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. The person signing this Agreement on behalf of Buyer and the person signing this Agreement on behalf of Seller each represents, covenants and warrants that such person has full right and authority to enter into this Agreement and to bind the party for whom such person signs this Agreement to the terms and provisions of this Agreement. This Agreement shall not be recorded unless the parties otherwise agree.

18. Addendums; Exhibits. The following named addendums and exhibits are attached to this Agreement and incorporated within this Agreement:  none or Exhibit A and First Amendment.

19. Time for Acceptance. Seller has until 5:00 p.m. Pacific Time on Wednesday, May 31, 2006 to accept this offer. Acceptance is not effective until a copy of this Agreement which has been signed and dated by Seller is actually received by Buyer. If this offer is not so accepted, it shall expire and the Earnest Money shall be promptly refunded to Buyer and thereafter, neither party shall have any further right or remedy against the other.

20. Seller's Acceptance and Brokerage Agreement. By execution of this Agreement, Seller agrees to sell the Property on the terms and conditions in this Agreement. Seller further agrees to pay a commission to Capacity Commercial Group and TN Tolls Company ("Broker") in the total amount computed in accordance with (i) the listing agreement or other commission agreement dated \_\_\_\_\_ between Seller and Broker; or (ii) if there is no written commission agreement, Seller hereby agrees to pay a commission of  Six percent (6%) of the purchase price to be split 50/50 between Capacity Commercial Group and TN Tolls Company. or  \$\_\_\_\_\_. Seller and Broker agree that the commission is deemed earned as of the

earlier of (i) Closing or (ii) the date Buyer waives all conditions precedent to Closing as set forth in this Agreement. Unless otherwise provided in a separate written agreement, Seller shall cause the Escrow Holder to deliver to Broker the real estate commission on the Closing Date or upon Seller's breach of this Agreement, whichever occurs first. If the Earnest Money is forfeited and retained by Seller in accordance with this Agreement, in addition to any other rights the Broker may have, the Broker shall be entitled to the lesser of (A) fifty percent (50%) of the Earnest Money or (B) the commission agreed to above, and Seller hereby assigns such amount to the Broker.

21. Execution Date. The Execution Date is the later of the two dates shown beneath the parties' signatures below.

22. Governing Law. This Agreement is made and executed under, and in all respects shall be governed and construed by the laws of the State of Oregon.

CONSULT YOUR ATTORNEY. THIS DOCUMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR REVIEW AND APPROVAL PRIOR TO SIGNING. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE COMMERCIAL ASSOCIATION OF REALTORS® OREGON/SW WASHINGTON OR BY THE REAL ESTATE LICENSEES INVOLVED WITH THIS DOCUMENT AS TO THE LEGAL SUFFICIENCY OR TAX CONSEQUENCES OF THIS DOCUMENT.

THIS FORM SHOULD NOT BE MODIFIED WITHOUT SHOWING SUCH MODIFICATIONS BY REDLINING, INSERTION MARKS, OR ADDENDA.

Buyer City of Canby  
 By *Mark A. Decker*  
 Title CITY ADMINISTRATOR  
 Execution Date 31 May 2006  
 Home Phone N/A  
 Office Phone 503-266-9404  
 Address 170 NEW 2<sup>nd</sup> Avenue  
 City Canby  
 Zip 97013  
 Fax No. \_\_\_\_\_  
 E-Mail \_\_\_\_\_  
 Signature *Mark A. Decker*

Seller Ray L. Burden & Irene E. Burden Family Trust  
 By *Charles Edward Burden*  
 Title Personal Representative for Estate of Ray L. Burden  
 Execution Date June 1, 2006 + Successor Trustee of the Irene E. Burden Family Trust  
 Home Phone 503-313-7552  
 Office Phone 503-266-2345  
 Address 23230 S. Highway 99E  
 City Canby  
 Zip 97013  
 Fax No. \_\_\_\_\_  
 E-Mail \_\_\_\_\_  
 Signature *Charles Edward Burden*



EARNEST MONEY PROMISSORY NOTE

COPY

U.S. \$10,000

Canby,  
City

Oregon  
State

Date: May 30, 2006

FOR VALUE RECEIVED, City of Canby

Names(s) of maker(s)

182 N. Holly St., Canby, OR, 97013, jointly and  
Address

severally, promise to pay to the order of Fidelity National Title

the sum of Ten Thousand and no/100 (\$10,000) Dollars,

with interest at 0.00 percent per annum from N/A

until paid.

