

AGENDA

CANBY CITY COUNCIL REGULAR MEETING

April 7, 2010

7:30 PM

Council Chambers

155 NW 2nd Avenue

Mayor Melody Thompson

Council President Walt Daniels

Councilor Richard Ares

Councilor Robert Bitter

Councilor John Henri

Councilor Brian Hodson

Councilor Jason Padden

CITY COUNCIL REGULAR MEETING

1. CALL TO ORDER

A. Pledge of Allegiance and Moment of Silence

B. National Library Week Proclamation

Pg. 1

C. Sexual Assault Awareness Month Proclamation

Pg. 2

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Each citizen will be given 3 minutes to give testimony. Citizens are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter.)

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.)

A. Approval of Minutes of the March 12, 2010 City Council Special Meeting

B. Approval of Minutes of the March 17, 2010 City Council Regular Meeting

7. RESOLUTIONS & ORDINANCES

A. Res. 1057, Referring to the Electorate a Proposed Annexation of 4.77 Acres Pg. 3

B. Res. 1058, Authorizing Canby Urban Renewal Agency Board to Purchase Property
Located at 111 NW 2nd Avenue Pg. 8

8. NEW BUSINESS

9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

12. EXECUTIVE SESSION: ORS 192.660(2)(e) Real Property, ORS 192.660(2)(f) Exempt Public Records and ORS 192.660(2)(h) Pending Litigation

13. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.



Office of the Mayor

Proclamation

National Library Week

WHEREAS, libraries everywhere play a vital role in supporting the quality of life in their communities; and

WHEREAS, our nation's school, academic, public and special libraries make a difference in the lives of millions of Americans, today, more than ever; and

WHEREAS, librarians are trained professionals, helping people of all ages and backgrounds find and interpret the information they need to live, learn and work in a challenging economy; and

WHEREAS, libraries serve as crucial technology hubs for people in need of free Web access, computer training, and assistance finding job resources; and

WHEREAS, libraries are part of the American Dream – places for opportunity, education, self-help and lifelong learning; and

WHEREAS, library use is up nationwide among all types of library users, continuing a decade-long trend; and

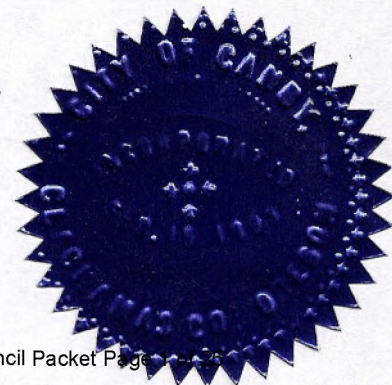
WHEREAS, the Canby Public Library is well-loved and well-used by residents of all ages from all walks of life; and

WHEREAS, libraries, librarians, library workers and supporters across America are celebrating National Library Week.

NOW, THEREFORE, I, Melody Thompson, by virtue of the authority vested in me as the Mayor of the City of Canby, do hereby proclaim April 11-17, 2010 as National Library Week, and call upon individuals, schools, churches, organizations and business establishments in the City of Canby to visit the library this week, and to take advantage of the wonderful library resources available at your library. I also invite all to enjoy music, refreshments and family fun at Canby's National Library Week celebration on Saturday, April 17, 2010. Communities thrive at your library.

Given unto my hand this 7th day of April 2010 in the City of Canby, Oregon.

Melody Thompson
Mayor





Office of the Mayor

Proclamation

Sexual Assault Awareness Month

WHEREAS, sexual assault affects women, children and men of all racial, cultural and economic backgrounds; and

WHEREAS, in addition to the immediate physical and emotional costs, sexual assault may also have associated consequences of post-traumatic stress disorder, substance abuse, depression, homelessness, eating disorders and suicide; and

WHEREAS, sexual assault can be devastating for not only the survivor, but also for the family and friends of the survivor; and

WHEREAS, no one person, organization, agency or community can eliminate sexual assault on their own, but we can work together to educate our entire population about what can be done to prevent sexual assault, support victim/survivors and their significant others, and increase support for agencies providing services to victim/survivors; and

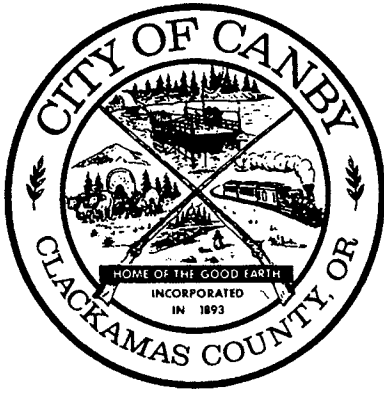
WHEREAS, Sexual Assault Awareness Month provides an excellent opportunity for citizens to learn more about preventing sexual violence.

NOW, THEREFORE, I, Melody Thompson, by virtue of the authority vested in me as the Mayor of the City of Canby, do hereby proclaim April as Sexual Assault Awareness Month in the City of Canby and call its significance to the attention of all our citizens.

Given unto my hand this 7th day of April 2010 in the City of Canby, Oregon.



