



Resolution 2005-066

A RESOLUTION AUTHORIZING THE CITY MANAGER TO COMPLETE THE SALE OF SHERWOOD LIBRARY TO SHERWOOD PRESBYTERIAN CHURCH FOR \$656,500.

WHEREAS, the City of Sherwood wishes to sell the existing City Library building at 955 N Sherwood Blvd; and

WHEREAS, in order to dispose of real property the City of Sherwood has complied with ORS 221.725, the statute that sets out the steps to dispose of real property by holding a public hearing on September 6, 2005 and;

WHEREAS, the City Council has heard public testimony regarding the sale of the City Library building to Sherwood Presbyterian Church and;

WHEREAS, the buyer, Sherwood Presbyterian Church has provided the City of Sherwood with a signed promissory note and copy of a check for \$10,000 dated October 18, 2005 and agreed to provide the City with a signed purchase and sale agreement within 48 hours of approval of the resolution:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to sign the sale agreement after it has been signed by the buyer and complete the transaction for the sale of Sherwood City Library to Sherwood Presbyterian Church.

Duly passed by the City Council this 18th day of October 2005.



Keith Mays, Mayor

ATTEST:



C.L. Wiley, City Recorder

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REAL ESTATE PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS CITY OF SHERWOOD

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the 4th day of October, 2005, by and between THE CITY OF SHERWOOD, an Oregon municipal corporation ("Seller") and Michael Seitz ("Buyer"), an individual.

Recitals:

WHEREAS, Seller owns that certain real property and improvements located in the City of Sherwood ("City"), County of Washington ("County"), State of Oregon ("State"), consisting of a building generally known as the Sherwood City Hall, located at 22566 SW Washington Street, Sherwood, Washington County, Oregon and all right, title and interest appurtenant thereto and to all streets, alleys, easements, and rights-of-way in, on, across, in front of, abutting or adjoining such real property (the "Real Property" or "Property").

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Property as such term is defined at Section 1.

Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the parties agree:

1. Definitions. In addition to terms defined elsewhere in this Agreement, as used in this Agreement, the following terms shall have the following meanings:

Approved Title Conditions shall have the meaning given that term at Section 4.

Authority(ies) means any governmental or quasi-governmental body or agency having regulatory jurisdiction of the Property and/or Seller including (without limitation) the United States, the State of Oregon, the City of Sherwood and Washington County.

Close of Escrow means the date the Deed (defined at Section 7.1.1) is recorded in the Official Records.

Closing Date means the earliest of the following dates (or, if such date falls on a weekend or national holiday, the first succeeding business day):

- (a) The sixtieth (60th) day following the Execution Date,
- (b) The date that is thirty (30) days following the date on which the conditions to Buyer's obligations hereunder set forth at Section 6.1.5 have been satisfied or waived (or such earlier date within such thirty (30) day period upon which the parties may agree).

Contingency Period means the period beginning on the Execution Date and ending on the sixtieth (60th) day thereafter (if such day falls on a weekend or national holiday, the Contingency Period shall end on the first succeeding business day).

Deposit shall have the meaning given that term at Section 3.2.1.

Escrow means an escrow opened with Escrow Holder for consummation of the transaction described in this Agreement.

Escrow Holder means First American Title, Suite 250, 200 SW Market Street, Portland, Oregon 97201 (Mavis Kimble, Title Officer).

Execution Date means the date on which this Agreement has been fully executed by the parties, as evidenced by the latest date entered following each party's signature line at the time of execution.

Governmental Regulations means any statutes, ordinances, rules, requirements, resolutions, policy statements, decisions, orders, judgments, directives, decrees, and regulations (including, without limitation, those relating to land use, subdivision, zoning, environmental, toxic, or hazardous waste, occupational health and safety, water, earthquake hazard reduction, and building and fire codes) of the Authorities bearing on the construction, maintenance, use, operation, development, or sale of the Property.

Hazardous Material means any hazardous or toxic substance, material, or waste that is or becomes regulated by any state or local governmental authority, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (a) petroleum, (b) asbestos, (c) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 USC §§ 1251, *et seq.* (33 USC § 1321), (d) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 USC §§ 6901, *et seq.* (42 USC § 6903), or (e) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC §§ 9601, *et seq.* (42 USC § 9601).

