



URA RESOLUTION 2009-017

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD DIRECTING THE AGENCY MANAGER TO SIGN THE FIRST AMENDMENT TO 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 Board approved the Purchase and Sales Agreement defining the terms and conditions negotiated with Capstone Partners, LLC by Resolution 2008-020 on August 19, 2008;

WHEREAS, changes in timelines and market conditions have warranted an amendment to that agreement;

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

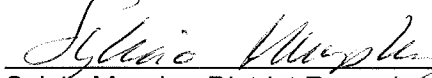
Section 1. The Agency directs the Agency Manager to sign the First Amendment to the Purchase and Sales Agreement with Capstone Partners, LLC. (Attachment A)

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 3rd day of November 2009.


Keith S. Mays, Board Chairman

ATTEST:


Sylvia Murphy, District Recorder

FIRST AMENDMENT OF PURCHASE AND SALE AGREEMENT

This **First Amendment of Purchase and Sale Agreement** (this "First Amendment" and together with the Purchase and Sale Agreement (as hereinafter defined), the "Agreement") is made this ____ day of October 2009, by and between the City of Sherwood Urban Renewal Agency ("Seller") and Capstone Partners LLC ("Purchaser"). The Seller and Purchaser are herein referred to collectively as the "Parties".

BACKGROUND:

A. Seller and Buyer entered into a certain Purchase and Sale Agreement dated September 3, 2008 (the "Purchase Agreement") pursuant to which Seller agreed to convey to Buyer and Buyer agreed to acquire from Seller a portion of that certain real property commonly know as the Old Cannery Site and consisting of Tax parcels R0555599, R0556017, and R0555615 in Washington County, Sherwood, Oregon (the "Current Seller Property"). Certain outside dates within the Purchase Agreement were extended by letter agreement between the Parties dated January 26, 2009 to allow the Seller to resolve certain physical issues with the Current Seller Property.

B. The Parties now desire to amend the Purchase Agreement as more particularly set forth herein.

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing background is incorporated into this First Amendment as if fully set forth herein. Capitalized terms not otherwise defined in this Amendment shall be as defined in the Purchase Agreement.

2. Amendments. The Purchase Agreement is hereby amended as follows:

a. Recitals.

Recital A. **Exhibit A-2** referenced in Recital A. of the Purchase Agreement is deleted and replaced in its entirety by the attached Amended Exhibit A-2.

Recital A. The first sentence of Recital A is amended as follows:

"Seller owns certain real property commonly known 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 West Phase (Site A-1), East Phase (Site B-1), South Phase (Site B-2), West Residential

Phase (Site C), and East Residential Phase (Site D), and NE Phase on the attached Exhibit A-2 (the "Land)."

b. Phases. **Section 1.2** of the Purchase Agreement shall be deleted and replaced with the following:

1.2 It is contemplated that the Property will be purchased in multiple phases or takedowns. Each Phase is depicted on the attached Amended Exhibit A-2, provided however that the exact size and location of each Phase shall be determined during the land division process. Each Phase may be purchased individually or in any combination and/or sequence. It is contemplated that the purchase of at least one Phase will occur on or before the date that is the second anniversary of the completion of the Old Cannery Site Infrastructure Improvements (the "First Takedown Outside Date"). The Seller will provide written notice to the Purchaser when the Old Cannery Site Infrastructure Improvements have been completed. The First Takedown Outside Date shall be extended for "Delay Events" subject to Purchaser's written notice to Seller. In the event the Purchaser extends the First Takedown Outside Date beyond two hundred seventy (270) days, Seller retains the right to terminate the Purchase Agreement. Purchaser agrees to diligently market and pursue financing for the remaining Phases of the Property. If Seller reasonably determines Purchaser is not diligently marketing and/or pursuing financing for the remaining Phases, Seller may exercise the right to terminate the Purchase Agreement at any time. The Purchaser agrees to purchase the remaining Phases between the First Takedown Outside Date and the Last Takedown Outside Date. The Last Takedown Outside Date is the seventh (7th) anniversary of the date of the completion of the Old Cannery Site Infrastructure Improvements. The Last Takedown Outside Date shall be extended for "Delay Events" subject to Purchaser's written notice to Seller. For purposes of this section, "Delay Events" include 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.

c. Development Goals. **Section 2.6** of the Purchase Agreement shall be deleted and replaced with the following:

It is contemplated that West Phase (Site A-1) shall be developed as one (1) approximately 3,750 square foot single story brick commercial building fronting on SW Pine Street; provided however, Purchaser may change how Purchaser develops Site A-1 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").

d. Purchase Price Amounts. **Section 3.3** of the Purchase Agreement shall be deleted and replaced with the following:

The Purchase Price for West Residential Phase (Site C) and East Residential Phase (Site D) shall be the product of the actual land area of the Residential Phase to be acquired (but not more than \$12.00 per square foot nor 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.

e. Purchase Price Amounts. Section 3.4 of the Purchase Agreement shall be deleted and replaced with the following:

The Purchase Price for any Phase or lot within the NE Phase shall be \$16.00 per square foot of land that comprises the Phase or lot to be acquired.