Melody Thompson
Mayor



City of Canby

Office of the City Attorney

March 18, 2010

Memo to: Mayor/City Council

From: John H. Kelley, City Attorney 

Re: Resolution No.1057 - Ballot measure/Summary for Voter's Pamphlet for
Annexation 09-01 – Beck Annexation

Attached is Resolution No. 1057. It certifies to Clackamas County elections department for the November 2, 2010 election, Annexation 09–01, application from Norman and Jenny Beck to annex 4.77 acres of property to the City. Both the Planning Commission and City Council unanimously approved it, and in accordance with the City Charter requirement for voter-approved annexations, the application must be voted on at the next election.

Attached to the Resolution is a Notice of City Measure Election with the Caption, Question and Summary for the ballot and the Explanatory Statement for the Voter's Pamphlet. The City is required to submit these documents when it refers an issue to a vote of the electorate. The deadline for having the material to the County is September 2, 2010.

The guideline for drafting the Notice and Explanatory Statement is that, "the City Attorney, to the best of his ability, give a true and impartial statement of the purpose of the measure in such language that the ballot title not create any argument for, or create prejudice against the measure". I believe the Notice and Statement I have prepared meets this criteria. If you agree, a motion to approve Resolution No. 1057 is appropriate. If you are not satisfied with the language, please feel free to contact me before the meeting or draft some alternative language to bring to the meeting so that it can be discussed.

RESOLUTION NO. 1057

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY RECORDER TO CERTIFY TO THE CLACKAMAS COUNTY CLERK A MEASURE REFERRING TO THE ELECTORATE A PROPOSED ANNEXATION OF 4.77 ACRES DESCRIBED AS TAX LOT 2500 OF TAX MAP 3-1E-27C LOCATED at 1732 N. PINE STREET; AUTHORIZING THE CITY RECORDER TO SEND AN EXPLANATORY STATEMENT FOR THE VOTER'S PAMPHLET; AND DOING ALL OTHER NECESSARY ACTS TO PLACE THE MATTER BEFORE THE VOTERS OF THE CITY OF CANBY FOR THE NOVEMBER 2, 2010 ELECTION.

WHEREAS, the Canby City Council has heretofore approved an application filed by Norman and Jenny Beck, the owners of tax lot 2500 of Tax Map 3-1E-27C, to annex 4.77 acres into the City of Canby; and

WHEREAS, pursuant to the provisions of the Canby City Charter, the approval of the proposed annexation must be referred to the electorate of the City of Canby for an election; and

WHEREAS, ORS 250.035 requires a Notice of Measure be prepared by the City and submitted to the Clackamas County Elections Department by September 2, 2010 in order to appear on the ballot for the November 2, 2010 election; and

WHEREAS, pursuant to the Canby Municipal Code, the Canby City Attorney has prepared a Notice of City Measure Election and Summary for Voter's Pamphlet to be submitted to the Elections Department;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby, as follows:

1. The City Recorder of the City of Canby is hereby authorized and directed to certify to the Clackamas County Clerk for submission to the voters at the November 2, 2010 election, the Notice of City Measure. Such Notice of City Measure Election is attached to this Resolution in proper form and adopted by the City.
2. The City Recorder of the City of Canby is further authorized and directed to submit a Summary of the Measure to be placed in the voter's pamphlet explaining in clear and concise language the affect of such ballot measure. Such summary is attached to this Resolution in proper form and adopted by the City.
3. The City Recorder, the City Administrator and the City Attorney are hereby

authorized to do all other necessary and proper acts to place the ballot measure before the voters at the November 2, 2010 election.

This Resolution shall take effect on April 7, 2010.

ADOPTED this 7th day of April, 2010, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

EXPLANATORY STATEMENT FOR VOTER'S PAMPHLET

MEASURE APPROVING ANNEXATION OF 4.77 ACRES INTO THE CITY OF CANBY

Measure No. _____

Word Total 377 (500 max)

This measure would approve the annexation of 4.77 acres into the city limits of the City of Canby. The property which would be included within the City boundaries is known as Tax Lot 2500 of Tax Map 3-1E-27C and is located generally in the northeast part of the City. The annexation application also includes all of N. Pine Street from the applicant's westerly property line of Tax Lot 2500 across the width of N. Pine Street. Tax Lot 2500 is currently zoned Rural Residential Farm and Forest (RRFF-5) under County zoning. If annexation into the City is approved by the voters, the parcel would be rezoned to R-1, Low Density Residential, as required under the City's Comprehensive Land Use Plan (Comp Plan) and Zoning Map. The westerly 0.15 acres of N. Pine Street would be zoned R-1.5 (Medium Density Residential).

Tax Lot 2500 is owned by Norman and Jenny Beck. The Becks have filed the application for annexation into the City of Canby. The City, following its Charter, has put this matter before the voters for approval.

The parcel is located at 1732 N Pine Street, south of NE Territorial Road, west of the Logging Road Trail. The property currently contains one single family residence. Adjacent properties to the north, west and east are within current city limits. Adjacent property to the south is currently located outside the city limits. Property to the west is zoned for Medium Density Residential. Property to the north is zoned High Density Residential and contains the Willamette Grove Apartments. As indicated above, the subject property would be rezoned upon annexation approval to R-1, Low Density Residential. Under the R-1 zoning regulations, the applicant could construct up to 18 single family lots, however in their application they indicate that, at this time, they simply want to build one additional single family residence for a family member. Annexation alone does not set the future uses to be built on the property. Any further development would have to comply with state and local land use laws and would be subject to public review.

