



URA RESOLUTION 2008-011

A RESOLUTION DIRECTING THE URBAN RENEWAL MANAGER TO SIGN A MEMORANDUM OF UNDERSTANDING FOR THE REDEVELOPMENT OF REAL PROPERTY

WHEREAS, the City of Sherwood Urban Renewal Agency wishes to develop the property known as The Old Cannery at what was previously 220 SE Willamette Street in Sherwood; and

WHEREAS, the City engaged a consultant to recommend redevelopment plan that would be in the best interest of the City; and

WHEREAS, the City has requested proposals for said redevelopment; and

WHEREAS, the City Council has decided to dispose of the real property and use this process in keeping with ORS 221.725;

WHEREAS, the City has subsequently transferred ownership of the property to the Urban Renewal Agency; and

WHEREAS, Capstone Partners, LLC has responded with a proposal that most closely reflects the aforementioned redevelopment plan; and

NOW, THEREFORE, THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The Urban Renewal Manager is directed to sign the attached Memorandum of Understanding (MOU), Exhibit A negotiated with Capstone Partners, LLC.

Duly passed by the Urban Renewal Agency this 15th day of April 2008.


Keith S. Mays, Board Chairman

ATTEST:


Sylvia Murphy, District Recorder

**MEMORANDUM OF UNDERSTANDING
REGARDING THE DEVELOPMENT OF REAL PROPERTY**

**OLD CANNERY SITE REDEVELOPMENT
Portland Oregon, Walnut Park Addition, Block 10, Western 30' Feet**

This Memorandum of Understanding (“**MOU**”), is entered into this ___ day of April, 2008, between the City of Sherwood Urban Renewal Agency or the City of Sherwood (“**Agency**”/”**Seller**”), Capstone Partners, LLC (“**Developer**”), Capstone Partners, LLC and/or Assigns (“**Purchaser**”). Capstone Partners will remain the manager and/or managing member of any entity to which it may assign its interests. Seller and Purchaser are referred to herein individually as “**Party**” and collectively as the “**Parties**”.

The purpose of this MOU is to outline the intent of the Parties for the redevelopment of the Old Cannery site, and describes the Parties respective objectives and the manner in which they propose to contribute to the preliminary design and preconstruction work necessary for the redevelopment of 6.06 acres of real property intersected by Pine Street with frontage along Willamette Street and bordered on the north by the Union Pacific railroad right of way. Said property consists of parcels R0555599; R0556017 and R0555615 with a combined land area of approximately 6.06 +/- gross acres in total, Sherwood, Washington County, Oregon (“**Property**”). In addition to the development of the project design as herein defined the Developer shall also pursue the goals of the Agency herein described, and will in concert with the Agency, conduct a community outreach and involvement process to secure the support of the surrounding community. The Agency also wishes to engage Developer to provide development advisory services to conduct pre-acquisition due diligence, cost estimating and adaptive re-use assessments on the adjacent “warehouse” property (“**Warehouse Site**”) it is under letter of intent to acquire. If the Agency closes on the Warehouse Site, Developer shall act as a construction and development advisor to the Agency so it can incorporate this property with the overall Master Plan for the Old Cannery Site to insure a compatible and seamless integration of the two properties.

- 1. Development Agreement.** The Parties acknowledge and agree that the transaction will require further documentation and approvals, including the preparation and approval of a formal Disposition and Development Agreement or Purchase and Sale (the “**DDA**” or “**PSA**”) agreement setting forth the terms and conditions of the conveyance and development of the Property in accordance with the program of development set forth below (the “**Project**”). The Parties execute this MOU to evidence their intention to proceed in mutual good faith to complete work required to negotiate terms of a DDA that are consistent with this MOU. The DDA will contain representations, warranties and covenants, conditions, and understandings customary for the development of projects of similar size and type and will provide a schedule of the timeline within which the Parties shall complete due diligence and underwriting activities to confirm the feasibility of the Project. The DDA shall contain a schedule of performance which requires Developer to

commence construction of Phase I of the Project on or before July 1, 2009, subject to delays beyond the control of Developer which shall include force majeure, acts of terrorism or war, weather delays, public agency delays (including appeals) and unavailability of acceptable debt capital. The Parties intend to negotiate and enter into a definitive DDA on a date as soon as feasible.

2. Program. The Project development program is summarized below:

Developer shall be responsible for the design, implementation, and execution of a phased Planned Unit Development incorporating both retail/commercial, residential housing elements, and the possible redevelopment of the existing Warehouse Site being acquired by the City of Sherwood for public and potentially private uses more particularly described below.

