



URA RESOLUTION 2008-020

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE PURCHASE AND SALES AGREEMENT FOR THE CANNERY REDEVELOPMENT

WHEREAS, the Urban Renewal Agency of the City of Sherwood ("Agency"), as the duly designated Urban Renewal Agency for the City of Sherwood, Oregon ("City"), is undertaking to carry out The Sherwood Urban Renewal Plan ("Plan") which Plan was approved by the City Council of the City ("Council") on August 29, 2000 by Ordinance No. 2000-1098; and

WHEREAS, the real property known as the Old Cannery site, consisting 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 - 5.46 acres; R0556017 - 0.09 acres and R0555615 - 0.51 acres located at what was previously 220 SE Willamette Street, Sherwood is planned for private redevelopment as set forth in Sections 501 and 600 of the Plan; and

WHEREAS, the Agency approved a Memorandum of Understanding on April 15, 2008 with Capstone Partners, LLC to purchase and develop the property; and

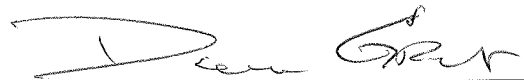
WHEREAS, the attached Purchase and Sales Agreement (Exhibit A) defines the terms and conditions negotiated with Capstone Partners, LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SHERWOOD URBAN RENEWAL AGENCY:

Section 1. The Agency directs the Agency Manager to sign the Purchase and Sales Agreement with Capstone Partners, LLC.

Section 2. This Resolution shall be effective from and after its adoption by the Agency Board.

Duly passed by the Urban Renewal Agency District Board this 19th day of August 2008.



Keith S. Mays, Board Chairman
Dave Grant, Board Vice Chair

ATTEST:



Sylvia Murphy, District Recorder

PURCHASE AND SALE AGREEMENT

DATE: July __, 2008 (the "Effective Date")

BETWEEN: City of Sherwood Urban Renewal District ("Seller")
22560 SW Pine Street
Sherwood, OR 97140
ATTN: Jim Patterson
Fax: (503) 625-5524

AND: Capstone Partners, LLC, ("Purchaser")
an Oregon limited liability company
1015 NW 11th Avenue, Suite 243
Portland, Oregon 97209
ATTN: Chris Nelson

Recitals

A. Seller owns certain real property commonly as the Old Cannery Site and consisting of Tax parcels R0555599, R0556017 and R0555615 in Washington County, in Sherwood, Oregon (the "Current Seller Property"). A legal description of the Current Seller Property is attached as Exhibit A-1 and made a part of this Agreement. Purchaser desires to purchase from Seller a portion of the Current Seller Property depicted as "Site A-1", "Site B-1", "Site B-2", "Site C", "Site D", and "Phase II Property" on the attached Exhibit A-2 (the "Land"). The legal description of the Land will be determined during the subdivision process that Purchaser and Seller contemplate occurring as part of the development of the Property. As used in this Agreement, "Property" includes:

- (i) the Land and improvements, and all related rights and appurtenances, including all right, title and interest of Seller in and to any of the following: any oil, gas, or other minerals laying under such land, any water or water rights benefiting such land and any stock evidencing any such rights, any easements benefiting such land and any strips and gores adjoining such land;
- (ii) all right, title and interest of Seller in permits or governmental approvals related to the Property, whether granted by governmental authorities or private persons (collectively, the "Rights");and
- (iii) the tangible personal property located on the Property. Tangible personal property shall mean all tangible personal property located on or in the real property or structures on the real property, and owned by the Seller.

B. Purchaser desires to purchase the Property from Seller, and Seller desires to sell the Property to Purchaser for the price and on the terms and conditions described below.

Agreement Terms and Conditions

NOW, THEREFORE, in consideration of the mutual promises of the Parties set forth below, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. PURCHASE AND SALE

- 1.1. Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the Property from Seller, all on the terms and conditions set forth in this Purchase and Sale Agreement (the "Agreement").
- 1.2. It is contemplated that the Property will be purchased in two (2) phases. The first phase of the Property is comprised of the following parcels, each of which are depicted on the attached Exhibit B (the "Phase I Purchase"); provided, however, that the exact size and location of each such parcel shall be determined during the land division process: (i) Site A-1 which is approximately 20,100 square feet of land located at the southwest corner of Pine Street by the railroad, (ii) Site B-1 and Site B-2 which is approximately 47,800 square feet of land, and (iii) Site C and D which is approximately 80,063 square feet of land located along Willamette Street. It is contemplated that the Phase I Purchase will occur on or before July 31, 2009 (the "Phase I Purchase Outside Date"); provided that the Phase I Purchase Outside Date shall be extended for delays beyond the control of Purchaser (collectively, "Delay Events"), including, without limitation, for delays due to force majeure events, acts of terrorism, war, weather delays, public agency delays and delays in obtaining governmental approvals (including appeals), strikes and unavailability of obtaining debt capital on terms reasonably acceptable to Purchaser. The second phase of the Property is comprised of the balance of the Property, which is approximately 32,446 square feet of land (the "Phase II Property"). It is contemplated that the purchase of the Phase II Property will occur on or before December 31, 2012 (the "Phase II Purchase Outside Date"), subject to extensions for Delay Events.
- 1.3. This Agreement shall be effective provided it is executed by both Seller and Purchaser, and in such event shall be deemed effective as of the date set forth above.

