



COPY

Resolution No. 2001-982

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE
REAL PROPERTY FROM JOSEPH GREEN (KALYCA RIM) AND
ENTER INTO SETTLEMENT OF LITIGATION**

WHEREAS, litigation known as “Joseph Green and Paul Rose v. City of Sherwood, et. al, Case No. C001361CV” is pending at the Oregon Court of Appeals; and

WHEREAS, the parties have entered into the Appellate Mediation Program pursuant to Order from the Court of Appeals; and

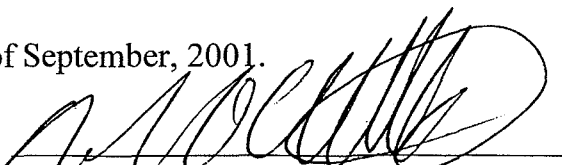
WHEREAS, the parties have reached agreement to settle the litigation in which the City of Sherwood purchases the subject property and any adjoining property owned by Mr. Green and dismiss the litigation;

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to sign the attached Sale Agreement and Receipt for Earnest Money as well as the Mutual Release in Full of All Claims.

Section 2. The City Manager is authorized to take all necessary steps to complete the transaction.

Duly passed by the City Council this 11th day of September, 2001.



Mark Cottle, Mayor

Attest:



C.L. Wiley, City Recorder

**SALE AGREEMENT AND
RECEIPT FOR EARNEST MONEY**

DATE: _____, 2001

SELLER: JOSEPH GREEN
c/o Mark Hoyt
Attorney at Law
429 Court St. N.E.
Salem, OR 97301

BUYER: THE CITY OF SHERWOOD, an
Oregon Municipal Corporation
20 NW Washington Street
Sherwood, OR 97140

RECITAL:

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property commonly known as Kalyca Rim development property, Sherwood, Washington County, Oregon, having the following legal description (the "Property"):

See Exhibit "A" attached hereto and by this reference incorporated herein.

AGREEMENT:

Now, therefore, for valuable consideration, the parties agree as follows:

1. **Sale and Purchase.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$125,000.00 (the "Purchase Price").
2. **Earnest Money.** Upon acceptance by Buyer of this Agreement, Buyer will promptly deposit with escrow the sum of \$5,000.00 as earnest money. The earnest money shall be applied to the Purchase Price on the Closing Date, as that term is defined below.
3. **Payment of Purchase Price.** The Purchase Price shall be paid as follows:
 - 3.1 At closing, the earnest money shall be credited to the Purchase Price.
 - 3.2 At closing, Buyer shall pay the balance of the purchase price in cash.

4. **Closing.** Closing shall take place on or before October 15, 2001 (the "Closing Date"), at the offices of Stewart Title, 2020 SW 4th Avenue, Suite 190, Portland, Oregon 97201.

5. **Preliminary Title Report.** Within ten (10) days after full execution of this Agreement, Seller shall furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer will have ten (10) days from receipt of the Title Report to review the Title Report and to notify Seller, in writing, of Buyer's disapproval of any exceptions shown in the Title Report. Buyer shall not be required to notify Seller with regard to any trust deed or mortgage or other monetary lien which will be presumed disapproved. Those exceptions not objected to by Buyer are referred to below as the "Permitted Exceptions." Zoning ordinances, building restrictions, taxes due and payable for the current tax year, and reservations in federal patents and state deeds shall be deemed Permitted Exceptions. If Buyer notifies Seller of disapproval of any exceptions, Seller shall have fifteen (15) days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within fifteen (15) days after expiration of such 15-day period, in which event the earnest money shall be refunded to Buyer and this Agreement shall be null and void.

6. **Conditions.** Buyer's obligation to purchase the Property is contingent on satisfaction of each of the following conditions:

6.1 Buyer's approval of the preliminary title report within ten (10) days after the same has been furnished to Buyer.

6.2 Buyer's acceptance prior to closing of any adverse conditions noted in any inspections, studies, surveys or tests conducted on the Property. Buyer shall have the right, at its expense, to conduct any such inspections, studies, surveys and tests, and Seller agrees to reasonably accommodate such inspectors.