The Canby Planning Commission unanimously voted to approve the application and the Canby City Council unanimously voted to approve the application and refer it to a vote of the Canby electorate.

CITY OF CANBY

Kimberly Scheafer, CMC
City Recorder

Date

Notice of City Measure Election

SEL 802

rev 01/10: ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

City and Notice Information

Notice is hereby given on April 7, 2010, that a measure election will be held in

City of Canby

Name of City or Cities

Oregon on November 2

Date of Election

, 2010.

The following shall be the ballot title of the measure to be submitted to the city's voters:

Caption 10 words

MEASURE APPROVING ANNEXATION OF 4.77 ACRES INTO CITY OF CANBY.

Question 20 words

SHALL 4.77 ACRES LOCATED AT 1732 N PINE STREET, SOUTH OF NE TERRITORIAL ROAD, BE ANNEXED INTO CANBY

Summary 175 words

Annexation is the legal process to bring property into the Canby City limits. Norman and Jenny Beck have filed an application as owners of a 4.77 acres parcel, asking the City to bring it into the City limits. The legal description of the property is Tax Lot 2500 of Tax Map 3-1E-27C. The parcel is located at 1732 N Pine Street, south of NE Territorial Road and west of the Logging Road Trail. This annexation will also include all of N Pine Street that abuts the westerly most property line of Tax Lot 2500. This application has been approved by the City Planning Commission following a hearing on November 23, 2009 and further approved by the Canby City Council at its meeting of February 17, 2010. The property currently contains one single family residence. It is currently zoned Rural Residential Farm and Forest (RRFF 5) by Clackamas County. Canby's Zoning Map designates the property for Low Density Residential (R-1) zoning upon annexation. Any future development requires City review and must comply with land use laws.

The following authorized city official hereby certifies the above ballot title is true and complete, which includes publication of notice and the completion of the ballot title challenge process.

Signature of Authorized City Official not required to be notarized

Date Signed mm/dd/yy

Kimberly Scheafer, CMC

City Recorder

Printed Name of Authorized City Official

Title



M E M O R A N D U M

TO: *Mayor Thompson and Council*
FROM: *Catherine Comer, Director Economic Development & Urban Renewal Agency*
THROUGH: *Amanda Klock, Interim City Administrator*
DATE: *March 29, 2010 for Council Meeting April 7, 2010*

Issue: **RESOLUTION 1058**
AUTHORIZING THE CANBY URBAN RENEWAL AGENCY BOARD TO PURCHASE REAL PROPERTY LOCATED AT 111 NW SECOND AVENUE

Summary:

The Urban Renewal Agency has approved purchase of the Snowcap Property building to relocate the Urban Renewal and City Planning, Building, and Utility Collections departments which will move into the building following renovations. This resolution authorizes the Agency to purchase the property.

Rationale:

Purchasing this building would allow the City to own a facility instead of paying a lease and would insure that the City will have control of this section of the block for a future city hall and/or public library.

Background:

The Agency has previously directed staff to work towards a long-range plan for downtown development and City facility needs. This purchase has been discussed in these long-range planning sessions by current and previous Agency members.

Financial Evaluation:

Current lease of Planning/Building/Economic Development: \$3,042 per month, \$36,504 per year
Purchase price: \$520,000 plus buyer's portion of closing costs
Renovations: Not to exceed \$125,000

Recommendation:

Staff recommends that the Council adopt this resolution
Recommended motion ***"I MOVE TO ADOPT RESOLUTION 1058, A RESOLUTION AUTHORIZING THE CANBY URBAN RENEWAL AGENCY BOARD TO PURCHASE REAL PROPERTY LOCATED AT 111 NW SECOND AVENUE, CANBY, OREGON."***

Attached:

Resolution 1058
Exhibit A: Purchase and Sale Agreement

RESOLUTION NO. 1058

A RESOLUTION AUTHORIZING THE CANBY URBAN RENEWAL AGENCY BOARD TO PURCHASE REAL PROPERTY LOCATED AT 111 NW SECOND AVENUE, CANBY, OREGON

WHEREAS, the Canby City Council established an Urban Renewal Agency to function within the City pursuant to Ordinance 1032 passed October 6, 1999; and

WHEREAS, pursuant to the CMC 2.68.030 the City Council shall exercise all powers, duties rights granted to the Urban Renewal Agency, unless specifically granted by the City Council to the Agency to perform; and

WHEREAS, the Urban Renewal Agency is seeking to purchase real property located at 111 NW Second Avenue in Canby, Oregon in connection with an Urban Renewal District redevelopment project and is requesting that the City Council authorize the District to enter into a Purchase and Sale Agreement to purchase the property, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof; and

WHEREAS, City Council finds that it is in the City's best interest to complete the proposed redevelopment project by purchasing this property:

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby, as follows:

1. The City of Canby Urban Renewal Agency Board is hereby authorized to enter into a Purchase and Sale Agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, to purchase real property located at 111 NW Second Avenue in Canby, Oregon.
2. The Director of the Urban Renewal Agency of the City of Canby is further authorized and directed to sign the attached Exhibit "A" on behalf of the Urban Renewal Agency Board and carry out all necessary actions to enter into the Purchase and Sale Agreement.