2. SELLER DEVELOPMENT GOALS FOR THE PROPERTY. Seller desires in connection with Purchaser's acquisition and development of the Property that Purchaser use commercially reasonable efforts to develop the project to be constructed on the Property consistent with the following:

- 2.1. A medium density mixed use development for both residential and commercial uses.
- 2.2. A development likely to stimulate new investment and development in the Sherwood "Old Town" and surrounding areas.
- 2.3. A development that will contribute to a "small town" feel with a unified architectural character.
- 2.4. A development that is complementary to the major investment that the City of Sherwood has made in new streets, sidewalks and street improvements north of the railroad tracks.
- 2.5. A development that substantially is in compliance with the overlay district standards for the City of Sherwood's Old Town.

- 2.6. It is contemplated that Site A-1 shall be developed as one approximately 5,000 square foot single story brick commercial building fronting on SW Pine Street; provided, however, Purchaser may change how Purchaser develops Site A-1 so as to allow for integrated and compatible master plan uses between the Property and the existing property located to the east of Site A-1 (the "Warehouse Property").
- 2.7. It is contemplated that Site B-1 shall be developed as one approximately two-story 14,000 square foot brick mixed use commercial building located adjacent to the public plaza to be constructed by Seller.
- 2.8. It is contemplated that Site C and Site D shall be developed as two approximately 50 unit three story apartment buildings with brick facades on public streets.

3. PURCHASE PRICE AMOUNTS

- 3.1. The purchase price (the "Purchase Price") for Site A-1 shall be an amount equal to the product of \$12.50 and square feet of land in Site A-1.
- 3.2. The Purchase Price for Site B-1 and Site B-2 shall be an amount equal to the product of \$15.00 and square feet of land in Site B-1 and Site B-2.
- 3.3. The Purchase Price for Site C and D shall be the product of 79,390 square feet and the residual land value of Site C and D (but not more than \$12.00 per square foot or less than \$8.00 per square foot), which residual land value shall be determined by a multi-family appraiser mutually selected by Purchaser (subject to approval by Seller, which approval shall not be unreasonably withheld, conditioned or delayed) using Purchaser's actual cost assumptions, revenue and operating expense assumptions to assist such appraiser in determining such residual land value.
- 3.4. The Purchase Price for the Phase II Property shall be \$16.00 per square foot of land that comprises the Phase II Property.

4. TIMING OF PAYMENT OF PURCHASE PRICE

- 4.1. The Purchase Price for Site A-1 and Site B-1 and Site B-2 shall be paid in cash on the closing of the purchase by Purchaser of Site A-1, Site B-1 and Site B-2.
- 4.2. The Purchase Price for Site C and Site D shall be paid in cash after the closing of the purchase of Site C and Site D. Such Purchase Price shall not be paid until thirty (30) days after both of the apartment buildings to be built on Site C and Site D have been built and 95% of the square feet of rental space in such apartment buildings has been leased to tenants who are in occupancy and paying rent.
- 4.3. The Purchase Price for the Phase II Property shall be paid in cash on the closing of the purchase by Purchaser of the Phase II Property.

5. SELLER PRE-CLOSING OBLIGATIONS

- 5.1. Prior to Closing (defined below), Seller will: (i) discharge all liens (including tax liens, liens for assessments and inchoate liens) encumbering the Property or any part of the Property; (ii) cure all title objections that Seller agrees to cure in accordance with

this Agreement; (iii) satisfy all requirements of the Title Company customarily required of a seller of real property located in Oregon related to issuance of the Purchaser's Title Policy, (iv) within ten (10) days after the Effective Date, provide Purchaser with all information in Seller's possession pertaining to the Property (including, without limitation, information pertaining to environmental matters, wetlands, soils, zoning, title and survey matters); (v) cooperate with Purchaser in facilitating all required zoning approvals, design review approvals, and other approvals necessary or advisable for the development of the Property, (vi) fund the construction of the public plaza and all public streets and related infrastructure that Seller is required to construct pursuant to that certain Development Agreement dated concurrently herewith between Seller and Purchaser (the "Development Agreement"), (vii) obtain a "no further action letter" from the Oregon Department of Environmental Quality with respect to Hazardous Materials that currently and/or previously were present on the Property in form and substance satisfactory to Purchaser, and (viii) initiate and obtain approval of a text amendment to the City of Sherwood's PUD ordinance so as to allow Purchaser to transfer residential density from portions of the Property to Sites C and D, which text amendment shall be in a form and substance satisfactory to Purchaser.