Official Records means the official real property transfer records of Washington County.

Opening of Escrow means the date on which the Deposit is delivered to Escrow Holder.

Property or Real Property means a building generally known as the Sherwood City Hall, located at 22566 SW Washington Street, Sherwood, Washington County Oregon.

Title Company means First American Title, Suite 250, 200 SW Market Street, Portland, Oregon, 97201.

Title Policy means the title insurance policy described in Section 9.

2. Purchase and Sale. Seller shall sell to Buyer and Buyer shall purchase from Seller (on the terms and subject to the conditions set forth in this Agreement) all of Seller's right, title and interest in the Real Property.

3. Purchase Price and Payment.

3.1 Amount. The purchase price ("Purchase Price") for the Property shall be One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00).

3.2 Payment of Purchase Price. The Purchase Price shall be payable as follows:

3.2.1 Deposit. Within five (5) days following the Execution Date, Buyer shall deliver to Escrow a promissory note in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (the "Deposit"). If the Close of Escrow occurs in accordance with this Agreement, at the Close of Escrow the Deposit shall be immediately converted by the Buyer into cash and said cash then applied and credited toward payment of the Purchase Price; otherwise, the Deposit shall be retained by Seller, or refunded to Buyer, in accordance with Section 6.3.2 or Section 22.

3.2.2 Cash at Closing. On or before the Closing Date, Buyer shall deposit into Escrow the additional cash in an amount equal to

The aggregate Purchase Price less the cash value of the Deposit.

4. Condition of Title. At the Close of Escrow, Seller shall convey to Buyer fee simple title to the Real Property by the Deed (defined at Section 7.1.1), subject only to the following matters ("Approved Title Conditions"):

- (a) matters of title respecting the Real Property approved by Buyer in accordance with Section 6.1.1; and
- (b) matters affecting the condition of title to the Real Property created by or with the written consent of Buyer.

5. Escrow. Seller has or will open an escrow account with Escrow Holder for purposes of handling the Deposit. Buyer and Seller shall deliver a fully executed copy of this Agreement to Escrow Holder.

6. Conditions to the Close of Escrow and Related Covenants.

6.1 Conditions Precedent to Buyer's Obligations. The conditions set forth in this Section 6.1 are solely for the benefit of Buyer and may be waived only by Buyer, and only if such waiver is set forth in writing signed by Buyer. The Close of Escrow and Buyer's obligations with respect to the transaction contemplated by this Agreement are subject to the satisfaction, not later than the date specified below with respect to each condition, of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

6.1.1 Title. On or before the end of the Contingency Period, Buyer shall have approved all exceptions to title (the "Title Exceptions") disclosed by the Title Documents

(defined below), excepting only those Title Exceptions that Seller has elected, on or before the date specified below, to cure, as further provided in this Section. Seller shall deliver, or cause to be delivered, all of the following documents and instruments (the "Title Documents") to Buyer not later than fifteen (15) days following the Execution Date:

- (i) a current, standard preliminary title report issued by the Title Company with respect to the Property, and
- (ii) legible copies of all documents, whether recorded or unrecorded, referred to in the preliminary title report.

Buyer shall have thirty (30) days following the Execution Date to give Seller written notice ("Buyer's Title Notice") of Buyer's disapproval of any Title Exception. If Buyer disapproves of any matters of title shown in the Title Documents, then, within twenty (20) days after Seller's receipt of Buyer's Title Notice, Seller shall give Buyer written notice ("Seller's Title Notice") of those disapproved Title Exceptions, if any, that Seller elects to eliminate from the Title Policy and as exceptions to title to, the Real Property or otherwise to correct. Seller's failure to deliver Seller's Title Notice within such 20-day period shall be deemed Seller's election to eliminate from the Title Policy and as exceptions to title to, the Real Property the Title Exceptions noted in Buyer's Title Notice.