f. Timing of Payment. **Section 4.3** of the Purchase Agreement shall be deleted and replaced with the following:

The Purchase Price for the NE Phase shall be paid in cash on the closing of the purchase by Purchaser of the NE Phase.

g. Seller Pre-closing Obligations. **Section 5.1(ii)** of the Purchase Agreement is amended by adding at the end "including, but not limited to, vacation of the existing public right of way located between the West Phase (Site A-1) and the Machine Works to the west of SW Pine Street and to the east of SW Washington Street". **Section 5.1** of the Purchase Agreement is further amended by adding (ix) "and obtain a "service provider letter" from Clean Water Services in form and content acceptable to Purchaser allowing for the proposed development of the Old Cannery Site".

h. Due Diligence. The definition of "Due Diligence Contingency Date" as contained in the third sentence of **Section 6.2** of the Purchase Agreement is amended to read: "As used herein, the Due Diligence Contingency Date shall be ninety (90) days after the later to occur of: (i) Purchaser's receipt of the 'no further action letter' from the Oregon Department of Environmental Quality, and (ii) final binding approval in form acceptable to Purchaser of the preliminary PUD and Subdivision for the proposed development of the Old Cannery Site".

i. Purchaser's Contingencies. **Section 7.9** of the Purchase Agreement shall be deleted and replaced with the following:

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

upon such terms and from such lender as is reasonably acceptable to Purchaser.

j. Purchaser's Contingencies. Section 7.10 of the Purchase Agreement shall be deleted and replaced with the following:

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, or as may be required by the Purchaser's construction lender.

k. Seller's Contingencies. Section 7.14 of the Purchase Agreement shall be deleted and replaced with the following:

Seller's obligations under this Agreement are contingent upon Purchaser providing evidence, reasonably acceptable to Seller that Purchaser has obtained a loan commitment for construction of the development on the specific Phase or Phases to be acquired, which commitment shall include a typical completion guarantee in favor of the construction lender.

l. Purchaser's Responsibilities: **Section 8.1** of the Purchase Agreement is amended by deleting "two (2) weeks after the Due Diligence Contingency Date" and replacing it with "sixty (60) days following Purchaser's notice to Seller of its intent to purchase a Phase or Phases of the Property".

m. The first sentence of Section 8.2 of the Purchase Agreement is amended to change the word "monthly" to "quarterly".

n. Milestones. The schedule in **Section 8.3** of the Purchase Agreement is deleted and replaced with the following:

Date	Milestone
August 2009	Purchaser to submit Preliminary PUD and Subdivision application and request for TSP Amendment
January 2010	Projected approval of Preliminary PUD and Subdivision and TSP Amendment
April 2010	Due Diligence Contingency Date (90 days following full approval of the proposed PUD and Subdivision)
Spring 2010	Construction begins on public infrastructure (120 days following the later to occur of (i) final PUD and Subdivision approval and TSP Amendment and (ii) Sherwood URD authorization to commence CD's).

Date	Milestone
Summer 2010	Construction begins on public plaza (210 days following Sherwood URD authorization to commence CD's).
Fall 2010	Construction begins on Machine Works shell rehab (240 days following Sherwood URD authorization to commence CD's).
Fall 2010	Projected completion of public infrastructure and plaza and recording of Final Plat.
Winter 2010	Projected completion of Machine Works shell rehab.
Fall 2012	Projected First Takedown Outside Date (two years following completion of public infrastructure).
Fall 2017	Projected Last Takedown Outside Date (seven years following completion of public infrastructure).

o. Closing. The first sentence of **Section 9.1** of the Purchase Agreement is amended to read: "The Closing of the purchase and sale of the Property shall occur in multiple phases to allow for the purchase of any individual Phase or lot or combination of Phases or lots."

p. Closing. Section 9.2 of the Purchase Agreement shall be deleted and replaced with the following:

The Closing for the first Phase purchased shall occur on a date selected by the Purchaser that is on or before the First Takedown Outside Date. The Closing for the last Phase to be purchased shall occur on a date selected by Purchaser that is on or before the Last Takedown Outside Date. All Closings related to other Phases shall occur on a date selected by Purchaser on a date that is after the First Takedown Outside Date but before the Last Takedown Outside Date.

q. Warranties. **Section 10.1.G** of the Purchase Agreement is amended by adding to the end of the sentence, "except for (i) the impact of wetlands buffer zones as identified by the 2009 wetlands delineation and (ii) environmental soil contamination which the Seller is in the process of cleaning up and is responsible for obtaining a 'no further action letter' from the Oregon Department of Environmental Quality."

r. Exhibit A-2. Exhibit A-2 of the Purchase Agreement is deleted and replaced with the attached Revised Exhibit A-2.

3. Reaffirmation. The Purchase Agreement, as amended hereby, is in full force and effect. Except as expressly modified by this Amendment, the terms, provisions, covenants and conditions of the Purchase Agreement shall remain

unchanged and are hereby ratified and confirmed as being in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the Purchase Agreement, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first above written.

SELLER:

City Of Sherwood Urban Renewal Agency

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

Attach Revised Exhibit A-2
Depiction of Land

Exhibit A-3 Public Right of Way to be Vacated