This Resolution shall take effect on April 7, 2010.

ADOPTED this 7th day of April, 2010, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

**REAL ESTATE PURCHASE AND SALE AGREEMENT
(Snowcap Properties, LLC Building)**

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into by and between the Urban Renewal Agency of the City of Canby, Oregon ("Purchaser") and Snowcap Properties, LLC ("Seller"), as of the _____ day of March, 2010 (the "Effective Date").

SECTION 1. PURCHASE AND SALE

1.1 Purchase and Sale.

Seller hereby represents and warrants that Seller is the current sole and exclusive owner of that real property located at 111 NW 2nd Avenue, Canby, Oregon, and legally described in **Exhibit A**, attached hereto and incorporated by reference herein (the "Property"), and has the full right and authority to convey the Property free and clear of any liens, claims or encumbrances. Seller further represents that the Property is unoccupied and is not subject to any lease, other agreement or any dispute. The Property is being conveyed together with all improvements, rights, easements and appurtenances pertaining to such real property including, but not limited to, water rights, mineral rights, development rights, contract rights and permits relating to the Property, and all improvements located thereon.

1.2 Survival.

The provisions included in this Agreement shall survive Closing (as defined in **Section 7**) and shall be fully effective thereafter.

SECTION 2. PURCHASE PRICE AND ALLOCATIONS

2.1 Purchase Price.

The purchase price for the Property shall be Five Hundred Twenty Thousand Dollars (\$520,000) (the "Purchase Price").

2.2 Payment of Purchase Price.

The Purchase Price shall be payable to Seller in cash or immediately available funds at Closing.

2.3 Escrow and Earnest Money.

Within five (5) days of Purchaser's receipt of Seller's signature on this Agreement, Purchaser shall open an escrow account with, and order a preliminary title commitment from, Chicago Title Insurance Company (the "Title Company") and deliver a copy of this Agreement to the Title Company. Purchaser will deposit a promissory note for the amount of Twenty-Five Thousand Dollars (\$25,000) into escrow as Earnest Money, which Earnest Money shall be fully refundable if Purchaser, for any reason, is not satisfied with the results of the Due Diligence and

elects to terminate this Agreement, as provided below. The Title Company is hereby irrevocably instructed that the Earnest Money shall be returned in full to Purchaser, upon demand, at any time during the Due Diligence Period without the need for any further consent from Seller, whose consent to the foregoing is hereby given.

SECTION 3. TITLE MATTERS

3.1 Title Review.

3.1.1. Preliminary Commitment. Upon opening of the escrow account, Purchaser and Seller will order, at Seller's cost and expense, a preliminary commitment (the "Preliminary Commitment") for the Title Policy, as described in **Section 3.2**, showing the status of title of the Property, showing all exceptions and conditions affecting the Property which would appear in the Title Policy, and committing the Title Company to issue such a Title Policy to Purchaser. Seller will also cause the Title Company to concurrently deliver to Purchaser complete and legible copies of all instruments referred to in the Preliminary Commitment as conditions or exceptions to the title (the "Exception Documents"). Seller hereby authorizes and directs the Title Company to furnish to Purchaser the foregoing items.

3.1.2. Purchaser's Review. Purchaser shall have ten (10) days after receipt of the Preliminary Commitment and Exception Documents to notify Seller, in writing, of its approval and/or disapproval of each exception shown in the Preliminary Commitment. Purchaser's failure to notify Seller within the above referenced time period shall be deemed Purchaser's disapproval of the Preliminary Commitment and Exception Documents. Any exception that Purchaser has approved, in writing, shall become a Permitted Exception.

3.1.3. Seller's Response. If Purchaser does notify Seller of an objection to any exception, then Seller shall have up to ten (10) days after receipt of Purchaser's notice to notify Purchaser, in writing, of its agreement to remove any of the disapproved exceptions. Seller's failure to notify Purchaser within this time period as to whether or not Seller will take the action required to remove a particular exception shall constitute Seller's agreement to remove that exception prior to Closing. Seller shall thereafter remove, by Closing, the exceptions it has agreed to remove, either by express agreement or by the foregoing failure to respond.

3.1.4. Purchaser's Rights. If Seller declines to remove all or some of the exceptions disapproved by Purchaser, Purchaser shall have up to ten (10) days to notify Seller, in writing, whether it will, in its sole discretion, waive such objections or terminate this Agreement. Purchaser's failure to give such notice shall constitute Purchaser's election to terminate this Agreement. In the event Purchaser gives written notice of its election to waive the exceptions that Seller has declined to cure, then those initially disapproved but subsequently accepted exceptions shall become Permitted Exceptions. If Purchaser elects to terminate this Agreement, the Title Company shall immediately return the Earnest Money to Purchaser. Seller shall pay any cancellation fee or other cost of the Title Company.

3.1.5. Updated Title Matters. The foregoing notice and response procedures shall be repeated for any title exceptions first appearing after Purchaser's receipt of the Preliminary Commitment, except that if the time period for delivery of any notice extends

beyond the Closing Date, such notice and all subsequent notices shall be delivered on or before the Closing Date.

