



Resolution 2003-077

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO PURCHASE REAL PROPERTY IMMEDIATELY EAST OF THE PUBLIC WORKS FACILITY

WHEREAS, the city requires property between the Public Works facility and Fire Station for the future realignment of Oregon Street; and

WHEREAS, this property is currently for sale; and

WHEREAS, City staff negotiated for purchase of this 0.84 acres of property; and

WHEREAS, purchase of the property will address several projects in the current Transportation Plan and Urban Renewal Plan.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1: The City Manager is authorized to finalize the Sales Agreement and Receipt for Earnest Money and take all necessary steps to complete the transaction.

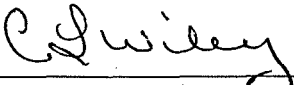
Section 2: Staff is directed to use money from the Street Fund to purchase the property.

Section 3: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 14th day of October 2003.


Mark O. Cottle, Mayor

ATTEST:


C.L. Wiley, City Recorder

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

DATE: October ____, 2003

SELLER: 100 Oregon Inc.
British Columbia, Canada

BUYER: CITY OF SHERWOOD
An Oregon municipal corporation
20 NW Washington St.
Sherwood, OR 97140
(503) 625-5522

RECITAL:

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property with all improvements located on it commonly known as 400 SE Willamette, Sherwood, Washington County, Oregon, having the following legal description (the "Property").

400 SE Willamette Street
Sherwood Acres Block 2, Lot 5, 6, 11, 12
Acres 1.75

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 \$183,000.00 (the "Purchase Price").
2. **Earnest Money.** Upon acceptance by Buyer of this Agreement, Buyer will promptly deposit with escrow the sum of \$1,000.00 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 December 1, 2003 (the "Closing Date"), at the offices of First American Title Co., Lake Oswego, OR.

5. **Preliminary Title Report.** Within five (5) 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 five (5) 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 ten (10) 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 ten (10) days after expiration of such 10-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 written acceptance 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.

6.2 The property appraising for at least the amount of the sales price herein. Buyer shall have the right, at its expense, to obtain an appraisal by a firm approved by Buyer, and Seller agrees to reasonably accommodate such appraiser.

6.3 Buyer's approval in writing 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.

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 date specified, this Agreement may be terminated, at the option of the Buyer, by written notice, in which event the earnest money shall be refunded to Buyer.

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

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

(1) Seller knows of no material structure defects with respect to the Property.

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

(3) Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Property.

(4) 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. Other than septic tanks, there are no underground storage tanks of any sort located on the Property.

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 indicated 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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.

21. 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.

23. Acceptance. This Agreement shall be null and void unless accepted by Buyer, by Buyer's execution of it, on or before May 29, 2002.

SELLER: _____
DATE: _____

BUYER: _____
DATE: _____

CITY OF SHERWOOD,
An Oregon municipal corporation

By: _____
Ross Schultz, City Manager