Not later than the end of the Contingency Period, Buyer shall be entitled to terminate this Agreement, by written notice to Seller, if Seller's Title Notice is unacceptable to Buyer. Buyer's failure to terminate this Agreement within such period shall be deemed Buyer's approval of Seller's Title Notice. If Buyer approves of Seller's Title Notice, Seller shall eliminate from the Title Policy, by the Closing Date, those disapproved Title Exceptions that Seller has elected to eliminate, in Seller's Title Notice as exceptions to title to the Real Property. If Buyer timely elects to terminate this Agreement, such termination shall be under and in accordance with Section 6.3.

6.1.2 Review and Approval of Documents and Materials. On or before the last day of the Contingency Period, Buyer shall have approved any documents and materials delivered by Seller to Buyer pursuant to this Section. Within fifteen (15) days after the Execution Date (and periodically thereafter as required by Section 21.1.4), Seller shall deliver to Buyer, for Buyer's review and approval, the documents and materials respecting the Property described in this Section 6.1.2:

- (a) Leases, Contracts. The persons in possession of the property under leases or month-to-month tenancies, as more particularly described in Schedule 6.1.2(a) and stating the nature of such possession (month-to-month tenancy, lease of specified term, etc).
- (b) Environmental Reports. The environmental reports (if any) more particularly described in Schedule 6.1.2(b) (or portions thereof) pertaining to the Property.
- (c) Other Information. All other information and legible copies of any additional documents in Seller's possession that, in Seller's reasonable good faith judgment, contain material facts or information concerning the physical condition of the Property as more particularly described in Schedule 6.1.2(c).

6.1.3 Inspections and Studies. On or before the last day of the Contingency Period, Buyer shall have approved the results of any and all inspections, investigations, tests, and

studies with respect to the Property as Buyer may elect to make or obtain as contemplated by Section 21.1.1. The cost of any such inspections, tests, and studies shall be borne by Buyer.

6.1.4 Environmental Conditions. On or before the last day of the Contingency Period, Buyer shall be satisfied with the environmental condition of the Real Property.

6.1.5 Survey Approval. On or before the last day of the Contingency Period Seller shall have prepared, and Buyer shall have approved, each in accordance with Section 21.1.6, an ALTA survey of the Property.

6.1.6. Representations, Warranties, and Covenants of Seller. On and as of the Closing Date, Seller shall have duly and timely performed each and every material agreement to be performed by Seller hereunder, and Seller's representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Closing Date.

6.1.7 No Material Changes. At the Closing Date, there shall have been no material adverse changes in the physical condition of the Property from its condition as of the date of this Agreement.

6.1.8 Seller's Deliveries. Seller shall have delivered the items described in Sections 6.1.1, 6.1.2, 7.1, and 8 as and when the same were required to be delivered.

6.1.9 Title Insurance. On and as of the Closing Date, the Title Company shall be irrevocably committed to issue the Title Policy to Buyer. Without limiting the generality of the foregoing:

- (a) On and as of the Closing Date, the Title Company shall be prepared to issue the Title Policy subject only to the standard exceptions set forth in such policies and such exceptions as have been approved by Buyer pursuant to Section 6.1.1.
- (b) On or before the Closing Date, Seller shall have delivered to Buyer, and to the Title Company, an affidavit acceptable to Buyer and to the Title Company, sufficient to permit the Title Company to omit from the Title Policy the standard exceptions pertaining to parties with the right of possession and construction liens, and stating that Seller has sole and exclusive possession of the Real Property, and that (i) there have been no improvements or repairs made to the Real Property during the last ninety (90) days immediately before the Closing Date, or (ii) with respect to such improvements or repairs, that all lienors or potential lienors in connection with such improvements or repairs have been paid in full.

6.2 Conditions Precedent to Seller's Obligations. The conditions set forth at this Section 6.2 are solely for the benefit of Seller and may be waived only by Seller and only if such waiver is set forth in writing signed by Seller. The Close of Escrow and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to satisfaction of each of the following conditions by the time specified below with respect to each such condition:

6.2.1 Deliveries. Buyer shall have delivered to Escrow Holder on or before the Closing Date, for disbursement and delivery as provided herein the balance of the Purchase Price payable at Closing under Section 2, and the documents and materials described in Section 7.2.