3.2 Title Policy.

3.2.1. Delivery of Policy. At Closing, Seller will, at its sole cost and expense, cause the Title Company to issue to Purchaser an ALTA standard coverage owner's policy of title insurance, in the amount of the Purchase Price, insuring Purchaser against loss or damage arising from any defects in title to the Property other than the Permitted Exceptions (the "Title Policy"). The Title Policy shall contain such endorsements as shall be reasonably requested by Purchaser. If Purchaser elects to obtain an ALTA extended coverage owner's policy or any special policy endorsements, Purchaser shall pay the difference in the premium between the standard coverage policy and the extended coverage policy, and Seller shall cooperate in order to allow the extended coverage policy or special endorsements to be issued.

3.2.2. Failure to Deliver Policy. If, at Closing, the Title Company will not issue the Title Policy as provided above, Purchaser may either proceed to close despite the lack of required insurance, or terminate this Agreement. If Purchaser terminates this Agreement because of the failure of the Title Company to issue the Title Policy as provided above, Seller shall immediately return the Earnest Money to Purchaser. Seller shall pay any cancellation fee or other cost of the Title Company, and this Agreement shall terminate and all rights and obligations of the parties shall terminate unless such failure is due to a default by Seller, and in that case the remedies of **Section 9.1** shall also apply.

SECTION 4. DUE DILIGENCE

4.1 Due Diligence Contingency.

Purchaser's obligation to purchase the Property is contingent upon Purchaser's satisfaction, in its sole and absolute discretion, with the condition of the Property, including the building located thereon ("Building"). Purchaser shall notify Seller, in writing, within thirty (30) days following execution of this Agreement of its waiver of this contingency ("Due Diligence Period"). If Purchaser determines that it will not purchase the Property prior to the expiration of the Due Diligence Period and so notifies Seller, in writing, within the required timeframe, Purchaser shall be entitled to a full refund of the Earnest Money, as provided above. Purchaser shall pay any cancellation fee or other cost of the Title Company, and this Agreement shall terminate and all rights and obligations of the parties, except Purchaser's indemnity obligations under **Section 4.2** of this Agreement, shall terminate. Due Diligence shall include, but is not limited to, all of the following:

4.1.1. Purchaser's Inspection and Other Due Diligence. Throughout the Due Diligence Period, Purchaser and its agents, employees and designees shall have reasonable access to the Property (including the Building) and to the persons and information described herein for the purpose of conducting its Due Diligence and determining the feasibility of the use of the Property for Purchaser's intended use. Purchaser shall contact Seller at (503) 939-9575 or (971) 322-4550 in order to arrange for access to the Property. Purchaser shall have the right to enter the Property to investigate and test the Property. Purchaser may conduct such

investigations and tests on the Property as it determines are appropriate including, but not limited to, surveys, soil and groundwater samples and tests (including any and all actions required to complete a thorough Phase I and, at Purchaser's sole option, Phase II Environmental Site Assessment), wetland studies, demolition bid, engineering studies, and environmental samples and tests. Purchaser shall have the right to inspect and study Seller's records and information relating to the Property including, but not limited to, the items described on **Exhibit B** hereto (collectively, the "Property Information"). Seller will provide such Property Information to Purchaser within ten (10) days of the Effective Date. Purchaser shall have the right, with reasonable notice; to receive copies of any such documents and records. Purchaser shall also have the right to contact the Seller, government agencies, environmental groups, prior owners, and other third parties who may have information about the past or present condition of the Property. Other items of Due Diligence include, but are not limited to, survey, land use verification, and financing.

4.1.2. Final Approval. Following completion of Due Diligence, but within the Due Diligence Period, Purchaser's governing board (the "Board") must approve or disapprove the purchase of the Property. If the Board does not approve the purchase of the Property for any reason whatsoever, this Agreement will terminate without liability to either party and Purchaser shall pay any Title Company fees due as a result of the termination.

4.2 Purchaser's Indemnification of Seller.

Seller agrees to cooperate with Purchaser in such investigations, studies and tests, and to provide any information in Seller's possession requested concerning the Property and its prior uses. Purchaser will, however, perform all investigations, studies, and tests at Purchaser's own expense. In addition, Purchaser will indemnify, defend and hold Seller harmless from any costs or claims for personal injury, property damage or materialman's/mechanic's liens caused by Purchaser's entry onto the Property to conduct such inspections, studies and tests. This indemnity shall not apply to any costs or claims (i) resulting from the acts or omissions of Seller, or (ii) resulting from the manufacture, generation, presence, release, disposal or transportation of Hazardous Substances on, to, or from the Property unless caused by Purchaser or its contractors or employees. Purchaser shall not be liable for an exacerbation of any pre-existing environmental condition that may result from environmental testing unless Purchaser has been advised of the presence of such materials and has failed to take reasonable precautions to avoid such exacerbation.