- 5.2. Until the Closing or termination of this Agreement by Purchaser or Seller, Seller will not, without Purchaser's approval, do any of the following: (i) amend, terminate or otherwise modify, or consent to the amendment, termination or modification of, any Rights related to the Property; (ii) grant, create or allow the creation of any easement, right-of-way, encumbrance, lien, restriction, condition, assessment, lease or other cloud on title which affects the Property, or amend, extend or otherwise modify the terms of any existing easement, right-of-way, encumbrance, lien, restriction, condition, assessment, lease or other cloud on title which affects the Property; or (iii) sell or otherwise transfer or dispose of all or any part of the Property, or enter into an agreement to sell or otherwise transfer or dispose of all or any part of the Property.

6. PURCHASER'S DUE DILIGENCE CONDITIONS

- 6.1. Seller shall promptly deliver to Purchaser (but not later than ten (10) days after the Effective Date) all documents and materials in Seller's possession or control pertaining to the Property, including, without limitation, copies of all environmental reports and test results for the Property and all other information (including reports or test results performed for other persons) relating to the presence of Hazardous Materials, wetlands, environmental constraints, geotechnical data and other considerations typically of importance to a transaction of this nature, as well as a current ALTA survey for the Property and a topographical survey of the Property. Seller shall use commercially reasonable efforts to deliver to Purchaser a traffic study report for Old Town Sherwood as soon as reasonably possible.
- 6.2. Purchaser's satisfaction with the condition of the Property and Purchaser's ability to develop the Property for Purchaser's intended purpose, as determined by Purchaser in Purchaser's sole discretion, is a condition to closing of the purchase and sale. Purchaser shall notify Seller in writing on or before the Due Diligence Contingency Date whether or not Purchaser's due diligence contingency has been satisfied (the "Satisfaction Notice"). As used herein, the "Due Diligence Contingency Date" shall be forty-five (45) days after the later to occur of: (i) the mutual execution of this

Agreement, (ii) Seller's delivery to Purchaser of a current ALTA survey of the Property, or (iii) Seller's delivery to Purchaser of a current traffic impact study with respect to the proposed development of the Property. If Seller does not timely receive the Satisfaction Notice or if Purchaser notifies Seller in writing that Purchaser's due diligence contingency has not been satisfied, this Agreement shall terminate and Purchaser shall provide Seller with copies, at no cost to Seller, of all third party final reports obtained by Purchaser with respect to the physical condition of the Property.

- 6.3. During the term of this Agreement, Purchaser and its representatives shall, at reasonable times, be entitled to go upon the Property for the purpose of making or conducting any inspection, investigation, test or survey reasonably related to the purchase of the Property or to Purchaser's prospective use thereof, provided only that all such activities shall be without expense to Seller and that Purchaser shall fully and immediately restore the Property to substantially its present condition following conduct of any tests. Purchaser shall hold Seller harmless from any damage to persons or property caused by Purchaser's activities on the Property; provided that in no event shall Purchaser be required to indemnify Seller to the extent such liens, costs and expenses arise from the negligence or willful misconduct of Seller or Seller's agents or employees, and in no event shall Purchaser have any duty to indemnify, defend or hold any person or entity harmless from or against any claim, demand, damage, loss, action, liability, cause of action, or judgment, including without limitation, any claim for diminution in value of the Property or for environmental remediation or clean-up costs, arising out of or in connection with the mere fact of having discovered and/or reported (to the extent such reporting was required by law) any adverse physical condition, title condition, or other defect with respect to the Property.
- 6.4. For the purposes of this Agreement, "Hazardous Materials" shall mean any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency law or ordinance including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Federal Water Pollution Control Act, U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1471 *et seq.*; Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; Refuse Act, 33 U.S.C. §§ 407 *et seq.*; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. §§ 65 *et seq.*, to the extent it includes the emission of any Hazardous Material and includes any Hazardous Material for which hazard communication standards have been established; Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. §§ 136 *et seq.*; Federal Safe Drinking Water Act, 42 U.S.C. §§ 300(f) *et seq.*; or any similar or analogous state or local statute or ordinance, or any regulation, order, rule, or requirement adopted thereunder, as well as any formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 *et seq.*