3. City of Sherwood Urban Renewal Agency Goals. The DDA will, without limitation, reflect the following Agency goals and objectives of the Request for Proposals for the City of Sherwood Old Cannery Site dated July 5, 2007 and the Sherwood Cannery Development Strategy dated June 17, 2005:

- 3.1 The project shall have a medium-density mixed-use development for both residential and retail-commercial uses.
- 3.2 Primary goal of the development shall be the stimulation of new investment and development in Old Town and surrounding areas.
- 3.3 Project elements shall contribute to a “small town” feel and shall have a unified architectural character.
- 3.4 Character of the development shall be complementary to the major investment the City of Sherwood has made in new streets, sidewalks, and street improvements north of the railroad tracks.
- 3.5 The Redevelopment shall incorporate a public plaza or similar community gathering place, and, if acquired by the Agency and determined desirable by Agency for integration into the Cannery site project, a public/private use redevelopment of the Warehouse Site to be incorporated with the overall Master Plan and development of the Old Cannery Property.
- 3.6 Elements of the Project shall demonstrate substantial conformance with the Overlay District standards for Sherwood Old Town.
- 3.7 The Project will be constructed utilizing private financing secured by Developer. The Agency’s financial contribution shall be limited to donation of the land for and

funding the cost of the development and construction of Public Plaza as well as a contribution of the land for the street right-of-ways and funding the cost of the development and construction of the new public streets and related infrastructure. The Agency shall be responsible for the maintenance of the public plaza, streets and infrastructure when completed.

4. **Land Disposition.** The sales price of the property takes into account its fair market value and the nature of the Project being constructed by Developer.

Said purchase shall consist of the two phase at a takedown schedule and price as herein provided as follows:

4.1 The Parties acknowledge that the Area and resulting Gross Price for each of the Subdivision Sites is subject to change based on the final ALTA survey to be completed by Seller and affirmed by Developer on or before closing. For the purpose of this MOU, please reference attachment titled Sherwood Land Plan date 3/28/08.

Subdivision Site	Area (SF)	Price (\$/SF)	Gross Price
Phase I			
Site A - SWC Pine St. & Railroad	20,108	\$12.50	\$251,350.00
		\$15.00 for land area net of Plaza	
Phase I Site B & Plaza *	46,771	SF (TBD) *	TBD
Phase I Site C & D- N/S Willamette Street	79,390	\$8.00 - \$12.00**	\$635,120 - \$952,680
Phase I			
Public Rights of Way – Proposed Columbia Street extension, Proposed Highland Drive and additional S.E. Willamette Street dedication	60,201	No cost to developer	
Phase II Future Phase	50,171	\$16.00	\$802,736.00
TOTAL	256,641		TBD

** Note: The actual size of the Plaza is yet to be determined, but should be a minimum of 10,000 (SF) and not greater than 20,000 (SF). The Public Plaza land area will be netted out of the indicated site area to be purchased by Developer.*

*** Note: The actual purchase price per square foot will be not less than \$8.00/sf and not greater than \$12.00/sf. The actual purchase price shall be a “Residual Land Value” to be determined by a mutually acceptable multi-family appraiser in the form a “Letter Opinion of Value”. Developer will share actual cost assumptions, revenue and operating expense assumptions to assist the appraiser in determining the Residual Land Value.*

4.2 **Phased Purchase.** Developer shall complete an initial Phase I purchase of Sites A, B, C, & D as Phase I of the Project. Total consideration for Phase I shall be determined based on the per-square-foot prices outlined above, net of the land area to be dedicated to the Plaza.. The purchase of Sites A and B shall be funded at Close of Escrow. The purchase of Sites

C & D of shall be funded when the completed apartment project has achieved stabilization after initial lease-up (95% occupied).

- 4.3 Product type for Phase I development as depicted in Attached Schematic Exhibit A shall be as follows:
- Site A – One 5,000 SF single story brick commercial building fronting on SW Pine Street (“Single story commercial”). The Parties agree that the development of Site A may change so as to allow for integrated and compatible Master Plan uses between the Warehouse Site currently being acquired by the Agency and the Old Cannery Site.
 - Site B – One 14,000 SF two-story brick mixed-use commercial building located adjacent to the new proposed public plaza (“Two-story commercial”)
 - Site C&D – Two, 50 unit (100 units total) three-story Class A apartment buildings with brick facades on public streets (“Multi-family for rent”)
- 4.4 Phase II development purchase shall consist of approximately 50,171 SF at an aggregate price of \$802,736. Phase II purchase shall occur not later than December 31, 2012.
- 4.5 If determined by Agency to be desirable for integration into the Cannery site project, redevelopment of the Warehouse Site to the highest and best use determined by the Agency and Developer. Agency shall compensate Developer with an advisory fee equal to 5% of the managed costs of the redevelopment. Managed costs shall include hard costs and all architectural and engineering costs related to the project.