SECTION 5. PRE-CLOSING OBLIGATIONS

5.1 Seller's Closing Obligations.

At all times from the Effective Date of this Agreement to the Closing, Seller will:

5.1.1. Make all payments due under, and comply with each and every covenant and obligation imposed upon the owner of the Property by, promissory notes, mortgages, deeds of trust, ground or other leases and any other agreements affecting the Property, or secured by an interest in the Property or any part thereof, and will take any and all action as may be necessary to avoid any default under such agreements;

5.1.2. Not negotiate, discuss or enter into, or cause to be entered into, any written or oral option, sale agreement, lease, service contract or other contract or agreement regarding or pertaining to the Property or any portion thereof. Seller will also take all action required to terminate any existing leases, contracts or agreements pertaining to the Property prior to Closing so that the Property shall be transferred to Purchaser free and clear of any encumbrances, except Permitted Encumbrances;

5.1.3. Pay for any materials, supplies or work provided or ordered for the Property by Seller or Seller's agents prior to the Closing and for which a labor, materialman's or mechanic's lien may be claimed under applicable law and, if required by the Title Company, provide the Title Company with such indemnifications or security as it may require to insure title to the Property at the Closing without exception for any unrecorded labor, materialman's or mechanic's claim of lien; and

5.1.4. Reasonably cooperate with Purchaser with respect to all applications relating to the Property and the development of the Property for Purchaser's intended use.

SECTION 6. WARRANTIES OF SELLER

6.1 Warranties.

Seller hereby represents and warrants to Purchaser that Seller is the sole legal owner of the Property with good title thereto and full authority to convey the same to Purchaser. For the purposes of inducing Purchaser to consummate the transaction contemplated hereby, in addition to the warranties contained in the Statutory Warranty Deed for the Property, Seller represents and warrants to Purchaser, as of the date hereof and, except as otherwise set forth herein, as of the Closing Date, all of the following:

6.1.1. Seller has full power, authority and legal right to execute, deliver and perform this Agreement, and all other documents and certificates contemplated hereby; Seller has duly authorized the execution, delivery and performance thereof; and has authorized the person executing this Agreement to do so;

6.1.2. There are no actions, suits, proceedings, orders or investigations pending or, to the best of Seller's knowledge, threatened against or affecting Seller which might adversely affect Seller's performance under this Agreement or the consummation of the transaction contemplated hereby;

6.1.3. Except as expressly provided herein, there is not pending or, to the best of Seller's knowledge, threatened (i) condemnation or similar proceedings with respect to the Property or any part thereof, or (ii) public improvements in, about or outside the Property which might result in the imposition of any assessment, lien or charge against Seller or the Property;

6.1.4. None of the following has occurred with respect to the Property or Seller: (i) appointment of a receiver, liquidator, or trustee; (ii) institution of any proceeding for dissolution or liquidation; (iii) filing or any petition for bankruptcy, or action toward reorganization; or (iv) notice of default or forfeiture;

6.1.5. All taxes and assessments and other governmental or quasi-governmental levies of any kind which are due for payment prior to the date hereof, the non-payment of which would in any way affect the Property or any part thereof, have been paid, or shall be paid by Seller, prior to or at the Closing Date, together with all interest and penalties thereon;

6.1.6. There are no unpaid bills, claims, or liens pending or contemplated by mechanics, materialmen, surveyors, or others, recorded or unrecorded, in connection with the Property;

6.1.7. The Property is not affected by any special assessment, whether or not a lien thereon, which has not or will not be paid in full by Seller prior to the Closing Date, nor does Seller know of any pending or contemplated assessments or similar charges which will affect the Property;

6.1.8. Neither the Property nor any portion thereof is located in a flood plain or special hazard area as designated by any federal, state or local governmental body or agency;

6.1.9. Nothing prohibits Seller from entering into this Agreement with Purchaser. No other person or entity has an interest in the Property, except as set forth in the Permitted Exceptions;

6.1.10. The Property Information provided by Seller to Purchaser is complete, accurate, true and correct and does not fail to state any fact without which the Property Information would be misleading; and

6.1.11. To the best of Seller's knowledge, except as disclosed in the Property Information provided to Purchaser, (i) there has been no generation, treatment, storage, transfer, disposal or release of Hazardous Substances on the Property (including grease traps which have not been properly cleaned and materials not properly disposed of); (ii) there are no aboveground or underground storage tanks on the Property nor have any aboveground or underground storage tanks been removed from the Property; (iii) there is no asbestos or lead paint in the Building and (iii) Seller is not aware of any facts which would lead it to believe that there are any Hazardous Substances on the Property. For purposes of this Agreement, the term "Hazardous Substances" shall mean: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials; polychlorinated biphenyls; radioactive materials; chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

6.2 Purchaser's Warranties.

Purchaser represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows: Purchaser is an urban renewal agency of the State of Oregon, duly organized

and validly existing under the laws of the State of Oregon, and once this Agreement is approved at a meeting of its Board, as provided in **Section 4.1.2**, this Agreement will become a legally binding commitment to purchase the Property. Until that approval is obtained, however, this Agreement may be terminated by Purchaser without liability, except to repair any damage done to Seller's property caused by Purchaser's Due Diligence and to pay the Title Company cancellation fee, if required.

6.3 Survival of Warranties.

The warranties contained in this **Section 6** shall survive the Closing and shall be fully effective thereafter. If Seller breaches any warranty, Purchaser shall have the rights and may exercise, at its option, any of the remedies provided under **Section 9.1** of this Agreement.