6.2.2 Other Obligations. Buyer shall have duly and timely performed each of its obligations hereunder.

6.3 Failure of Conditions to Close of Escrow. If any of the conditions set forth in Sections 6.1 or 6.2 are not timely satisfied or waived, for a reason other than the default of Buyer or Seller under this Agreement:

6.3.1 Termination of Agreement. Either:

- (a) upon written notice to the other party given by the party for whose benefit such condition was established;
- (b) if specifically so permitted with respect to any such condition, automatically if such condition has not timely been satisfied or waived; or
- (c) if Buyer fails to deliver the Deposit to Escrow as and when required pursuant to Section 3.2.1

then, in any such event, this Agreement and the Escrow shall terminate and the rights and obligations of Buyer and Seller shall be discharged.

6.3.2 Payment of Deposit. Upon termination of this Agreement pursuant to Section 6.3.1, if such termination occurs because the conditions stated at Section 6.1 have not been satisfied by the Closing Date, or under Section 16, then Escrow Holder shall refund and pay the Deposit (and all earnings thereon) to Buyer but if such termination occurs for any other reason, then Escrow Holder shall pay and deliver the deposit, and all earnings thereon, to Seller.

6.3.3 Delivery of Documents and Other Funds.

If this Agreement is terminated pursuant to Section 6.3.1, Escrow Holder shall:

- (a) Promptly pay and/or return to Seller: all funds deposited in Escrow by Seller, plus any interest earned on such funds, together with all documents deposited by Seller in Escrow that are held by Escrow Holder on such termination date; and
- (b) Promptly pay and/or return to Buyer: all funds (other than the Deposit which shall be handled in accordance with Section 6.3.2) deposited in Escrow by Buyer (plus any interest earned on such funds) together with all documents deposited by Buyer in Escrow and that are held by Escrow Holder on such termination date.

6.3.4 Obligation of Escrow Holder. The Escrow Holder shall be entitled to pay and deliver funds and documents pursuant to this Section 6.3 upon receipt of both parties' written certification that the circumstances contemplated by the appropriate subparagraph of Section 6.3.2 have occurred.

7. Deliveries to Escrow Holder.

7.1 By Seller. Seller shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date the following instruments and documents, each of which shall have been

duly executed by Seller, and other signatory thereto (other than Buyer) and, where applicable, shall have been acknowledged:

7.1.1 Deed. A warranty deed (the "Deed"), acknowledged in recordable form, conveying the Real Property to Buyer subject only to the Approved Title Conditions.

7.1.2 Non-Foreign Certification. A form of Transferor's Certificate of Non-Foreign Status prepared and approved by Buyer ("FIRPTA certificate").

7.1.3 Bringdown Certificate. A certificate stating that all of Seller's representations and warranties contained in this Agreement are true and correct in all material respects on and as of the Closing Date (or specifying changes thereto) and that Seller has duly and timely performed all of its obligations to be performed under this Agreement at or before the Closing Date.

7.2 By Buyer. Buyer shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date the following instruments, documents, and things:

7.2.1 Purchase Price. The balance of the Purchase Price, in accordance with Section 3.

7.2.2 Costs, Expenses and Prorations. The amount due Seller, if any, after the costs, expenses, and prorations are computed in accordance with Sections 10 and 11.

8. Seller's Direct Deliveries to Buyer Upon Close of Escrow. At Close of Escrow, Seller shall deliver possession of the Property to Buyer.

9. Title Insurance. At the Close of Escrow, Seller shall cause the Title Company to issue to Buyer, upon payment of a normal premium, an Owner's standard policy of title insurance in a form reasonably required by Buyer, showing fee title to the Property vested in Buyer subject only to the Approved Title Conditions (the "Title Policy"). The Title Policy shall be issued in an amount equal to the full Purchase Price.

10. Costs and Expenses.

Seller shall pay:

- (a) any and all transfer charges or taxes;
- (b) all premiums for the standard coverage afforded by the Title Policy (excluding endorsements);
- (c) one-half of any escrow fees and costs charged by Escrow Holder; and
- (d) Seller's share of prorations.

