

**Urban Renewal Agency Resolution No. 2002-001**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT TO PURCHASE  
REAL PROPERTY FROM JOSEPH R. CATANESE  
LOCATED AT 290 NORTHWEST RAILROAD  
AVENUE, SHERWOOD, OREGON  
(CATANESE II)**

**WHEREAS**, the Urban Renewal Agency of the City of Sherwood attempted to purchase property located at 290 Northwest Railroad Avenue, Sherwood, Oregon pursuant to Resolution 2001-004; and

**WHEREAS**, such sale was contingent on a Level I Environmental Assessment being approved by the Urban Renewal Agency; and

**WHEREAS**, the Level I Environmental Assessment advised that further investigation be undertaken as a fueling pump had at one time been located on the property; and

**WHEREAS**, based on the findings of the Level I Environmental Assessment, the transaction was terminated; and

**WHEREAS**, it is appropriate for the Urban Renewal Agency of the City of Sherwood to purchase the property as the land is situated as to be useful to the Agency presuming the environmental concerns are resolved; and

**WHEREAS**, City staff has renegotiated for the purchase of such land;

**NOW, THEREFORE, THE URBAN RENEWAL AGENCY OF THE CITY OF**

**SHERWOOD RESOLVES AS FOLLOWS:**

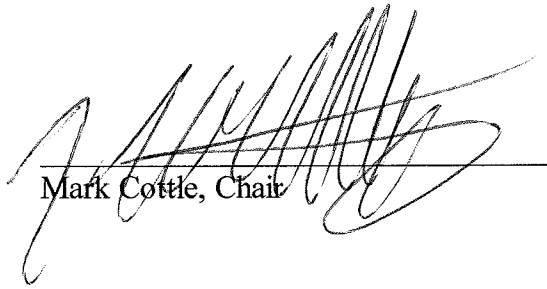
Section 1. The City Manager is authorized to sign the attached Sale Agreement and Receipt for Earnest Money.

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

Adopted this 19<sup>th</sup> day of February, 2002.

Attest:

  
\_\_\_\_\_  
C.L. Wiley, City Recorder

  
\_\_\_\_\_  
Mark Cottle, Chair

**SALE AGREEMENT AND  
RECEIPT FOR EARNEST MONEY**

DATE: \_\_\_\_\_, 2002

SELLER: JOSEPH R. CATANESE  
c/o David R. Nepom  
Attorney at Law  
3700 Barbur Building  
3718 S.W. Condor #100  
Portland, OR 97201-4142

BUYER: URBAN RENEWAL AGENCY  
OF THE CITY OF SHERWOOD,  
an Oregon municipal corporation  
20 NW Washington St.  
Sherwood, OR 97140

**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 290 N.W. Railroad Avenue, Sherwood, Washington County, Oregon., having the following legal description (the "Property").

Lot 5 and the West 9 feet of Lot 6, Block 2, Sherwood, City  
of Sherwood, County of Washington, State of Oregon.

**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 \$150,000.00 (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, a charitable donation of \$50,000.00 shall be credited to the Purchase Price and appropriate documentation will be provided to Seller for the charitable donation.

**3.3** At closing, Buyer shall pay the balance of the purchase price in cash.

**4. Closing.** Closing shall take place on or before March 14, 2002 (the "Closing Date"), at the offices of Pacific Northwest Title of Oregon.

**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** Buyer's approval in writing of a Level II Environmental Assessment of the subject property to be conducted by a firm approved by Buyer. If the report is acceptable

to Buyer and does not advise that further investigation be undertaken, Buyer and Seller shall share equally in the cost of such assessment up to a maximum total cost of \$5,000.00. If the cost is in excess of \$5,000.00, Buyer shall pay such excess. 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:

**6.2.1** Terminate this Agreement, in which case the earnest money shall be refunded to Buyer and this Agreement shall be of no further effect, **or**

**6.2.2** 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, prior to the Closing Date.

If the transaction does not close by Closing Date due to the failure of this condition, Buyer shall pay the entire cost of the Environmental Assessment and hold Seller harmless therefrom.

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 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. Charitable Donation.** Buyer shall reasonably cooperate with Seller regarding Seller's desire to claim a tax deductible donation for a portion of the purchase price. Buyer shall not certify or confirm the value of the donation or total value of the subject property.

**9. 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.

**10. 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.

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

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

**13. Property Included.** The subject property is bare land only. No fixtures or landscaping is included as part of the property.

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

**15. Seller's Representations.** As to Seller's actual knowledge only, 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 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.

(3) 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 environmental hazardous materials or wastes have been or may have been located or deposited. 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.

Buyer has had and has exercised a full and complete opportunity to inspect and investigate the property. Except as stated above, no representations or warranties have been made by the Seller or anyone on Seller's behalf to the Buyer as to the environmental or other condition of the premises or the improvements, and it is understood and agreed that the premises are sold "as is" at the time this Agreement is closed.

Buyer specifically retains any and all statutory rights to contribution under applicable state and federal environmental law.

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.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

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

**22. 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.

**23. 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.

**24. Acceptance.** This Agreement shall be null and void unless accepted by Buyer, by Buyer's execution of it, on or before February 14, 2002.

SELLER:

BUYER:

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

URBAN RENEWAL AGENCY  
OF THE CITY OF SHERWOOD,  
an Oregon municipal corporation

\_\_\_\_\_  
Joseph R. Catanese

By: \_\_\_\_\_  
Ross Schultz, City Manager