SECTION 7. CLOSING

7.1 Closing Date.

Closing of the sale of the Property from Seller to Purchaser shall occur within fifteen (15) days following the Due Diligence Period ("Closing" or "Closing Date"), unless this date shall be mutually extended by written amendment to this Agreement, signed by both Purchaser and Seller. Closing shall be held in the offices of the Title Company, or at such other place as may be agreed upon in writing by Seller and Purchaser. Each party hereto agrees to execute and deliver to the Title Company such escrow instructions as may be necessary to implement and coordinate the Closing as set forth in this Agreement.

7.2 Seller's Closing Obligations.

At Closing, Seller will:

7.2.1. execute, acknowledge and deliver a Statutory Warranty Deed to the Property, subject only to the Permitted Exceptions;

7.2.2. execute, acknowledge and deliver such other agreements, documents and instruments as may be necessary to transfer, convey and assign the Property to Purchaser;

7.2.3. deliver to Purchaser, pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, an affidavit stating that Seller is not a foreign person and providing Seller's United States taxpayer identification number; and

7.2.4. deliver to Purchaser such other instruments or documents as may be required pursuant to the provisions hereof or as mutually agreed by counsel for Seller and Purchaser to be necessary to fully consummate the transaction contemplated hereby.

7.3 Purchaser's Closing Obligations.

At the Closing, Purchaser will:

7.3.1. deliver to Seller cash or funds readily available in the amount of the Purchase Price, less any Earnest Money already paid to Seller; and

7.3.2. deliver to Seller such other instruments or documents as may be required pursuant to the terms hereof or mutually agreed by counsel for Seller and Purchaser to be necessary to fully consummate the transaction contemplated hereby.

7.4 Allocation of Closing Expenses.

The costs of closing the transaction shall be allocated between Seller and Purchaser as follows:

7.4.1. Seller will pay:

- (a) the cost of the owner's standard Title Policy required by **Section 3.2**;
- (b) the cost of providing to Purchaser all information to be reviewed and approved by Purchaser pursuant **Section 4.2** of this Agreement;
- (c) one-half (1/2) of the escrow fees of the Title Company;
- (d) any applicable real estate excise taxes, transfer taxes and any other taxes and charges with respect to the transaction;
- (e) the costs of clearing title and obtaining any other item to be delivered to Purchaser at Closing;
- (f) any assessments against the Property existing as of Closing, whether due and payable before or after such date;
- (g) all property taxes, interest and penalties necessary to bring the Property out of any "open space," "forest land," "historic," "exempt" or other designation and to eliminate all liability for such charges and to eliminate any restrictions on the use of the Property due to its tax designation; and
- (h) all property taxes due in any tax year prior to the year of Closing.

7.4.2. Purchaser will pay:

- (a) one-half (1/2) of the escrow fees of the Title Company;
- (b) the cost of any extended coverage that exceeds the cost of the owner's standard coverage and all endorsements, as requested by Purchaser; and

- (c) the cost of recording the Statutory Warranty Deed and any other documents that Purchaser may choose to record.

7.4.3. All other expenses incurred by Seller or Purchaser with respect to Closing, including, but not limited to, attorneys' fees, shall be borne and paid exclusively by the party incurring the same unless the parties hereto expressly agree in writing to the allocation of part or all of such expenses to one of the parties.

7.5 Prorations.

The following items shall be adjusted or prorated between Seller and Purchaser at the Closing, as of the Closing Date: Property taxes and assessments for the then current tax year relating to the Property.

7.6 Right to Possession.

At Closing, Purchaser shall have full and unrestricted right to possession of the Property, subject only to the Permitted Exceptions.

7.7 Risk of Loss.

Risk of loss or damage to the Property by condemnation, eminent domain, foreclosure or similar proceedings (or deed in lieu thereof), or by fire or any other casualty, from the date hereof through Closing will be on Seller and thereafter will be on Purchaser. Seller will immediately notify Purchaser in writing of any such loss or damage. Purchaser shall notify Seller, in writing, within fourteen (14) days of receiving such notice whether Purchaser shall proceed to Closing. Purchaser's failure to notify Seller that it will proceed to Closing shall constitute notice of disapproval of the loss or damage. If Purchaser proceeds to Closing, Seller shall assign to Purchaser any insurance proceeds or condemnation awards, if any, and all causes of action and rights against such condemning authority, insurer or lender. If Purchaser disapproves this loss or damage, the Seller shall immediately return the Earnest Money to Purchaser, Seller shall pay any cancellation fee or other cost of the Title Company, and this Agreement shall terminate and all rights and obligations of the parties shall terminate.

SECTION 8. INDEMNIFICATION

8.1 Brokerage Commissions.

Seller and Purchaser warrant that they have not entered into or authorized any commissions with respect to this transaction. Each party agrees to indemnify and hold the other harmless from and against the claims of any and all brokers or other intermediaries claiming that the party agreed to, entered into, or authorized any finder's fee or commission in connection with this Agreement or the sale of the Property.

8.2 Warranties.

8.2.1. Seller agrees to indemnify, defend and hold Purchaser, its successors and assigns, harmless from any and all liabilities, claims, damages, demands, costs, fines, penalties

and expenses of any kind or nature (except those items which by this Agreement specifically become the obligation of Purchaser), including, without limitation, attorneys' fees and expenditures for investigation and remediation (collectively "Claims"), by any other party or parties (including a governmental entity) which may be imposed upon or incurred by Purchaser, its successors or assigns arising out of or in connection with the breach of Seller's warranties under this Agreement.