6.5. As used in this Agreement, "Title Company" shall mean First American Title Insurance Company. Within thirty (30) days after the Effective Date, Purchaser shall obtain from Title Company and review a preliminary title report with respect to the Property, together with all documents and information pertaining to the exceptions to title listed in such report. Purchaser may advise Seller in writing and in reasonable detail, not later than thirty (30) days after Purchaser's receipt of the Title Report, what exceptions to title, if any, listed in the then current preliminary report or disclosed on any survey obtained by Purchaser that are not acceptable to Purchaser (the "Title Objections"). Purchaser shall not, however, unreasonably express disapproval of any exceptions to title and, prior to notifying Seller of any Title Objections, shall endeavor in good faith to cause Title Company to modify and update the preliminary report to reflect requested corrections and revisions. Purchaser's failure to deliver a notice of Title Objections to Seller within such thirty (30) day period shall be deemed Purchaser's acceptance of all title and survey matters. Seller shall have five (5) business days after receipt of Purchaser's Title Objections to give Purchaser notice that: (i) Seller will remove any Title Objections from title (or afford the Title Company necessary information or certifications to permit it to insure over such exceptions), or (ii) Seller elects not to cause such exceptions to be removed. Seller's failure to provide notice to Purchaser within such five (5) business day period as to any Title Objection shall be deemed an election by Seller not to remove the Title Objection. If Seller so notifies or is deemed to have notified Purchaser that Seller shall not remove any or all of the Title Objections, Purchaser shall have until sixty (60) days after Purchaser's receipt of the Title Report to determine and to notify Seller whether Purchaser will: (a) proceed with the purchase and take the Property subject to such exceptions, or (b) terminate this Agreement. As used in this Agreement, "Permitted Exceptions" shall include and refer to any and all exceptions to title, excepting solely Title Objections that have been identified by Purchaser within the time frames contained in this Section and that Seller has notified Purchaser pursuant to this Section that Seller is willing to remove.

7. PURCHASER'S CONTINGENCIES

- 7.1. Purchaser's obligations under this Agreement are contingent upon the satisfaction or waiver of Purchaser's due diligence and title contingencies set forth above within the time frames set forth above.
- 7.2. Purchaser's obligations under this Agreement are contingent upon the mutual execution of this Agreement and approval of this Agreement by Seller's board.
- 7.3. Purchaser's obligations under this Agreement are contingent upon all representations of Seller contained in this Agreement are accurate and complete in all material respects at the time of a Closing as if made again at that time.
- 7.4. Purchaser's obligations under this Agreement are contingent upon Seller's performance all of the obligations to be performed by Seller under this Agreement at or before Closing.
- 7.5. Purchaser's obligations under this Agreement are contingent upon the Title Company being prepared to issue the Purchaser's ALTA extended coverage Title Policy conforming to the requirements of this Agreement.

- 7.6. Purchaser's obligations under this Agreement are contingent upon Purchaser obtaining final, binding approvals that are not subject to appeal for all governmental approvals required by Purchaser for Purchaser's proposed development of the Property, including, without limitation, all PUD, subdivision, public improvement, land use, building permit and other similar approvals.
- 7.7. Purchaser's obligations under this Agreement are contingent upon the creation of separate legal lots for all portions of the Property to be purchased by Purchaser and which are to be retained by Seller.
- 7.8. Purchaser's obligations under this Agreement are contingent upon the receipt of a binding commitment from Seller to pay for the cost of development and construction of the public plaza and public rights of way and infrastructure contiguous with the Property pursuant to the terms and provisions of the Development Agreement, as well as for the dedication of land areas needed for all such public rights of way.
- 7.9. Purchaser's obligations under this Agreement are contingent upon the receipt of a construction financing commitment with respect to the development of the portion of the Property to be acquired as part of the Phase I Purchase upon such terms and from such lender as is reasonably acceptable to Purchaser.
- 7.10. Purchaser's obligations under this Agreement are contingent upon obtaining pre-lease or pre-sale commitments for a minimum of 40% of the proposed retail, office and/or commercial buildings contemplated to be developed on the portion of the Property to be acquired as part of the Phase I Purchase, or as may be required by Purchaser's construction lender.
- 7.11. Purchaser's obligations under this Agreement are contingent upon the receipt by Seller of all building permits necessary for the construction of the public plaza, all public rights of way and all other related infrastructure that is contiguous to the Property.
- 7.12. Purchaser's obligations under this Agreement are contingent upon the receipt of a confirmation from the State of Oregon Bureau of Labor and Industries that under the State of Oregon prevailing wage laws, Purchaser shall have no obligation to pay prevailing wages in connection with Purchaser's proposed development of the Property.
- 7.13. Purchaser's obligations under this Agreement are contingent upon Seller not being in default of the Development Agreement.