Buyer shall pay:

- (a) any document recording charges;
- (b) all premiums for endorsements (including the extended coverage endorsement) to the Title Policy;
- (c) one-half of any escrow fees and costs charged by Escrow Holder; and
- (d) Buyer's share of prorations.

Buyer and Seller shall each pay all legal and professional fees and fees of other consultants incurred by Buyer or Seller respectively. All other costs and expenses shall be allocated in accordance with customary practice in Washington County, Oregon.

11. Prorations.

11.1 General. Real property taxes and assessments (if any) affecting the Property shall be prorated as of 11:59 p.m. on the day preceding Close of Escrow with all taxes and assessments attributable to periods before that time being allocated to Seller, and all taxes and assessments attributable to periods after that time being allocated to Buyer.

11.2 Method of Proration. All prorations shall be made in accordance with customary practice in Washington County, except as expressly provided herein. Such prorations (if and to the extent known and agreed upon as of the Close of Escrow) shall be paid by Buyer to Seller (if the prorations result in a net credit to the Seller) or by Seller to Buyer (if the prorations results in a net credit to the Buyer) by increasing or reducing the cash to be paid by Buyer at the Close of Escrow. Any such prorations not determined or not agreed upon as of the Close of Escrow shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash as soon as practicable following the Close of Escrow.

12. Disbursements and Other Actions by Escrow Holder. At the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner hereinbelow indicated:

12.1 Funds. Disburse all funds deposited with Escrow Holder by Buyer in payment of the Purchase Price as follows: (a) deduct all items chargeable to the account of Seller pursuant to Section 10 or to pay obligations secured by liens or encumbrances affecting the Property that Seller has agreed to remove pursuant to Section 6.1.1; (b) if, as a result of the prorations and credits pursuant to Section 11, amounts are to be charged to the account of Seller, deduct the total amount of such charges; (c) disburse the balance of the Purchase Price payable to Seller promptly upon the Close of Escrow; and (d) disburse the remaining balance of the funds, if any, to Buyer promptly upon the Close of Escrow.

12.2 Recording. Cause the Deed (with documentary transfer tax information, if any, to be affixed after recording), and any other documents that the parties may mutually direct, to be recorded in the Official Records, and deliver the recorded originals thereof to Buyer and conformed copies to Seller following recordation and the Close of Escrow.

12.3 Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

12.4 Delivery of Documents to Buyer. Deliver to Buyer the FIRPTA Certificate, each duly executed by Seller, and any other documents (or copies thereof) deposited into Escrow by Seller pursuant hereto.

13. Seller's Representations and Warranties. Seller represents and warrants to Buyer that as of the date of this Agreement and as of the Closing Date:

13.1 Due Organization. Seller is a duly organized and existing Oregon municipal corporation.

13.2 Authorization. Seller has the full power and authority to execute, deliver and perform its obligations under this Agreement, and no consent of any third party is required in connection with Seller's execution, delivery and performance of this Agreement.

13.3 No Litigation. To the best of Seller's knowledge, other than as disclosed in Schedule 13.3, there is no pending litigation, condemnation, administrative action, or other legal proceeding involving or affecting any portion of the Property, nor has Seller received any written notice of any such proceeding.

13.4 Hazardous Materials. To the best of Seller's knowledge and belief, other than as disclosed in the reports and other documents listed in Schedule 6.1.2(b), no Hazardous Materials have been placed, stored, spilled, leaked, released or in any way allowed to contaminate the Property during Seller's ownership of the Property and Seller has no knowledge of any contamination of the property by Hazardous Materials prior to Seller's ownership.

14. AS IS CONDITION. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 13, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION MADE AVAILABLE TO BUYER OR PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS.

15. Buyer's Representations and Warranties. Buyer represents to and for the benefit of Seller that this Agreement has been duly executed and delivered by Buyer and shall be duly authorized and shall be the legal, valid and binding obligation of Buyer enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency, or other similar laws affecting creditor's rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity. No consent of any creditor, investor, judicial or administrative body, or of any authority or other party is required in connection with Buyer's execution and delivery of this Agreement or its performance of its obligations hereunder.