5. Development Principles. In order to achieve the stated goals and objectives, the following development principles and guidelines will be applied to all negotiations and program and project development activities:

- 5.1 The Project will be subject to Agency’s design review and approval. Developer will submit schematic and preliminary design drawings to Agency at the appropriate stage of the development process.
- 5.2 Developer will be required to demonstrate the financial feasibility of the Project by submitting a preliminary project proforma not later than August 1, 2008.
- 5.3 The Project will demonstrate community support through a community outreach process.

6. **Due Diligence.** Agency shall grant Developer/Purchase a period of 150 days following full execution of the this MOU to complete all detailed due diligence it requires in its sole discretion, including, by not limited to title review, an environmental site assessment(s), geotechnical study, zoning and land use research, and development cost analysis. Seller shall grant Developer and Purchaser, as well as, their consultants, access to the Property for the purposes of performing due diligence. Developer/Purchaser shall bear all costs of their due diligence efforts, and in event of failure of Developer/Purchaser to complete Phase I and II purchase of subject Property copies of all studies, reports, and pertinent documents commissioned by Developer/Purchaser shall be provided to Seller at no cost provided that Developer terminates the MOU. In the event the Agency/Seller does not perform under the terms of the definitive DDA or PSA, the Agency/Seller agrees to reimburse Developer for their reasonable due diligence, architectural and engineering costs.

To ensure all parties are aware of ongoing activity during the due diligence period, a monthly update report from the developer to the city's agents (or the city) is requested. While not meant to be a comprehensive report, the document should specifically reference the progress and action items being addressed.

7. **Developer/Purchaser Contingencies**

- 7.1 Waiver of all items described in the Due Diligence paragraph above.
- 7.2 Full execution of the DDA and/or PSA by all Parties and approval from the Agency Board.
- 7.3 Final approval of the PUD, subdivision, proposed public improvements, and any other approvals required for the development of the Property.
- 7.4 Legal separation of the Property so as to form separate legal parcels for the Phase I development sites, Public Plaza, and Infrastructure and Remainder Site.
- 7.5 Commitment from the City of Sherwood Urban Renewal Agency for cost of development and construction of the Public Plaza and public right-of-ways and infrastructure, as well as commitment from the Agency for dedication land areas needed for the public right-of-ways.
- 7.6 Developer's receipt of a construction financing commitment for all Phase I development upon terms and from a lender reasonably acceptable to Developer/Purchaser.

- 7.7 Developer's obtaining pre-lease or pre-sale commitments for a minimum of 40% of the proposed Phase I retail, office, and/or commercial buildings, subject to approval by Developer's lender.
- 7.8 Developer's obtaining a financing commitment for the development of 100 +/- apartment units on a 100% speculative basis (no pre-leasing).
- 7.9 Title commitment for Phase I sites from a title company acceptable to Developer/Purchaser.
- 7.10 Receipt of all permits necessary for construction of the Phase I improvements, Public Plaza, and infrastructure as approval.

8. Developer Responsibilities.

- 8.1 Develop a preliminary master plan for the property including public roads, potential lot configurations, public plaza, and specific building site plans.
- 8.2 Create a new Planned Unit Development (“**PUD**”) zoning on the Property.
- 8.3 Negotiate and document all separate agreements between Seller, Agency, and Developer.
- 8.4 Subdivide, partition, and/or adjust lot lines as required to meet the master plan and to respond to market demand.
- 8.5 Coordinate design, permit, and manage construction of Public Plaza, new streets and related infrastructure, and redevelopment of the Warehouse Site.
- 8.6 Purchase land from Seller/Agency in accordance with to be negotiated DDA or PSA.
- 8.7 Develop and finance buildings for sale or lease.
- 8.8 Provide Agency with schematic and design documents as soon as prepared by Developer's architect.
- 8.9 Provide Agency with financial information relative to letter of interest and/or commitment from commercial banks or private leading sources for Project funding.
- 8.10 Develop a marketing program for sale or lease of buildings, including the Warehouse Site provided private uses are programmed for the building and that

Agency determines it desirable to integrate said property into the Old Cannery site project.

8.11 Participate in Agency's community outreach/public input process.

9. Seller/Agency Responsibilities.

9.1 Provide all information in its possession related to environmental condition including environmental assessments and reports; zoning condition; soils; survey and preliminary title information.

9.2 Cooperate with Developer in facilitation of all required zoning approvals, design review, and other approvals necessary for development of the Project.