8. PURCHASER'S RESPONSIBILITIES

- 8.1. Purchaser shall submit a preliminary proforma demonstrating the financial feasibility of the proposed development of the Property to Seller for Seller's review no later than two (2) weeks after the Due Diligence Contingency Date.
- 8.2. Purchaser shall provide Seller with monthly updates on Purchaser's efforts with respect to the development of the Property. Such reports are not intended to be comprehensive reports but merely a summary of the development progress that has occurred during the month period immediately prior to the date of each such report.

8.3. Purchaser shall develop a proposed schedule of performance with respect to the proposed development of the Property for review by Seller. Currently, it is contemplated that such schedule of performance will be as follows, subject to force majeure delays:

| <u>Date</u> | <u>Milestone</u> |
|--|---|
| Due Diligence Contingency Date | Purchaser's due diligence ends |
| 2 Weeks following Due Diligence Contingency Date | Purchaser provides draft master plan to Seller |
| 4 Weeks following Due Diligence Contingency Date | Seller approves master plan (not to be unreasonably withheld) |
| Day after Seller approves master plan | Purchaser initiates PUD zoning process |
| 7/31/09 | Phase I closing occurs and commences construction. |

- 8.4. Purchaser shall develop a preliminary master plan for the Property.
- 8.5. Purchaser shall use commercially reasonable efforts to obtain a planned unit development zoning designation for the Property.
- 8.6. Purchaser shall use commercially reasonable efforts to obtain all legal lot subdivisions to effectuate the transactions contemplated by this Agreement.
- 8.7. Purchaser shall provide Seller with schematic and design documents promptly following preparation by Purchaser's architect.
- 8.8. Purchaser shall provide Seller with such information as Seller reasonably requests regarding the potential sources of financing of the proposed development of the Property.
- 8.9. Purchaser shall develop a marketing program for the sale or lease of the buildings to be developed on the Property.
- 8.10. Purchaser shall participate in Seller's community outreach/public input process pertaining to the proposed development of the Property.

9. CLOSING

- 9.1. The Closing of the purchase and sale of the Property shall occur in two phases, the first with respect to the portion of the Property to be acquired as part of the Phase I Purchase (the "Phase I Closing"), and the second with respect to the Phase II Property (the "Phase II Closing"). Each closing will occur in an escrow to be administered by the Title Company ("Escrow"). The parties agree to provide the Title Company with escrow instructions consistent with the terms of this Agreement.
- 9.2. The closing date ("Closing" or "Closing Date") for the Phase I Closing shall occur on a date selected by Purchaser that is on or before the Phase I Purchase Outside Date

and the Phase II Closing shall occur on a date selected by Purchaser that is on or before the Phase II Purchase Outside Date.

- 9.3. On or before the applicable Closing Date, Seller shall deposit into Escrow funds to pay Seller's portion of the closing costs and Title Insurance, as well as all of the following: (i) an original special warranty deed in statutory form (the "Deed"), duly executed by Seller and notarized, (ii) a certificate of non-foreign status (the "FIRPTA Certificate"), and (iii) such documents as the Title Company may require to establish the authority of Seller to complete the sale of the Property as contemplated by this Agreement and to issue the Purchaser's Title Policy with respect to the portion of the Property purchased on such Closing Date.
- 9.4. On or before the applicable Closing Date, Purchaser shall deposit into Escrow such funds (by certified check or wire transfer) as are necessary to complete payment of the Purchase Price that is payable on such Closing Date under the terms and provisions of this Agreement, and to pay Purchaser's portion of the closing costs. Purchaser shall also deposit into Escrow such documents as the Title Company may require to complete the sale of the Property as contemplated by this Agreement.
- 9.5. On the Closing Date, the Title Company shall: (i) deliver the applicable Purchase Price to Seller; (ii) cause the Deed to be recorded in the Official Records of Washington County, Oregon; (iii) deliver to Purchaser the Purchaser's Title Policy (defined below) and, the executed FIRPTA Certificate, (iii) promptly after such Closing, the Title Company shall deliver to each of Purchaser and Seller an accounting of all funds received and disbursed and copies of all executed and recorded or filed documents deposited with the Title Company with the recording or filing information noted on such documents.
- 9.6. On the applicable Closing Date, the Title Company shall issue to Purchaser an extended ALTA owner's policy of title insurance (the "Purchaser's Title Policy"), insuring Purchaser as the owner of the portion of the Property acquired on such Closing Date subject only to non-delinquent real property taxes and assessments and the Permitted Exceptions. The Purchaser's Title Policy shall have a liability limit equal to the Purchase Price for the portion of the Property acquired on such Closing Date. Seller shall pay the premium for extended ALTA coverage and endorsements.
- 9.7. Purchaser shall pay one-half of the Title Company's escrow fee and all recording fees, and Seller shall pay one-half of the Title Company's escrow fee and all transfer or similar taxes.
- 9.8. The Title Company shall prorate, as of the Closing Date, real property taxes and assessments payable in the tax year of the Closing between Purchaser and Seller based upon the number of days such portion of the Property conveyed on the Closing Date is owned by the respective parties during such year. If such portion of the Property is subject to taxation for a prior tax year as a result of the transfer of such portion of the Property from a public Seller to a taxable purchaser, Purchaser shall pay the taxes for such earlier tax years.
- 9.9. Seller will deliver possession of the applicable portion of the Property to Purchaser at Closing, free of all rights of possession of Seller or any third parties.