16. Condemnation. If, before the Close of Escrow, any portion of the Property is taken or if access thereto is reduced or restricted, by eminent domain or otherwise (or is the subject of a pending, threatened, or contemplated taking that has not been consummated), Seller shall immediately after discovery notify Buyer in writing of such fact. In such event, Buyer shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to Seller given not later than ten (10) days after receipt of Seller's notice. If this Agreement is so terminated, the provisions of Section 6.3 shall govern, and the entire Deposit, and all interest

thereon, shall be refunded to Buyer. If Buyer does not exercise its option to terminate this Agreement, or if there has not been a taking by eminent domain or otherwise to give rise to such option, neither party shall have the right to terminate this Agreement, but Seller shall assign and turn over, and Buyer shall be entitled to receive and keep, all awards for the taking by eminent domain that accrue to Seller, and the parties shall proceed to the Close of Escrow pursuant to the terms hereof, without modification of the terms of this Agreement and without any reduction in the Purchase Price. Unless or until this Agreement is terminated, Seller shall take no action with respect to any eminent domain proceeding without the prior written consent of Buyer.

17. Indemnification.

17.1 Indemnification of Buyer. Seller shall, to the extent permitted by law, defend and indemnify Buyer against, and shall hold Buyer harmless from, all claims, demands, liabilities, losses, damages, costs, and expenses, including without limitation reasonable legal fees and disbursements, incurred by Buyer and relating to the Property that arise out of, result from, or are related to (i) personal injuries or property damage occurring before the Close of Escrow and attributable to: (a) Seller's activities on the Property before the Close of Escrow, or (b) conditions on the Property before the Close of Escrow, and (ii) acts, events, or matters, the existence or occurrence of which constitute a breach by Seller of one or more representations, warranties, or covenants of Seller hereunder; provided, however, nothing contained herein shall negate or modify any liability of Buyer for breach of Buyer's representations, warranties, and covenants in this Agreement.

17.2 Indemnification of Seller. Subject to Section 22.2 in the case of Buyer's breach of its obligation to purchase the Property, Buyer shall defend and indemnify Seller against, and shall hold Seller harmless from, all claims, demands, liabilities, losses, damages, costs, and expenses, including without limitation legal fees and disbursements, incurred by Seller relating to the Property that arise out of, result from, or are related to (i) personal injury or property damage attributable to Buyer's activities on the Property (or that of its agents, employees, contractors, or invitees, including pursuant to the right of entry granted Buyer at Section 21.1.1) whether before or after the Close of Escrow, or to conditions on the Property after Close of Escrow, (ii) and mechanics, materialmen's or other similar lien placed against the Real Property by reason of Buyer's activities on the Real Property (or that of its agents or contractors) before the Close of Escrow, (iii) any claims or actions that arise out of any dispute in connection with the release and termination of the Option, and (iv) acts, events, or matters, the existence or occurrence of which constitute a breach by Buyer of one or more representations, warranties, or covenants of Buyer hereunder; provided, however, nothing contained herein shall negate or modify any liability of Seller for a breach of Seller's representations, warranties, and covenants in this Agreement.

18. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, or by facsimile transmission followed by delivery of a "hard" copy, and shall be deemed received upon the date of receipt thereof, as follows:

If to Seller: Jim Patterson
Assistant City Manager
City of Sherwood.
22566 SW Washington Street
Sherwood, OR 97140
Telecopy: 503.625.5524

and a copy to: Beery, Elsner, & Hammond, LLP
Suite 380
1750 SW Harbor Way
Portland, OR 97201
Attn: Paul C. Elsner
Telecopy: 503.226.2348

If to Sherwood after
the Close of Escrow: Jim Patterson
Assistant City Manager
City of Sherwood.
22566 SW Washington Street
Sherwood, OR 97140

If to Buyer:
27826 Noah Ct.
Laguna Niguel, CA 92677
Attention: Michael Seitz
Telecopy: _____

Notice of change of address shall be given by written notice in the manner specified in this Section 18.

19. Brokers. Each party represents and warrants to the other that no other broker or finder has been engaged by it in connection with any of the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any of such transactions. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution, or consummation of this Agreement, then Buyer shall indemnify, save harmless, and defend Seller from and against such claims if they shall be based upon any statement or representation or agreement by Buyer, and Seller shall indemnify, save harmless, and defend Buyer if such claims shall be based upon any statement, representation, or agreement made by Seller.