Both principal and interest are payable in U.S. dollars on or before \_\_\_\_\_,

upon satisfaction or waiver of contingencies pursuant to the Purchase and Sale Agreement

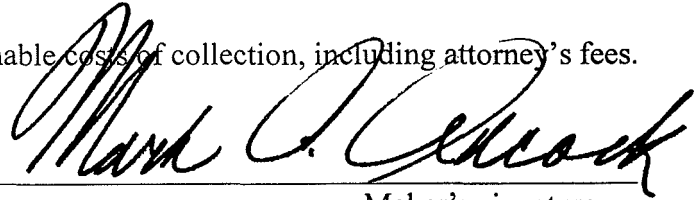
between Maker and Ray L. Burden, deceased and Irene E. Burden Family Trust dated May 30, 2006, payable at

Fidelity National Title, 900 SW Fifth Avenue, Terrace Level, Portland, OR

to Account No. N/A or to such other address or account as the holder

may designate. Presentment, notice of dishonor, and protest are hereby waived. If this note is

not paid when due, I/we agree to pay all reasonable costs of collection, including attorney's fees.



Maker's signature

Maker's signature

**FIRST AMENDMENT  
TO  
AGREEMENT FOR PURCHASE AND SALE**

This FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE ("First Amendment") is made and entered into effective as of May 30, 2006, by and between, **Ray L. Burden and Irene E. Burden Family Trust** ("Seller"), and **City of Canby** ("Buyer").

RECITALS

- A. Seller and Buyer entered into that certain Agreement for Purchase and Sale as dated as of May 30, 2006, with respect to real property commonly know as 'Exhibit A' of the Purchase and Sale Agreement ( the "Purchase Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Closing: Closing shall occur no later than July 31, 2006
2. Measure 37: 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 regulation, that, in farm or forest zones, may not authorize construction or siting of a residence and that limit lawsuit against farming or forest practices as defined in ORS 30.930 in all zones. Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under Chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)). Before or accepting this instrument, the person acquiring fee title to the property should check with the appropriate cit or county planning department to verify approved uses, the existence of fire protection for structures and the rights of neighboring property owners, if any, under Chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)). ORS 93.040 (2).
3. Price: The price shall be \$996,174.00 until June 30, 2006. For each day beyond June 30, 2006, the price shall be increased by a daily charge of \$165.00.
4. Level I or Level II: Should a Level I or a Level II environmental report be required by buyer, it would be at the sole cost and expense of the buyer. In the event that buyer is not satisfied, in its sole discretion, with the results of the Level I or Level II report, buyer may terminate this agreement prior to the date of closing without any liability.
5. Environmental: Seller is the personal representative of the estate and has no actual knowledge of hazardous material on the property. Seller does represent to the Buyer that the property has been used in agricultural use and some agricultural chemicals were used which may now be deemed "hazardous materials". Seller also discloses that during the construction of Sequoia Parkway there may have been oil drippings from construction equipment. Buyer is advised to obtain its own environmental report on the property. Seller is selling the property "AS IS".
6. Miscellaneous Seller Obligations: The price shall include all streets, utilities and curbing on Sequoia Parkway, plus Seller's prorated share of existing AFD's (Advance Finance District allocations) and LID's (Local Improvements District assessments). Seller shall pay farm deferral taxes, if applicable.
7. Miscellaneous Buyer Obligations: Buyer shall be responsible for sidewalks, planter/landscaping strips and driveways. Buyer shall also be responsible for EID (Economic Improvement District) fees when applicable.
8. Personal Property / Nursery Stock: Seller shall have the option to remove any personal property and all or part of Seller's landscaping (including nursery stock) prior to the date of closing.

9. Except with respect to the provisions expressly set forth in this Amendment, the Purchase Agreement remains unmodified in all other respects and in full force and effect. This First Amendment is entered into pursuant to, and is intended to be read together and consistent with, the Purchase Agreement. However, if any consistencies exist between this First Amendment and the Purchase Agreement, the provisions of this First Amendment shall prevail over anything to the contrary in the Purchase Agreement.
  
10. The parties may execute this First Amendment in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. A First Amendment containing a facsimile signature of the parties to this First Amendment shall be deemed an original of the First Amendment. Each of the parties agrees to forward original non-facsimile signatures of the First Amendment to the other party.

**IN WITNESS WHEREOF**, Seller and Buyer have executed this First Amendment for Purchase and Sale Agreement as of the day and year first written above.

SELLER:

**Ray L. Burden and Irene E. Burden Family Trust**

By: Charles Edward Burden  
*Personal Representative for the Estate of Ray L. Burden*  
 Name: Charles Edward Burden  
*Successor Trustee for the Irene E. Burden Family Trust*  
 Dated: June 1, 2006

BUYER:

City of Carroll

By: Mark C. Adcock  
 Name: MARK C. ADCOCK  
 Dated: 31 May 2006