10. WARRANTIES

10.1. Seller hereby represents and warrants to Purchaser as follows:

- 10.1.A. Seller has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Seller in connection with the execution of this Agreement and the transaction contemplated by this Agreement.
- 10.1.B. This Agreement has been duly executed and delivered by Seller and constitutes a valid, binding and enforceable obligation of Seller.
- 10.1.C. Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- 10.1.D. There is no litigation, claim or arbitration pending or, to Seller’s knowledge, threatened with respect to the Property. There is no condemnation, environmental, zoning or other proceeding, either instituted or to Seller’s knowledge, planned to be instituted, which could detrimentally affect the use, development or operation of the Property or the value of the Property, nor has Seller received notice of any special assessment proceeding affecting the Property.
- 10.1.E. Except as disclosed to the Purchaser in writing, Seller has received no notice from any governmental entity that the Property is in violation of any laws, ordinances, rules or regulations applicable to the Property, including, without limitation, any such laws, ordinances, rules or regulations pertaining to Hazardous Materials. Neither Seller, nor, to Seller’s knowledge, any third party has used, generated, manufactured, produced, stored or disposed of on, under, or about the Property or transported to or from the Property any Hazardous Materials.
- 10.1.F. Seller owns the Property free and clear of all liens, encumbrances, leases or other occupancy rights and security interests whatsoever, subject only to the Permitted Exceptions. Seller has not performed, nor caused to be performed, any work on the Property which would cause a construction or other lien to be filed against the Property. No special tax, regular or special assessment, license, fee, impact or development fee, levy, late-comer charge, mitigation payment, lien or charge (individually and collectively a “Charge”) has been imposed against the Property or Seller by any governmental, quasi-governmental, public, quasi-public, utility, transportation or other entity, authority or agency (individually and collectively an “Agency”). Seller has not entered into any agreement or understanding with respect to any Charge which may now or hereafter, directly or indirectly, be imposed on the Property or become an obligation of the owner of the Property. Seller has not agreed to install, construct, modify, repair or improve any improvement for or on behalf of any Agency, the cost of which may now or hereafter, directly or indirectly, be imposed on the Property or become an obligation of the owner of the Property.
- 10.1.G. Seller knows of no defect in the physical condition of the Property.

10.1.H. No representation, warranty or statement of Seller in this Agreement contains any untrue statement of a material fact or omits a material fact necessary to make the statements of fact contained herein not misleading. All such representations, warranties and statements of Seller are based upon current, accurate, and complete information and there has been no adverse material change in such information. Seller knows of no material fact nor has Seller failed to disclose to Purchaser any material fact which would prevent Purchaser from developing the Property after the closing of the sale of the Property as contemplated by Purchaser.

10.1.I. Seller and each person or entity owning an interest in Seller is:

(1) not identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and

(2) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and

(3) none of the funds or other assets of Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), and

(4) no Embargoed Person has any interest of any nature whatsoever in Seller (whether directly or indirectly). The term "Embargoed Person" means any person, entity or government subject to trade restrictions under law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Seller is prohibited by law or Seller is in violation of law. Seller also shall require, and shall take reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Seller is or shall be listed on any of the Lists or is or shall be an Embargoed Person.

10.2. Purchaser hereby represents and warrants to Seller as follows:

10.2.A. Purchaser has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Purchaser in connection with the execution of this Agreement and the transactions contemplated hereby.

10.2.B. This Agreement has been duly executed and delivered by Purchaser and constitutes a valid, binding and enforceable obligation of Purchaser.