SECTION 9. TERMINATION AND REMEDIES

9.1 Seller's Defaults.

9.1.1. Seller's Defaults. Seller shall be deemed to be in default hereunder in the event Seller fails, for a reason other than Purchaser's default hereunder, to meet, comply with, or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required in this Agreement, or there shall have occurred a breach of any representation or warranty made by Seller.

9.1.2. Purchaser's Remedies. In the event of default by Seller, Purchaser may pursue any remedy available at law or equity, including:

- (a) Enforcing specific performance of this Agreement;
- (b) Bringing suit for damages.

In addition, and without prejudice to the foregoing remedies, Purchaser may, if default occurs prior to Closing, terminate this Agreement.

9.1.3. Return of Earnest Money. Upon termination of this Agreement pursuant to **Section 9.1.2** following a Seller default, the Earnest Money shall be promptly returned to Purchaser by Seller upon receipt of written notice from Purchaser that Seller has defaulted under this Agreement.

9.2 Purchaser's Defaults.

9.2.1. Purchaser's Defaults. Purchaser shall be in default hereunder in the event Purchaser fails, for a reason other than Seller's default hereunder, without legal excuse to complete the purchase of the Property or to meet, comply with, or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required in this Agreement, or there shall have occurred a breach of any representation or warranty made by Purchaser.

9.2.2. Seller's Remedies. In the event of default by Purchaser, Seller's sole and exclusive remedy shall be to retain the Earnest Money, it being agreed between Purchaser and Seller that such sum shall be liquidated damages for a default of Purchaser hereunder because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default. Receipt of the Earnest Money shall constitute a full waiver of any other remedies Seller may have under this Agreement, or at law or equity.

SECTION 10. MISCELLANEOUS

10.1 Assignment of Contract.

Purchaser may assign its rights and obligations under this Agreement. Purchaser must notify Seller of any such assignment prior to the Closing and the assignee shall for all purposes be regarded as Purchaser under this Agreement.

10.2 Entire Agreement; Modification.

This Agreement sets forth the entire understanding between the parties with respect to the transaction contemplated herein and supersedes all prior or contemporaneous agreements, oral or written. Neither this Agreement nor any provision hereof may be waived or amended except by an instrument in writing signed by both parties.

10.3 Time of Essence.

Time is of the essence of this Agreement.

10.4 Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

10.5 Notices.

All notices to either party must be in writing and either (i) delivered in person, (ii) by United States certified mail, return receipt requested, postage prepaid, or (iii) by courier service, postage prepaid, and sent to the address of such party as set forth below, or such other address as either party may from time to time designate by written notice to the other:

If to Purchaser:

The Urban Renewal Agency
for City of Canby
182 North Holly Street
PO Box 930
Canby, OR 97013
Attn: Catherine Comer

If to Seller:

Snowcap Properties, LLC
1326 NE 12th Avenue
Canby, OR 97013
Attn: Gale A. Nelson

10.6 Interpretation.

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

10.7 Captions.

The captions used in this Agreement are for convenience only and shall not be deemed to construe or to limit the meaning of the language of this Agreement.

10.8 Severability.

If one or more of the provisions of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any other application thereof shall in no way be affected or impaired.

10.9 Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Venue shall be in Clackamas County.

10.10 Exhibits.

The following exhibits are incorporated into and made a part of this Agreement as if set forth fully herein:

- Exhibit A** Legal Description of Property
- Exhibit B** Books and Records Required by Section 4.1.1

10.11 Attorney Fees.

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review in addition to all other amounts provided by law. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Agreement requires a party to defend the other, it is agreed that such defense shall be by legal counsel reasonably acceptable to the party being defended.

10.12 Waiver.

No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time of performance of any other obligation or act.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

Snowcap Properties, LLC

PURCHASER:

**The Urban Renewal Agency of the City of
Canby, Oregon**

By: _____

Name: _____

As Its: _____

Telephone: _____

Facsimile: _____

Email: _____

By: _____

Name: _____

As Its: _____

Telephone: _____

Facsimile: _____

Email: _____

PO-331700 v3

EXHIBIT A
LEGAL DESCRIPTION

14 Canby Lt 12 Pt Lt 1 Blk 1, T3S, R1E, S33, Clackamas County, Oregon

EXHIBIT B

BOOKS AND RECORDS REQUIRED BY SECTION 4.1.1

Statements of all real and personal property taxes (including special assessments or other charges affecting the Property), along with notices of any proposed tax assessments with respect to the Property or any portion thereof for the two (2) most recent tax years;

Copies of any boundary or other surveys, wetland studies or delineations, architectural or structural reports, environmental site assessments, or soil studies with respect to the Property;

Copies of any notices of violation, administrative orders or any other enforcement action or lawsuit taken against the Seller and concerning the Property or improvements;

Copies of records concerning the past or present release, generation, disposal, transportation or existence of Hazardous Materials on the Property, and any environmental studies relating to the Property;

Copies of records of or information concerning any enforcement actions pursuant to federal, state and/or local environmental legislation against neighboring property owners of which Seller has knowledge; and

Any other documents or records with respect to the operation of the Property which may be reasonably requested by Purchaser.