6.3 Buyer's approval prior to closing of a Level I Environmental Assessment of the subject property to be conducted by a firm approved by Buyer. Buyer shall have the right, at its expense, to conduct such Level I Environmental Assessments, and Seller agrees to reasonably accommodate such inspectors. If the report is unacceptable to Buyer or if it advises that further investigation be undertaken, Buyer shall have the option to either terminate this Agreement, in which case its earnest money shall be refunded to it, or go forward with the agreement on condition that this sale shall be subject to Buyer's approval in writing of any reports generated by said further investigation.

6.4 Execution by Buyer and Seller of a Mutual Release in Full of All Claims, a copy of which is attached and dismissal with prejudice of the pending appellate action captioned "Joseph W. Green and Paul Rose v. City of Sherwood, a municipal corporation and its city council composed of Walt Hitchcock, Mark Cottle, Tom Krause, Scott Franklin, and Bill Whiteman."

The foregoing conditions are for the benefit of Buyer and may be waived, in whole or in part, by Buyer only. Any waiver must be in writing. Unless waived, if any condition is not satisfied by the closing date, this Agreement may be terminated, at the option of Buyer, by written notice, in which event the earnest money shall be refunded to Buyer. Closing of this transaction shall be a waiver of any and all conditions provided herein.

7. **Deed.** On the Closing Date, Seller shall execute and deliver to Buyer a statutory warranty deed, conveying the Property to Buyer, free and clear of all liens and encumbrances except the Permitted Exceptions.

8. **Title Insurance.** Within fifteen (15) days after closing, Seller shall furnish Buyer with an owner's policy of title insurance in the amount of the purchase price, standard form, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

9. **Costs and Expenses.** Seller shall pay for all premiums for the title insurance policy, one-half of the escrow fees and costs, one-half of the transfer or documentary stamp taxes, and Seller's share of prorations. Buyer shall pay one-half of the escrow fees and costs, one-half of the transfer or documentary stamp taxes, all document recording charges, and Buyer's share of prorations. Seller and Buyer shall each pay their own legal and professional fees respectfully. All other costs and expenses shall be allocated between Seller and Buyer in accordance with the customary practice in Washington County, Oregon.

10. **Taxes; Prorates.** Real property taxes for the current tax year and other usual items shall be prorated as of the Closing Date.

11. **Possession.** Buyer shall be entitled to possession immediately upon closing.

12. **Property Included.** The property is bare land only. No fixtures are part of the property.

13. **Personal Property.** No personal property is included as part of the Property being sold to Buyer.

14. Seller's Representations. Seller represents and warrants to Buyer as follows:

(1) Seller has received no written notice of any liens to be assessed against the Property.

(2) Seller is not a "foreign person" as that term is defined in IRC §1445. On the Closing Date, Seller will execute and deliver to Buyer a certification of nonforeign status on a form required by the IRS.

(3) To the best of Seller's knowledge, the Property has never been used for the storage or disposal of any hazardous material or waste, there are no environmentally hazardous materials or wastes contained on or under the Property and the Property has not been identified by any governmental agency as a site upon which environmentally hazardous materials or wastes have been or may have been located or deposited.

All representations and warranties contained in this Agreement will survive closing and the conveyance of the Property to Buyer.

Pursuant to ORS 105.465(1)(a), Buyer hereby indicates to the Seller, and such indication is conclusive, that the real property, will be used for purposes other than a residence for the Buyer or the Buyer's spouse, parent or child. Therefore, a statutory seller's disclosure or disclaimer form is not required.

15. Binding Effect/Assignment Restricted. This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns.

16. Remedies. TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT. If the conditions described in Section 6 above are satisfied or waived by Buyer and the transaction does not thereafter close, through no fault of Seller, before the close of business on the Closing Date, Buyer shall forfeit the earnest money deposit to Seller as liquidated damages, and this Agreement shall be of no further effect, it being the intention of the parties that Buyer may forfeit the earnest money and be free of any further obligations under this Agreement. If Seller fails to deliver the deed described in Section 7 above on the Closing Date or otherwise fails to consummate this transaction, the earnest money shall be refunded to Buyer, but acceptance by Buyer of the refund will not constitute a waiver of other remedies available to Buyer.