10.2.C. Purchaser represents and warrants that Purchaser and each person or entity owning an interest in Purchaser is:

(1) not identified on any List maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation; and

(2) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States; and

(3) none of the funds or other assets of Purchaser constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; and

(4) no Embargoed Person has any interest of any nature whatsoever in Purchaser (whether directly or indirectly). Purchaser also shall require, and shall take reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Purchaser is or shall be listed on any of the Lists or is or shall be an Embargoed Person.

- 10.3. Except as expressly set forth in this Agreement, as of the Effective Date, no warranties, guarantees or representations have been or are being made by Seller or any agent or representative of Seller concerning: (i) the availability of any governmental permits or approvals obtained or to be obtained in connection with Purchaser's use of the Property, except to the extent that such permits or approvals may be obtained by Purchaser applying for, and the City of Sherwood approving, such permits or approvals through the City's regulatory land use and building permit processes; (ii) the suitability of the Property for Purchaser's intended use; (iii) the physical condition of the Property; (iv) the compliance of the Property with any past or present zoning, land use, building, fire, safety, environmental or other ordinances, restrictions, laws and regulations; (v) the sub-surface condition of the Property; or (vi) the presence of any material in, under, or on the Property which is regulated by any ordinance, regulation or law.
- 10.4. Purchaser will accept the Property in its present condition, "AS IS, WITH ALL FAULTS" without any representations or warranties by Seller or any agent or representative of Seller, expressed or implied, except as set forth in this Agreement and the documents to be delivered by Seller at Closing. Purchaser acknowledges that Purchaser will ascertain for itself the value and condition of the Property and Purchaser is not relying on, nor has Purchaser been influenced by, any representation of Seller or any agent or representative of Seller regarding the value, condition, or any aspect of the Property, except as set forth in this Agreement. As part of Purchaser's agreement to purchase the Property "AS IS, WITH ALL FAULTS," and not as a limitation on such agreement, Purchaser hereby unconditionally and irrevocably waives and releases any and all actual or potential rights Purchaser might have regarding any form of warranty, express or implied, of any kind or type, relating to the Property, except for Seller's warranties set forth in this Agreement and the documents to be delivered by Seller at Closing. Such waiver is absolute, complete, total and unlimited in every way.

11. BROKERAGE COMMISSIONS

- 11.1. Seller acknowledges to Purchaser that it has a broker relationship with GVA Kidder Mathews in connection with the transactions contemplated by this Agreement, whose fee shall be paid by Seller. Seller shall protect, defend, indemnify, and hold Purchaser harmless for, from and against any and all other claims, liabilities or demands with respect to any fees or other compensation asserted as a result of Seller's actions in connection with this Agreement.
- 11.2. Purchaser acknowledges to Seller that Purchaser has not used a broker or finder in connection with the transactions contemplated by this Agreement. Purchaser shall protect, defend, indemnify, and hold Seller harmless for, from and against any and all other claims, liabilities or demands with respect to any fees or other compensation asserted as a result of Purchaser's actions in connection with this Agreement.
- 11.3. These indemnities shall survive the Closing or the termination of this Agreement.

12. BREACH

- 12.1. If a party (a "Breaching Party") is in breach of such party's obligations under this Agreement, the non-breaching party (the "Non-Breaching Party") may give the

Breaching Party written notice of such default. If such default is not cured within thirty (30) days of the date of such notice is received by the Breaching Party, the Non-Breaching Party may then terminate this Agreement by written notice to the Breaching Party; provided, if the Breaching Party notifies the Non-Breaching Party that the default specified in such notice is one that cannot be cured within such thirty (30) day period, but that the Breaching Party has commenced the cure of such default and is diligently pursuing the cure of such default to completion, the Non-Breaching Party may not terminate this Agreement prior to the completion of such cure unless the Breaching Party ceases to diligently pursue the cure of such default.

- 12.2. If this Agreement is terminated pursuant to the provisions of this Section, neither party shall have any further obligations under this Agreement; provided, however, if this Agreement is terminated due to a Seller default, Purchaser shall be entitled to pursue any remedy available to Purchaser at law or in equity, including, without limitation, an action of specific performance, or receive reimbursement from Seller for all costs and expense incurred by Purchaser in connection with this Agreement, including, without limitation, Purchaser's due diligence costs and costs and expense incurred in connection with efforts to obtain financing. If this Agreement is terminated due to Purchaser's default, Seller shall be entitled to receive Seller's out of pocket third party costs incurred in connection with the transaction contemplated by this Agreement up to an amount equal to _____ Dollars (\$_____).

13. CONDEMNATION

If after the Effective Date, and prior to Closing, the Property is or becomes subjected to a bona fide threat of condemnation by a body having the power of eminent domain, or is taken by eminent domain or condemnation (or sale in lieu thereof), Purchaser shall have the right to terminate this Agreement by written notice to Seller or proceed with the purchase (in which event all condemnation proceeds shall be paid to Purchaser).