20. Required Actions of Buyer and Seller. Buyer and Seller shall execute all such instruments and documents and shall take all actions pursuant to the provisions hereof in order to consummate the purchase and sale herein contemplated and shall use their good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

21. Parties' Additional Obligations Before Close of Escrow.

21.1 Seller's Obligations.

21.1.1 Entry. Buyer and Buyer's representatives, agents, and designees has been provided the right to enter the Property and make reasonable investigations. Buyer continues to have the right, at reasonable times, upon reasonable notice to Seller, to enter upon the Property, at Buyer's own cost, for any purpose in connection with its proposed purchase, development, construction, or operation of the Real Property, including, without limitation, the right to make such inspections, investigations, and tests (including, without limitation, review, testing, and investigation of the environmental condition of the Real Property; City and County zoning ordinances; geotechnical studies; applicable covenants, conditions, and restrictions; traffic patterns and mitigation; necessity for off-site improvements; utilities; public road access; and necessity for and availability of permits or licenses) as Buyer may elect to make or obtain. In connection with the investigation contemplated by this Section 21.1.1, Seller shall make such books, records, and files concerning the Property that are in Seller's possession available to Buyer and Buyer's attorneys, accountants, and other representatives, agents, and independent contractors at any time during business hours upon reasonable notice from Buyer.

21.1.2 Notice. Seller shall promptly notify Buyer if Seller learns of any material change in the physical condition of the Real Property or of any event or circumstance that makes any representation or warranty of Seller under this Agreement untrue or misleading, or any covenant of Seller under this Agreement incapable or materially less likely of being performed, it being understood that the Seller's obligation to provide notice to Buyer shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties, or covenants under this Agreement.

21.1.3 Additional Deliveries. In addition to the items that Seller is required to deliver to Buyer, pursuant to Section 6.1.2, at the times specified in such Section, Seller shall promptly deliver to Buyer any items of the kind referred to in such Section coming into Seller's possession after the date for delivery thereof specified at Section 6.1.2 but before the Closing Date and shall also deliver to Buyer before the Closing Date any updated information concerning any of the items previously delivered to Buyer pursuant to Section 6.1.2.

21.1.4 Necessary Permits. Immediately following the Execution Date, Seller shall, with all reasonable diligence, and in a commercially reasonable manner, take or cause to be taken such actions as are reasonably necessary and appropriate to obtain the Necessary Permits.

21.1.5 Survey. From and after the Execution Date Seller shall, with all reasonable diligence, and in a commercially reasonable manner prepare an ALTA survey and a legal description of the Property that meets all requirements of the Title Company prerequisite to issuance of the Title Policy.

22. Legal and Equitable Enforcement of This Agreement.

22.1 Default by Seller. If the Close of Escrow and the consummation of the transactions herein contemplated do not occur by reason of any default by Seller, Buyer shall have the right, as its exclusive remedy for such breach, to pursue the specific performance of this Agreement, but Buyer shall have no right to recover damages of any kind (including incidental damages or any lost operating profits or other consequential damages) arising by reason of such breach other than payment of any cancellation fee charged by Escrow Holder (for which Seller shall be solely responsible in such circumstances).

22.2 Default by Buyer. If the Close of Escrow and the consummation of the transactions herein contemplated does not occur as herein provided by reason of any default of Buyer, Buyer and Seller acknowledge that it would be impractical and extremely difficult to estimate the damages that Seller may suffer. A reasonable estimate of the total net detriment that Seller would suffer in the event that Buyer defaults and fails to complete the purchase of the Property is and shall be, as Seller's sole and exclusive remedy (whether at law or in equity including, without limitation, specific performance), an amount equal to the Deposit deposited with Escrow Holder before the date of such default, plus any interest accrued thereon. Said amount shall be the full agreed and liquidated damages for Buyer's breach of this Agreement. The payment of such amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Seller. Upon default by Buyer, this Agreement shall be terminated and neither party shall have any further rights or obligations hereunder each to the other except for the right of Seller to collect such liquidated damages from Buyer and Escrow Holder.