17. Attorney Fees. If an action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

18. Notices. All notices and communications in connection with this Agreement shall be given in writing and shall be delivered personally or transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted shall be deemed effective on the date delivered personally or it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

19. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

20. Applicable Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the state of Oregon.

21. Required Statutory Warning. 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 EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

22. Agreement Preparation. Seller understands that the law firm of Lien & Johnson prepared this Agreement on behalf of the Buyer and in no way represents the Seller.

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23. **Acceptance.** This Agreement shall be null and void unless accepted by Buyer, by Buyer's execution of it, on or before September 14, 2001.

SELLER:

BUYER:

DATE: _____

DATE: _____

Joseph Green

THE CITY OF SHERWOOD, an Oregon
Municipal Corporation

By: _____
Ross Schulz,
City Manager

Settlement Agreement and Mutual Release of All Claims

This Settlement Agreement and Mutual Release of All Claims is entered into this ___ day of September, 2001, by and between Joe Green (hereinafter "Green") and City of Sherwood (hereinafter "Sherwood").

WHEREAS, Green owned certain real property commonly known as Kalyca Rim located within the City of Sherwood, which real property is more particularly described in Exhibit A attached hereto (hereinafter "Property"); and

WHEREAS, it was Green's intent to develop the Property; and

WHEREAS, Green submitted several applications to the City of Sherwood seeking approval for the intended development; and

WHEREAS, Green alleged Sherwood did not timely process the applications and initiated a writ of mandamus action in Washington County Circuit Court, which was assigned case number C001361CV; and

WHEREAS, that action was dismissed and as part of the dismissal Sherwood was awarded a portion of its claimed attorney fees; and

WHEREAS, thereafter, Green appealed that action to the Oregon Court of Appeals which case was assigned case number A113082; and

WHEREAS, Green alleged actions and regulations of Sherwood constituted an unconstitutional taking of his property, and violation of other constitutional rights held by Green; and

WHEREAS, Sherwood denied any and all wrongdoing or liability to Green; and

WHEREAS, the parties hereto have reached an agreement regarding the resolution of their differences and wish to reflect that agreement in writing; now, therefore,

* * * W I T N E S S E T H * * *

FOR AND IN CONSIDERATION OF the mutual promises, agreements and covenants contained herein the parties do hereby agree as follows:

1. The parties hereto do hereby mutually give up, release, discharge and otherwise waive any and all claims they may have against one another, their officers, directors, employees, agents, assigns, attorneys and any other party as of the date of this agreement, known or unknown, arising from any interaction between the parties prior to the date of the this agreement, it being the purpose of this agreement to end, and

forever resolve and discharge all disputes, debts, grievances which may exist between the parties including, but not limited to, Green's claims asserted in the mandamus action, claims for an unconstitutional taking, claim for violation of Green's civil rights and claims by the Sherwood against Green for attorney fees awarded in the mandamus action.

2. The appeal of the mandamus action shall be dismissed.
3. The City of Sherwood shall be entitled to keep all application fees paid by Green.
4. The effectiveness of this agreement shall be conditional upon Sherwood purchasing the property for the price of \$125,000 pursuant to the earnest money agreement attached. In the event the City of Sherwood does not complete the purchase contemplated herein, this agreement shall be null and void, and be of no force or effect.
5. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns. This agreement was drafted on behalf of Green by Mark C. Hoyt, Attorney at Law, who exclusively represents Green in this matter. Both parties have had the opportunity to, and have, consulted legal counsel regarding this agreement and its effect prior executing this agreement. In the event of any ambiguity, or dispute regarding the scope or terms of this agreement the agreement shall not be construed against any party as the drafter, but shall be construed as if drafted jointly to give effect to its intended purpose, ending all currently existing disputes and obligations between the parties and bringing peace.
6. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.
7. This Agreement may be amended only by an instrument in writing executed by all the parties.
8. This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.
9. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other

respect and of the remaining provisions of this Agreement shall not be in any way impaired.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
11. The parties hereto represent that they are authorized to enter into this agreement, and all actions necessary to authorize execution, and performed of this agreement have been taken.

City of Sherwood

BY: _____

Its: _____

Joe Green