14. DAMAGE OR DESTRUCTION

14.1. All risk of damage or destruction of the Property after the Effective Date and prior to Closing shall remain with the Seller. If the Property is or becomes damaged, the Seller shall notify the Purchaser of the extent of the damage and the scope of necessary repairs as soon as such information is reasonably available to the Seller, and Purchaser shall give notice within ten (10) business days after receiving Seller's notification, of its election to either proceed with the Closing, or to terminate the Agreement. If the Purchaser elects to proceed to Closing, the Seller shall assign any available insurance proceeds applicable directly to the Property to the Purchaser for Purchaser's use in making repairs, but Seller's responsibility for repairs is limited to the applicable insurance proceeds. If the Purchaser elects to terminate the Agreement solely as a result of damage or destruction, the termination shall be effective as of the date of Purchaser's notice. In the case of termination under this Section, no breach of the Agreement shall be deemed to have occurred, and a Party shall have no further claim or remedy against the other party as a result of the termination.

15. GENERAL PROVISIONS

15.1. Assignment

Purchaser may not assign this Agreement or its rights under this Agreement without the written consent of the Seller, which consent shall not be unreasonably withheld or delayed; provided, however, no consent shall be required in connection with the assignment of Purchaser's interest in this Agreement to any entity in which Purchaser has an ownership or management interest. Purchaser shall remain a manager of any entity to which Purchaser assigns its interest in this Agreement. This Agreement shall be binding upon and inure to the benefit of any permitted assignee or successor in interest to a party, and Purchaser shall be released of all obligations under this Agreement.

15.2. Notices

All notices and demands which either party gives to the other under this Agreement shall be sent by hand delivery, by registered or certified mail (postage pre-paid, return-receipt requested), by fax transmission, or by Federal Express or other reputable overnight courier service. All notices and demands shall be given to a party at the address or fax number set forth at the beginning of this Agreement or as may be changed upon written notice to the other party. Notices shall be effective upon the earlier of actual delivery or refusal of a party to accept delivery thereof; *provided that* notices given by fax transmission shall be simultaneously transmitted by another means allowed hereunder. A copy of any notice given to Purchaser shall also be given to Brad Miller, Ball Janik LLP, 101 SW Main Street, Suite 1100, Portland, Oregon 97204. A copy of any notice given to the Seller shall also be given to Pamela J. Beery, Beery, Elsner & Hammond, 1750 SW Harbor Way, Suite 380, Portland, Oregon 97201.

15.3. Severability

If any provision of this Agreement shall be invalid or unenforceable, the remaining provisions shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15.4. Attorneys' Fees

In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained with respect to any dispute relating to this Agreement, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

15.5. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

15.6. Time of the Essence

Time is of the essence in this Agreement.

15.7. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

15.8. Amendment to this Agreement

The terms of this Agreement may not be modified or amended except by an instrument in writing executed by Seller and Purchaser.

15.9. Waiver

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

15.10. Statutory Disclaimer

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 THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST

PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. 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, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

15.11. Consequences of Termination

If Purchaser or Seller terminates this Agreement, neither Purchaser nor Seller will have any further obligation under this Agreement, except for indemnity obligations, which shall survive such termination. Nothing in this Section is intended to limit the provisions of this Agreement dealing with the disposition funds or documents held in Escrow following termination of the obligations of Purchaser or Seller. In addition, neither the termination of this Agreement nor this Section limits the liability of a party for its breach of this Agreement, which liability shall survive termination.

15.12. Public Communications

Whenever commercially practicable, all public communications concerning the Property (such as 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 Purchaser and Seller and shall be subject to prior written approval of each party, which approval shall not be unreasonably withheld, conditioned or delayed.

15.13. Survival

Except as otherwise provided in this Agreement, all covenants, undertakings and obligations under this Agreement and all representations and warranties contained in this Agreement will survive Closing and will not be merged into the Deed or other documents delivered under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER:

City of Sherwood Urban Renewal District

By: _____
Jim Patterson, District Manager

PURCHASER:

Capstone Partners LLC, an Oregon limited liability company

By: _____
Chris Nelson, Member

By: Triangle Development Company, an Oregon corporation, Member

Jeffrey M. Sackett, President

EXHIBIT A
LEGAL DESCRIPTION

Exhibit A – This exhibit is a topic of discussion at the 8/14/08 Work Session, and may need to be revised accordingly. It will be emailed to the URA Board by close of business on 8/15/08 and distributed in hardcopy at the 8/19/08 meeting.