_____ Seller's Initials

M.S. Buyer's Initials

23. Assignment. Buyer shall have the right to assign its rights and delegate its obligations under this Agreement only if:

- (a) Buyer shall have given Seller not less than ten (10) days' prior written notice of assignment, specifying therein the identity of the proposed assignee, the proposed assignment date, and the development such assignee proposes to pursue;
- (c) on or before the proposed assignment date specified in such notice, Seller shall have consented in writing to such assignment, which consent shall not be withheld unreasonably; and
- (d) the proposed assignee agrees in writing to assume and perform all of Buyer's obligations hereunder. Any assignee in accordance with this Section 23 shall succeed to all the rights and remedies hereunder, including, but not limited to, the specific performance of this Agreement, but shall not relieve Buyer of its obligations hereunder. Any assignment other than in accordance with this Section 23 shall be void.

24. Miscellaneous.

24.1 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, except that this Agreement shall be construed to the greatest extent possible to effect the intent of the parties as evidenced by this Agreement taken as a whole (including the invalid or unenforceable provision).

24.2 Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. Any waiver claimed under or with respect to this Agreement must be in writing signed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

24.3 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

24.4 Professional Fees. If any party brings any action or suit against another party by reason of any breach of any of the covenants, agreements, or provisions on the part of the other party arising out of this Agreement, or by reason of the breach of representation and warranty made herein, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees (whether incurred before or at trial, on appeal, or in connection with a petition for review, including any action before a U.S. Bankruptcy Court, and in an amount determined by any presiding tribunal), accounting and engineering fees, and any other professional fees resulting therefrom.

24.5 Entire Agreement. This Agreement (including the Exhibits listed below, which are incorporated in this Agreement by the reference thereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm, or corporation other than the parties hereto.

- Exhibit A Real Property Description
- Schedule 6.1.2(a) Leases, Contracts
- Schedule 6.1.2(b) Environmental Reports
- Schedule 6.1.2(c) Other Property Information
- Schedule 13.3 Pending Litigation
- Schedule 13.4 Hazardous Materials

24.6 Time of Essence. Time is strictly of the essence with respect to each and every term, condition, obligation, and provision hereof and failure to timely perform any of the terms, conditions, obligations, or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

24.7 Warrant of Authority. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein. The parties hereto further acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein; and, having so done, do hereby execute this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first hereinabove written.

CITY OF SHERWOOD, an Oregon municipal corporation

By: Ross E. Schultz
Name: Ross Schultz
Title: City Manager
Date: October 5, 2005

“Seller”

By: Michael Seitz
Name: Michael Seitz
Title: Member
Date: October 4th, 2005

“Buyer”

EXHIBIT A

Real Property Description

Schedule 6.1.2 (a)

Leases and Contracts

Schedule 6.1.2 (b)

Environmental Reports

Schedule 6.1.2 (c)

Other Property Information

Schedule 13.3

Pending Litigation

Schedule 13.4

Hazardous Materials

RECEIVED

OCT 04 2005

CITY OF SHERWOOD

PROMISSORY NOTE

\$ 25,000.00

October, 4th 2005

FOR VALUE RECEIVED, Michael Seitz of 27826 Noah Ct., Laguna Niguel, CA 92677, promises to pay to the order of THE CITY OF SHERWOOD, (CITY) the sum of TWENTY-FIVE THOUSAND Dollars, (\$25,000.00) in lawful money of the United States of America. Payment of said sum shall be due in cash at the Close of Escrow consistent with the terms of the "REAL ESTATE PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS dated 4th October 2005 by and between Michael Seitz and the City of Sherwood.

Notwithstanding the foregoing, _____ promise to pay the entire balance and any accrued interest thereon, within ninety (90) days of demand by CITY.

If any installment is not paid as provided above, the whole sum of principal shall become immediately due and collectible at the option of the holder of this note.

In case suit or action is instituted to collect this note, we promise to pay such additional sums as the trial court may adjudge reasonable as attorney's fees in said suit or action, and any appellate court upon appeal of such suit or action.


Michael Seitz