9.3 Fund construction of Public Plaza element and all public streets and related infrastructure including a fee for construction management to be paid to Developer. The actual fee shall be fixed and determined once construction costs have been determined based on the actual bids utilized for the construction of these public improvements, but shall not be less than five percent (5%) of project costs. The fee shall be paid on a monthly straight-line basis, starting at Closing and running through the estimated course of construction of the Phase I project.

9.4 Provide ALTA Extended Owner's Title Policy to Developer at closing.

9.5 Pay brokerage commission due to GVA Kidder Mathews incident to sale of the Property as per separate agreement.

10. Term and Exclusivity. This MOU shall be effective when executed by both Parties. Developer/Purchaser, or its designated representative, will retain the exclusive right to negotiate a DDA or P&S with Agency, and Agency will refrain from negotiating with other parties for development of the Property until August 1, 2008, as long as Developer meets the Schedule of Performance under Section 11.

11. Schedule of Performance.

3/31/08	Execute MOU
6/30/08	DDA or P&S Approved and Executed by Agency
8/31/08	Developer Due Diligence Ends
9/01/08	Developer Provides Master Plan for Development to Agency
9/30/08	Agency Approves Master Plan
10/01/08	Developer Initiates PUD/Zoning Approval Process

- 06/30/09 Developer Acquires Land from Agency/Seller for Phase I Construction
- 07/01/09 Developer begins Phase I Construction. Developer shall have the right to extend the Phase I Construction Date for delays which are not in the Developer's control, which shall include force majeure, acts of terrorism or war, weather delays, public agency delays (including appeals) and unavailability of acceptable debt capital.

12. Non-Binding Agreement. This MOU is a statement of the current intent of the Parties, and does not create a binding agreement between the Parties, except as specified in Section 10 as it relates to Term and Exclusivity and except as specified in Section 16 as it relates to the Termination of this MOU and cure rights of the Parties. This MOU shall not be relied upon as a basis for a contract by estoppels or serve as the basis for a claim based on detrimental reliance or any other theory. The Parties understand that no Party shall be bound until the DDA or P&S has been negotiated, executed, delivered, and approved by the Members of Developer and the Agency Board. The Parties will make a good faith effort to negotiate the DDA or P&S as soon as feasible.

13. Communications. The Parties agree that all public communications concerning the Property, e.g., press releases or information provided to the media and all substantive discussions with public agencies having jurisdiction over the Property, will be undertaken jointly by Agency and Developer and shall be subject to the prior approval of the other Party.

14. Notices

14.1 All notices or other communications required by or relating to this MOU or the Property will be in writing, and sent by personal delivery, by overnight delivery, or by fax with a telephonic confirmation of receipt.

14.2 Correspondence concerning the Property shall be addressed to:

City of Sherwood:

Jim Patterson
City of Sherwood
22560 SW Pine Street
Sherwood, Oregon 97214
Phone: (503) 625-4260

For: Capstone Partners, LLC:

Chris Nelson
Capstone Partners
1015 NW 11th Avenue, Suite 243

Portland, OR 97209
(503) 226-1972

15. Authorization. Agency and Developer and its members will seek all approvals required by law, bylaws, operating agreements, and pertinent corporate documents in order to enter into this MOU.

16. Termination.

16.1 Agency may unilaterally terminate this MOU with fifteen (15) days prior written notice if Developer fails to satisfy the following benchmark:

- Failure to remove Due Diligence contingencies by August 31, 2008.

16.2 Prior to the end of the Due Diligence Period, Developer may terminate this MOU by providing written notice to Agency/Seller of its election to terminate.

16.3 For reasons other than those described in Section 16.1, either Party may terminate this MOU (the “terminating Party”) in writing for cause related to non performance stating the specific non-performance issue. However, the nonterminating Party will be given thirty (30) days to cure the reasons for termination given by the terminating Party, if cure is possible, and must notify the terminating Party in writing of its desire to cure. If the cure is not completed within such 30-day period, the terminating Party may thereafter notify the nonterminating Party of its failure to cure and this MOU shall terminate on the date of such written notice.

Upon termination, all of the respective rights and obligations of the Parties hereunder shall be of no further force or effect. In the event of termination each Party shall be solely responsible for their own expenses incurred during the term of the MOU.

17. DISCLAIMER OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM SUCH PARTY’S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

Signatures on following page.

MEMORANDUM OF UNDERSTANDING: OLD CANNERY SITE

URA Resolution 2008-011
April 15, 2008 Exhibit A

AGREED AND ACCEPTED:

SHERWOOD URBAN RENEWAL DISTRICT AGENCY

By: _____
Jim Patterson, District Manager

Date: _____

DEVELOPER

CAPSTONE PARTNERS LLC

By: _____

Date: _____

By: _____

Date: _____